

**EVENT CENTRE
MANAGEMENT AND LEASE AGREEMENT**

THE CITY OF CALGARY

- and -

**CSE REAL ESTATE CORPORATION in its capacity as general partner for and on behalf of
CSE REAL ESTATE LIMITED PARTNERSHIP**

- and -

**CALGARY SPORTS AND ENTERTAINMENT CORPORATION
in its capacity as general partner for and on behalf of
CALGARY FLAMES LIMITED PARTNERSHIP**

MADE AS OF DECEMBER 5, 2019

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MANAGEMENT AND LEASE AGREEMENT

THIS AGREEMENT made effective the 5th day of December, 2019 (the "**Agreement**").

BETWEEN:

THE CITY OF CALGARY
(the "**City**")

AND:

CSE REAL ESTATE CORPORATION in its capacity as general partner for
and on behalf of **CSE REAL ESTATE LIMITED PARTNERSHIP**
(the "**Manager**")

AND:

CALGARY SPORTS AND ENTERTAINMENT CORPORATION in its capacity
as general partner for and on behalf of **CALGARY FLAMES LIMITED**
PARTNERSHIP
(the "**Guarantor**")

RECITALS:

- A. The City will own the Event Centre and the Lands on which the Event Centre will be constructed in accordance with the provisions of the Project Framework Agreement and the Development Management Agreement.
- B. Pursuant to the Project Framework Agreement and the Development Management Agreement, the Manager will contribute funds to acquire a leasehold interest in the Event Center from the City pursuant to this Agreement, which funds will be used by Calgary Municipal Land Corporation for the design, permitting, construction and development of the Event Center.
- C. The Parties acknowledge that various agreements are necessary to develop, construct and operate the Event Centre.
- D. At the July 29, 2019 Combined Meeting of Council, Council directed City Administration to negotiate and execute all definitive documents and agreements and take all actions required to conclude the agreements, arrangements and transactions contemplated in Report C2019-0964 and the attachments thereto.
- E. The Manager has the necessary resources and expertise to act as the operator and manager of the entirety of the Event Centre and each of its component parts.
- F. The City has agreed to retain the Manager to carry out the management, operation and maintenance of the Event Centre, subject to and in accordance with the terms and conditions set out in this Agreement.

- G. The following principles were approved by Council on July 30, 2018 and, together with the requirements of all other Council Event Centre Approvals, are intended to inform the use and Operation of the Event Centre pursuant to this Agreement:
- (a) the Event Centre should be a gathering place for all Calgarians that includes, but not be limited to: concerts, assemblies, festivals, professional and amateur sports, linked to an outdoor gathering space;
 - (b) public funds must be used for public benefit, including but not limited to improving access and availability for individuals and groups, while also providing economic benefits for the Calgary economy;
 - (c) the Event Centre must be a catalyst to attract further vibrancy and investment as an anchor for further development in a mixed use neighbourhood; and
 - (d) the Event Centre must be viable and sustainable as its own entity while contributing as part of a comprehensive master plan vision that supports The City of Calgary's planning objectives and enhances our communities' brand and reputation.
- H. In furtherance of the foregoing, and as consideration for the contribution of funds by the Manager pursuant to the Project Framework Agreement and the Development Management Agreement, the City has agreed to grant to the Manager a lease to use and occupy the Event Centre and a right to sublease and/or license others to use the Event Centre, subject to and in accordance with the terms and conditions set out in this Agreement.
- I. The Guarantor has agreed to provide a guarantee of the obligations of the Manager hereunder in accordance with Article 17 of this Agreement.

THIS AGREEMENT WITNESSES:

**ARTICLE 1
INTERPRETATION**

1.1 Definitions

In this Agreement, unless something in the subject matter or context is inconsistent therewith:

- (a) "**Additional Improvements**" has the meaning ascribed to it in Section 6.1 hereof.
- (b) "**Additional Warranties**" means construction, manufacturers and other warranties, guarantees and other performance commitments as are obtained by or on behalf of either Party in respect of the Event Centre or the Operation thereof from time to time during the Term.
- (c) "**Affiliate**" of any Person means any Person that, directly or indirectly, Controls, is Controlled by or is under common Control with such Person including:
 - (i) an "affiliate" within the meaning of the *Business Corporations Act* (Alberta);

- (ii) a partnership, the majority of whose partnership interests are directly or indirectly held by such Person or an Affiliate of such Person and such majority is sufficient to Control the affairs of such partnership; or
- (iii) a trust, the majority of whose beneficial interests are directly or indirectly held by such Person or an Affiliate of such Person or of which such Person or an Affiliate of such Person is, directly or indirectly, a trustee or manager which directs the management or policies of the trust;

and, in respect of the City only, includes any one or more Persons existing or to be formed by or on behalf of the City for the purpose of owning the Event Centre, whether similar to the Saddledome Foundation or otherwise howsoever constituted.

- (d) "**Agreement**", "**this Agreement**", "**the Agreement**", "**hereto**", "**hereof**", "**herein**", "**hereby**", "**hereunder**" and similar expressions mean or refer to this Management and Lease Agreement as amended from time to time and any agreement or instrument supplemental hereto and the expressions "**Article**", "**Section**", "**Subsection**" and "**Schedule**" followed by a number or letter mean and refer to the specified Article, Section, Clause or Schedule of or attached to this Agreement.
- (e) "**All Risks Coverage**" means the insurance coverage on the Event Centre required pursuant to Section 8.1(a)(i) hereof.
- (f) "**Annual Event Centre Schedule**" has the meaning ascribed to it in Subsection 4.10(d)(vi).
- (g) "**Annual Plan**" has the meaning ascribed to it in Subsection 4.10(d) hereof.
- (h) "**Applicable Laws**" means, with respect to any Person, property, agreement, transaction or event, all applicable present and future laws, statutes, by-laws, codes, ordinances, decrees, rules, regulations, treaties, policies, guidelines and judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, directives, rulings or awards, general principles of common law and conditions of any grant of approval, permission, authority, licence or registration of any federal or provincial court, statutory body, regulatory authority, agency, commission, tribunal, board, department of any government, or any other Governmental Authority, including any self-regulatory organization recognized by such Governmental Authority and includes, without limitation, any of the foregoing that relate to environmental matters; provided, however, that for the purposes of this Agreement, "Applicable Laws" shall not include any City Policies.
- (i) "**Arbitration Court**" has the meaning ascribed to it in Section 13.5(b) hereof.
- (j) "**Arbitration Notice**" has the meaning ascribed to it in Section 13.5(a) hereof.
- (k) "**Assignment**" means any transfer, assignment, sale, conveyance or other disposition of this Agreement or any interest in this Agreement, in whole or in part and whether by operation of law or otherwise, or any sublease or sharing or parting with possession of the Event Centre, in whole or in part, or the entering into of any agreement or arrangement to transfer, assign, sell, convey or otherwise dispose of this Agreement in whole or in part; provided, however, that any license of the

Event Centre entered into by the Manager in accordance with the provisions of this Agreement (other than a license of the entirety of the Event Centre, except as expressly permitted pursuant to Section 5.3(a) hereof) shall not constitute an "**Assignment**" for the purposes hereof.

- (l) "**Attornment Instruments**" has the meaning ascribed to it in Section 10.6(c) hereof.
- (m) "**Award**" has the meaning ascribed to it in Section 13.5(f) hereof.
- (n) "**Building Condition Assessment**" has the meaning ascribed to it in Section 4.10(e) hereof.
- (o) "**Building Systems**" means all mechanical, plumbing, electrical and heating, ventilating and air-conditioning services and equipment, sprinkler equipment, pipes, ducts, wiring, machinery and equipment, fire safety systems, life safety systems and other integral services, utility connections and similar equipment and services, in any such case providing services to the various components of the Event Centre.
- (p) "**Bus Barn Right of First Offer Agreement**" means the right of first offer agreement dated as of December 5, 2019 between the City and the Manager in respect of the lands commonly known as the "Bus Barn Lands", as amended, modified, extended and supplemented from time to time in accordance with the provisions thereof
- (q) "**Business Day**" means any day which is not a Saturday, Sunday or a day observed as a holiday under the laws of the Province of Alberta or the federal laws of Canada applicable therein.
- (r) "**Capital Improvement Extension Term**" has the meaning ascribed to it in Section 3.3 hereof.
- (s) "**Change in Control**" means any transaction or series of transactions including, without limitation, any transfer, assignment, conveyance or other disposition of all or part of the equity interests, securities, partnership interests or other ownership interests of a Person by operation of law or otherwise which results in a change in the effective Control of such Person and includes any merger, amalgamation or other similar corporate reorganization of a Person, a change in any one or more partners of a general partnership or a change in one or more limited partners of a limited partnership or a change in the general partner of a limited partnership to an entity that is not Controlled by: (i) one or more of the current holders (as of the date of this Agreement) of the equity interests or other security interests of such limited partnership; or (ii) an approved assignee, where approval is required under this Agreement, of the holders of the equity interests or other security interests of such limited partnership.
- (t) "**City**" means The City of Calgary and any successor thereto or permitted assignee of this Agreement therefrom.
- (u) "**City Administration**" means administration staff of the City.

- (v) **"City Background Intellectual Property"** means all City owned or controlled Intellectual Property or Proprietary Materials which: (i) were owned or controlled by City prior the effective date of this Agreement; or (ii) are developed by the City outside of the scope of this Agreement.
- (w) **"City Indemnified Parties"** has the meaning ascribed to it in Section 8.3(a) hereof.
- (x) **"City Manager"** means the person appointed to the position of chief administrative officer of the City pursuant to the *Municipal Government Act* (Alberta), or such person's designate from time to time.
- (y) **"City Mortgagee"** has the meaning ascribed to it in Section 10.6(b) hereof.
- (z) **"City Policies"** means all policies of the City, in its capacity as a Governmental Authority and not in its capacity as a Party to this Agreement, which are applicable to the Event Centre from time to time as determined in accordance with Section 4.17(b), as such policies may be amended by the City, in its capacity as a Governmental Authority and not in its capacity as a Party to this Agreement, from time to time and such additional City policies which are issued by the City, in its capacity as a Governmental Authority and not in its capacity as a Party to this Agreement, from time to time during the Term of this Agreement and which are applicable to the Event Centre in accordance with Section 4.17(b).
- (aa) **"City Proprietary Materials"** means all Proprietary Materials owned by the City or which the City has the right to use, but excluding the Manager's Proprietary Materials.
- (bb) **"City's Auditor"** means the auditor appointed by the City from time to time, which may include the City's internal auditor, an external auditor retained by the City, or a combination of both, as the case may be.
- (cc) **"Claim"** has the meaning ascribed to it in Section 8.7 hereof.
- (dd) **"Community Engagement Program"** has the meaning ascribed to it in Subsection 5.6(a)(i) hereof.
- (ee) **"Confidential Information"** means information considered proprietary by a Party that is delivered or disclosed pursuant to this Agreement (and for certainty shall not include this Agreement) and identified as such, and includes any and all material, data and information (regardless of form and whether or not patentable or protectable by copyright and whether or not identified as confidential or proprietary) that is not available to the public or required to be disclosed by Applicable Laws such as technical and business information, financial plans and records, Construction Data, marketing plans, business strategies, trade secrets, present and proposed products, customer lists and information regarding customers and suppliers.
- (ff) **"Control"** or **"Controlled"** means: (i) with respect to any Person that is a corporation, incorporated or unincorporated association, incorporated or unincorporated syndicate, or other incorporated or unincorporated organization, trust or other legal entity which has issued voting securities, the ownership in the aggregate, directly or indirectly, of voting securities of such Person carrying 50%

or more of the votes for the election of directors (or individuals performing a similar function or occupying similar position, including the trustees of a trust); (ii) with respect to any Person that is a trust which has not issued voting securities, control by the trustees of such trust; or a Person who Controls each trustee of such trust and in each case, ownership in the aggregate, directly or indirectly of 50% or more of the beneficial interests in such trust held by Persons that are not charities; (iii) with respect to any Person that is a partnership that does not have directors (or Persons performing a similar function or occupying a similar position) (other than a limited partnership), the ownership in the aggregate directly or indirectly of 50% or more of the interests in such partnership; or (iv) with respect to any Person that is a limited partnership, the Control of each general partner of such limited partnership and the ownership in the aggregate directly or indirectly of 50% or more of the limited partnership interests in such limited partnership; and a Person is Controlled (within the meaning of paragraphs (i) to (iv) of this definition) by a Person when one or more of such first-mentioned Persons are directly or indirectly Controlled (within the meaning of paragraphs (i) to (iv) of this definition) by the second-mentioned Person, and the terms "**Controlling**", "**Controlled by**" and "**under common Control with**" will have corresponding meanings.

- (gg) "**Construction Data**" has the meaning ascribed to it in the Project Framework Agreement and the Development Management Agreement.
- (hh) "**Council**" means the municipal council of the City.
- (ii) "**Council Event Centre Approvals**" means all approvals, directions and policies of Council respecting the Event Centre made as of the date of this Agreement and such other approvals, direction and policies of Council respecting the Event Centre from time to time after the date of this Agreement.
- (jj) "**CPI**" means the All-Items Consumer Price Index for the City of Calgary as published by Statistics Canada (or by a successor or other Governmental Authority, including a provincial agency), or, if the Consumer Price Index is no longer published or is not published for the relevant period of time, an index published in substitution for the Consumer Price Index or for such relevant period or time, or any comparable replacement index designated by the City, acting reasonably and in consultation with the Manager. If a substitution or replacement is required, the City, acting reasonably, and in consultation with the Manager, will make the necessary conversions. If the base year for the Consumer Price Index (or the substituted or replacement index) is changed by Statistics Canada (or by its successor or other Governmental Authority), the City will make the necessary conversion. If any calculation is required to be made under this Agreement based on the CPI as at a particular date or for a particular period and the CPI for such date or period is not available as at the time such calculation is required to be made, the City, acting reasonably, and in consultation with the Manager, shall be entitled to estimate the CPI for the purposes of such calculation, subject to adjustment following the CPI for the relevant date or period becoming available.
- (kk) "**CPI Index Ratio**" means a fraction, the numerator of which is the CPI for the October 31 immediately prior to the commencement of a Fiscal Year, and the denominator of which is the CPI for the October 31 immediately prior to the commencement of the preceding Fiscal Year.

- (ll) **"Critical City Infrastructure"** means any utilities, infrastructure or other improvements of any kind whatsoever located in, on, under or through the Lands that do not solely service the Event Centre (or any component part thereof), that are the City's responsibility, as Governmental Authority, to operate, maintain, repair and replace, all as more fully identified on Schedule B hereto.
- (mm) **"CSEC Covenant to Pay Agreement"** means the covenant to pay agreement (for the community grant agreement) dated as of December 5, 2019 between the City and the Guarantor, as amended, modified, extended and supplemented from time to time in accordance with the provisions thereof.
- (nn) **"Demolition Agreement"** means the demolition agreement dated as of December 5, 2019 between the City, the Manager and the Guarantor, as amended, modified, extended and supplemented from time to time in accordance with the provisions thereof
- (oo) **"Development Management Agreement"** means the development management agreement dated as of December 5, 2019 between the City, the Manager, the Guarantor and Calgary Municipal Land Corporation in respect of the design, development and construction of the Event Centre, as amended, modified, extended and supplemented from time to time in accordance with the provisions thereof.
- (pp) **"Disclosing Party"** has the meaning ascribed to it in Section 14.3(c) hereof.
- (qq) **"Dispute"** has the meaning ascribed to it in Section 13.1 hereof.
- (rr) **"Dispute Notice"** has the meaning ascribed to it in Section 13.1 hereof.
- (ss) **"Event Centre"** means, collectively, the Lands, the Interior Facility, the Secondary Facility, all of which are more particularly described on Schedule B attached hereto (and as the same shall be replaced in accordance with the provisions of Section 18.1(a)(ii) hereof) and including, without limitation, all Building Systems and facilities forming part of any of the foregoing.
- (tt) **"Event Centre IP"** has the meaning ascribed to it in Section 4.3(b) hereof.
- (uu) **"Event Centre IP Licence"** has the meaning ascribed to it in Section 4.3(c) hereof.
- (vv) **"Event Centre Services"** has the meaning ascribed to it in Section 2.2 hereof.
- (ww) **"Event of Default"** has the meaning ascribed to it in Section 11.1 hereof.
- (xx) **"Event of Insolvency"** means with respect to a Person the occurrence of any one of the following events:
 - (i) if such Person shall:
 - A. be wound up, dissolved, or liquidated, or become subject to the provisions of the *Winding-up and Restructuring Act* (Canada), as amended or re-enacted from time to time, or have its existence terminated or have any resolution passed therefor, unless, in any

such case it forms part of a bona fide corporate reorganization or a merger or amalgamation not forming part of any relief being sought under any present or future law relative to bankruptcy, insolvency or other relief for debtors, provided that it shall not be an Event of Insolvency if the Person, being a corporation, is dissolved involuntarily pursuant to its governing legislation and the Person is revived within forty-five (45) Business Days of any of the directors or officers of such corporation at the time of its dissolution becoming aware of such dissolution;

- B. make a general assignment for the benefit of its creditors or a proposal under the *Bankruptcy and Insolvency Act (Canada)* as amended or re-enacted from time to time, or shall be declared bankrupt or insolvent by a court of competent jurisdiction;
 - C. propose a compromise or arrangement under the *Companies' Creditors Arrangement Act (Canada)* or any similar legislation, from time to time, or shall file any petition or answer seeking any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution or similar relief for itself under any present or future law relative to bankruptcy, insolvency or other relief for debtors; or
 - D. become insolvent within the meaning of the *Bankruptcy and Insolvency Act (Canada)*; or
- (ii) if a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against such Person seeking any reorganization, arrangement, composition, re-adjustment, liquidation, dissolution, winding up, termination of existence, declaration of bankruptcy or insolvency or similar relief under any present or future law relating to bankruptcy, insolvency or other relief for or against debtors, and such Person shall acquiesce in the entry of such order, judgment or decree or such order, judgment or decree shall remain unvacated and unstayed for an aggregate of thirty (30) days (whether consecutive or not) from the day of entry thereof; or if any trustee in bankruptcy, receiver or receiver and manager, liquidator or any other officer with similar powers shall be appointed for such Person or of all or any substantial part of its property with the consent or acquiescence of such Person, or such appointment shall remain unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive).
- (yy) "**Expert**" has the meaning ascribed to it in Section 13.3 hereof.
- (zz) "**Expert Notice**" has the meaning ascribed to it in Section 13.3 hereof.
- (aaa) "**F&B Premises**" means dining, catering, hospitality, vending and concession stands, Interior Facility and Secondary Facility suites, kiosks, roving vendors, snack bars, liquor bars, dining rooms and all areas of the Interior Facility and Secondary Facility, including seating areas and club seats areas, where food and beverage products are sold or served.

- (bbb) **"F&B Revenues"** means all gross revenues derived from the F&B Premises within the Event Centre net only of GST, determined in accordance with Generally Accepted Accounting Principles.
- (ccc) **"F&B Services"** means the provision of food and beverage products for consumption in the F&B Premises within the Event Centre in accordance with this Agreement.
- (ddd) **"F&B Service Providers"** means the Manager or one or more Persons engaged by the Manager, to provide all or part of the F&B Services for the Event Centre.
- (eee) **"FF&E"** means all furniture, furnishings, trade fixtures, machinery, signage, scoreboards, large video and audio displays, information technology systems and all hardware and software associated therewith (but excluding, for clarity, any Manager Proprietary Materials), and equipment necessary or desirable for the Operation of the Event Centre in accordance with the provisions of this Agreement and in order to maintain the Standard and including, without limitation, all Event Centre Equipment (as defined in the Project Framework Agreement and the Development Management Agreement) acquired or installed in the Event Centre in accordance with the provisions of the Project Framework Agreement and the Development Management Agreement; provided, however, that "FF&E" shall not include any Additional Improvements or any of the foregoing required specifically for any user of the Event Centre other than the Manager or any of its Affiliates and owned by any such user of the Event Centre other than the Manager or any of its Affiliates.
- (fff) **"Facility Fee"** has the meaning ascribed to it in the Facility Fee Agreement.
- (ggg) **"Facility Fee Agreement"** means the agreement dated December 5, 2019 between the City, the Guarantor, and the Manager with respect to the determination, collection and remittance of the Facility Fee and attached as Schedule G hereof.
- (hhh) **"First Initial Extension Term"** has the meaning ascribed to it in Section 3.1(b) hereof.
- (iii) **"Fiscal Year"** means the fiscal year beginning July 1 and ending June 30.
- (jjj) **"FOIP"** has the meaning ascribed to it in Section 14.1 hereof.
- (kkk) **"Force Majeure"** means any act, event, cause or condition beyond the control of a Party (other than as a result of financial incapacity or financial inability of such Party, which, for greater certainty, shall not be considered an event beyond the control of a Party) and not caused by an act or omission of such Party and which by the exercise of reasonable diligence and at a reasonable cost such Party is unable to prevent or control, in the nature of:
 - (i) a lack or an inability to obtain materials, goods, equipment, services, utilities or labour;
 - (ii) any new Applicable Law passed or made or coming into effect after the date of this Agreement;

- (iii) an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used commercially reasonable efforts to oppose said order, judgment, legislation, ruling or direction;
- (iv) an inability to obtain any licence, permit, permission or authority relating to the Operation of the Event Centre or the provision of the Management Services from an entity beyond time periods typical for The City of Calgary (in its capacity as a Governmental Authority and not in its capacity as a party to this Agreement) despite using commercially reasonable efforts to obtain;
- (v) a strike, labour dispute, work stoppage, lockout, slow-down or other combined action of workers that provide labour or services to the Event Centre; provided, however, that any of the foregoing relating to any players in a professional sports organization that utilizes the Event Centre shall not constitute an event of Force Majeure for the purposes of this Agreement;
- (vi) fire, explosions, unavoidable casualties, natural disasters such as floods, earthquakes, tornadoes, hurricanes and other adverse weather conditions (including rain and snow), provided that the affected Party is precluded or materially limited from performing any of its obligations under this Agreement as a result of such adverse weather condition;
- (vii) an act of terrorism, civil commotion, war, invasion, embargo, insurrection, rebellion, sabotage (other than by the Parties), riot, violence, malicious mischief (other than by the Parties), act of public enemy, or extortion;
- (viii) local, regional or national states of emergency; and
- (ix) an act of God;

and which in any such case shall cause such Party to be unable to fulfil or to be delayed or restricted in the fulfilment of any obligation hereunder. For clarity, and notwithstanding the foregoing, the Parties agree that the occurrence of any event described in Section 11.8(b) of this Agreement for any reason whatsoever shall not, in any such case, constitute an event of Force Majeure.

- (III) **"Generally Accepted Accounting Principles"** means accounting standards for private enterprises in accordance with the CPA handbook.
- (mmm) **"Governmental Authority"** means any: (i) federal, provincial, municipal, local or other governmental or public department, central bank, court, utility, commission, board, bureau, agency or instrumentality, domestic or foreign; (ii) any subdivision or authority of any of the foregoing, including the subdivision authority, development authority, municipal planning commission and subdivision and development appeal board of The City of Calgary (in its capacity as a Governmental Authority and not in its capacity as a Party to this Agreement); and (iii) any professional body or quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the

foregoing or regulating professional standards for any consultant or contractor engaged in connection with the Event Centre (including, without limitation, the Independent Engineer).

- (nnn) "**Gross Revenues**" means, for any period, without duplication, any and all revenues, derived from the Operation of the Event Centre, which constitute operating revenues determined in accordance with Generally Accepted Accounting Principles, of every nature and kind including, but not limited to, revenues from goods sold or leased and services performed in or from the Event Centre, revenues from the use or Operation of the Event Centre for events (including revenues from rentals, subleasing and licensing of the Event Centre or any part thereof which constitute operating revenues determined in accordance with Generally Accepted Accounting Principles), whether at wholesale or retail, whether for cash, credit, exchange of merchandise, or other consideration, F&B Revenues, third party advertising revenue, concession fees and rentals, revenue from merchandise sales but only to the extent the Manager or any Affiliate of the Manager is entitled to such merchandise sales revenues, equipment rentals, utility income, box office revenues (but only to the extent the Manager or any Affiliate of the Manager is entitled to such box office revenues), the portion of the Facility Fee paid to the Manager pursuant to the Facility Fee Agreement, miscellaneous operating revenues, and expressly including revenue from the following sources:
- (i) in each case, and only to the extent the Manager or any Affiliate of the Manager is entitled to such revenues, single game event tickets, club seats tickets, suite rentals and season tickets, or other forms of admission to the Event Centre but excluding (A) face value (or, if no face value, the fair market value) of all complimentary or barter tickets; (B) the aggregate amount of all service charges payable directly or indirectly to an arm's length unaffiliated third party, or to an affiliate on normal market terms in connection with the sale of such tickets, such as TicketMaster or equivalent service charges, credit card or interac service charges, but only to the extent that the Manager or any Affiliate of the Manager is not reimbursed for such service charges; and (C) applicable Taxes on such amounts; and
 - (ii) the sale of all merchandise and services sold or delivered at the Event Centre, including the sale of souvenirs, novelty, and other promotional items, and entertainment provided by machines, vending machines, and machines operated by coins and credit cards or otherwise but only to the extent the Manager or any Affiliate of the Manager is entitled to such revenues.
- (ooo) "**GST**" means the tax imposed under Part IX of the *Excise Tax Act (Canada)*, or any tax replacing such imposition and any similar tax that may hereafter be imposed under the laws of the Province of Alberta or Canada, including in any such case any interest thereon and penalties relating thereto.
- (ppp) "**Guarantor**" means Calgary Sports and Entertainment Corporation, in its capacity as general partner for and on behalf of Calgary Flames Limited Partnership, the owner of the National Hockey League franchise participating in the National Hockey League under the name "Calgary Flames".

- (qqq) "**Handback Commencement Date**" means the earlier of the following:
- (i) the date which is two (2) years prior to the expiry of the Second Initial Extension Term; or
 - (ii) the date which is three (3) months after a notice of termination has been given by one Party to the other Party under this Agreement if this Agreement is being terminated prior to the expiry of the Second Initial Extension Term, unless the effective date of termination of this Agreement indicated in any such notice is less than six (6) months following the date of delivery of such notice, in which case it shall be the date that is as soon as reasonably possible following the delivery of any such notice of termination.
- (rrr) "**Handback Plan**" means a detailed plan and procedure prepared by the Manager which shall include, at a minimum, the steps that the Manager will take and the processes, plans and procedures that the Manager will follow (including the full and proper training by the Manager of all relevant staff of the City) and all applicable information sharing and information transfer relating to the provision of the Management Services to facilitate the City's performance of such activities after the expiration or sooner termination of this Agreement, and the timing for each, to ensure an orderly, timely and well managed transition of the Event Centre from the Manager to the City.
- (sss) "**Hazardous Substances**" means any contaminant, pollutant or dangerous substance, noxious substance, toxic substance, hazardous waste or material, flammable or explosive substance or radioactive material, in any case that is regulated under any Applicable Laws relating to environmental matters.
- (ttt) "**Indemnified Party**" has the meaning ascribed to it in Section 8.6 hereof.
- (uuu) "**Indemnifier**" has the meaning ascribed to it in Section 8.6 hereof.
- (vvv) "**Indemnity Beneficiary**" has the meaning ascribed to it in Section 8.6 hereof.
- (www) "**Independent Engineer**" means either a professional engineer licenced by the Association of Professional Engineers and Geoscientists of Alberta (APEGA) with a valid permit to practice issued by APEGA, or an engineering firm employing such professional engineers, in any such case as approved by the Oversight Committee.
- (xxx) "**Initiating Party**" has the meaning ascribed to it in Section 13.5(a) hereof.
- (yyy) "**Intellectual Property**" means all forms of intellectual property including but not limited to trademarks, trade names, emblems, insignia, logos, slogans, distinguishing guises, get-up, copyright, inventions, patents, and industrial designs, software programs and data, and all applications and registrations therefor.
- (zzz) "**Interest Rate**" means the prime rate of interest per annum published by Royal Bank of Canada from time to time, as may be in effect on the first day of each month as its reference rate of interest used to determine rates of interest for

commercial loans in Canada in Canadian funds, expressed as an annual rate plus five (5%) percent.

- (aaaa) **"Interior Facility"** means the approximately 18,000 and maximum 19,000 seat primary event centre facility and all Building Systems forming part thereof, all as to be constructed on the Lands in accordance with the Project Framework Agreement and the Development Management Agreement including the arena bowl, seating, concourses, suites, loge seating, lounges and clubs, amenities related to the use of the arena bowl, the F&B Premises, underground parking, on-site parking, interior office space, media rooms or areas, dressing rooms, referee or official rooms, emergency rooms, interior concessions, ticket offices, retail premises and mechanical, electrical, boiler, fire protection and information technology rooms, but excluding the Secondary Facility.
- (bbbb) **"International Event"** means any major international event pursued by or on behalf of the City or pursued by any organizing committee, bid committee or similar entity endorsed by the City (such committee or entity, an **"Organizing Committee"**) such as (by way of example only and without limitation) the Olympic Games and Paralympic Games, the Commonwealth Games, the PanAm Games and ParaPanAm Games, any World's Fair or World's Expo, or any other event that is international in scope and scale; and, for clarity, the Parties acknowledge and agree that **"International Event"** shall not be limited to sporting or athletic events.
- (cccc) **"Lands"** means the entirety of Plan "C", Blocks 92 and 95, and the portion of 13th Avenue SE that bisects Plan "C", Blocks 92 and 95, all in the City of Calgary, as shown for reference purposes outlined in black on the plan attached as Schedule A hereto. Upon registration of the Subdivision Plan (as defined in the Project Framework Agreement and the Development Management Agreement), in accordance with the terms and conditions of the Project Framework Agreement and the Development Management Agreement, this definition of "Lands" shall be deemed for all purposes under this Agreement to be the Lands set forth in the registered Subdivision Plan and the certificate of title issued by the Alberta Land Titles Office upon such registration.
- (dddd) **"Lifecycle Plan"** means the asset management and life cycle plan for the Event Centre prepared and finalized as part of the Overall Commissioning Program and to be attached hereto as Schedule E setting out the life cycle plan for maintaining all building components forming part of the Event Centre from initial construction through to disposal including, without limitation the prediction of future performance and associated repair or replacement cost of building components based on their condition during each Building Condition Assessment.
- (eeee) **"Major Structural Failure"** means any change in the structural integrity of any Structural Component forming part of the Event Centre such that the use or occupation of any structure forming part of the Event Centre, or any material portion thereof, is materially diminished from its use and occupation at the Turnover Date (as defined in the Project Framework Agreement and the Development Management Agreement) such that the Event Centre will no longer be fit for public occupancy without completing a Major Structural Repair, as determined by: (i) any Building Condition Assessment; (ii) the Independent Engineer; or (iii) any Governmental Authority having jurisdiction.

- (ffff) "**Major Structural Repair Plan**" has the meaning ascribed to it in Section 4.7(b) hereof.
- (gggg) "**Major Structural Repair Report**" has the meaning ascribed to it in Section 4.7(a) hereof.
- (hhhh) "**Major Structural Repairs**" means the repair or replacement of a Structural Component of the Event Centre that, if not completed, would result in a Major Structural Failure, as determined by: (i) any Building Condition Assessment; (ii) the Independent Engineer; or (iii) any Governmental Authority having jurisdiction; provided, however, that "**Major Structural Repairs**" shall not include any routine day-to-day preventative maintenance, repair or component part replacement of any Structural Components identified in any Annual Plan or Building Condition Assessment as being necessary or desirable for the continued safe and efficient operation of any Structural Component or to ensure its continued good operation for the remainder of its anticipated useful life, or any replacements of any Structural Components required as a result of any damage to or destruction of the Event Centre contemplated by Article 12 hereof.
- (iiii) "**Management Services**" has the meaning ascribed to it in Section 2.1(a) hereof.
- (jjjj) "**Manager**" means CSE Real Estate Corporation, in its capacity as general partner for and on behalf of CSE Real Estate Limited Partnership, and any successor thereto or permitted assignee of this Agreement therefrom.
- (kkkk) "**Manager Background Intellectual Property**" means all Manager owned or controlled Intellectual Property or Proprietary Materials which: (i) were owned or controlled by Manager before the effective date of this Agreement; (ii) are developed by the Manager outside of the scope of this Agreement; or (iii) are related in any respect to the Calgary Flames, the Calgary Hitmen, the Calgary Roughnecks, the National Hockey League, the Western Hockey League or the National Lacrosse League.
- (llll) "**Manager Indemnified Parties**" has the meaning ascribed to it in Section 8.4(a) hereof.
- (mmmm) "**Manager IP**" has the meaning ascribed to it in Section 4.3(d) hereof.
- (nnnn) "**Manager IP Licence**" has the meaning ascribed to it in Section 4.3(d) hereof.
- (oooo) "**Manager Proprietary Material**" means: (i) all Proprietary Materials owned by the Manager; and (ii) all Proprietary Materials not owned by the Manager but which the Manager has the right to use including without limitation, (A) any agreement, document, information or understanding prepared by or in the possession or control of the Manager (in its capacity other than as Manager), (B) operational manuals (including, without limitation, accounting, financial administration, personnel administration, and policies and procedures manuals), (C) corporate records of the Manager, ticket holder profiles and ticket holder histories, (D) employee attitude surveys, (E) recipes, menus, wine lists and related materials, (F) software and other management programmes developed by or on behalf of the Manager, notwithstanding any modification or alteration made for application at the Event Centre and notwithstanding their maintenance or administration by any other

Person, (G) the operating and design standards of any event centre or other facility owned or operated by the Manager or any of its Affiliates and any materials relating thereto, (H) business and Marketing plans, and (I) internal audit reports.

- (pppp) "**Manager's Personnel**" means personnel employed by the Manager providing services for the Operation of the Event Centre.
- (qqqq) "**Marketing**" means all marketing, advertising, promotion, sales, public relations, communications, publicity and related activities conducted by the Manager for the purpose of promoting the name and business of the Event Centre pursuant to the terms of this Agreement, including, without limitation, all literature and promotional materials related thereto.
- (rrrr) "**Material Adverse Effect**" means any fact, event or circumstance that, alone or when taken with other events or conditions occurring or existing concurrently with such event or condition: (i) has or could reasonably be expected to have a material adverse effect on the business, assets, operations, condition (financial or otherwise), or prospects of the Manager, the Guarantor or the Event Centre; or (ii) materially impairs or could reasonably be expected to materially impair the ability of the Manager to perform its obligations under this Agreement.
- (ssss) "**Material Capital Improvement**" means any capital improvement made by or on behalf of the Manager, at its sole cost and expense, to the Event Centre in addition to its maintenance, repair and replacement obligations under this Agreement, and which is determined by the Independent Engineer to materially extend the useful life of the Event Centre, taken as a whole, in accordance with Section 6.6 hereof, including, by way of example only, alterations or improvements to the Event Centre or any part thereof, the purpose of which is intended primarily to substantially upgrade the Event Centre (including, without limitation, any Building Systems forming part thereof) or substantially upgrade, expand or enlarge its facilities or systems or any portion thereof.
- (tttt) "**Material Capital Improvement Report**" has the meaning ascribed to it in Section 6.6.
- (uuuu) "**Minimum Annual Maintenance Schedule**" means the detailed schedule setting out the timing and frequency of all planned and anticipated component and system testing, inspections, maintenance, repairs and replacements for the Event Centre and all component parts thereof, as such Minimum Annual Maintenance Schedule is prepared and finalized as part of the Overall Commissioning Program and to be attached hereto as Schedule F, as the same shall be supplemented by the Annual Plan in each Fiscal Year and amended from time to time in accordance with the provisions hereof based on the Lifecycle Plan and the then-applicable Building Condition Assessment.
- (vvvv) "**Mortgage**" has the meaning ascribed to it in Section 10.6(b) hereof.
- (wwww) "**Naming Rights Fee**" means the annual fee of two hundred fifty thousand (\$250,000) dollars, payable by the Manager to the City pursuant to Section 9.2 hereof.
- (xxxx) "**Notice of Claim**" has the meaning ascribed to it in Section 8.7 hereof.

(yyyy) **“Operating Costs”** means any and all expenditures, without duplication, incurred in connection with the maintenance, Operation, Marketing and management of the Event Centre and the provision of the Management Services which, in any such case, constitute operating costs reasonably and properly incurred in accordance with Generally Accepted Accounting Principles including, but not limited to, food and beverage operating costs, payroll, costs of training courses and relocation, parking and other fringe benefits including contributions and premiums towards employment and Workers’ Compensation insurance, pension plan contributions and similar premiums and contributions, where applicable, accounting or audit fees, the purchase of operating supplies, costs for administering and enforcing any agreement, contract or understanding entered into by the Manager including without limitation, litigation costs, fees and expenses and any amounts paid upon settlement or pursuant to a judgement against the Manager, acting on behalf of the City, advertising costs, Marketing costs, cleaning expenses, landscaping and snow removal costs, garbage, data processing costs, dues, subscriptions and membership costs, insurance premiums for and payment of the deductible portions of the insurance, amounts expended to procure and maintain permits, licences and any other approvals, and to pay charges, Taxes, fees, printing and stationery costs, postage and freight costs, equipment and sign rental costs, repairs, replacement and maintenance costs, traffic control, supervision and monitoring, policing, supervision and security expenses, the cost of office and building supplies, utility charges, all costs of installation and connection of a utility grade meter in accordance with specifications approved by the City and connected to the City’s monitoring and metering system, costs paid in connection with heating, ventilating, air conditioning and the maintenance, repair and replacement of equipment supplying or distributing such heating, ventilation or air conditioning, costs paid in connection with the maintenance, repair and replacement of all utility lines and facilities (including underground lines) with respect to cable/internet wiring, water mains, gas pipes, electricity service, storm and sanitary sewers, grading and other infrastructure amenities and services, and telephone charges, business travel, out-of-pocket disbursements, the cost of employee uniforms, exterminator and trash and waste collection, recycling, disposal and removal costs, energy conservation, the cost of compliance with all Applicable Laws with respect to the Event Centre, including but not limited to, life safety systems, fire alarm, fire monitoring, fire response and the cost of compliance with the latest version of the National Fire Code and National Building Code (Alberta Edition), costs of ice repair and resurfacing equipment, environmental assessment, monitoring and remediation costs, fees and expenses of any third party consultants and/or experts retained by the Manager in accordance with the Annual Plan, fees and expenses of the Independent Engineer, costs of preparing all reports required pursuant to this Agreement (including, without limitation, all Building Condition Assessments, updates to the Lifecycle Plan and updates to the Minimum Annual Maintenance Schedule), amounts expended upon the termination or earlier expiry of this Agreement in the satisfaction or settlement of all operating and other business accounts, costs and expenses incurred in the Operation of the Event Centre, but Operating Costs shall NOT include the cost of Major Structural Repairs (including any related depreciation and amortization expenses) that are the responsibility of the City pursuant to Section 4.7 hereof, incremental cost of flood insurance that is the responsibility of the City pursuant to Section 8.1(c) hereof (if any), and any taxes in respect of income, capital or place of business of, or otherwise personal to, the City. For clarity, the Parties acknowledge that the classification of any cost

as an Operating Cost in this Agreement is solely for the purposes of determining responsibility for such cost and does not constitute a determination as to how any such cost is treated for accounting or tax purposes, which determination shall be made by each of the Parties in their sole discretion.

- (zzzz) "**Operation**" means the operation, direction, management, maintenance, repair, replacement, furnishing, equipping, supervision and security of the Event Centre and all component parts thereof, and the performance of the obligations of the Manager hereunder, including the delivery and provision of the Event Centre Services; and "**Operated**" and "**Operating**" each have a corresponding meaning.
- (aaaaa) "**Overall Commissioning Program**" has the meaning ascribed to it in the Project Framework Agreement and the Development Management Agreement whereby the Parties shall, *inter alia*, complete or cause to be completed the initial Building Condition Assessment, the Lifecycle Plan, and the detailed Minimum Annual Maintenance Schedule for the first two (2) Fiscal Years of the Term.
- (bbbb) "**Oversight Committee**" has the meaning ascribed to it in Section 7.1 hereof.
- (cccc) "**Party**" means the City or the Manager; and "**Parties**" means the City and the Manager.
- (dddd) "**Person**" means any Governmental Authority, individual, firm, association, partnership or corporation or any group of individuals, firms, associations, partnerships or corporations or any combination thereof and "**Persons**" has a corresponding meaning.
- (eeee) "**Primary Term**" has the meaning ascribed to it in Section 3.1 hereof.
- (ffff) "**Primary Uses**" has the meaning ascribed to it in Section 5.4 hereof.
- (ggggg) "**Project Documents**" means this Agreement, the Project Framework Agreement, the Development Management Agreement, the Stampede Agreements, the Facility Fee Agreement, the Tax Agreement, the Demolition Agreement, the CSEC Covenant to Pay Agreement and the Bus Barn Right of First Offer Agreement.
- (hhhhh) "**Project Framework Agreement**" means the project framework agreement dated as of December 5, 2019 between the City, the Manager and the Guarantor in respect of the funding, design, development and construction of the Event Centre, as amended, modified, extended and supplemented from time to time in accordance with the provisions thereof.
- (iiii) "**Proprietary Materials**" means all (i) Intellectual Property, as well as the embodiment of any such Intellectual Property, (ii) trade secrets, (iii) Confidential Information, and (iv) any other forms of material, data, and information (whether tangible or intangible) which is subject to ownership by a person.
- (jjjj) "**Receiving Party**" has the meaning ascribed to it in Section 14.3(c) hereof.

- (kkkkk) "**Required FF&E**" means all FF&E originally purchased for and/or installed in the Event Centre in accordance with the provisions of the Development Management Agreement including, without limitation, all Event Centre Equipment and all replacements and upgrades thereof made throughout the Term.
- (lllll) "**Responding Party**" has the meaning ascribed to it in Section 13.5(a) hereof.
- (mmmmm) "**Risk Management Consultant**" has the meaning ascribed to it in Section 8.1(b) hereof.
- (nnnnn) "**Rivers District**" means the City of Calgary Rivers District community revitalization levy area established pursuant to section 3 of *Alberta Regulation 232/2006*.
- (ooooo) "**Second Initial Extension Term**" has the meaning ascribed to it in Section 3.1(b) hereof.
- (ppppp) "**Secondary Facility**" means, if constructed in accordance with the provisions of the Project Framework Agreement and the Development Management Agreement, the separate community skating rink meeting NHL standards and quality and located on the Lands, with seating areas bordering the skating rink and concourses and amenities related to the use of the skating rink and all Building Systems forming part thereof, as confirmed in accordance with the provisions of Section 18.1(a) hereof.
- (qqqqq) "**Stampede**" means Calgary Exhibition and Stampede Limited, its successors and permitted assigns having regard to the provisions of the Stampede Agreements.
- (rrrrr) "**Stampede Agreements**" means, collectively: (i) the event centre exterior signage and retail agreement dated December 5, 2019 between the Manager and Stampede; (ii) the Calgary Stampede event centre limited access agreement dated December 5, 2019 between the Manager and Stampede; (iii) the shared community space license, management and booking agreement dated December 5, 2019 between the City, the Manager, Stampede and Calgary Municipal Land Corporation; and (iv) the parking rights and revenue sharing agreement dated December 5, 2019 between the Manager and Stampede; in each case as amended, modified, extended and supplemented from time to time in accordance with the provisions thereof.
- (sssss) "**Stampede Period**" means a period not exceeding seventeen (17) days in the month of July in each calendar year, and as set for each calendar year by the Manager and the Stampede in accordance with the provisions of the Stampede Agreements.
- (ttttt) "**Standard**" (i) where used to refer to a state or condition, means a facility suitable for use as a Tier 1 level sports and entertainment facility in Canada and the United States of America which is of similar age, size and nature of use as the Event Centre, that is maintained to the standard prevailing for Tier 1 facilities and in compliance with Applicable Laws, City Policies and the terms of this Agreement; and (ii) where used to refer to a standard of operation, means that all facilities and services are operated as would be operated by a prudent owner or professional,

highly competent and experienced manager of a Tier 1 sports and entertainment facility in Canada and the United States of America of similar age, size and nature of use as the Event Centre that is operated at the standard prevailing for Tier 1 facilities and in accordance with industry best practices applicable thereto, at all times in compliance with Applicable Laws and City Policies or as otherwise provided in accordance with the terms of this Agreement.

(uuuuu) "**Structural Component**" means the footings, foundations, columns, beams, joists, trusses, floor and roof structure, cross bracing, shear walls, suspended slab, slab on grade, ice slab, structural stairs, retaining walls and concrete masonry walls, all of which to the extent they are primarily used for resisting gravity and lateral loads, and in any such case forming part of the Event Centre, all as to be more fully specified in Schedule C attached hereto; provided, however, that "**Structural Component**" shall not include:

- (i) the floor finishes, ceilings or interior wall surfaces of any structure forming part of the Event Centre if not structural in nature;
- (ii) the roof membrane of any structure forming part of the Event Centre;
- (iii) building envelope (exterior non-load bearing walls, windows, curtain walls) including waterproofing;
- (iv) any flood mitigation measures;
- (v) any escalators, elevators, mechanical, plumbing, life safety, security or electrical equipment, systems or facilities (including, without limitation, heating, ventilating and air-conditioning equipment, elevators, escalators, boilers, chillers, furnaces or other similar equipment) or other Building Systems included in or servicing any structure forming part of the Event Centre;
- (vi) any door, revolving door or FF&E included in any structure forming part of the Event Centre; or
- (vii) any other part of the Event Centre that, by its nature, requires periodic replacement to the extent that it is worn out or incapable of continued repair in a reasonable and cost effective manner.

(vvvvv) "**Tax Agreement**" means the tax agreement dated as of December 5, 2019 between the City, the Manager and the Guarantor in respect of the application and payment of Taxes in respect of the Event Centre, as amended, modified, extended and supplemented from time to time in accordance with the provisions thereof.

(wwwww) "**Taxes**" means all taxes, rates, excises, duties, charges, assessments, impositions, levies, charges for local improvements and/or licence fees imposed by any authority having jurisdiction, including but not limited to federal, provincial, regional, municipal or other government, agency, board or commission, general and special, ordinary and extraordinary, foreseen and unforeseen, whether or not liability for same exists as of the date hereof, of every nature and kind whatsoever upon or in respect of the Event Centre, the use and occupancy thereof, the

existence or operation of the Event Centre or any part(s) thereof, whether real or personal property and any taxes or other type of levy imposed on the City or the Manager or anyone else on account or in lieu thereof, by any authority having jurisdiction, whether or not forming a charge on the Event Centre itself, and any other taxes, rates, duties or assessments which may hereinafter be levied in lieu of, or of a nature similar to the foregoing, and whether recurring annually or at other intervals or on a special or single instance basis only, and any business taxes, business occupancy taxes or other taxes levied against the City and/or the Manager and attributable to the Event Centre, in whole or in part and, without limiting the generality of the foregoing, any applicable commercial concentration tax, business improvement area charges, any business occupancy tax and any applicable goods and services tax or any other or similar taxes which may in the future be imposed from time to time, whether or not same are exigible as at the date hereof.

(xxxxx) "**Term**" has the meaning ascribed to it in Section 3.1 hereof.

(yyyyy) "**Termination Payment**" means an amount equal to the aggregate gross Operating Costs (whether actual, budgeted/pro forma, or a combination of the foregoing) in respect of the Event Centre for the applicable five (5) Fiscal Years determined in accordance with Section 11.8(b).

(zzzzz) "**Tier 1**" means a best in class sports and entertainment facility (including an arena) in North America hosting a professional club of the National Hockey League that is comparable to the Event Centre.

(aaaaaa) "**Warranties**" means, collectively, all "Warranties" as defined in the Development Management Agreement in respect of the Event Centre or any part thereof (or any FF&E associated therewith) obtained in connection with the initial development, construction and fit out of the Event Centre pursuant to the Project Framework Agreement and the Development Management Agreement, and any Additional Warranties.

1.2 Obligations as Covenants

Each obligation of the Manager or the City, as the case may be, contained in this Agreement even though not expressed as a covenant, is considered to be a covenant for all purposes of this Agreement.

1.3 Extended Meanings

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Whenever a statement or provision in this Agreement is followed by words denoting inclusions or examples (such as "including" or "such as") and then a list of, or reference to, specific matters or items, such list or reference shall not be read as to limit or restrict the generality of such statement or provision, even though words such as "without limitation" or "without limiting the generality of the foregoing" or "but not limited to" do not precede such list or reference.

1.4 Partial Invalidity

Save and except for any provisions or covenants contained herein which are fundamental to the subject matter of this Agreement (including, without limitation, those that relate to the payment of monies), the invalidity or unenforceability of any provisions of this Agreement or any covenants herein contained will not affect the validity or enforceability of any other provision or covenants hereof or herein contained and any such invalid provisions or covenants will be deemed to be severable. Each provision and covenant herein contained will be separately valid and enforceable to the fullest extent permitted by Applicable Law.

1.5 Entire Agreement

This Agreement, together with the Project Documents and the other agreements contemplated by this Agreement, constitutes the entire agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements, understandings, negotiations, proposals, representations and discussions, whether oral or written. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the City or the Manager unless in writing and signed by them.

1.6 Waiver

- (a) The waiver by the City of a breach of any term, covenant or agreement herein contained shall not be deemed to be a waiver of the term, covenant or condition or of a subsequent breach of the same or another term, covenant or condition herein contained unless such waiver is in writing and signed by the City. The subsequent acceptance by the City of any fee or payment by the City shall not be deemed to be a waiver of a preceding breach by the Manager of a term, covenant or agreement of this Agreement.
- (b) The waiver by the Manager of a breach of any term, covenant or agreement herein contained shall not be deemed to be a waiver of the term, covenant or condition or of a subsequent breach of the same or another term, covenant or condition herein contained unless such waiver is in writing and signed by the Manager. The subsequent acceptance by the Manager of any fee or payment by the Manager shall not be deemed to be a waiver of a preceding breach by the City of a term, covenant or agreement of this Agreement.

1.7 Headings and Captions

The indices, article and section headings are inserted for convenience or reference only and are not to be considered when interpreting this Agreement.

1.8 Time of Essence and Force Majeure

Time is of the essence of this Agreement and every part hereof. Notwithstanding any other provision in this Agreement, if by reason of Force Majeure, a party is unable to perform in whole or in part its obligations under this Agreement, then in such event and only during such period of inability to perform, such party shall be relieved of those obligations to the extent it is so unable to perform and such inability to perform, so caused, shall not, except as expressly provided herein, make such party liable to the other, and any time periods in which such obligation is to be

performed shall be extended for such period of inability to perform; the performance by each party hereto of every obligation contained in this Agreement shall be deemed to be subject to Force Majeure. The Party claiming the benefit of an extension of time due to Force Majeure must use commercially reasonable efforts to avoid or mitigate the impact of the Force Majeure and must reasonably demonstrate that, but for the occurrence of the applicable Force Majeure event, such Party would have been ready and able to timely perform the delayed obligations. For greater certainty, no event of Force Majeure shall excuse either Party from making a payment under this Agreement when due.

1.9 Business Days

If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day.

1.10 Currency

All references to money herein are references to lawful money of Canada.

1.11 Statute References

Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

1.12 Governing Law

This Agreement and the use of the Event Centre by the Manager under this Agreement shall all be governed by the laws of the Province of Alberta and shall be treated in all respects as an Alberta contract and each Party agrees to attorn to the jurisdiction of the courts of the Province of Alberta.

1.13 Schedules

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

Schedule A	-	Lands
Schedule B	-	Event Centre Components
Schedule C	-	Structural Components
Schedule D	-	Oversight Committee Terms of Reference
Schedule E	-	Lifecycle Plan
Schedule F	-	Minimum Annual Maintenance Schedule
Schedule G	--	Facility Fee Agreement

ARTICLE 2 MANAGER APPOINTMENT

2.1 Appointment

- (a) The City hereby appoints the Manager as exclusive manager, for and during the Term, to manage, oversee and direct the Operations of the Event Centre on behalf of the City. Subject only to the terms of this Agreement, the Manager shall have the responsibility for the servicing, Marketing, Operations and direction of the Event Centre including the determination as to the manner and method for the provision and fulfilment of Event Centre Services (collectively, the "**Management Services**").
- (b) The Manager hereby accepts the foregoing appointment and agrees, throughout the Term, to perform the Management Services in a highly competent, diligent, efficient, safe and expeditious manner and with the same degree of care, skill and supervision as would be exercised by someone meeting the Standard, all in accordance with and subject to the terms of this Agreement.

2.2 Scope of Management Responsibilities

Throughout the Term, the Manager shall do all things and take all action necessary in connection with the Management Services at all times in keeping with the Standard, and in accordance with and subject to the terms of this Agreement. Without limiting the generality of the foregoing or any other provision of this Agreement, the Manager is authorized and directed to provide the following (collectively, the "**Event Centre Services**"):

- (a) arrange for the delivery of services necessary for and related to the Operation of the Event Centre, including contracts for the delivery of the F&B Services;
- (b) negotiating, entering into and administering contracts, licences and other undertakings related to and/or necessary for the Operation of the Event Centre during the Term, provided however that the term of any of the foregoing shall not extend beyond the term of this Agreement without the approval of the Oversight Committee;
- (c) soliciting, negotiating and entering into all booking commitments for use of the Event Centre with event promoters, community sports organizations, associations and leagues, the Stampede and all other users of the Event Centre, subject always to the restrictions on use contained herein;
- (d) managing, controlling, directing and supervising all aspects of the delivery of the F&B Services, including, without limitation, the right to retain one or more F&B Services Providers for the Event Centre, provided however that the term of any agreement with an F&B Services Provider shall not extend beyond the term of this Agreement without the approval of the Oversight Committee;
- (e) providing continuous security and surveillance systems and services for the Event Centre in order to promote and protect the safety of the Event Centre and the occupants and contents thereof;

- (f) the planning, preparation and conduct of and contracting for all Marketing of the Event Centre;
- (g) keeping the Event Centre and all FF&E in good maintenance and operating condition and repair in keeping with the Standard and in accordance with the then-applicable Annual Plan;
- (h) developing any required operations protocols including fire and evacuation plans, health and safety protocols, security protocols, maintenance and cleaning programs, waste and recycling programs, energy conservation programs, and implementing staffing requirements as necessary to properly Operate the Event Centre;
- (i) leasing or purchasing all necessary or desirable goods, supplies, services and equipment (including, without limitation, all FF&E) for the Operation of the Event Centre and provision of the Management Services;
- (j) employing, engaging and/or hiring, and at all times maintaining, adequate personnel and consultants to perform its duties under this Agreement in accordance with the Standard;
- (k) soliciting, negotiating and entering into all licenses with licensees in respect of commercial and retail premises located within the Interior Facility and performing all obligations of the licensor thereunder;
- (l) paying all Operating Costs when due;
- (m) subject to Section 8.7 hereof, initiating and defending, including in the City's name, legal actions and proceedings pertaining to the Operation of the Event Centre and the provision of the Management Services which may arise against the City and/or the Manager;
- (n) the determination of credit policies, including agreements with credit card organizations, cheque validation companies or other similar services;
- (o) maintain a set of all booking records and schedules for the Event Centre;
- (p) maintain and retain all books, records and accounts pertaining to the Event Centre and the Operation thereof; and
- (q) provide day-to-day administrative services in support of the Management Services pursuant to each Annual Plan provided herein, including, but not limited to, the acquisition of services, equipment, supplies and facilities; internal budgeting and accounting; maintenance and property management; personnel management; record-keeping; collections and billing; and similar services, all in accordance with the terms of this Agreement.

2.3 Right of Entry Reserved

- (a) Upon reasonable prior notice to the Manager, representatives of the City shall have the right to enter all portions of the Event Centre to inspect same, to observe the performance by the Manager of its obligations under this Agreement, to carry out

the inspection and audit rights pursuant to Section 4.10 hereof, or to do any other act or thing which the City may be obligated or have the right to do under this Agreement or otherwise. Nothing contained in this Section is intended or shall be construed to limit any other rights of the City under this Agreement. The City's actions shall be conducted such that they shall not materially disrupt the Manager's and other Event Centre users' work, duties and schedule and the City shall, at its expense, repair any damage caused by it and restore to the condition existing prior to the damage occurring, in the exercise of its rights under this Section. Nothing in this paragraph shall impose or be construed to impose upon the City any independent obligation to construct or maintain or make repairs, replacements, alterations, additions or improvements to the Event Centre or create any independent liability for any failure to do so. The City's right of inspection set out herein is solely for the protection and benefit of the City and no representation or warranty with respect to the status or condition of the Event Centre or compliance with any of this Agreement, Applicable Laws, City Policies or the Standard shall be implied, nor shall any liability be imposed on the City, by reason of such inspection.

- (b) In addition to, and without limiting the generality of, the foregoing, the City shall be entitled to, on written notice to the Manager, enter the Lands to complete any work necessary for the maintenance, operation, repair and/or replacement of any Critical City Infrastructure, as determined by the City, acting reasonably. The City shall use commercially reasonable efforts not to interfere with the Operations of the Event Centre by the Manager when exercising its rights pursuant to this Section 2.3(b), and the City shall, at its expense, repair any damage caused by it and restore same to the condition existing prior to the damage occurring, in the exercise of its rights under this Section.

2.4 International Events

The Manager acknowledges and agrees that the City has reserved for itself (both directly and for and on behalf of any Organizing Committee endorsed by the City), the right to exclusively use the Event Centre or any part(s) thereof, at any time and from time throughout the Term, as a facility/venue for an International Event, subject to receipt by the Manager of prior notice of such International Event no later than 36 months prior to the date on which access to the Event Centre would be required for such International Event. If the City elects to use the Event Centre or any part(s) thereof for an International Event in accordance with the preceding sentence, the following provisions shall apply:

- (a) The City and/or the Organizing Committee, as applicable, shall assume all obligations in respect of the Management Services in respect of the Event Centre (or the applicable parts thereof) for the duration of the International Event (including, without limitation, such period of time as may be required prior to the commencement of the International Event to prepare the Event Centre for same and for testing events, and such period of time as may be required following completion of the International Event to transition the provision of Management Services back to the Manager). Subject to the remaining provisions of this Section 2.4, during such period of time, all of the Manager's day-to-day rights, benefits, obligations and liabilities in respect of the provision of the Management Services, together with its lease to use the Event Centre, shall be suspended in respect of the Event Centre (or the applicable parts thereof), and the City and/or the Organizing Committee, as applicable, shall have full rights of access to and use of

the Event Centre (or the applicable parts thereof) and all FF&E located therein or associated therewith. Without limiting the generality of the foregoing, in connection with any such International Event, the City and/or the Organizing Committee, as applicable, shall:

- (i) have exclusive use of all signage at the Event Centre for the duration of the International Event including, without limitation, the right to cover up or re-brand same, save and except for the naming rights signage located on the exterior of the Event Centre;
 - (ii) be entitled to elect, in its sole discretion, to utilize the staff and personnel of the Manager or employ its own staff and volunteers for the provision of the Management Services for the duration of the International Event;
 - (iii) be the exclusive manager, distributor and seller of all tickets relating to the International Event;
 - (iv) have the exclusive right to broadcast and/or sell broadcast, sponsorship and other multimedia rights related to the International Event; and
 - (v) be entitled to exclusively use the products and services of the applicable International Event's marketing partners.
- (b) The City and/or the Organizing Committee, as applicable, shall be entitled to all Gross Revenues derived from the use and Operation of the Event Centre for the duration of the International Event described above, as determined by Generally Accepted Accounting Principles, with the exception of F&B Revenues only, which shall remain for the account of the Manager; provided, however, that the City and/or the Organizing Committee, as applicable, may elect, in its sole discretion, to retain all F&B Revenues (net of any costs to supply the associated F&B Services) generated during the International Event, in which case the City and/or the Oversight Committee, as applicable, shall compensate the Manager for all forfeited F&B Revenues (net of any costs to supply the associated F&B Services) during such period. The City and/or the Organizing Committee, as applicable, shall be responsible for all direct incremental costs and expenses incurred by the City and/or the Organizing Committee in connection with the provision of the Management Services for the duration of the International Event described above and the Manager shall remain responsible and fully liable for the payment of all Operating Costs related to the Event Centre that are not directly attributable to the International Event.
- (c) The City and/or the Organizing Committee, as applicable, shall be responsible for providing any and all capital funding that may be required in order to undertake and complete any capital improvements, alterations or additions to the Event Centre as may be required to prepare the Event Centre for the applicable International Event. Any such capital improvements, alterations or additions to the Event Centre, together with the estimated budget therefor, shall require the prior approval of the Oversight Committee and, if applicable, the applicable Organizing Committee.

For clarity, the Manager and the City acknowledge and agree that the provisions of this Section 2.4 shall only apply in respect of any International Events pursued by the City (or any Organizing Committee endorsed by the City) and shall not apply in respect of any events pursued by the Manager, whether such event is of a similar scale and scope as any International Event. In the event there is conflict between an International Event pursued by the City and an event pursued by the Manager for the use of the Event Centre during a specific period of time, the International Event pursued by the City shall have priority.

2.5 Title to the Lands and Event Centre

The Manager acknowledges and agrees that, other than the leasehold estate granted to the Manager pursuant to Section 5.1 hereof, the Manager shall not acquire any estate, right, title or ownership interest in the Lands or the Event Centre pursuant to this Agreement or otherwise. Notwithstanding any provision herein to the contrary, all fee simple interest in and freehold title to the Lands, or any part thereof, and the Event Centre, shall at all times remain unencumbered by any interest claimed by or through the Manager, except as hereafter stated. The Manager shall not register this Agreement in whole or in part against title to the Lands, but may register a caveat in respect of this Agreement, subject to the remaining provisions of this Section 2.5. Any caveat in respect of this Agreement shall be in form and content acceptable to the City, acting reasonably, and shall disclose only: (i) the date of the Agreement; (ii) the parties; (iii) the premises demised to the Manager; (iv) the Term; and (v) any rights of renewal or extension under this Agreement. The Manager shall deliver a copy of the proposed notice to the City for its review and approval no less than 7 Business Days prior to the date on which the Manager intends to submit such caveat for registration against the Lands, and if the City's approval has not been obtained during such 7 Business Day period, the Manager shall not proceed with such registration until such approval has been obtained. Such caveat shall specifically not disclose the rents nor any other financial details or arrangements between the parties contained in this Agreement. The Manager agrees to discharge, at its sole cost and expense, such registration within a reasonable period of time from expiry of the Term or sooner termination of the Agreement, provided that if such registration is not discharged within 30 days following the expiration of the Term or sooner termination of this Agreement, the City may take all such actions as may be required to discharge same, the costs of which shall be for the account of the Manager.

ARTICLE 3 TERM

3.1 Term and Initial Extensions

- (a) The Manager is to act as manager and operator of the Event Centre pursuant to this Agreement and to lease the entirety of the Event Centre from the City in accordance with Section 5.1 hereof, all for a primary term of one (1) year (the "**Primary Term**") commencing on the actual Turnover Date (as determined in accordance with the Project Framework Agreement and the Development Management Agreement) as such period may be renewed by extending for an additional term or terms pursuant to Sections 3.1(b), 3.2 or 3.3, unless earlier terminated, in each case, in accordance with the terms and conditions of this Agreement (the "**Term**").
- (b) Following the expiration of the Primary Term, the Manager shall have the option to renew by extending the lease to use the Event Centre and to extend the

appointment of the Manager for: (i) one additional one (1) year term (the "**First Initial Extension Term**"); and (ii) one additional thirty-three (33) year term (the "**Second Initial Extension Term**"); in that order. Each option for the First Initial Extension Term and the Second Initial Extension Term is exercisable by notice in writing to the City given not less than 9 calendar months and not more than 12 calendar months prior to the expiry of the Primary Term or the First Initial Extension Term, as applicable, provided that at the time notice is given and immediately prior to the expiry of the Primary Term or the First Initial Extension Term, this Agreement shall be in full force and effect and the Manager shall not then be in default in any of its material obligations under this Agreement beyond any applicable cure period. If the Manager gives the notice referred to in the preceding sentence, the lease of the Event Centre and the appointment of the Manager pursuant to this Agreement shall be renewed effective immediately following the expiry of the Primary Term or the First Initial Extension Term by extending this Agreement on the same terms and conditions hereof, except that all previous rights to extend shall no longer be available.

- (c) If the Manager does not exercise its option for the First Initial Extension Term or the Second Initial Extension Term, the Manager shall pay to the City the amounts determined in accordance with, and have the obligations described under, Section 11.3(c)(i) to (iv) of this Agreement. This provision shall survive any expiry or termination of this Agreement.
- (d) For certainty, the Manager shall not be entitled to exercise the option for the Second Initial Extension Term unless it first exercised the option for the First Initial Extension Term.

3.2 Further Options to Extend

- (a) Following the expiration of the Second Initial Extension Term, the Manager shall have the option to renew by extending the lease to use the Event Centre and to further extend the appointment of the Manager for five (5) further consecutive terms of one (1) year each (each, an "**Extension Term**"). Each option for an Extension Term is exercisable by notice in writing to the City not less than 24 calendar months and not more than 18 calendar months prior to the expiry of the Second Initial Extension Term, or not less than 9 calendar months and not more than 12 calendar months prior to the expiry of the then-applicable Extension Term (as applicable), provided that at the time notice is given and immediately prior to the expiry of the Second Initial Extension Term or then-applicable Extension Term, this Agreement shall be in full force and effect and the Manager shall not then be in default in any of its material obligations under this Agreement beyond any applicable cure period.
- (b) If the Manager gives the notice referred to in Section 3.2(a), the lease to use the Event Centre and the appointment of the Manager shall be renewed effective immediately following the expiry of the Second Initial Extension Term or the then-applicable Extension Term by extending this Agreement on the same terms and conditions of this Agreement, except that there shall be no right to extend this Agreement beyond the fifth (5th) Extension Term described in this Section 3.2.

- (c) For certainty, the Manager shall not be entitled to exercise the option for any Extension Term under this Section 3.2 unless it first exercised the option for the Second Initial Extension Term or the immediately preceding Extension Term, as applicable.

3.3 Manager Contributions

The Manager acknowledges and agrees that no amount of CSERELP's Contribution (as defined in the Development Management Agreement) is or will become refundable as a result of Manager failing to, at any time, exercise its option for the Initial Extension Term, the Second Initial Extension Term or an Extension Term pursuant to this Article 3. The Manager further acknowledges and agrees that upon exercising any of the options set out in Sections 3.1 and 3.2, the Manager shall continue to be liable for all obligations, liabilities and defaults or Events of Default arising or accruing in respect of all preceding terms of this Agreement and there shall be no release of any such obligations, liabilities, defaults or Events of Default, whether deemed by operation of law or otherwise.

3.4 Material Capital Improvements

- (a) If the Manager completes any Material Capital Improvement of the Event Centre, at its sole cost and expense, during the Primary Term, the First Initial Extension Term or the Second Initial Extension Term, the Manager shall have a one-time right to renew by extending the Second Initial Extension Term by a period (the "**Capital Improvement Extension Term**") equal to the lesser of: (i) the period of time by which the remaining useful life of the Event Centre has been extended beyond the useful life of the Event Centre as it existed prior to such Material Capital Improvement being completed, directly as a result of the completion of the Material Capital Improvement, as determined in accordance with Section 6.6 below; and (ii) ten (10) years. The Capital Improvement Extension Term shall be on the same terms and conditions as this Agreement. For clarity, the Parties agree that the Manager's option for the Capital Improvement Extension Term shall remain effective regardless of the fact that the useful life of the Event Centre exceeded the duration of the Primary Term, the First Initial Extension Term and the Second Initial Extension Term described in Section 3.1 hereof prior to the applicable Material Capital Improvement being completed.
- (b) If at any time during the Primary Term, the First Initial Extension Term and the Second Initial Extension Term described in Section 3.1 hereof, the Manager is entitled to exercise the option for a Capital Improvement Extension Term, the Parties agree that: (i) prior to exercising the option for a Capital Improvement Extension Term, the Manager shall first be required to exercise its options for each of the First Initial Extension Term and the Second Initial Extension Term; and (ii) the exercise of an option for any Capital Improvement Extension Term shall not derogate from or terminate the Manager's right to exercise its option for all or some of the Extension Terms pursuant to Section 3.2 hereof, which shall remain in full force and effect in accordance with the provisions thereof, provided however that the Manager shall have first exercised all such options for the Extension Terms pursuant to Section 3.2 as it wishes to exercise (in its sole discretion) in priority to the Capital Improvement Extension Term and all such exercised Extension Terms pursuant to Section 3.2 shall have expired prior to the commencement of the Capital Improvement Extension Term. If the Manager fails to exercise its

option for any or all of the Extension Terms pursuant to Section 3.2 and has exercised its option for the Capital Improvement Extension Term, the Capital Improvement Extension Term shall commence upon the expiry of the Second Initial Extension Term or such applicable final exercised Extension Terms (if any) as the case may be.

ARTICLE 4 CERTAIN POWERS AND DUTIES OF MANAGER

4.1 Power and Authority

- (a) The Manager is hereby granted the power to Operate the Event Centre and provide Management Services in accordance with this Agreement and, in accordance with Section 4.2 below, the power and authority to use and to contract for the use of the Event Centre by others in respect of specific events and generally to do all acts that are reasonably necessary for the proper management and Operation of the Event Centre.
- (b) The power and authority given to the Manager by this Agreement (including, without limitation, the power and authority to make agreements with respect to the Operation or use of the Event Centre) is subject to and shall not extend to any act which is not in accordance with this Agreement.

4.2 Negotiation and Signing of Agreements

Except as otherwise specified in this Agreement and subject to the restrictions contained herein, the Manager will, at all times during the Term, have the sole power and authority to negotiate and execute all agreements with third parties for the Operation or use of the Event Centre and shall have the sole corresponding liability (without recourse to, or a right of indemnity against, the City) arising from any such agreements. The Manager shall indemnify and hold harmless the City Indemnified Parties from and against any and all claims, damages, suits, costs, expenses, liabilities, fines, obligations, penalties, demands, actions or proceedings of any nature or kind whatsoever (including without limitation legal fees and disbursements on a solicitor/client full indemnity basis) of or by anyone whatsoever, resulting from, or arising out of, directly or indirectly, the third party agreements entered into by the Manager in accordance with Section 4.1 and this Section 4.2.

4.3 Ownership of Proprietary Materials

- (a) The City Background Intellectual Property is and shall remain the sole property of the City and shall form part of the City Proprietary Materials and the Manager Background Intellectual Property is and shall remain the sole property of the Manager and shall form part of the Manager Proprietary Materials.
- (b) Any Intellectual Property developed or acquired by the Manager (in its capacity as Manager pursuant to this Agreement) exclusively for use in association with the operation of the Event Centre shall be owned by the City (the "**Event Centre IP**"), and the Manager shall take such steps as the City may reasonably direct to transfer rights in such Event Centre IP to the City, all at the expense of the City. Notwithstanding the foregoing, the City shall not own or have any other rights whatsoever in or to the Event Centre name, any Proprietary Materials developed

or acquired by the Manager that could be used for a purpose other than, or in addition to, the operation of the Event Centre, any Manager Background Intellectual Property or any Proprietary Materials that specifically relate to the Calgary Flames, the Calgary Hitmen, the Calgary Roughnecks, the National Hockey League, the Western Hockey League or the National Lacrosse League.

- (c) The City shall grant the Manager a royalty-free, non-exclusive and fully paid up licence to use: (i) the Event Centre IP; and (ii) any other City Proprietary Materials the Manager deems necessary, acting reasonably, in order to permit the Manager to perform the services pursuant to the terms of this Agreement (the "**Event Centre IP Licence**"). The Event Centre IP Licence shall remain in force for the Term of this Agreement. In the event that any licensed Event Centre IP consists of trademarks, the Parties shall agree, both acting reasonably, on the character and quality of the wares and services to be provided by the Manager in association with such trademarks.
- (d) The Manager shall grant the City a royalty-free non-exclusive and fully paid up licence to those Manager Proprietary Materials which the Parties agree are necessary, each acting reasonably, for the City to use as owner of the Event Centre or in order to permit the City to fulfil its obligations to the Manager under the terms of this Agreement (such materials hereinafter referred to as the "**Manager IP**" and the licence to use such materials the "**Manager IP Licence**"). The City shall not be permitted to use such Manager IP except for the limited purpose set forth in this Section 4.3(d). The Manager IP Licence shall remain in force for the Term. The City shall comply with any additional terms set out by the Manager concerning the use and display of the Manager IP by the City including but not limited to standards for the character and quality of the wares and services to be provided by the City in association with any trademarks forming part of the licensed Manager IP.
- (e) After the termination or earlier expiry of this Agreement, the Manager may terminate the Manager IP Licence, in whole or in part, in its sole discretion 6 months after notice of the proposed termination of the Manager IP Licence has been given to the City, in which event the City shall be entitled to provide notice to the Manager that certain Manager IP is necessary for the continued successful Operation of the Event Centre in accordance with the Standard, and such Manager IP shall immediately be transferred to the City or, if incapable of being transferred, shall be held by the Manager in trust for the City. Notwithstanding the foregoing, if in the reasonable view of the Manager, the continued use of any part of the Manager IP by the City constitutes a risk to the value of that part of the Manager IP, the Manager may terminate the Manager IP Licence with respect to that part of the Manager IP upon thirty (30) days' notice to the City.
- (f) The City acknowledges and agrees that the Manager owns or has a right to use all of the Manager IP and the Manager Proprietary Materials. The City shall, at the sole cost of the Manager, execute, acknowledge and deliver all documents that may be reasonably necessary or desirable to enable the Manager and/or its Affiliates to protect and register the Manager IP and any Manager Proprietary Materials. The City shall not attack, or assist any other Person in attacking, the ownership, distinctiveness, or validity of the Manager IP or any Manager Proprietary Materials.

- (g) The Manager acknowledges and agrees that the City owns or has a right to use the Event Centre IP and the City Proprietary Materials. The Manager shall, at the sole cost of the City, execute, acknowledge and deliver all documents that may be reasonably necessary or desirable to enable the City and/or its Affiliates to protect and register the Event Centre IP or any City Proprietary Materials. The Manager shall not attack, or assist any other Person in attacking, the ownership, distinctiveness or validity of the Event Centre IP or any City Proprietary Materials.
- (h) In the event that the City becomes aware of an actual or threatened infringement or other violation of the rights of the Manager to the Manager IP or the Manager Proprietary Materials, the City shall notify the Manager in writing. The Manager shall have the exclusive right (but not the duty) to commence, at its own expense, any action or proceeding that it sees fit against the party violating the Manager's rights. The City shall assist the Manager in any such dispute at the Manager's reasonable request without expense to the City. The Manager shall be entitled to all damages awarded and costs recoverable as a result of such action. The Manager has the unfettered right to settle any action or other proceeding pertaining to any Manager IP and Manager Proprietary Material without notice to, or the consent of, the City.
- (i) In the event that the Manager becomes aware of an actual or threatened infringement or other violation of the rights of the City to the City Proprietary Materials, the Manager shall notify the City in writing. The City shall have the exclusive right (but not the duty) to commence, at its own expense, any action or proceeding that it sees fit against the party violating the City's rights. The Manager shall assist the City in any such dispute at the City's reasonable request without expense to the Manager. The City shall be entitled to all damages awarded and costs recoverable as a result of such action. The City has the unfettered right to settle any action or other proceeding pertaining to any City Proprietary Material without notice to, or the consent of, the Manager.
- (j) To the extent that any of the Manager IP or Manager Proprietary Materials are trade secrets or Confidential Information, the City shall, except as required by Applicable Laws, keep such trade secrets and Confidential Information confidential and shall safeguard the same at least as carefully as the City safeguards its own trade secrets and Confidential Information. To the extent that any of the City Proprietary Materials are trade secrets or Confidential Information, the Manager shall keep such trade secrets and Confidential Information confidential and shall safeguard the same at least as carefully as the Manager safeguards its own trade secrets and Confidential Information.
- (k) The provisions of this Section 4.3 shall survive the termination or earlier expiry of this Agreement.

4.4 Revenue

Subject to the terms of the Facility Fee Agreement, revenue sharing in the event of an International Event in accordance with Section 2.4 hereof, and the payment of the Naming Rights Fee in accordance with Section 9.2 hereof, the City covenants and agrees with the Manager that the Manager shall be entitled to receive and retain all Gross Revenues received from the Operation or use of the Event Centre during the Term.

4.5 Payment of Expenses

- (a) Except as set out in Subsection 4.5(b) below, the Manager shall be responsible for and shall pay out of its own resources, without any contribution from the City of any kind whatsoever, all costs, expenses and fees incurred in the Operation of the Event Centre and provision of Management Services during the Term, including, without limitation, all Operating Costs.
- (b) Notwithstanding the foregoing, in no event shall the Manager be responsible for the following costs, which shall be the sole responsibility of the City and which the City shall pay out of its own resources without any contribution from the Manager of any kind whatsoever: (i) subject to the provisions of Section 4.7, the cost of Major Structural Repairs; (ii) the direct and incremental cost, if any, of obtaining flood insurance coverage with respect to the Event Centre, as determined in accordance with Section 8.1(c); and (iii) any other costs, whether in the nature of Operating Costs or otherwise, that are expressly set out in this Agreement as being the responsibility of the City to pay for its own account without compensation of any kind whatsoever from the Manager.

4.6 Maintenance and Repair of the Event Centre

- (a) The Manager will, at all times during the Term as part of the Operation of the Event Centre:
 - (i) maintain or cause to be maintained, at its sole cost and expense as part of Operating Costs, the Event Centre and all Building Systems in good and proper repair and operating condition and in a structurally sound manner, as would a prudent owner;
 - (ii) subject to Section 4.7, in the same manner as a prudent owner of the Event Centre and in order to repair and maintain the Event Centre, including the FF&E, as required by the provisions of this Agreement, carry out or cause to be carried out the necessary repairs and replacements as may be required to the Event Centre and any FF&E therein,

in accordance with the Minimum Annual Maintenance Schedule, each Annual Plan, the then most recent Lifecycle Plan, the then most recent Building Condition Assessment and as may otherwise be necessary to maintain the Standard which shall include, without limitation, making all capital expenditures and incurring all capital costs associated with the foregoing, except for (i) damage or destruction by fire and other casualty, which shall be dealt with as provided in Article 12, and (ii) Major Structural Repairs, which shall be dealt with as provided in Section 4.7.

- (b) The Manager shall arrange for an annual inspection of the Event Centre (primarily for Structural Components) by a professional engineer retained by the Manager and shall provide the City with the recommendations of such professional engineer as to current Structural Component requirements of the Event Centre.
- (c) In the Operation of the Event Centre including, without limitation, undertaking any maintenance, repair or replacement work, the Manager shall: (i) use commercially reasonable efforts to enforce all Warranties and cause all providers of the Warranties to promptly perform all repairs and replacements with respect to items

covered by the Warranties; (ii) obtain all such Warranties in keeping with the Standard; and (iii) not undertake any actions that could or would have the effect of impairing, cancelling or otherwise voiding any of the Warranties prior to the expiration of any warranty period applicable thereto.

- (d) In the event that the assignment of any Warranties obtained by the City or any other rights derived under such Warranties during the initial development, construction and fit out of the Event Centre are prohibited at law or requires the consent of any other party or parties and such consent is not or cannot be obtained, prior to the Turnover Date the City will hold such Warranties in trust for the benefit of the Manager and shall take all actions in respect thereto as the Manager may direct including using commercially reasonable efforts to enforce such Warranties and to cause all providers of such Warranties to promptly perform all repairs and replacements with respect to items covered by such Warranties.
- (e) The costs associated with the enforcement of the Warranties obtained in connection with the initial development, construction and fit out of the Event Centre shall be apportioned equally between the Manager and the City.
- (f) Following the Turnover Date, any and all Additional Warranties shall be obtained by the Manager and assigned to the City as required. In the event that the assignment of any Additional Warranties obtained by the Manager or any other rights derived under such Additional Warranties after the Turnover Date are prohibited at law or requires the consent of any other party or parties and such consent is not or cannot be obtained after the Turnover Date the Manager will hold such Additional Warranties in trust for the benefit of the City and shall take all actions in respect thereto as the City may direct using commercially reasonable efforts to enforce such Additional Warranties and to cause all providers of such Additional Warranties to promptly perform all repairs and replacements with respect to items covered by such Additional Warranties and the costs associated with the performance of all repairs and replacements with respect to items covered by such Additional Warranties shall be paid by the Manager.

4.7 Major Structural Repair

- (a) If at any time during the Term of this Agreement, the Independent Engineer determines that a Major Structural Repair is required in respect of the Event Centre (whether as a result of any Building Condition Assessment or other inspections or investigations conducted by the Independent Engineer or a Governmental Authority), the Manager and the City shall cause the Independent Engineer to prepare a report (a "**Major Structural Repair Report**") setting out, without limitation: (i) the reason the Major Structural Repair is required (including, without limitation, any defects in the initial design and/or construction or installation of the applicable Structural Components, any deficiencies in the maintenance, repair and replacement of the Structural Components, or any actions or omissions that impacted the continued functioning of the applicable Structural Components); (ii) the timeframe in which the Major Structural Repair is required to be undertaken and completed to avoid Major Structural Failure; and (iii) a budget setting out the anticipated costs required (inclusive of all materials and labour) to undertake and complete the applicable Major Structural Repair.

- (b) For the next 90 days following receipt of any Major Structural Repair Report, the Oversight Committee shall, acting reasonably and in good faith, work to mutually agree upon: (i) the scope of the work required in order to effect such Major Structural Repairs; and (ii) the budget for completing such Major Structural Repairs; and during such period the Parties shall consult with the Independent Engineer to develop any alternatives or strategies that may be implemented to avoid the Major Structural Failure that would result if such Major Structural Repair was not completed. If at the end of such 90 day period the City and the Manager are unable to agree upon the scope of the required Major Structural Repairs and the budget in respect of same (collectively, the "**Major Structural Repair Plan**"), the Parties shall refer any outstanding issues in respect of such Major Structural Repair Plan to dispute resolution for determination in accordance with Article 13 hereof.
- (c) Subject to Sections 4.7(d), 4.7(e) and 4.7(f) below, upon finalization of any Major Structural Repair Plan in accordance with Section 4.7(b) above, the Manager agrees that it shall undertake and complete, or cause to be undertaken and completed, all repairs and replacements as required in order to effect the required Major Structural Repairs in accordance with the Major Structural Repair Plan, and the City agrees that it shall be solely liable and responsible for all costs associated therewith, without any contributions of any kind from the Manager unless otherwise agreed to by the Manager, in its sole discretion, as part of the settlement of the Major Structural Repair Plan, or unless the work and costs associated therewith are covered, in whole or in part, by any Warranties, in which case the Manager and the City agree that they shall cause the provider of such Warranties to undertake such repairs or replacements as may be covered under such Warranties.
- (d) Notwithstanding the finalization of any Major Structural Repair Plan (whether by the agreement of the Parties or pursuant to dispute resolution) or the provisions of Section 4.7(c) above:
 - (i) if any finalized Major Structural Repair Plan provides that Major Structural Repairs are required to be undertaken at the cost and expense of the City, and such Major Structural Repairs are uninsured Major Structural Repairs then the City, in its sole discretion, shall be entitled to elect by written notice to the Manager within 90 days following the finalization of the applicable Major Structural Repair Plan, to terminate this Agreement upon no less than 365 days' written notice to the Manager, in which case the City shall not be required to undertake or complete the applicable Major Structural Repairs or pay for the cost thereof, and the City shall have no liability of any kind whatsoever to the Manager or any Person claiming by or through the Manager in respect of such termination; provided, however, that so long as the costs to complete any such Major Structural Repairs are less than \$55,000,000, the City agrees that it shall not exercise such right of termination unless it has been unable to receive the required approval of Council to fund such Major Structural Repairs.; and
 - (ii) if any finalized Major Structural Repair Plan provides that Major Structural Repairs are required to be undertaken in respect of the Interior Facility at the cost and expense of the City and: (1) such Major Structural Repairs are

uninsured Major Structural Repairs; (2) until such Major Structural Repairs are made to the Interior Facility, the Manager shall not be able to utilize the Interior Facility for the Primary Use applicable thereto; (3) there are no more than five (5) years remaining in the Second Initial Extension Term; and (4) the Independent Engineer has determined that the applicable Major Structural Repairs shall take more than two (2) years to complete; then the Manager, in its sole discretion, shall be entitled to elect by written notice to the City within 90 days following the finalization of the applicable Major Structural Repair Plan, to terminate this Agreement upon no less than 365 days' written notice to the City, in which case the City shall not be required to undertake or complete the applicable Major Structural Repairs or pay for the cost thereof, and the Manager shall have no liability of any kind whatsoever to the City or any Person claiming by or through the City in respect of such termination.

- (e) Notwithstanding the provisions of Section 4.7(c) above, if any Major Structural Repair is required as a result of or otherwise relates to:
- (i) any negligent acts or omissions or wilful misconduct of the Manager or any Person for whom the Manager is responsible at law;
 - (ii) any Additional Improvements made by or on behalf of the Manager in accordance with the provisions of this Agreement; or
 - (iii) any failure by the Manager to fulfill its maintenance, repair, capital expenditure or replacement obligations in accordance with the provisions of this Agreement including, without limitation, with respect to any Structural Component or as outlined in any Annual Plan or Building Condition Assessment;

then, in any such case, the Manager shall be solely liable and responsible for all costs required to complete the applicable Major Structural Repairs, without any contribution from the City of any kind whatsoever unless otherwise agreed to by the City, in its sole discretion, as part of the settlement of the applicable Major Structural Repair Plan, or unless the work and costs associated therewith are covered, in whole or in part, by any Warranties, in which case the Manager and the City agree that they shall cause the provider of such Warranties to undertake such repairs or replacements as may be covered under such Warranties.

- (f) For clarity, the Party responsible for the costs of undertaking and completing any Major Structural Repair in accordance with the preceding provisions of this Section 4.7 shall also be responsible for the costs of repairing or restoring any damage caused to any other component of the Event Centre (other than the impacted Structural Components) in connection with undertaking and completing such Major Structural Repairs.

4.8 Use and Replacement of FF&E

The Manager shall be entitled to use all FF&E located in the Event Centre as of the commencement of the Term, and shall acquire at its sole cost and expense any additional, replacement or upgraded FF&E from time to time required for the Operation of the Event Centre

in accordance with the provisions of this Agreement and so as to maintain the Standard including, without limitation, ice-making machines, a set of hockey goals acceptable for use in National Hockey League play, an ice cover and such other furniture, fixtures and equipment as may be required to allow for any professional sports organization to use the Event Centre, such costs to be included in Operating Costs or to the capital account of the Manager as the case may be. The Manager, in the ordinary course of managing and Operating the Event Centre, shall be entitled to dispose of any such FF&E which is no longer necessary or useful for the efficient management or operation of the Event Centre and shall otherwise be entitled to dispose of any such FF&E if it replaces such FF&E with FF&E of like value, all without having to account to the City with respect to any proceeds of sale received in respect of any such disposition.

4.9 Taxes

The Manager shall be responsible for and shall pay, prior to the due date therefore, all Taxes levied or imposed in respect of the Event Centre and its use, occupation and Operations therefrom, other than as set out in the Tax Agreement.

4.10 Records and Reporting

- (a) Financial Records – The Manager shall keep full and accurate records relating to all aspects of the Operation of the Event Centre and the provision of the Management Services, which shall be kept in accordance with Generally Accepted Accounting Principles, and the Manager shall establish and maintain a system of bookkeeping adequate for the Operation of the Event Centre. The Manager shall keep and preserve all such records, excluding Manager Proprietary Materials, for the periods of time required by Applicable Laws, and for a period of no less than seven (7) years following the expiration of the Term or earlier termination of this Agreement.
- (b) Annual Reconciliation of Event Centre Operations – Within 120 days following the last day of each Fiscal Year, the Manager shall submit to the Oversight Committee: (i) a statement of operations for the preceding Fiscal Year, all in respect of the Event Centre only (and not, for clarity, in respect of the Manager generally or any of its other operations); and (ii) a summary of the Operating Costs incurred and accrued in respect of the Event Centre for such Fiscal Year in respect of the Operation of the Event Centre only (and not, for clarity, in respect of the Manager generally or any of its other operations).
- (c) City's Audit Right – The City's Auditor shall have the right at any time, and from time to time, to audit the books and records of the Manager relating to the summary of Operating Costs described in Section 4.10(b). The cost of such audit shall be for the City's account and shall not form part of Operating Costs. Such audit may be performed upon reasonable prior notice to the Manager, and in the event of any such audit the Manager shall co-operate fully with the City's Auditor in making available to them such books and records, answering such questions and providing such further assistance as the City's Auditor may reasonably require. For clarity, the foregoing audit right shall relate to the books and records of the Manager in respect of the summary of Operating Costs described in Section 4.10(b) only and not in respect of the Manager generally or any of its other operations and, without limiting the generality of the foregoing, shall not include any financial records maintained by the Manager in respect of the Calgary Flames,

the Calgary Hitmen or the Calgary Roughnecks, nor any financial records in respect of revenues for any other events hosted by the Manager.

- (d) Annual Plan – On or before June 30th of each year during the Term, the Manager shall prepare and present to the Oversight Committee the Manager's proposed annual plan for the next Fiscal Year (the "**Annual Plan**"), which shall include, without limitation, the following information relating to the Manager's Operation of the Event Centre for the next ensuing Fiscal Year:
- (i) an annual operating budget in respect of the Event Centre;
 - (ii) details regarding any proposed capital expenditures to be made in respect of the Event Centre and any material planned or budgeted FF&E replacements, upgrades or purchases;
 - (iii) a detailed annual maintenance, repair and replacement plan satisfying, at a minimum, the requirements of the Minimum Annual Maintenance Schedule and incorporating, without limitation, any maintenance, repair and replacement work recommended or required for such Fiscal Year pursuant to the Lifecycle Plan and/or the then-applicable Building Condition Assessment, together with any recommendations resulting from the inspection described in Section 4.6(b);
 - (iv) a detailed schedule of required maintenance for the Event Centre satisfying, at a minimum, the requirements of the Minimum Annual Maintenance Schedule and incorporating such additional maintenance, repair and replacement work as is contemplated by the then applicable plan described in Section 4.10(d)(iii), together with any recommendations resulting from the inspection described in Section 4.6(b);
 - (v) the proposed rates to be charged by the Manager to users of the Secondary Facility for such Fiscal Year (subject to the provisions of Section 5.6(a)(iv)), provided that the rates to be charged for use of the Secondary Facility shall be competitive with the average rental rate charged to minor sports organizations at other facilities in the City of Calgary, as determined by the Oversight Committee;
 - (vi) a schedule setting out all then-confirmed dates on which the Manager has secured users for the Interior Facility and the Secondary Facility including, without limitation, the Stampede Period and all confirmed home games of each of the Calgary Flames, the Calgary Hitmen and the Calgary Roughnecks for that Fiscal Year (the "**Annual Event Centre Schedule**"), together with a draft annual Event Centre schedule for the next following Fiscal Year; and
 - (vii) the composition of the Community Engagement Program for such Fiscal Year.

Those components of each Annual Plan described in Sections 4.10(d)(iii), 4.10(d)(iv) and 4.10(d)(vii) shall be subject to the review and approval of the Oversight Committee and, failing any such approval, shall be referred to dispute

resolution for determination in accordance with Article 13 hereof. For clarity, the Parties agree that the balance of each Annual Report shall not be subject to the approval of the Oversight Committee and shall be provided by the Manager to the Oversight Committee for informational purpose only. The Manager agrees that it shall provide the Oversight Committee with quarterly updates regarding its progress as against the then-applicable Annual Plan in each Fiscal Year.

- (e) **Building Condition Assessment** – The Manager will arrange for a building condition assessment (the “**Building Condition Assessment**”) on a ten-year look forward basis to be prepared by the Independent Engineer and approved by the Oversight Committee (and, failing any such approval, shall be referred to dispute resolution for determination in accordance with Article 13 hereof) every five (5) years during the Term for the purpose of: (i) assessing the building condition; (ii) identifying any maintenance, repairs and replacements required to be made to the Event Centre or any systems or facilities forming part thereof (including, without limitation, any of the foregoing required in respect of the Structural Components) over the ensuing ten (10) year period (but expressed on an annual basis) to ensure that the building condition of the Event Centre is meeting the requirements of the Standard; and (iii) identifying any Major Structural Repairs that may be required in order to prevent any Major Structural Failure. The costs of each Building Condition Assessment will form part of Operating Costs, which shall be the sole cost and responsibility of the Manager. The Manager agrees that it shall undertake and complete all required maintenance, repairs and replacements recommended by each Building Condition Assessment (other than any Major Structural Repairs, which shall be addressed in accordance with Section 4.7 above) in accordance with the timeframes and the recommendations contained therein, and that such maintenance, repairs and replacements shall be included in the annual maintenance plan forming part of each Annual Plan. The Parties acknowledge and agree that the Building Condition Assessment to be completed as part of the Overall Commissioning Program shall constitute the first Building Condition Assessment for all purposes of this Agreement.
- (f) **Updates to Lifecycle Plan and Minimum Annual Maintenance Schedule** – Within 120 days following the approval of each Building Condition Assessment in accordance with the provisions of Section 4.10(e) above, the Manager shall prepare, or cause to be prepared, and provide to the Oversight Committee for its review and approval (and, failing any such approval, shall be referred to dispute resolution for determination in accordance with Article 13 hereof): (i) a revised Lifecycle Plan; and (ii) a revised Minimum Annual Maintenance Schedule; in both cases incorporating any revisions required thereto based on the findings of the most recent Building Condition Assessment. From and after the date on which any revised Lifecycle Plan or Minimum Annual Maintenance Schedule has been finalized in accordance with the preceding sentence, such approved document shall be deemed to replace the previous version thereof for all purposes of this Agreement.
- (g) **Maintenance Records and Reporting** – The Manager shall keep either in electronic or hard copy format, full and accurate building records relating to all aspects of the maintenance, repair and replacement of the Event Centre and all component parts thereof including, but not limited to, all Building Condition Assessments, all testing and inspection reports prepared in accordance with the Lifecycle Plan, as-built

drawings and authenticated record drawings and specifications of the original construction of the Event Centre and any renovations or Additional Improvements undertaken throughout the Term, maintenance and repair records, receipts, preventative maintenance records, building information models, operation and maintenance manuals, commissioning reports and energy audit reports. The Manager shall keep and maintain such records for the duration of the Term and shall turn over all such records to the City upon the expiration of the Term or sooner termination of this Agreement. The Manager shall give the City's authorized representatives access to and the right to review all such records upon reasonable prior notice from the City.

4.11 Notices of Material Events

Upon obtaining knowledge thereof, the Manager shall provide the Oversight Committee with prompt notice of any of the following events which has had or would reasonably be expected to have or result in a Material Adverse Effect, which notice shall also include the action taken or to be taken by the Manager, if any, to remedy such event:

- (a) any default or event of default under a contract that relates to the Operation of the Event Centre and/or the Manager's or Guarantor's obligations under this Agreement and to which the Manager or the Guarantor is a party including, without limitation, any agreements with the National Hockey League or that relate to the Calgary Flames or any successor hockey club, and any agreements with any other professional sports league or team;
- (b) any litigation, investigation or proceeding which may exist at any time in respect of the Event Centre, the Manager or the Guarantor, the result of which, if determined adversely to the Manager or the Event Centre, would or would be reasonably expected to result in a Material Adverse Effect; and
- (c) any other event which has had, or would reasonably be expected to have or result in a Material Adverse Effect.

From time to time throughout the Term, upon the written request of the City, the Manager shall provide to the City confirmation that the then current ownership structure of each of the Manager, the Guarantor and their respective general partners that is disclosed in publicly accessible materials remains true and correct in all respects; provided, however, that so long as an Event of Default has not occurred and continued beyond the expiration of any cure period provided therefor, the City agrees that it shall not be entitled to make any such request more than once in each calendar year.

4.12 Personnel

Despite anything else in this Agreement, it is agreed and understood that the Manager's Personnel shall not be considered to be employees of the City for any purpose. Nothing in this Agreement shall be interpreted so as to create any employment relationship between Manager's Personnel and the City. The Manager shall supervise and direct such Manager's Personnel and have full responsibility for the actions of such Manager's Personnel as contemplated in this Agreement from and after the date that such Manager's Personnel become the Manager's Personnel, and shall be solely responsible for their supervision, direction and control. The Manager shall determine, in its discretion, the selection of Manager's Personnel and other staffing decisions including, without limitation, changes, replacements and offers of employment, training,

termination of employment, supervision, direction, control, training and assigning of the duties of such employees.

4.13 Food and Beverage Operations

- (a) The Manager shall have the exclusive right to manage, control, direct and supervise all aspects of the F&B Services in the F&B Premises (including, without limitation, the right to determine the manner in which the F&B Services are delivered at the Event Centre). For clarity, all F&B Revenues shall form part of Gross Revenues.
- (b) The Manager shall obtain, maintain and renew all liquor licence permits required for the F&B Premises and the provision of F&B Services.
- (c) All permits and licences required by the Alberta Gaming, Liquor & Cannabis for the sale and consumption of alcoholic beverages in the Event Centre shall be issued in the name of the Manager.

4.14 Naming Rights

The City hereby grants the Manager the exclusive right to sell or license the naming rights for the Event Centre during the Term and to exclusively retain all revenues from such sale or license, subject to the payment of the Naming Rights Fee to the City in accordance with Section 9.2 hereof. In order to ensure compliance with the City Policies, the City shall retain the rights to approve the Person receiving naming rights, such approval not to be unreasonably withheld, it being acknowledged by the City that the provisions of this Agreement relating to naming rights are in full satisfaction of obligations that the Manager might otherwise have pursuant to the *Municipal Naming, Sponsorship and Naming Rights Policy*.

4.15 Signage

The Manager acknowledges that all signage rights in and on the Event Centre shall be subject to and placed in accordance with all applicable City Policies, all Applicable Laws, and shall incorporate all interior and exterior signage agreed upon and/or contemplated by the Parties pursuant to the Project Framework Agreement. For clarity, the City shall have no right to approve, restrict, control or otherwise determine signage rights in the interior of the Event Centre, and such interior signage rights shall be subject to and placed at the sole discretion of the Manager so long as such interior signage complies with all applicable City Policies and all Applicable Laws, and provided further that all City signage, branding and recognition agreed upon and/or contemplated by the Parties pursuant to the Project Framework Agreement shall not be altered or removed by the Manager without the approval of the Oversight Committee.

4.16 Permits and Licenses

The Manager shall use reasonable and diligent efforts to procure (or cause any other user of the Event Centre, including without limitation the Guarantor, to procure) any permits and licences required and pay all charges and fees, necessary for the Operation of the Event Centre and any other business to be conducted by it hereunder, and the City, in its capacity as owner of the Event Centre only, shall cooperate with the Manager in applying for such permits and licences at the Manager's cost. The Manager shall deliver copies of all such permits or licences to the City once obtained, and shall thereafter deliver copies of any renewals, extensions or

replacements thereof throughout the Term. The Manager shall pay promptly all Taxes, licence fees and permit fees of whatever nature arising from its Operation of the Event Centre and the provision of the Management Services, without contribution of any kind from the City.

4.17 Compliance with Laws and City Policies

- (a) Each Party and their respective officers, agents and employees shall comply with all Applicable Laws affecting directly or indirectly it or its operations and activities on or in connection with the Event Centre, subject however to the other Party's obligations under this Agreement.
- (b) At all times during the performance of its obligations under this Agreement, the Manager will abide by any and all City Policies which have application to the obligations and duties of the Manager under this Agreement. The Parties agree that notwithstanding anything to the contrary herein, wherever this Agreement references the applicability or the compliance by the Manager of all or any City Policies, the applicability of such City Policies and the extent of the Manager's requirement to comply with such City Policies shall be determined as follows: the Oversight Committee shall be responsible for determining both: (i) the applicability of any City Policy to the Operation of the Event Centre, the use thereof and the performance of the Parties' obligations under this Agreement; and (ii) the method for implementing any principles contained in a City Policy in connection with the Operation of the Event Centre, the use thereof and the performance of the Parties' obligations under this Agreement. At any time during the Term, either the Manager or the City shall be entitled to refer any City Policy to the Oversight Committee to determine its application and implementation in accordance with the preceding sentence. If the Oversight Committee is unable to unanimously agree upon any such determination, such matter may be referred for escalation in accordance with the dispute resolution process described in Article 13 hereof.

4.18 Rivers District Endorsement

From and after the date of this Agreement, the Manager agrees that it shall publicly and privately support, endorse and promote the Rivers District and the proposed vision and development thereof. Without limiting the generality of the foregoing, the Manager agrees that it shall utilize its media capabilities to positively profile and promote the Rivers District by, without limitation, including such positive profiling and promotion as part of its Marketing in respect of the Event Centre.

ARTICLE 5 LEASE AND USES

5.1 Lease

In consideration of the contribution of funds by the Manager under the Project Framework Agreement and the Development Management Agreement for the purpose of acquiring a leasehold interest in the Event Center, and in consideration of the other fees to be paid and the covenants, terms, agreements or obligations hereinafter contained on the part of the Manager to be observed and performed, the City hereby demises and leases to the Manager for the Term the Event Centre for the Operation of the Event Centre and the provision of the Management Services in accordance with the provisions of this Agreement including, without limitation, for the Manager's

sports and entertainment business. The Manager hereby leases and accepts the Event Centre from the City and covenants to observe and perform all the covenants and obligations to be observed and performed by the Manager pursuant to this Agreement. The City covenants with the Manager to observe and perform all the covenants and obligations of the City herein.

5.2 License to Stampede

The Manager shall grant a license of the Event Centre to the Stampede for the Stampede Period, pursuant to and in accordance with the Calgary Stampede Event Centre Limited Access Agreement dated December 5, 2019 between the Manager and the Stampede.

5.3 Other Subleases and Licenses

- (a) Provided that: (i) the Manager and the Guarantor are Affiliates of one another; (ii) the Guarantor is the owner of the National Hockey League franchise participating in the National Hockey League under the name "Calgary Flames"; and (iii) neither the Manager nor the Guarantor are in default of any of their obligations under this Agreement or any other Project Document beyond the expiration of any applicable cure periods provided therefor; the Manager shall have the right, without the requirement to obtain the consent of the City, but upon providing prior written notice to the City, to sublease or license the whole of the Event Centre or the whole of the Interior Facility, or any portion thereof, respectively, to the Guarantor only.
- (b) Subject to Sections 2.4, 5.2, 5.3(a), and 5.6, any other sublease, license or sharing or parting with possession of the whole of the Event Centre or the whole of the Interior Facility, or the assignment of any license or sublease described in the preceding sentence shall constitute an Assignment for the purposes of this Agreement and shall be subject to compliance with the provisions of Section 10.3 hereof.
- (c) Notwithstanding anything to the contrary herein, the Manager shall have the right without the requirement to obtain the consent of the City and without the requirement to provide prior written notice to the City, to license less than the whole of the Event Centre (other than a license of the whole of the Interior Facility), or less than the whole of the Interior Facility.

5.4 Uses of the Event Centre

The Manager shall use and occupy the Event Centre to Operate the Event Centre principally for sporting events (such as, by way of example and not by way of limitation, ice hockey and lacrosse), spectator entertainment events and concerts, community sports purposes and, subject to the restrictions set out in Article 5, other similar sports and entertainment events and ancillary uses thereto, such as restaurants, licensed beverage operations, food concessions, retail outlets and ancillary on-site office space for the Manager and the Guarantor in respect of their respective operations at the Event Centre (the "**Primary Uses**"). The Manager agrees that, throughout the Term, it shall use commercially reasonable efforts to: (a) schedule events and activities in the Interior Facility and the Secondary Facility; and (b) enter into licenses in respect of the retail premises within the Interior Facility; in all such cases in order to maximize the use of the Event Centre for the Primary Uses, taking into account that the Event Centre and the surrounding area is intended to be for public use year-round, providing a permanent gathering

place for the people of Calgary and Southern Alberta to enjoy affordable programming and activities like concerts, assemblies, festivals and amateur and professional sporting events.

5.5 Prohibited Uses

Without the prior written approval of the City, the Event Centre shall not be used for the following purposes:

- (a) a casino;
- (b) a permanent "themed" dinner theatre attraction;
- (c) the sale of goods not in keeping with a reputable and first class development, second hand goods (other than the sale of memorabilia such as game used equipment and team jerseys) or armed services surplus articles, insurance salvage stock, fire sale stock or bankruptcy stock;
- (d) the sale of firecrackers or fireworks;
- (e) an auction, bulk sale, liquidation sale, "going out of business" or bankruptcy sale, or warehouse sale;
- (f) a use which, because of the merchandising methods or quality of operation likely to be used, would tend to lower the character of the Event Centre; or
- (g) any practice of unethical or deceptive advertising or selling procedures.

5.6 Restrictions on Use of the Event Centre

- (a) The Manager agrees to adhere to the following requirements for the booking and use of the Event Centre:
 - (i) The Manager will create a community engagement program for allocation by the City, which will provide the City with access to various events held each year at the Event Centre, including tickets to events, appropriate hospitality packages, and other unique experiences (the "**Community Engagement Program**"). The specific composition of the ticket packages for the Community Engagement Program will be proposed by the Manager as part of the Annual Plan taking into account the specific events that will take place at the Event Centre for the forthcoming year, and shall require the approval of the City. The total annual cost to the Manager of providing the Community Engagement Program will be approximately \$200,000 (increased annually by the CPI Index Ratio) calculated using the face value (or, if no face value, the fair market value) of the applicable tickets and/or hospitality packages and/or other unique experiences.
 - (ii) On or before December 31 of each year, to the extent not already finalized in the applicable Annual Plan or any updates thereto provided in accordance with the provisions of Section 4.10(d) above, the scheduling for the following events shall be settled:
 - A. the Stampede Period;

- B. as many Calgary Flames, Calgary Hitmen and Calgary Roughnecks home games as are known;
 - C. as many concerts and similar entertainment events as are known;
 - D. any International Events; and
 - E. any other events as are known.
- (iii) The City may request access to and use of the Interior Facility for up to five (5) days per calendar year of the Term and of the Secondary Facility for up to twenty (20) days per calendar year of the Term for the purposes of community programming and municipally-sponsored events (the "**City Events**"), which City Events shall not, for clarity, be traditional commercial events similar to those staged and operated by the Manager at the Event Centre for its own account. The Manager shall act in good faith and use reasonable efforts to provide such access and use for the City Events. The City acknowledges that priority for the use of the Interior Facility and the Secondary Facility shall be given to the schedules (including practices and training camps) of the Calgary Flames, the Calgary Hitmen, the Calgary Roughnecks and class "A" concerts, and the Manager agrees that the use of the Secondary Facility for City Events shall be given the same priority as any other potential user of the Secondary Facility. If the City wishes to have access to the Interior Facility or the Secondary Facility for the purposes of a City Event, it shall provide the Manager with a written request therefor, which written request shall specify the proposed date for such City Event, any alternate dates for such City Event that would be acceptable to the City, and reasonable particulars regarding the format and content of such City Event. The Manager agrees that it shall respond, in writing, to any such request within three (3) Business Days following delivery of such request confirming whether or not the requested component of the Event Centre is available for such City Event. If the Interior Facility or Secondary Facility, as applicable, is available, the Manager shall provide a conditional confirmation to the City; provided, however, that the Manager shall not be required to unconditionally reserve the Interior Facility or Secondary Facility, as applicable, for such City Event until 90 days prior to the date of such City Event. The Manager agrees that the City shall not be required to pay any usage fee or other amounts to the Manager in connection with any City Event; however, the City agrees that it shall be responsible and liable for (and shall pay) any actual and reasonable direct incremental Operating Costs incurred by the Manager in connection with the preparation for and management and Operation of the Event Centre for the applicable City Event.
- (iv) During the Term, the Manager shall make the Secondary Facility available to community organizations designated by the City from time to time for an average of twenty (20) hours per week between the hours of 4:00 pm and 10:00 pm on weekdays, and the hours of 8:00 am and 10:00 pm on weekends. The rental rate charged by the Manager for such use of the Secondary Facility shall be at an hourly rental rate that is fifteen (15%) percent less than the average rental rate charged to minor sports

organizations at other facilities in the city of Calgary, as determined by the Oversight Committee, acting reasonably.

- (v) The Manager agrees that it shall not reserve the use of the Interior Facility or the Secondary Facility for any event or series of events more than 36 months in advance unless such reservation is terminable by the Manager if the City and/or any Organizing Committee exercises any of their rights pursuant to Section 2.4 hereof.
- (b) The Manager shall use reasonable commercial efforts to offer ticket pricing options to attract a wide variety of Calgarians to events held at the Event Centre.

5.7 No Release

The Manager acknowledges to the City that no sublease or license shall have the effect of releasing or limiting the rights, interests or obligations of the Manager or the City under this Agreement.

5.8 Environmental

- (a) Without limiting the generality of the Manager's obligation to comply with all Applicable Laws, the Manager agrees that it shall not cause or permit to occur any violation of Applicable Laws relating to environmental matters on, under or about the Event Centre arising from the Manager's use or Operation of the Event Centre.
- (b) The Manager shall not: (i) release, store or dispose of any Hazardous Substances, or permit any subtenant or licensee or user of the Event Centre to do the same; or (ii) fail to prevent the release, storage or disposal of any Hazardous Substances by its servants, agents, employees, contractors or any other Persons for whom the Manager is responsible in law including, without limitation, any subtenant, licensee or user of the Event Centre; in any such case on, under or about the Event Centre in violation of Applicable Laws relating to environmental matters.
- (c) If at any time during the Term there occurs any release or disposal of any Hazardous Substances on, under or about the Event Centre in any such case in violation of Applicable Laws relating to environmental matters (including, without limitation, any of the foregoing caused by any subtenant or licensee of the Event Centre), then the Manager agrees that it shall, at its sole cost and expense and without any contribution from the City of any kind whatsoever, undertake the remediation and clean-up work required by any Government Authority with respect to such release or disposal in order to comply with all Applicable Laws.
- (d) The Manager shall defend, indemnify and hold harmless the City Indemnified Parties from and against any and all claims, damages, suits, costs, expenses, liabilities, fines, obligations, penalties, demands, actions or proceedings of any nature or kind whatsoever (including without limitation legal fees and disbursements on a solicitor/client full indemnity basis) of or by anyone whosoever, resulting from, or arising out of, directly or indirectly, any breach or default by the Manager of its obligations under this Section 5.8 or otherwise relating to the presence of any Hazardous Substances on, under or about the Event Centre, or any breach of Applicable Laws relating to environmental matters in respect of the Event Centre or the Manager's use or Operation thereof.

- (e) The Parties agree that if the Manager brings to or creates at the Event Centre any Hazardous Substance other than those substances or materials reasonably necessary to operate the Event Centre for the Primary Uses, or if the conduct of the Manager's business causes there to be any Hazardous Substances at the Event Centre other than those substances or materials reasonably necessary to operate the Event Centre for the Primary Uses, notwithstanding any rule of law to the contrary, such Hazardous Substance shall be and remain the sole and exclusive property of the Manager and shall not become the property of the City notwithstanding the degree of affixation of such Hazardous Substance or the goods containing such Hazardous Substance to the Event Centre, and notwithstanding the expiry or earlier termination of this Agreement.

ARTICLE 6 ADDITIONAL IMPROVEMENTS

6.1 Additional Improvements to the Event Centre

The Manager may, at its sole cost and expense, carry out or cause to be carried out such additional improvements to the interior of any free-standing structure forming part of the Event Centre, including fixtures and additions of a capital nature (but excluding decorative changes, the installation or removal of any trade fixtures, personal property or FF&E, or any fit-out or tenant improvement work undertaken by any subtenant or licensee of any retail premises, all of which the Manager shall be entitled to carry out without any involvement of the City or the Oversight Committee, or subject to the provisions of this Article 6) (the "**Additional Improvements**") as the Manager considers necessary or appropriate, subject to compliance with the remaining provisions of this Article 6. Notwithstanding the foregoing, in no event shall the Manager be entitled to:

- (a) complete any Additional Improvements that: (i) affect the structural and building envelope elements, base building or exterior of the Event Centre, the Building Systems or any utility systems that service the Event Centre (including, without limitation, any Structural Components); (ii) exceed \$2,000,000.00 for any single improvement or project; or (iii) limit or void any Warranties;
- (b) construct, erect or place any additional building, structures or other improvements outside of any of the free-standing structures forming part of the Event Centre or anywhere else on the Lands; or
- (c) demolish any of the Interior Facility or the Secondary Facility or any substantial portions of the foregoing;

without, in all such cases, obtaining the City's prior written consent, which consent may be given or withheld by the City in its sole discretion. In connection with making any request for the City's consent, the Manager shall provide to the City the materials and documents described in Subsections 6.2(a)(i) and 6.2(b).

6.2 Approvals

- (a) The Manager shall not commence construction of any Additional Improvements unless and until:
 - (i) the designs, plans and specifications for the Additional Improvements have been approved by the Oversight Committee, such approval not to be

unreasonably withheld, and the Manager shall have provided evidence satisfactory to the Oversight Committee confirming that the Independent Engineer has approved the plans and specifications for such Additional Improvements;

- (ii) all requisite approvals, licences or permits of or from any Governmental Authority for the construction of the Additional Improvements in accordance with Applicable Laws have been obtained, and a copy thereof has been provided to the Oversight Committee;
- (iii) adequate insurance during the course of construction is in place with respect to the insurable interest of the City and the Manager has been obtained, and a certificate from the Manager's insurer or insurance broker, in a form and content satisfactory to the City, acting reasonably, shall have been delivered to the City certifying: (A) the insurance being carried by the Manager, the endorsements, the exclusions and the other material terms thereof, if any; and (B) that such insurance conforms to the requirements of the City; or such other proof as the City may reasonably request to establish that the necessary insurance is in full force and effect shall have been delivered to the City. The coverage, the amount, and the endorsements of the insurance shall be determined by the City, acting reasonably;
- (iv) the Oversight Committee shall have approved the Manager's proposed design consultants, acting reasonably, provided also that: (A) the Manager shall have provided evidence satisfactory to the Oversight Committee that the Additional Improvements shall not limit or void any Warranties from the initial construction and development of the Event Centre pursuant to the Project Framework Agreement and the Development Management Agreement; and (B) the Manager shall retain the Independent Engineer as its engineering consultant for any such Additional Improvements; and
- (v) the Manager shall not be in default of any of its obligations under this Agreement in respect of which notice has been given and the grace period provided for remedying such default has expired, prior to commencement of construction of the Additional Improvements.

It shall be the responsibility of the Manager to obtain at its expense all such requisite approvals, licences or permits as are required under Subsection 6.2(a)(ii) but the City shall, to the extent necessary, and in its capacity as owner of the Event Centre and not as an approving authority, make or join in the making, at the Manager's sole cost and expense, of any application for any required approval, licence or permit which must be made by the City.

- (b) In requesting the approval of the Oversight Committee required under Subsection 6.2(a)(i), the Manager shall submit to the Oversight Committee:
 - (i) details of any work of demolition of any existing facilities or structures which is required;

- (ii) the designs, plans and specifications of the Additional Improvements, including details regarding any services required in connection therewith, together with confirmation in writing from the Independent Engineer as to the structural soundness of the proposed Additional Improvements;
 - (iii) the names of all proposed consultants intended to be engaged in connection with the construction of the Additional Improvements;
 - (iv) an estimated date of commencement and estimated date of completion of the work; and
 - (v) a detailed budget regarding the expected costs to undertake and complete the proposed Additional Improvements.
- (c) The Oversight Committee shall, by notice in writing within the period of 15 Business Days immediately following its receipt of any application for approval under Subsection 6.2(a)(i), provide its approval or disapproval of the application or any part thereof. If the Oversight Committee fails to give notice in writing of its approval or disapproval within such 15 Business Day period, the Manager may give a further notice in writing to the Oversight Committee requiring the Oversight Committee to give its decision within a further period of 10 Business Days and if the Oversight Committee fails to give its decision within such further 10 Business Days, the application of the Manager shall be considered not to have been approved by the Oversight Committee.
- (d) If the Oversight Committee disapproves of an application for approval as permitted in Section 6.2(c), the Oversight Committee shall in giving notice of its disapproval to the Manager state in detail its reason or reasons for so doing.
- (e) The Oversight Committee's approval of the designs, plans and specifications for any Additional Improvements is required hereunder solely for the protection and benefit of the City and neither the City nor its officers, servants or agents shall be liable to the Manager for the safety, adequacy, soundness or sufficiency of any Additional Improvements by reason of the giving of such approval nor shall the giving of such approval constitute a waiver by the City of any duty or liability owed by the Manager to the City, its officers, servants or agents, by reason of this Agreement or otherwise howsoever.
- (f) By no later than 30 days following completion of any Additional Improvements in accordance with this Article 6, the Manager shall provide the City with as-built drawings and authenticated record drawings in respect thereof.

6.3 Fees

The Manager shall pay to the City the reasonable costs and expenses incurred by the City in assessing and evaluating the designs, plans and specifications for the Additional Improvements submitted to the Oversight Committee or the City for approval, including, without limitation, any fees payable to the Independent Engineer and any other consultants retained by the City in connection with such review, within thirty (30) days following review of the Manager's request for approval of the Additional Improvements and receipt of an invoice therefor and a reasonably detailed statement relating thereto. Any such payment to the City shall be conditional on the City

delivering to the Manager for its approval, acting reasonably, an estimated budget of such reasonable costs and expenses prior to any such costs and expenses being incurred by the City.

6.4 Inspection

- (a) The City and any Person or Persons appointed by it may, in such manner and frequency and with such advance notice as is reasonable in the circumstances and at its own risk, inspect the Additional Improvements and materials used in their construction at all reasonable times during the course of construction and the Manager shall pay to the City the reasonable costs and expenses incurred by the City in carrying out or causing to be carried out any inspection pursuant to this Section 6.4(a) within thirty (30) days following receipt of an invoice therefor and a reasonably detailed statement relating thereto.
- (b) If the materials used in the Additional Improvements or the location of the Additional Improvements or any part thereof do not or does not conform with the approved designs, plans and specifications, the City may give notice to such effect to the Manager. Upon receipt of any such notice, the Manager shall promptly take such action as may be necessary to correct any material deficiency, defect or omission and shall if so required by the City, acting reasonably, refrain from continuing work on the Additional Improvements until such correction has been completed, or the City, acting reasonably, is satisfied that it will be completed. If at any time after completion of the work of constructing any Additional Improvements, the Additional Improvements or any part thereof have become structurally unsound or result in any damage to any other part of the Event Centre, the Manager shall promptly take such steps as may be necessary to correct any of the foregoing, at the Manager's sole cost and expense.

6.5 Construction

Following approval by the Oversight Committee, the Manager shall carry out or cause to be carried out the construction of the Additional Improvements expeditiously, diligently, with new materials, in a good and workmanlike manner, and with due care in accordance with all Applicable Laws, all applicable City Policies and in accordance with the designs, plans and specifications, approved by the Oversight Committee and the Independent Engineer (subject to such changes as the Oversight Committee and the Independent Engineer may from time to time approve, acting reasonably). The Manager shall take all reasonable steps to have the Additional Improvements substantially completed by the estimated date of completion thereof, subject only to Force Majeure.

6.6 Material Capital Improvement

In connection with its proposal to undertake any Additional Improvements, the Manager shall be entitled to request that any such Additional Improvement be designated as a Material Capital Improvement for the purposes of this Agreement, in which case: (a) together with the materials to be delivered to the Oversight Committee in accordance with Section 6.2(a)(i) above, the Manager shall submit a written report to the City from the Independent Engineer (the "**Material Capital Improvement Report**") confirming its opinion (i) that such Additional Improvement, if undertaken and completed in accordance with the proposed plans and specifications in respect thereof, constitutes a Material Capital Improvement and will increase the remaining useful life of the Event Centre, taken as a whole, beyond what is set out in the then-current Building Condition

Assessment, (ii) as to the duration of such extension to the remaining useful life of the Event Centre, taken as a whole, that shall result from the completion of the Material Capital Improvement, and (iii) any additional maintenance, repair and replacement requirements associated with such Material Capital Improvement that will need to be completed on a go-forward basis; and (b) notwithstanding any other provisions of this Article 6, the City shall also be required to approve the applicable Additional Improvements, which approval shall not be unreasonably withheld or delayed. If the City approves of any Additional Improvement contemplated by this Section 6.6, upon completion of such Additional Improvement the Manager shall also be required to submit a further written report from the Independent Engineer confirming the information contained in the Material Capital Improvement Report including, without limitation, the amount of time by which the remaining useful life of the Event Centre, taken as a whole, has been extended by the completion of such Material Capital Improvement, which confirmatory report shall determine whether the applicable Additional Improvement constitutes a Material Capital Improvement for the purposes hereof and whether the Manager shall be entitled to any Capital Improvement Extension Term pursuant to Section 3.4 hereof. The Manager shall be solely responsible for all costs and expenses associated with the Material Capital Improvement Report (and any confirmatory report required in connection therewith) and the City's review thereof including, without limitation, all costs of the Independent Engineer associated therewith. Any payment to the City in respect of the City's cost to review the Material Capital Improvement Report shall be conditional on the City delivering to the Manager for its approval, acting reasonably, an estimated budget of such reasonable costs and expenses to review the Material Capital Improvement Report prior to any such costs and expenses being incurred by the City.

ARTICLE 7 OVERSIGHT COMMITTEE

7.1 Formation of Oversight Committee

The City and the Manager hereby form and establish an oversight committee to oversee and provide direction regarding any matters associated with the Event Centre as set out in this Agreement (the "**Oversight Committee**"). The Oversight Committee shall remain in place for the duration of the Term.

7.2 Governance Support

Each of the Parties will support and contribute to the governance of the Event Centre and facilitate communication among the Parties on matters related to this Agreement and the Event Centre through participation in the Oversight Committee. The Oversight Committee shall:

- (a) monitor the Operation of the Event Centre and the provision of the Management Services;
- (b) act as a forum to resolve potential issues and address concerns and assist the Parties by promoting cooperation and effective communication with respect to matters related to this Agreement and the Event Centre;
- (c) be responsible for receiving and reviewing all matters related to the Event Centre, including: (i) each Annual Plan; (ii) any issues arising from reports or documents provided under or pursuant to this Agreement; (iii) any quality assurance and safety issues; and (iv) any other issues pertaining to the Event Centre that are to

be reviewed and/or approved by the Oversight Committee pursuant to this Agreement;

- (d) monitor compliance with the terms and conditions of this Agreement;
- (e) create any sub-committees deemed appropriate to address specific aspects of the Event Centre and establish the terms of reference of any sub-committees;
- (f) provide approvals as contemplated in this Agreement; and
- (g) attend to any other function required by this Agreement, or as mutually agreed to by the Parties.

7.3 Terms of Reference

The terms of reference for the Oversight Committee are attached hereto as Schedule D.

7.4 Members

- (a) Each of the City and the Manager will appoint and have two representatives on the Oversight Committee at all times. Each Party may designate an alternate natural person to act as a member of the Oversight Committee in the absence from time to time of its appointees. Each Party shall notify the other Party in writing of the name of its appointee and alternate. If a Party wishes to replace its appointee to the Oversight Committee, it may do so in writing at any time and from time to time. Each member of the Oversight Committee shall have authorization to act on behalf of the Party that appointed him or her. Until removed or replaced by its appointing body, the members of the Oversight Committee will be:
 - (i) representatives for the City – General Manager, Planning and Development and the individual appointed by the General Manager, Planning and Development; and
 - (ii) representatives for the Manager – Vice President of Building Operations and the individual appointed by the Vice President of Building Operations.
- (b) The office of a member of the Oversight Committee shall be vacated upon the occurrence of any of the following events:
 - (i) if he or she dies or an order is made declaring him or her to be a mentally incompetent person or incapable of managing his or her affairs;
 - (ii) if he or she is removed from office by a written notice from the Party that appointed him or her; or
 - (iii) if by notice in writing to the Parties he or she resigns his or her office and such resignation, if not effective immediately, becomes effective in accordance with its terms.
- (c) Any vacancies in the Oversight Committee shall be filled by the Party that appointed the former member of the Oversight Committee whose loss of office created the vacancy within five (5) Business Days following the creation of the

vacancy. Such Party shall fill the vacancy by written notice stating the name and address of the natural person whom it appoints to the Oversight Committee to fill the vacancy. Copies of such written notice shall be given to the other Party and the natural person so appointed shall thereafter be a member of the Oversight Committee.

7.5 Decision-Making

- (a) **Decision-Making.** The power of the Oversight Committee may be exercised by resolution at a meeting at which a quorum of its members is present or by resolution in writing consented to by all of the members of the Oversight Committee then in office if constituting a quorum, all in accordance with the terms of reference set forth in Schedule D. All decisions and determinations made by the Oversight Committee shall constitute the approval of the Parties and shall be binding upon the Parties and may be implemented by the Oversight Committee without any further approvals of the Parties.
- (b) **Unanimous Vote.** At all meetings of the Oversight Committee, every question shall be decided by the unanimous vote of the members of the Oversight Committee at the meeting, provided that a quorum is present in accordance with the terms of reference set forth in Schedule D. Each member of the Oversight Committee shall be entitled to one vote.
- (c) **Compensation.** No fees, salaries, expenses, commissions or other compensation shall be required to be paid by the Parties to the members of the Oversight Committee in respect of their work on the Oversight Committee.

7.6 No Release

The Parties acknowledge and agree that the approval by the Oversight Committee of any matter delegated to it pursuant to this Agreement shall not: (a) constitute a waiver by any Party hereunder of any duty or liability owed to it by the other Party; (b) in any way release any Party from any of its obligations or liabilities under this Agreement; or (c) in any way impose any liability on any Party in respect of the obligations of the other Party hereunder.

ARTICLE 8 INSURANCE, INDEMNIFICATION AND RELEASE

8.1 Insurance

- (a) The Parties agree that the following insurance will be taken out and kept in force by the Manager during the Term, subject to Subsections 8.1(j) and 8.1(k) below:
 - (i) on behalf of the City, all risks property insurance including, without limitation, boiler & machinery, the building, pressure vessels, mechanical and electrical equipment, FF&E, other fixtures and contents in an amount equal to one hundred (100%) percent of the full replacement cost thereof, with coverage against all risk of physical loss or damage (including coverage against the perils of collapse, earthquake, and sewer backup) but not, for clarity, the peril of flood, which shall be insured against in accordance with Section 8.1(c) (the “**All Risks Coverage**”). The City is to be included as the first loss payee. Such insurance shall contain a waiver

of subrogation rights that the Manager's insurers may have against the City and against those for whom it is in law responsible, whether any such damage is caused by the act, omission or negligence of the City or those for whom it is in law responsible. Further, the All Risks Coverage shall contain a breach of conditions endorsement;

- (ii) insurance upon personal property of every description and kind owned by the Manager or for which the Manager is legally liable, or installed by or on behalf of the Manager, which is located in the Event Centre, including, without limitation, inventory and stock in trade fixtures, furniture and equipment, (including all FF&E not covered by the All Risks Coverage), in an amount sufficient to cover the full replacement cost thereof, on an "all risk" basis including sprinkler leakage (where applicable), earthquake, flood and collapse. Such insurance shall contain a waiver of any subrogation rights as against the City and against those for whom it is in law responsible, whether any such damage is caused by the act, omission or negligence of the City or those for whom it is in law responsible;
- (iii) business interruption insurance on an insurable gross profits basis or its equivalent, covering loss of income to the Manager for a minimum indemnity period of twenty-four (24) months resulting from interruption of business caused by the occurrence of any of the risks insured against under the All Risks Coverage;
- (iv) commercial general liability insurance in the name of the Manager with a limit of not less than thirty million (\$30,000,000) dollars per occurrence covering all operations of the Event Centre and naming the City as an additional insured. Limits of liability may be structured as any combination of primary plus supplementary layers and umbrella and/or excess, or primary plus umbrella and/or excess. Such coverage shall be extended to include owner's and contractors' protective, products and completed operations, intentional bodily injury for the protection of persons or property, personal injury, incidental medical malpractice, employers' liability, blanket contractual liability, property damage, provisions for cross liability and severability of interests;
- (v) automobile liability insurance, written on a standard policy form, for all vehicles used in the operation of the Event Centre by the Manager with limits of not less than two million (\$2,000,000) dollars in respect of any one accident;
- (vi) non-owned automobile liability insurance on all non-owned vehicles used in the operation of the Event Centre by the Manager with limits of not less than two million (\$2,000,000) in respect of any one accident; and
- (vii) such other insurance as a prudent owner or operator of a similar facility would maintain with respect to the use and operation of the Event Centre in accordance with reasonable and accepted commercial practices as recommended by the Risk Management Consultant and approved by the Oversight Committee from time to time in accordance with Section 8.1(j) below.

- (b) In order to assist the Parties in obtaining effective and efficient insurance coverage of the Event Centre and all risks associated therewith, the Parties hereto agree to engage an independent third party duly qualified risk management consultant or insurance consultant, being a consultant (or firm of consultants) that is not already retained by either the City or the Manager or their respective insurance brokers in respect of the Event Centre such as, by way of example only, InTech Risk Management Inc. (the "**Risk Management Consultant**"). The identity of the Risk Management Consultant, the terms of reference of the engagement of the Risk Management Consultant and the contract by which the Risk Management Consultant provides its consulting services to the Parties shall be subject to approval by the Oversight Committee. The cost of the Risk Management Consultant shall be borne equally as between the City and the Manager.

- (c) Notwithstanding that the Manager's obligation to obtain and maintain the All Risks Coverage in respect of the Event Centre in accordance with the provisions of Section 8.1(a)(i) and business interruption coverage in accordance with the provisions of Section 8.1(a)(iii), the Parties agree that such All Risks Coverage and business interruption insurance shall not include coverage against the peril of flood and insurance coverage in respect of the peril of flood shall be obtained and maintained in accordance with the following provisions:
 - (i) The basic principles as to the delineation of responsibility in respect of flood insurance coverage in respect of the Event Centre and business interruption coverage relating thereto (such property policy component and business interruption component being, collectively, the "**Flood Insurance Coverage**") shall be as follows:
 - (A) The coverage to be obtained shall be as would be obtained by a reasonable and prudent owner of land and improvements located within the Rivers District, based upon a recommendation from the Risk Management Consultant but, approved by the Oversight Committee; and
 - (B) The amount of the coverage including sublimits, deductible amounts and the premium to be paid for the Flood Insurance Coverage shall be as recommended by the Risk Management Consultant, but approved by the Oversight Committee; and

 - (ii) The premium payable for the Flood Insurance Coverage shall be allocated as between the Parties as follows:
 - (A) The Manager shall be responsible for such portion of the premium that would have been payable had the Event Centre not been located in the Rivers District and instead was located outside of a flood plain as recommended by the Risk Management Consultant and approved by the Oversight Committee; and

- (B) The City shall be responsible for all premiums in excess of the premium for which the Manager is responsible in accordance with subsection (A) hereof,

which allocation of premium shall be based on recommendations received from the Risk Management Consultant but ultimately approved by the Oversight Committee;

- (iii) The deductible amount under the Flood Insurance Coverage shall be as recommended by the Risk Management Consultant, but approved by the Oversight Committee and the allocation of the deductible shall be as follows:

- (A) The Manager shall be responsible for the deductible amount that would be typical for flood insurance and associated business interruption coverage had the Event Centre not been located in the Rivers District and instead was located outside of a flood plain as recommended by the Risk Management Consultant and approved by the Oversight Committee; and

- (B) The City shall be responsible for the balance of the deductible over the portion of the deductible which is the Manager's responsibility pursuant to subsection (A) above,

which allocation shall be as recommended by the Risk Management Consultant, but as determined by the Oversight Committee;

- (iv) In the event of a claim pursuant to the Flood Insurance Coverage, such claim shall be managed either by the Risk Management Consultant, or as recommended by the Risk Management Consultant, but approved, by the Oversight Committee with a view to: (A) repairing any damage caused by the flood event as expeditiously as possible; and (B) to ensuring that the Party who has placed such insurance can have its claims effectively managed;

- (v) The Manager agrees that it shall work with the City and the Risk Management Consultant to provide such information and access to the Event Centre and the Manager's staff at the Event Centre as may be reasonably required by the City and the Risk Management Consultant in order to ensure that the City and the Risk Management Consultant has all information necessary in order to obtain, maintain and manage the Flood Insurance Coverage for the Event Centre throughout the Term;

- (vi) The Flood Insurance Coverage shall contain a waiver of any subrogation rights that the insurer may have against the Party not placing the Flood Insurance Coverage and against those for whom it is in law responsible, whether any such damage is caused by the act, omission or negligence by such other Party or those for whom it is in law responsible. The Party not placing the Flood Insurance Coverage shall also be included as an

additional named insured under the Flood Insurance Coverage (and in the event that the City places the Flood Insurance Coverage and includes it in a blanket policy, the Manager shall be included as an additional named insured with respect to the Event Centre only); and

- (vii) The determination as to whether the Manager or the City should take out the Flood Insurance Coverage shall be as recommended by the Risk Management Consultant but approved by the Oversight Committee, but each of the Risk Management Consultant and the Oversight Committee shall have regard to: (A) the business interruption insurance requirements of the Manager from time to time (it being acknowledged that as of the date of this Agreement, the Manager carries twenty-four (24) months of business interruption insurance); and (B) the Manager's desire to effectively and efficiently administer any claim under the Flood Insurance Coverage given the importance of repairing all damage to the Event Centre caused by a flood incident. Notwithstanding the preceding provisions of this Section 8.1(c)(vii) or any recommendation by the Risk Management Consultant that Flood Insurance Coverage (inclusive of both the property policy component and the business interruption component) be taken out by the Manager, the City shall be entitled to elect, in its sole discretion but subject to the confirmation by the Risk Management Consultant regarding the feasibility of same, to take out the Flood Insurance Coverage itself, either as a separate standalone policy or as part of the City's blanket all risks property insurance for City owned properties, together with business interruption insurance coverage that meets the business interruption insurance requirements of the Manager from time to time. The City acknowledges that the placement of business interruption insurance of the Manager requires the disclosure of proprietary and confidential information of the Manager and agrees that the Manager will be entitled to participate in the application process to exclude the City from any disclosure of proprietary and confidential information to the insurer and otherwise protect the proprietary and confidential information of the Manager. For clarity, if the City makes the election described in the preceding sentence, such Flood Insurance Coverage shall be obtained on the terms and conditions otherwise recommended by the Risk Management Consultant and approved by the Oversight Committee in accordance with the first sentence of this Section 8.1(c)(vii), and the Manager's only contribution payable on account of such Flood Insurance Coverage shall be the premium and deductible amounts for which the Manager is responsible as approved by the Oversight Committee pursuant to Sections 8.1(c)(ii)(A) and 8.1(c)(iii)(A), as applicable.
- (d) The Party placing any of the insurance coverage shall, from time to time at the other Party's request, acting reasonably, promptly deliver a certificate from the placing Party's insurance or insurance broker, in a form and content satisfactory to the other Party, acting reasonably, certifying the insurance coverage being placed by the placing Party under the exclusions, endorsements and other material terms thereof, if any, and that such insurance conforms to the requirement of this Agreement, or such other proof as the other Party may reasonably request to establish that such insurance is in full force and effect.

- (e) Subject only to the City's contribution pursuant to Section 8.1(c), the Manager shall punctually pay all premiums payable for maintaining the insurance required pursuant to this Article 8, or if applicable, promptly reimburse the City therefor. If (i) the Manager is responsible for placing any such insurance and fails to insure according to the terms of this Agreement, or (ii) the Manager fails to pay the premiums in respect thereof, or (iii) the City receives notice of a proposed material change, cancellation or termination of such insurance, the City may, in any such case, on ten (10) days' notice to the Manager, and the Manager failing to insure and provide the required certification within such ten (10) days, acquire such insurance and the Manager shall pay the reasonable costs incurred by the City in (iv) acquiring such insurance, or (v) paying the premiums in respect thereof, or (vi) rectifying any proposed material changes to, cancellation or termination of, such insurance, to the City upon receipt of a demand for payment together with an invoice therefor and a reasonably detailed statement relating thereto.
- (f) The Manager shall use reasonable commercial efforts to ensure that all insurance shall contain an undertaking by the insurer to notify the City in writing not less than thirty (30) days' prior to any material change, cancellation or termination.
- (g) The Manager shall from time to time at the City's request, acting reasonably, promptly deliver to the City, a certificate from its insurer or insurance broker, in a form and content satisfactory to the City, acting reasonably, certifying the insurance being carried by the Manager, the exclusions, the endorsements and the other material terms thereof, if any, or such other proof as the City may reasonably request to establish that such insurance is in full force and effect and that such insurance conforms to the requirements of this Agreement. Where the City obtains Flood Insurance Coverage in accordance with Section 8.1(c) above, then the City shall, upon request, promptly deliver to the Manager a certificate from its insurer or insurance broker, in form and content satisfactory to the Manager, acting reasonably, certifying the Flood Insurance Coverage being carried by the City, the exclusions, the endorsements and the other material terms thereof, if any, or such other proof as the Manager may reasonably request to establish that the Flood Insurance Coverage is in full force and effect and conforms to the requirements of this Agreement.
- (h) The Manager shall be solely responsible for the payment of any deductibles with respect to claims under the policies described in Section 8.1(a) above, except where such deductible relates to a claim for a Major Structural Repair, in which case the cost of such deductible shall be the sole responsibility of the City, and except where such deductible relates to a claim for flood coverage, in which case the cost of such deductible shall be dealt with in accordance with Section 8.1(c)(iii) above.
- (i) Neither the Manager nor the City will do, suffer or permit to be done or omit to do anything which will cause the rate of insurance for the policies described in Sections 8.1(a) or 8.1(c) above to be increased or the insurance to be cancelled or made subject to cancellation.
- (j) At any time and from time to time during the Term, either the City or the Manager may propose changes to the coverages required pursuant to Section 8.1(a), including, without limitation, in respect of any coverage limits, forms of coverage,

or additional types of coverage to those described in Section 8.1(a). The Risk Management Consultant shall recommend any such proposed changes but any such proposed changes shall require the approval of the Oversight Committee, and if so approved, the provision of Section 8.1(a) hereof shall be amended by the Parties to reflect such changes.

- (k) Throughout the Term, the City and the Manager may agree that, if requested by either Party, the Parties shall instruct the Risk Management Consultant to undertake a review of the insurance requirements in respect of the Event Centre to determine the most appropriate, effective and efficient method of insuring the Event Centre, including, without limitation, by reviewing the feasibility of having the All Risks Coverage or the Flood Insurance Coverage placed by a Party then not carrying such coverage. If after a review of the recommendation of the Risk Management Consultant, the Oversight Committee approves any changes to the method of insuring the Event Centre, the provisions of this Article 8 shall be amended by the Parties to reflect such changes in a manner satisfactory to counsel to each Party, acting reasonably.
- (l) Notwithstanding the provisions of Section 8.1(j) and 8.1(k), the Parties agree that no changes to the insurance coverage or method of obtaining such insurance coverage approved by the Oversight Committee shall result in the City being liable to pay any premiums or deductibles in respect of the insurance coverages obtained in respect of the Event Centre other than as described in Sections 8.1(c) and 8.1(h).

8.2 Users Insurance

The Manager agrees to require that proper insurance (or a self-insurance program acceptable to the Manager, in its sole discretion) indicating sufficient general liability, automobile, bodily injury, property damage, death and worker's compensation insurance coverage, shall be obtained and maintained at all times by all users of the Event Centre as may be appropriate and usual for such users' activities in a similar sports and entertainment facility; provided that, if the Guarantor obtains any sublease or license contemplated by Section 5.3(a) hereof, without limiting the generality of the foregoing the Guarantor shall, at a minimum, obtain the coverage contemplated by Section 8.1(a)(iv) hereof or be a named insured on such coverage obtained by the Manager. Such requirement will extend to all sublessees, licensees, users, promoters, exhibitors, concessionaires or other persons (other than the City) contracting with the Manager for use of the Event Centre. Such insurance requirement will include naming the City and the Manager as additional insureds and shall be written with insurers acceptable to the City and licensed to conduct business (and in good standing) in the Province of Alberta. The Manager will endeavour to have such requirement supported by a valid certificate of insurance.

8.3 Indemnification of City

- (a) The Manager shall defend, indemnify and hold harmless the City, its elected officials, officers, consultants, agents and employees (collectively the "**City Indemnified Parties**") from and against any and all loss of, or damage to, property, or injuries to, or death of, any person or persons, including without limitation, the City Indemnified Parties, and shall defend, indemnify and hold harmless the City Indemnified Parties, or any of them, from any and all claims, damages, suits, costs, expenses, liabilities, fines, obligations, penalties, demands, actions or proceedings

of any nature or kind whatsoever (including without limitation legal fees and disbursements on a solicitor/client full indemnity basis) of or by anyone whatsoever, resulting from, or arising out of, directly or indirectly:

- (i) any negligent act or omission or wilful misconduct of the Manager or its directors, officers, servants, subcontractors, employees or any other persons for whom in law the Manager is responsible;
- (ii) from any breach of any of the Manager or its directors, officers, servants, subcontractors, employees or any other persons for whom in law the Manager is responsible of any covenant, term or provision of this Agreement;
- (iii) enforcing payment or in enforcing any other covenant, term, agreement or obligation to be observed or performed by the Manager contained in this Agreement if it is determined that the Manager has defaulted in its obligations under this Agreement and has not cured such default during any applicable grace period; or
- (iv) the occupancy, use or Operation of the Event Centre by the Manager and any other activities of the Manager, its servants, subcontractors, employees, agents, consultants or any other Persons for whom in law the Manager is responsible, or any other Persons utilizing the Event Centre (including, without limitation, any subtenants and licensees) on or about the Event Centre, or any incident or injury occurring thereon (including, without limitation, any claims made by third Parties in respect thereof);

provided, however, the Manager shall not release, indemnify or hold harmless the City Indemnified Parties from damage to or loss of property, or injury to or death of persons: (A) to the extent contributed to or caused by the negligent act or omission or wilful misconduct of the City Indemnified Parties; or (B) to the extent relating to or in respect of any occurrences insured against by the City or required to be insured against by the City pursuant to this Article 8; in any such case notwithstanding anything stated in this Section 8.3(a), but subject in all cases to Section 8.5 hereof.

- (b) The provisions of this Section 8.3 shall survive any termination or earlier expiry of this Agreement.

8.4 Indemnification of Manager

- (a) The City shall defend, indemnify and hold harmless the Manager, the Guarantor and their respective directors, officers, consultants, agents and employees (collectively the "**Manager Indemnified Parties**") (without duplication) from and against any and all loss of, or damage to, property, or injuries to, or death of, any person or persons, including without limitation, the Manager Indemnified Parties, and shall defend, indemnify and hold harmless the Manager Indemnified Parties, or any of them, from any and all claims, damages, suits, costs, expenses, liabilities, fines, obligations, penalties, demands, actions or proceedings of any nature or kind whatsoever (including without limitation legal fees and disbursements on a

solicitor/client full indemnity basis) of or by anyone whatsoever, resulting from, or arising out of, directly or indirectly:

- (i) any negligent act or omission or wilful misconduct of the City or its officers, servants, subcontractors, employees or any other persons for whom in law the City is responsible;
- (ii) from any breach of any of the City or its officers, servants, subcontractors, employees or any other persons for whom in law the City is responsible of any covenant, term or provision of this Agreement; or
- (iii) enforcing payment or in enforcing any other covenant, term, agreement or obligation to be observed or performed by the City contained in this Agreement if it is determined that the City defaulted in its obligations under this Agreement;

provided, however, the City shall not release, indemnify or hold harmless the Manager Indemnified Parties from damage to or loss of property, or injury to or death of persons: (A) to the extent contributed to or caused by the negligent act or omission or wilful misconduct of the Manager Indemnified Parties; or (B) to the extent relating to or in respect of any occurrences insured against by the Manager or required to be insured against by the Manager pursuant to this Agreement; in any such case notwithstanding anything stated in the preceding provisions of this Section 8.4(a), but subject in all cases to Section 8.5 hereof.

- (b) The provisions of this Section 8.4 shall survive any termination or earlier expiry of this Agreement.

8.5 Releases

- (a) Notwithstanding any other provisions of this Agreement, the Manager does hereby release and waive:
 - (i) any and all claims, demands, actions and proceedings which the Manager may have against the City or those for whom the City is liable in law; and
 - (ii) any and all awards, judgments, liabilities, losses, damages, costs and expenses which the Manager may incur by reason of the acts or omissions of the City or those for whom City is responsible in law,

with respect to any and all occurrences insured against by the Manager or required to be insured against by the Manager, pursuant to this Agreement, whether any such claims, demands, actions, proceedings, awards, judgments, liabilities, losses, damages, costs and expenses arise as a result of the acts, omissions or negligence or otherwise of the City or those for whom the City is responsible at law, except where the acts or omissions of the City or those for whom the City is responsible at law are outside the insurance coverage obtained or required to be obtained pursuant to this Agreement.

- (b) Notwithstanding any other provisions of this Agreement, the City does hereby release and waive:

- (i) any and all claims, demands, actions and proceedings which the City may have against the Manager and those for whom the Manager is liable in law; and
- (ii) any and all awards, judgments, liabilities, losses, damages, costs, and expenses which the City may incur by reason of the acts or omissions of the Manager or those for whom the Manager is responsible in law,

with respect to any and all occurrences insured against by the City or required to be insured against by the City pursuant to this Agreement, whether any such claims, demands, actions, proceedings, awards, judgments, liabilities, losses, costs and expenses arise as a result of the acts, omissions or negligence or otherwise of the Manager or those for whom the Manager is responsible at law, except where the acts or omissions of the Manager or those for whom the Manager is responsible at law are outside the insurance coverage obtained or required to be obtained pursuant to this Agreement.

8.6 Benefit of Indemnity and Release

The Parties agree that each obligation of one Party (the "**Indemnifier**") to indemnify the other Party (the "**Indemnified Party**") in this Agreement shall include an obligation on the part of the Indemnifier to indemnify and hold harmless not only the Indemnified Party but each elected official, director, officer, agent and employee of the Indemnified Party and every other person for whom the Indemnified Party is responsible in law (each such director, officer, elected official, agent, employee or other person being hereinafter referred to as an "**Indemnity Beneficiary**"). Subject to the exception set out in Section 8.5, the Indemnifier also agrees that any release granted in this Agreement in favour of the Indemnified Party shall include a release on the same terms and to the same extent for each of the Indemnity Beneficiaries. Subject to the exceptions set out in Sections 8.3 and 8.4, the Indemnifier agrees that the benefit of any indemnity or release granted by the Indemnifier in this Agreement may be assigned in whole or in part to any Indemnity Beneficiary, either generally or with respect to one or more particular matters, while the Indemnified Party retains the benefit of such indemnity in its favour and for the benefit of each other Indemnity Beneficiary, as well as in favour of such Indemnity Beneficiary with respect to all matters in respect of which that indemnity is not assigned to such Indemnity Beneficiary.

8.7 Notice of Claim

When an Indemnified Party receives written notice of a claim which the Indemnified Party determines may give rise to a claim for indemnification under this Agreement (the "**Claim**"), the Indemnified Party shall give prompt notice to the Indemnifier, including details of such Claim and, if applicable, a copy of such Claim (the "**Notice of Claim**"). Following receipt by the Indemnifier of a Notice of Claim, the Indemnifier shall be entitled to make a reasonable investigation of the Claim, as the Indemnifier considers necessary or desirable at its sole cost and expense. For the purpose of such investigation, the Indemnified Party shall make available to the Indemnifier all information concerning the Claim or relied upon by the Indemnified Party to substantiate the claim for indemnification. Within thirty (30) days following receipt by the Indemnifier of a Notice of Claim, the Indemnifier shall elect to either (a) assume control of and proceed in a diligent manner with the investigation, defence, or settlement of the Claim, including choice of counsel and other advisors, in consultation with the Indemnified Party or (b) direct the Indemnified Party to do so, at the Indemnifier's sole cost and expense. Subject to the next sentence, the Party assuming the defence of the Claim shall, in its discretion, acting reasonably, do such acts and things and conduct such negotiations, take or defend such proceedings, and make such settlement as it

deems advisable with respect to the Claim. Except with the prior written consent of the Indemnified Party, the Indemnifier shall not settle or compromise any Claim or admit liability in respect thereof or disclose the existence of the indemnity, other than as may be required in defence of a court action, in respect of matters arising out of or relating to the indemnities contained in this Agreement. If the Indemnified Party shall withhold its consent to any compromise or settlement recommended by the Indemnifier, the Indemnified Party shall thereafter be responsible for all further defence costs (provided that if the ultimate disposition of the Claim results in an outcome more favourable than the compromise or settlement proposed by the Indemnifier, the Indemnifier shall be liable for and shall indemnify the Indemnified Party for all such defence costs), and, should the ultimate disposition of the claim result in an outcome less favourable than the compromise or settlement proposed by the Indemnifier, the Indemnified Party shall be solely responsible for the difference between the ultimate result and the compromise or settlement not accepted. Each Party shall cooperate with the other fully in respect of any Claim, including providing each other on an ongoing basis with all information which may be relevant to the Indemnified Party's or the Indemnifier's liability hereunder and supplying copies of all relevant documentation promptly, as it becomes available, and each shall make available such witnesses as are under its control. Any payment shall be made where practically possible to give effect to any tax savings. Notwithstanding anything contained in this Article 8, the indemnities provided under this Article 8 shall not extend to any debt, cost, expense, claim or demand for which insurance proceeds have been recovered by the Indemnified Party and each Indemnified Party shall upon receiving notice of a Claim, first seek to satisfy any such Claim through its own insurance proceeds and through the enforcement of any other rights available to it (including any indemnities, damages claims, releases and warranties to which it is entitled) and the Indemnified Party shall diligently and in good faith using all commercially reasonable efforts prosecute all available insurance claims and recover to the fullest extent possible insurance proceeds for all Claims.

8.8 Consequential Damages

Notwithstanding anything to the contrary contained in this Agreement, no Party (in this Section, the "**First Party**") will be liable to the other Party (in this Section, the "**Other Party**") for any loss, expense, injury, death, damage or other liability of any indirect, special or consequential nature suffered by the Other Party which arises due to the First Party's failure to perform its obligations under this Agreement or for any other reason (including negligence or wilful misconduct on its part or on the part of any Person for whose act it is responsible in law), howsoever and whensoever caused, and whether arising in contract, negligence or other tort liability, strict liability or otherwise, even if advised of the possibility thereof; and without limiting the generality of the foregoing, damage, injury or loss of an indirect or consequential nature shall include loss of revenue, loss of profits (whether direct or indirect), loss of production, loss of earnings, loss of contract, cost of purchased or replacement capacity, cost of capital and loss of the use of any facilities or property owned, operated, leased or used by the Other Party.

ARTICLE 9 PAYMENTS TO CITY

9.1 Facility Fee Agreement

The City, the Manager and the Guarantor agree that, throughout the Term, they shall each comply with their respective obligations under the Facility Fee Agreement in accordance with the provisions thereof, including without limitation all payment obligations thereunder. Notwithstanding the foregoing, the Parties agree that, if the City and/or any Organizing

Committee exercises its rights to use the Event Centre for the purposes of an International Event in accordance with Section 2.4 hereof, the City shall be entitled to elect, in its discretion, to suspend the application of the Facility Fee Agreement for the duration of any such International Event.

9.2 Naming Rights Fee

In consideration for the right and license to sell or license the naming rights for the Event Centre in accordance with Section 4.14 hereof, the Manager shall pay the Naming Rights Fee to the City for the first ten (10) years of the Term commencing on the Turnover Date and on each subsequent anniversary thereof, whether or not the Manager has entered into an agreement to sell or license the naming rights for the Event Centre.

ARTICLE 10 RESTRICTIONS ON ASSIGNMENT AND ENCUMBERING

10.1 Not to Encumber

The Manager shall not have the right to, and shall not, mortgage, charge or encumber this Agreement, the Event Centre or the Lands in any way whatsoever, including without limitation the assignment of this Agreement or any of its rights under this Agreement by way of security in favour of any Person. Other than the registration of a caveat in respect of this Agreement in accordance with the provisions of Section 2.5 hereof, the Manager shall not, and shall not permit any subtenant, licensee or user of the Event Centre to, make or permit any registration of any kind whatsoever to be made against title to the Lands or any part thereof.

10.2 Liens

The Manager shall pay all costs for work done or caused to be done in connection with any work undertaken by it (or on its behalf) pursuant to this Agreement in a timely manner and if such costs could result in any lien or encumbrance on the Lands, the Event Centre or any part thereof, shall keep, or take steps in accordance with this Section 10.2 to keep, the title to the Lands, the Event Centre and every part thereof free and clear of any lien or encumbrance in respect of such work, and shall indemnify and hold harmless the City from and against (a) any and all claims, demands, actions or proceedings which may be brought or prosecuted against the City, and (b) any and all awards, judgments, liabilities, losses, damages, costs and expenses, including reasonable legal fees on a solicitor-client basis, which the City may suffer or incur, whether in respect of any lien or otherwise, arising out of the supply of materials, services or labour for such work. The Manager shall immediately notify the City of any such lien, claim of lien or other action of which it becomes aware and which affects the title to the Lands or any part thereof, and shall cause the same to be removed within ten (10) days of notice to the Manager of such lien or encumbrance (or such additional time as the City, acting reasonably, may consent to in writing), failing which the City may take such action as the City deems necessary to remove the same and the entire reasonable cost thereof shall be immediately due and payable by the Manager to the City upon receipt of an invoice therefor and a reasonably detailed statement relating thereto. Notwithstanding the preceding sentence, if the failure to remove any such lien or encumbrance results in the lienholder or encumbrancee making an application for sale of the Lands or if any financing of the Lands is affected by any such lien or encumbrance, the Manager shall cause any such lien or encumbrance to be removed immediately, failing which the rights of the City set out in the preceding sentence shall apply. For clarity, the Parties agree that the Manager's obligations pursuant to this Section 10.2 shall apply in respect of any liens or

encumbrances registered against title to the Lands, the Event Centre or any part thereof in respect of any work done or caused to be done by or on behalf of any subtenant or licensee of the Lands, the Event Centre, or any part thereof.

10.3 Assignment by the Manager

- (a) The Manager shall not undertake or permit an Assignment without the prior written approval of the City, which approval: (i) shall not be unreasonably withheld or delayed by the City if the proposed assignee or its affiliate has been approved by the National Hockey League as the successor owner of a National Hockey League franchise to be operated in the City of Calgary and evidence of such approval has been provided to the City by the Manager concurrently with any such request for approval from the City; and (ii) in all other instances, may be withheld or conditioned by the City in its sole discretion; and any such purported Assignment undertaken without the prior written approval of the City shall be void and of no effect. In no event shall any Assignment to which the City consented constitute a release or otherwise relieve the Manager from the performance of the terms, covenants and conditions herein on its part contained to be observed and performed throughout the Term. Any permitted Assignment shall be subject to the Party effecting the Assignment (the "Transferor") executing and causing the assignee, grantee or transferee of the Assignment, as the case may be (the "Transferee") to execute promptly an assumption agreement in favour of the other Party (in form satisfactory to the other Party, acting reasonably), whereby the Transferee agrees, *inter alia*: (a) to be bound by all of the terms, covenants and conditions contained in this Agreement as if such Transferee had originally executed this Agreement; (b) to pay all amounts required to be paid by the Transferor hereunder; and (c) notwithstanding the Assignment, the Transferor shall be jointly and severally liable with the Transferee under this Agreement and shall not be released from performing any of the terms, covenants and conditions of this Agreement (unless the other Party consents to such release in writing).
- (b) The Manager shall not undertake or permit to be undertaken any transaction or series of transactions that would result in a change in the direct or indirect ownership interests in the Manager or its general partner (including, without limitation, any transfer, assignment, conveyance or other disposition of all or part of the equity interests or other securities of the Manager or the general partner of the Manager, by operation of law or otherwise) other than in accordance with the following provisions:
 - (i) In respect of any such transaction or series of transactions undertaken between the direct or indirect holders of the equity interests or other securities of the Manager or the general partner of the Manager as of the date of this Agreement, it shall provide the City with no less than thirty (30) days' prior written notice thereof, but without any requirement to obtain the City's approval.
 - (ii) In respect of any such transaction or series of transactions that will result in any Person that is not a direct or indirect holder of equity interests or other securities of the Manager or the general partner of the Manager as of the date of this Agreement following completion of such transaction or series of transactions:

- A. if such transaction or series of transactions results in a direct or indirect Change in Control of the Manager or the general partner of the Manager, it shall require the prior written approval of the City, which approval: (x) shall not be unreasonably withheld or delayed by the City if the Person who will Control the Manager or the general partner of the Manager following completion of such Change in Control has been approved by the National Hockey League and evidence of such approval has been provided to the City; or (y) in all other instances, may be withheld or conditioned by the City in its sole discretion;
 - B. if such transaction or series of transactions shall result in such Person directly or indirectly owning between 20% to 49% of the equity interests or other securities in the Manager or the general partner of the Manager, the Manager shall provide the City with written notice, but without any requirement to obtain the City's approval, as soon as reasonably practical prior to the completion of such transaction or series of transactions, provided the City agrees to maintain the confidentiality of such information and will not make use of such information or release it to employees, officials, officers, authorized representatives or external advisors or consultants without the prior written consent of the Manager or as required by Applicable Laws; and
 - C. if such transaction or series of transactions will result in such Person directly or indirectly owning less than 20% of the equity interests or other securities in the Manager or the general partner of the Manager, the Manager shall provide the City with written notice confirming the completion of such transaction or series of transactions by no later than thirty (30) days following the completion of such transaction or series of transactions.
- (iii) Together with any notice or request for consent delivered by the Manager to the City in the circumstances described in this Section 10.3(b), the Manager shall provide to the City: (A) evidence satisfactory to the City, acting reasonably, confirming the identity of the owners of the direct or indirect equity interests or other securities of the Manager and/or the general partner of the Manager following completion of such transaction or series of transactions; and (B) if such transaction or series of transactions requires the approval of the National Hockey League, evidence of such approval having been granted by the National Hockey League.

10.4 Non-Competition

During the Term, neither the Manager nor any Affiliate of the Manager shall, without the prior approval of the City, acting reasonably, own or manage a stadium or other event centre located within the City of Calgary, the principal purpose of which is the hosting and staging of events similar to the Primary Uses. Notwithstanding the foregoing, the Manager shall not be restricted from and shall be free to own or manage a stadium or other event centre located within the City of Calgary, the principal purpose of which includes sporting events other than ice hockey and lacrosse (such as, by way of example and not by way of limitation, football, soccer and

baseball). Nothing herein shall be construed as restricting the Manager from pursuing its other business interests.

10.5 Assignment by the City

The City shall be entitled, at any time and from time to time throughout the Term of this Agreement, to effect any Assignment of this Agreement to any Affiliate of the City without requiring any approval from the Manager on no less than thirty (30) days' prior written notice to the Manager, and provided that such Affiliate enters into an agreement in favour of the Manager whereby such Affiliate agrees to assume and be bound by all of the City's obligations under this Agreement. If the City undertakes any Assignment to an Affiliate in accordance with the preceding sentence, upon completion of such Assignment the City shall be released from any and all obligations under this Agreement from and after the effective date of such Assignment. Any other Assignment of this Agreement by the City shall require the prior approval of the Manager, which approval may be withheld or conditioned by the Manager in its sole discretion.

10.6 City Mortgage

- (a) Subject to the remaining provisions of this Section 10.6, the City may, at any time and from time to time, mortgage, charge or encumber the Event Centre or the Lands as security for any financing obtained or to be obtained by the City during the Term.
- (b) At the option of the City to be exercised by way of written notice to the Manager from time to time, this Agreement and the rights of the Manager hereunder shall be subject to and subordinate to any and all mortgages, trust deeds, financial encumbrances and charges (each a "**Mortgage**") registered against title to the Event Centre or the Lands or any part thereof now or in the future, including all renewals, extensions, modifications and replacements of any Mortgages from time to time, subject to the City and any holder of a Mortgage (a "**City Mortgagee**") first complying with the following provisions.
- (c) The Manager shall at any time on notice from the City or any City Mortgagee attorn to and become a tenant of the City Mortgagee on the same terms and conditions as set out in this Agreement, and shall execute promptly upon request by the City any certificates, agreements, instruments of attornment or other instruments or agreements as requested from time to time to postpone or subordinate this Agreement and all of the rights of the Manager hereunder to any Mortgage or to otherwise give full effect to the provisions of this Section 10.6 (such instruments or agreements, collectively "**Attornment Instruments**"). The Manager's obligation to subordinate its rights under this Agreement and attorn to any City Mortgagee and to execute any Attornment Instruments shall be subject to the City and such City Mortgagee entering into an acknowledgment agreement in form and content satisfactory to each of the Manager, the City and the City Mortgagee (each acting reasonably), whereby the City Mortgagee agrees with the Manager that: (i) if the City Mortgagee takes possession or control of the Event Centre or the Lands or otherwise succeeds to the interest of the City hereunder, the City Mortgagee shall assume, observe, perform and be bound by all of the provisions of this Agreement to be observed and performed by, and that are binding upon, the City; and (ii) so long as an Event of Default in respect of the Manager has not occurred and is not continuing, the Manager's rights under this Agreement to use, Operate and lease

the Event Centre and the Lands shall not be disturbed by virtue of any of the foregoing acts by a City Mortgagee, nor shall any of the Manager's rights under this Agreement be terminated or otherwise affected thereby.

ARTICLE 11 DEFAULT BY MANAGER OR THE CITY

11.1 Event of Default

Any of the following occurrences or acts shall constitute an "Event of Default" by the Manager under this Agreement:

- (a) failure to pay the fees set out in Section 9.2 within ten (10) days after receipt of notice in writing of such failure from the City; or
- (b) failure to insure to the minimum limits as required by Section 8.1 within ten (10) days of receipt of notice in writing from the City to such effect or failure to comply with the requirements set out in Section 8.1(e); or
- (c) if any Event of Insolvency occurs in respect of the Manager; or
- (d) if the Manager: (i) mortgages, charges or encumbers this Agreement, the Event Centre or the Lands, in any such case in breach of Section 10.1; or (ii) undertakes or is subject to any Assignment, Change in Control, or transfer of any equity interests in the Manager or the general partner of the Manager; in any such case in breach of Section 10.3 hereof, and any such breach has not been rectified by the Manager within thirty (30) days after receipt of notice in writing from the City of such breach; or
- (e) non-performance or non-observance by the Manager of any of its other covenants, terms, agreements or obligations hereunder not specifically referenced in this Section 11.1 for sixty (60) days after receipt of notice in writing from the City of such failure (or, in case of a failure which cannot with diligence be cured within such sixty (60) day period if the Manager shall not promptly proceed to cure such failure after receiving such notice and thereafter prosecute the curing of such failure with diligence, it being intended that in connection with a failure not capable of being cured within such sixty (60) day period the time within which to cure such failure shall be extended for such period as may be necessary to cure such failure with diligence); or
- (f) if any default by the Manager under any other Project Agreement has occurred and continued beyond the expiration of any applicable cure period provided therefor.

11.2 Dispute

- (a) If a notice of an Event of Default is given by the City under Section 11.1(e), the Manager may notify the City that it disputes the matters contained in such notice, in which case unless otherwise agreed the dispute shall be referred to dispute resolution in accordance with Article 13 hereof, provided that the cure periods referred to in such sections shall be extended for so long as the dispute is being resolved in accordance with the provisions thereof.

- (b) If such dispute is determined in a manner adverse to the Manager, wholly or in part, the Manager shall forthwith commence to correct the applicable Event of Default promptly following the completion of such dispute resolution process and shall complete the same within thirty (30) days after such determination or, if more than thirty (30) days are reasonably required to remedy such Event of Default, commence to remedy same within such thirty (30) days and thereafter prosecute the same to completion within the time period determined as reasonable for such completion by the adjudicator of the dispute as part of their determination.

11.3 Remedies of the City

- (a) In the event of:
 - (i) the occurrence of an Event of Default as set out in any of Sections 11.1(c), 11.1(d) or 11.1(f) hereof which has not cured within the time limit set out therein for the curing of such Event of Default (if any);
 - (ii) the occurrence of 3 or more Events of Default (in any such case which have not been cured within the time limit set out therein for the curing of such Event of Default (if any)) over a 12 month rolling period commencing on the commencement date of the Term; or
 - (iii) the occurrence of any single Event of Default or series of Events of Default as set out in any of Sections 11.1(a), 11.1(b) and/or 11.1(e) (in any such case which have not been cured within the time limits set out therein for the curing of such Event of Default (if any)) that have financial impacts to the City (whether as a result of any payment defaults or the City exercising its rights pursuant to Section 11.5 hereof) in excess of \$200,000 over a 12 month rolling period commencing on the commencement date of the term;

then, in any such case, the City may by notice to the Manager terminate this Agreement, including without limitation the Manager's appointment as manager of the Event Centre and the Manager's lease of the Event Centre as set out in this Agreement on the date set out in the notice to the Manager without the necessity of any other act or any suit or legal proceedings being brought or taken.

- (b) In the case of all Events of Default regardless of whether termination rights may be exercised pursuant to Section 11.3(a) above other than any event specified in Section 11.8(b), unless such termination rights are exercised by the City: (i) the City shall have a cause of action against the Manager for damages flowing from such Event of Default; and (ii) the City shall have all other remedies available to it at law, including injunctive relief or a claim for specific performance where appropriate.
- (c) If the City elects to terminate this Agreement pursuant to Section 11.3(a) above, the following provisions shall apply:
 - (i) The City shall be entitled to cause the Independent Engineer to prepare a Building Condition Assessment (the "**Termination Building Condition Assessment**") and in connection therewith conduct an inspection of the Event Centre, all for the purposes of confirming whether, at the time of such termination, the Manager was in compliance with its maintenance, repair

and replacement obligations in respect of the Event Centre (including, without limitation, all Building Systems and Structural Components) pursuant to this Agreement, and the costs of the Termination Building Condition Assessment and inspections by the Independent Engineer associated therewith shall be for the account of the Manager. If such inspections and/or Termination Building Condition Assessment identifies any defaults, defects or deficiencies in the Manager's maintenance, repair and replacement obligations, the Manager shall, at its sole cost and expense, forthwith undertake and complete all actions and work necessary to rectify any such defaults, defects or deficiencies (collectively, the "Termination Work").

- (ii) The Manager shall pay to the City: (A) the full amount of the Termination Payment; plus (B) if as of the date of such termination, the Manager has not paid to the City the full amount of the Naming Rights Fee payable pursuant to Section 9.2 hereof, the total amount of all Naming Rights Fee payments that would be payable but for the termination of this Agreement; as liquidated damages in full and final satisfaction of any and all claims that the City may have against the Manager as a result of the termination of this Agreement pursuant to Section 11.3(a) above; provided, however, that the Manager shall remain fully liable to the City for, and the City shall be entitled to pursue all rights and remedies against the Manager in respect of: (1) any and all fees or other moneys owing by the Manager to the City as of the date of termination of this Agreement; (2) any antecedent breach of any other covenants, terms, conditions or provisions of this Agreement to be observed or performed by the Manager up to the date of such termination; (3) any Termination Work required based on the Termination Building Condition Assessment and association inspection, together with all costs of the Independent Engineer in connection therewith; and (4) any obligations of the Manager under this Agreement that expressly survive the expiration or sooner termination of this Agreement.
 - (iii) In order to calculate the amount of the Termination Payment in the circumstances contemplated by this Section 11.3(c), the provisions of Subsections 11.8(b)(i) and 11.8(b)(ii) shall apply, *mutatis mutandis*, and the Manager and the Guarantor shall forthwith deliver all information required pursuant to those Sections following receipt of any notice of termination delivered pursuant to Section 11.3(a) above. The City shall be entitled to deliver written notice confirming the City's determination of the Termination Payment within one hundred eighty (180) days following its receipt of all required information in accordance with the preceding sentence, and the Manager shall pay to the City the amount described in Section 11.3(c)(ii) above within thirty (30) days following its receipt of such notice from the City.
 - (iv) The Provisions of Section 11.8(d) shall apply, *mutatis mutandis*, to any Termination Payment made by the Manager to the City in accordance with this Section 11.3(c).
- (d) The provisions of this Section 11.3 shall survive any termination of this Agreement in accordance with the provisions of this Section.

11.4 Other Termination

If this Agreement is terminated by the City in accordance with Sections 4.7(d)(i) or 12.1, the Manager shall have no liability of any kind whatsoever to the City or any person claiming through the City pursuant to this Agreement, save and except for: (a) any and all fees or other moneys owing by the Manager to the City as of the date of termination of this Agreement; (b) any antecedent breach of any other covenants, terms, conditions or provisions in this Agreement to be observed or performed by the Manager up to the date of such termination; and (c) any obligations of the Manager under this Agreement that expressly survive the expiration or sooner termination of this Agreement.

11.5 Additional Remedies for Failure to Perform

If the Manager fails to observe or perform or cause to be observed or performed each and every covenant, term or provision of the Manager to be observed or performed under this Agreement, the City shall have the right (but shall not be obligated) to observe or perform or cause the same to be observed or performed and to do or cause to be done such things as may be reasonably necessary or incidental thereto (including, without limiting the foregoing, the right to undertake maintenance, make repairs, installations and replacements, and expend moneys) and, if reasonably required by the City to exercise such right, the City shall be entitled to temporarily suspend the Manager's use and Operation of the Event Centre during such period, provided such suspension does not interfere or impair with the Manager's ability to run a scheduled event. All reasonable payments, expenses, charges, fees and disbursements incurred or paid by or on behalf of the City in respect thereof shall be paid by the Manager to the City on receipt of a demand for payment thereof together with an invoice therefor and a reasonably detailed statement relating thereto.

11.6 Emergency

In the event of an emergency in respect of the Event Centre, as determined by the City acting reasonably, the Manager shall, notwithstanding the provisions of Sections 11.1 or 11.2, immediately attend to the remedying thereof, failing which the City shall have the right (but shall not be obligated) to remedy the emergency and the provisions of Section 11.5 shall apply *mutatis mutandis* to this Section 11.6.

11.7 Interest

The Manager shall pay interest at a rate of interest per annum equal to the Interest Rate, on all amounts required to be paid by the Manager to the City under this Agreement from the due date of payment thereof until paid to the City (both before and after judgment until fully paid) including, without limitation, any amounts payable to the City pursuant to Sections 11.5, 11.6 and 11.8.

11.8 Calgary Flames NHL Franchise

- (a) The Manager represents and warrants that one of the assets of the Guarantor is a franchise from the National Hockey League to operate a professional hockey club which presently participates in the National Hockey League under the name "Calgary Flames". The Manager covenants and agrees that it shall not cause (and shall not permit the Guarantor to cause) such franchise to relocate from the City of Calgary at any time during the Term of this Agreement.

- (b) If at any time during the Term: (i) the Calgary Flames (or any successor franchise in the National Hockey League) cease to use the Event Centre for all of their home games during any hockey season (except a limited number, not to exceed six (6), during each season, of neutral site games where the Calgary Flames are the home team, and except if any International Event is held at the Event Centre that prevents the Event Centre from being used for such home games and except for any period where no National Hockey League games are played as a result of a strike by, or lockout of, the National Hockey League Player's Association), whether as a result of the loss by the Manager of the National Hockey League franchise, due to a relocation of the Calgary Flames to a city other than Calgary, or otherwise howsoever; or (ii) neither the Manager nor the Guarantor has the right to operate the Calgary Flames (or any successor franchise in the National Hockey League) professional hockey club in the City of Calgary; then, in any such case:
- (i) the Manager and the Guarantor shall immediately provide the City with all information with respect to the Operation of the Event Centre that would be necessary for the City to effectively assume the obligation of Operating the Event Centre, and for the City to make the determination set out in Subsection 11.8(b)(iii) below including, without limitation, reports confirming the aggregate gross Operating Costs incurred by the Manager during the five (5) Fiscal Years immediately preceding the date which the event described in this Section 11.8(b) occurred or, if a full five (5) Fiscal Years of aggregate gross Operating Costs have not been incurred by such date, such combination of budgeted/pro forma Operating Costs and gross Operating Costs actually incurred as may be required to provide data on aggregate gross Operating Costs incurred or projected to be incurred for a period of five (5) Fiscal Years;
 - (ii) the City's Auditor shall have the right to audit the books and records of the Manager relating to the Operating Costs report set out in Subsection 11.8(b)(i) above and the cost of such audit shall be for the Manager's account. Such audit may be performed upon reasonable prior notice to the Manager within a reasonable period of time from receipt of the Operating Costs report set out in Subsection 11.8(b)(i) above, and in the event of any such audit the Manager shall co-operate fully with the City's Auditor in making available to them such books and records, answering such questions and providing such further assistance as the City's Auditor may reasonably require. For clarity, the foregoing audit right shall relate to the books and records of the Manager in respect of the Operating Costs report only and not in respect of the Manager generally or any of its other operations and, without limiting the generality of the foregoing, shall not include any financial records maintained by the Manager in respect of the Calgary Flames, the Calgary Hitmen or the Calgary Roughnecks, nor any financial records in respect of revenues for any other events hosted by the Manager; and
 - (iii) the City or the Manager may, in their sole discretion, elect to terminate this Agreement by written notice to the other delivered within 180 days of receipt by the City of all information required to be delivered pursuant to Subsection 11.8(b)(i) above; provided, however, that the Manager acknowledges and agrees that it shall only be entitled to elect to terminate

this Agreement pursuant to this Section 11.8(b)(iii) in the event that the Manager or the Guarantor, as the case may be, are relocating the Calgary Flames (or any successor franchise in the National Hockey League) professional hockey club to a location other than the City of Calgary and such relocation has been approved by the National Hockey League. In the event such notice of termination is delivered by the City, such notice of termination shall include the City's determination of the Termination Payment, calculated based on the information obtained pursuant to Subsections 11.8(b)(i) and 11.8(b)(ii) above. In the event such notice of termination is delivered by the Manager (the "**Manager Notice of Termination**"), the City shall provide its determination of the Termination Payment calculated based on the information obtained pursuant to Subsections 11.8(b)(i) and 11.8(b)(ii) above to the Manager within ninety (90) days of receipt of the Manager Notice of Termination.

- (c) If the City or the Manager elects to terminate this Agreement in accordance with the provisions of Subsection 11.8(b)(iii) above, then the provisions of Section 11.3(c)(i) above shall apply, *mutatis mutandis*, and the Manager shall pay to the City: (i) the full amount of the Termination Payment; plus (ii) if as of the date of such termination, the Manager has not paid to the City the full amount of the Naming Rights Fee payable pursuant to Section 9.2 hereof, the total amount of the Naming Rights Fee payments that would be payable but for the termination of this Agreement, within thirty (30) days following the City's determination of the Termination Payment pursuant to Section 11.8(b)(iii) above as liquidated damages, in full and final satisfaction of any and all claims that the City may have against the Manager as a result of the occurrence of any event described in Section 11.8(b) above; provided, however, that the Manager shall remain fully liable to the City for, and the City shall be entitled to pursue all rights and remedies against the Manager in respect of: (A) any and all fees or other moneys owing by the Manager to the City as of the date of termination of this Agreement; (B) any antecedent breach of any other covenants, terms, conditions or provisions in this Agreement to be observed or performed by the Manager up to the date of such termination; (C) any Termination Work required based on the Termination Building Condition Assessment and associated inspection, together with all costs of the Independent Engineer in connection therewith; and (D) any obligations of the Manager under this Agreement that expressly survive the expiration or sooner termination of this Agreement.
- (d) The City agrees that within six (6) months following the fifth (5th) anniversary of the termination of this Agreement pursuant to this Section 11.8, the City shall provide the Manager with a written statement confirming the incremental direct operating profit, if any, generated or received directly by the City during such five (5) year period as a result of the City or its agent assuming operations of the Event Centre following termination of this Agreement, which statement shall be accompanied by reasonable particulars of the Operating Costs incurred and revenues directly received by the City during such period. If such statement confirms that the City directly received any such incremental direct operating profit during such five (5) year period, concurrently with the delivery of such statement the City shall pay to the Manager an amount equal to such incremental direct operating profit so directly received by the City. For clarity, (i) the operating profit earned by the City referred to in this Section 11.8(d) does not include any amount for Facility Fees that may

be imposed by the City during the five (5) year period subsequent to the termination; (ii) Operating Costs will include an amount equal to 10% of the actual Operating Costs incurred, representing an allocation of the City's management, overhead and administration costs incurred to operate the Event Centre during the five (5) year period subsequent to the termination; and (iii) the City shall not be required to pay any amount greater than the Termination Payment received pursuant to Section 11.8(c) above.

- (e) The provisions of this Section 11.8 shall survive any termination of this Agreement in accordance with the provisions of this Section.

11.9 Accounting and Records

- (a) The City and the Manager agree that within a reasonable period of time following the expiration or earlier termination of this Agreement and in any event within ninety (90) days thereof, the Parties shall meet to determine a final accounting of all amounts owing under this Agreement and within ten (10) days of such determination any adjusting payments required to be made shall be made by the other Party. If the Parties are unable to agree on a final accounting, the matter shall be resolved in accordance with the provisions of Article 13.
- (b) The Manager agrees, that within thirty (30) days of the termination of this Agreement or thirty (30) days prior to the expiration of this Agreement, as the case may be, the Manager shall provide the City with a general status report as to all matters of interest a new manager ought to have knowledge with respect to the Event Centre and shall provide the City with copies of all books of account, records, reports or other documents which the Manager is required to maintain hereunder and are otherwise in the possession or control of the Manager and relate to the Operation, subleasing and licensing of the Event Centre.

11.10 Default by City

- (a) In the event that the City defaults in its obligations under this Agreement and fails to remedy such default within sixty (60) days of receipt of notice to such effect from the Manager setting out in detail the nature of such default (or, in the case of a default which cannot with diligence be remedied within such sixty (60) day period, if the City shall not promptly proceed to cure such default after receiving such notice and thereafter prosecute the remedying of such default with diligence, it being intended that in connection with a default not capable of being remedied within such sixty (60) day period, the time within which to remedy such default shall be extended for such period as may be necessary to cure such default with diligence), the Manager shall have the remedies available as set forth in subsection (b) of this Section if, following the time period set out above, the Manager gives the City a further notice setting out the nature of the default and the City fails to remedy the default within thirty (30) days following receipt by the City of such further notice. The provisions of Section 11.2 shall apply *mutatis mutandis* to this Section 11.10.
- (b) In the event of a default by the City which has not been remedied within the applicable grace period (and that the provisions of Section 11.2 have been

complied with in the event the City disputes the existence of an event of default), the Manager shall have the following remedies:

- (i) the Manager may, but shall not be obligated, to terminate this Agreement by written notice to the City, which termination shall be effective as of the date set out in such notice, all without the necessity of any other act or suit or legal proceedings being brought or taken;
- (ii) the Manager shall have a cause of action against the City for damages flowing from the breach by the City of this Agreement;
- (iii) the Manager shall have all other remedies available to it at law, including injunctive relief, where appropriate; and
- (iv) in the event of a failure to pay a monetary amount or in the event that the Manager has a right to claim damages from the City arising from its breach, the City shall be obliged to pay interest on such unpaid amount or such damages at a rate of interest per annum equal to the Interest Rate from the due date of any such payment until paid to the Manager (both before and after judgment until fully paid).

ARTICLE 12 DAMAGE AND DESTRUCTION

12.1 Damage to Event Centre

- (a) If during the Term, the Event Centre is damaged or destroyed (including smoke and water damage) as a result of fire, the elements, accident or other casualty required to be insured against pursuant to this Agreement, then in each such event, the following provisions shall have effect:
 - (i) if the Event Centre is rendered partially or wholly unfit for occupancy, so as to prevent the use of the entire Event Centre or the Interior Facility, or a substantial portion thereof (in any such case as determined by the Independent Engineer) then provided that the City or the Manager receives sufficient insurance proceeds to permit the rebuilding or restoring the Event Centre, the City shall promptly proceed to rebuild and/or restore the Event Centre (unless prevented by causes beyond its control), in which case the Manager shall forthwith assign and pay over to the City all proceeds of insurance received by the Manager in respect of such damage or destruction. Notwithstanding the foregoing: (A) if any such damage or destruction occurs during the last 5 years of the Second Initial Extension Term (or at any time during any Extension Term), the City, in its sole discretion, shall have the absolute right to decide to not rebuild and/or restore (or cause to be rebuilt and/or restored) the Event Centre; and/or (B) if sufficient proceeds are not received to permit the rebuilding or restoring of the Event Centre and neither the City nor the Manager are prepared to advance the necessary funds so that there are sufficient proceeds for such purpose; then in either such case, the City or the Manager may terminate this Agreement on notice to the other Party.

- (ii) Notwithstanding anything to the contrary herein, if any such damage or destruction described in Subsection 12.1(a)(i) occurs during the last 5 years of the Second Initial Extension Term (or at any time during any Extension Term) and the Independent Engineer has determined that it will take more than 2 years to rebuild and/or restore the Event Centre as a result of such damage or destruction, then the Manager may terminate this Agreement upon notice to the City.
 - (iii) In the event that the City or the Manager terminates this Agreement in accordance with the provisions of Subsection 12.1(a)(i) or the Manager terminates this Agreement in accordance with Subsection 12.1(a)(ii), then no termination payment shall be required to be made by either Party on such termination.
 - (iv) Any insurance proceeds received under the All Risks Coverage as a result of such damage or destruction in circumstances where this Agreement is terminated as a result thereof shall be distributed as follows:
 - A. if such termination occurs during the first ten (10) years of the Term, such proceeds shall be equally shared as between the Manager as to 50% and the City as to 50%; and
 - B. in each subsequent year of the Term thereafter, the City's entitlement to such proceeds shall be increased by 2%, and the Manager's entitlement to such proceeds shall be decreased by 2%, with the intent and to the effect that if such proceeds become payable in the final year of the Second Initial Extension Term, such proceeds shall be retained solely by the City.
- (b) The Manager acknowledges to the City that nothing in this Section 12.1 shall require the City to rebuild the Event Centre to the same state or condition that existed before the Event Centre was damaged or destroyed, provided that the Event Centre as rebuilt or restored will have reasonably similar facilities and services to those in the Event Centre prior to the damage or destruction and having regard to the Fundamental Principles (as defined in the Project Framework Agreement). If the Manager disagrees that the rebuilt Event Centre has similar facilities and services as required by the preceding sentence (as described in the plans and specifications prepared prior to any rebuilding or repairs commencing), the matter shall be referred to dispute resolution in accordance with the provisions of Article 13 of this Agreement; provided, however, that the City shall in no event be obligated to advance any funds in addition to the proceeds of insurance actually received as a result of any damage or destruction of the Event Centre.
- (c) If the Event Centre or any portion thereof is damaged or destroyed but such damage or destruction is to a lesser extent than that described in Subsection 12.1(a)(i) above, then, subject to the proviso that the City or the Manager receives sufficient insurance proceeds to permit the repairing, rebuilding or restoring of the Event Centre, the City shall promptly proceed to repair, rebuild and/or restore the Event Centre (unless prevented by causes beyond its control) in which case the Manager shall forthwith assign and pay over to the City all proceeds of insurance received by the Manager in respect of such damage or destruction. In the event

of a dispute as to whether damage or destruction is to the extent referenced in Subsection 12.1(a)(i) or to the extent as referenced in Subsection 12.1(c), the matter shall be referred to the Independent Engineer whose determination shall be final and binding on the parties.

- (d) Notwithstanding the preceding provisions of this Section 12.1, the Parties acknowledge and agree that any repairing, rebuilding or restoring of the Event Centre undertaken by the City in accordance with the preceding provisions of this Section 12.1 shall not require the City to repair, restore or replace any personal property of the Manager including any FF&E not insured under the All Risks Coverage, the City agrees that it shall have no interest in the proceeds of the insurance referred to in Subsection 8.1(a)(ii) and the Manager agrees that it shall be solely responsible for the repair, restoration and replacement of any of such personal property of the Manager as aforesaid that is damaged or destroyed in connection with the damage to or destruction of the Event Centre including, without limitation, all FF&E that is not insured under the All Risks Coverage.
- (e) Notwithstanding that there may exist a City Mortgage and that loss payable under the insurance coverage referenced in Section 8.1(a)(i) may be payable to the City Mortgagee, the City agrees to cause the City Mortgagee to release its interest in the insurance proceeds so as to allow the insurance proceeds to be used for rebuilding the Event Centre where the City is obliged or has agreed to rebuild the Event Centre pursuant to the provisions of this Section 12.1. Further, the rights of the City Mortgagee to insurance proceeds in the event that rebuilding of the Event Centre is not required shall be limited to the share of the proceeds available to the City in accordance with Subsection 12.1(a)(iv).

ARTICLE 13 DISPUTE RESOLUTION

13.1 Dispute Notice

Any: (a) disagreements relating to the validity, construction, meaning, performance or effect of this Agreement, or to the rights or liabilities of the Parties or any other matter related to this Agreement which cannot be resolved by the Oversight Committee; or (b) any inability of the Oversight Committee to approve any matter requiring its approval in accordance with the provisions of this Agreement; (in any such case, a “**Dispute**”) will be referred to the City Manager and the chair of the board of directors of the Manager. This process may be triggered by any Party or any member of the Oversight Committee providing written notice to the other Party or Parties (a “**Dispute Notice**”) of the Dispute, briefly setting out the pertinent facts, the remedy or relief sought or the decision requiring approval, and the grounds on which such remedy, relief or resolution of a decision is sought.

13.2 Negotiation

Within 5 Business Days of a Party delivering a Dispute Notice to the other Party, or such longer period as the Parties may agree, the City Manager and the chair of the board of directors of the Manager will meet and make good faith efforts to resolve the Dispute through without prejudice negotiations.

13.3 Expert Mediation

If the Dispute is not resolved pursuant to Section 13.2 to the mutual satisfaction of the Parties within 10 Business Days of a Party delivering a Dispute Notice to the other Party, or such longer period as the Parties may agree, a Party may by notice to the other Party (an "**Expert Notice**") request the appointment of an independent Person or Persons generally recognized as having familiarity with and expertise in the matter which is the subject of the Dispute (an "**Expert**") to resolve the Dispute as set out below:

- (a) within 5 Business Days of the delivery of an Expert Notice, each Party will submit in writing to the other Party, the names of no more than two (2) candidates for Expert who are independent of the Parties, experienced in the resolution of similar disputes and immediately available to perform the role of Expert in respect of the Dispute at hand;
- (b) if a Party has an objection to a proposed candidate, it will give written notice of such objection with reasons to the other Party;
- (c) if for any reason within 5 Business Days of the delivery of an Expert Notice, an Expert has not been appointed, then either Party may apply to the Court of Queen's Bench of Alberta for the appointment of such Expert;
- (d) the Expert's fees and expenses will be shared equally by both Parties;
- (e) the Expert will conduct an impartial review of the Dispute in such manner as the Expert thinks fit, including carrying out on site inspections and interviews with any persons that the Expert thinks fit. The Parties will comply with all reasonable requests from the Expert for additional information, documents and access to personnel which the Expert considers necessary for the review. Any submission or documentation in respect of the Dispute provided to the Expert by a Party will also be provided to the other Parties;
- (f) the Expert may, with the written approval of the Parties, retain other professional persons or experts to assist with the review and will pay due regard to any request by a Party to retain such other professional persons or experts;
- (g) the Expert will not be obliged to conduct enquiries in the presence of the Parties or receive submissions from the Parties, except to the extent that the Expert thinks fit, and may render a decision notwithstanding the failure of a Party to participate in the proceedings;
- (h) the Expert will render a brief, written, reasoned and impartial decision on the Dispute, with copies to each Party within 15 Business Days of the signing by the Expert and both parties of an agreement appointing such Expert, or such longer period as agreed to in writing by the Parties. The Expert's decision will be in the form of a proposed determination of the rights of the Parties having regard to the Expert's understanding of the relevant contractual provisions, Applicable Law and the facts as agreed by the Parties or as best the Expert is able to determine them;
- (i) each Party acknowledges the value of having the Expert render a timely decision regarding the Dispute. If the Expert is unable to render his or her decision within the time set or as extended by mutual agreement of the Parties, then the Parties

will request that the Expert provide to the Parties within such time such analysis of the Dispute as the Expert is able to make within that time and describe the further work the Expert recommends would be required in order to arrive at a reasoned decision;

- (j) a decision of an Expert is not binding on the Parties but is intended to assist the Parties to reach agreement with respect to the Dispute;
- (k) the proceedings under this Section 13.3 will be confidential and all information, data or documentation disclosed or delivered by either party to the Expert as a result or in connection with his duties as Expert will be treated as confidential and neither the Parties nor the Expert will disclose to any Person any such information, data or documentation unless the Parties otherwise agree in writing. Nothing contained in this provision will prevent the submission in any subsequent proceedings of any evidence other than evidence that came into existence for the express purpose of submission to, or assistance of, the Expert; and
- (l) the proceedings by or before an Expert will be without prejudice to any subsequent proceedings.

13.4 Commencement of Arbitration

If the Dispute is not completely resolved by agreement between the Parties within 10 Business Days of the receipt of the Expert's decision or analysis pursuant to Section 13.3 (or such longer period as the Parties may agree) or within 10 Business Days of the date on which the Expert's decision or analysis ought to have been received under Section 13.3, or if neither party elects to issue an Expert Notice pursuant to Section 13.3, then a Party may commence proceedings to have the Dispute finally settled by arbitration under Section 13.5. In any such proceedings the scope of issues will not be limited strictly to the terms of the Dispute Notice but may extend to include directly related matters for the purpose of completely resolving the Dispute.

13.5 Arbitration Procedure

If a Party is entitled under Section 13.4 to commence proceedings to have a Dispute finally resolved by arbitration, such Party may submit the Dispute to arbitration in accordance with the following principles:

- (a) arbitration proceedings shall be commenced by the Person desiring arbitration (the "**Initiating Party**") delivering, within the time and in the manner contemplated by this Agreement, notice of such election to have such matter or question determined by arbitration (the "**Arbitration Notice**") to the other Party hereto (the "**Responding Party**");
- (b) at any time following the delivery of the Arbitration Notice, either the Initiating Party or the Responding Party may deliver notice to the other indicating that such Person is ready to commence the arbitration proceedings and, within 10 Business Days following the delivery of such notice, the Initiating Party and the Responding Party shall meet and attempt to appoint a sole arbitrator. If the Initiating Party and the Responding Party do not so meet or are unable to agree on a sole arbitrator within such 10 Business Days period then, upon not less than 10 Business Days further notice given by either the Initiating Party or the Responding Party to the other, such Person may apply to a court of competent jurisdiction pursuant to the *Arbitration*

Act (Alberta) (the "**Arbitration Court**") to appoint the sole arbitrator. The provisions of such enactment shall apply to any such application to the Arbitration Court;

- (c) the sole arbitrator selected to act hereunder shall be qualified by education, training and experience to pass upon the particular question or questions in dispute;
- (d) the compensation and expenses of the sole arbitrator and any expert (including legal counsel) or consultant appointed or retained by the sole arbitrator shall be determined by the sole arbitrator or the Arbitration Court;
- (e) the sole arbitrator appointed shall proceed immediately to hear and determine the question or questions in dispute;
- (f) the decision of the sole arbitrator and reasons therefor (the "**Award**") shall be drawn up in writing and signed by the sole arbitrator and shall be made and delivered by the sole arbitrator to the Initiating Party and the Responding Party within 20 Business Days after the appointment of the sole arbitrator (or such other longer period as may be agreed to among the Initiating Party, the Responding Party and the sole arbitrator, in their respective sole discretions) and, in the event that the Award is not made within such time period, either the Initiating Party or the Responding Party may elect to terminate the arbitration (except where the sole arbitrator has successfully applied to the Arbitration Court for an extension in the time within which the sole arbitrator is required to make the Award); and
- (g) the Award shall be final and binding upon the Initiating Party or the Responding Party as to the question or questions so submitted to arbitration and the Initiating Party and the Responding Party shall be bound by the Award and comply with the terms and provisions thereof.

13.6 Other Remedies

Nothing contained in this Agreement will preclude a Party from initiating a proceeding in a court of competent jurisdiction for the purpose of enforcing remedies in respect of an Event of Default or other default hereunder (subject to Section 11.2) or obtaining an effective emergency or provisional remedy to protect its rights as necessary in the circumstances, including obtaining temporary and preliminary injunctive relief and other orders, whether before or after the Dispute has been initiated by a Dispute Notice.

13.7 Payments Not Suspended

In the event of a Dispute in respect of any monies to be paid by a Party pursuant to this Agreement, the obligation to make payment in respect of such Disputed amount shall continue and each Party shall be obligated to make all payments that would have otherwise been required by it under this Agreement during the continuance of a Dispute until the Dispute is resolved pursuant to this Article, by court order or pursuant to the mutual agreement of the Parties involved in the Dispute. Upon resolution of the Dispute, the Parties shall make any necessary adjustments and payments to each other as may be required to comply with the resolution of the Dispute.

ARTICLE 14 CONFIDENTIALITY AND FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

14.1 Freedom of Information and Protection of Privacy Act

The Parties acknowledge that the City is subject to the protection and disclosure provisions of the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, Chapter F-25 ("FOIP"), as amended, revised or substituted from time to time and, notwithstanding anything contained in this Agreement, that information submitted and in the possession of the City is governed by FOIP and may be eligible for disclosure in accordance with the requirements of same. In each case, if the City at any time receives a request for access to any information pursuant to FOIP, the City shall, unless prohibited by Applicable Law, (a) notify the Manager of the potential disclosure if and to the extent required by, and in accordance with, FOIP, (b) withhold any information as required by FOIP, and (c) limit disclosure to only what is required pursuant to FOIP. For clarity, the Parties acknowledge that this Agreement shall be made public.

14.2 Confidentiality

The Parties will maintain the confidentiality of all Confidential Information and will not make use of Confidential Information or release it to employees, officials, officers, authorized representatives or external advisors or consultants other than as required for the performance of this Agreement or as required by Applicable Laws and will not otherwise release or disclose the Confidential Information to any unauthorized third party. The Manager agrees that the City may disclose any and all information it has in its power or control pertaining to this Agreement and the Event Centre to members of Council and employees and officers of the City who require the subject information from time to time, as and when determined by the City, and the Manager hereby agrees to any such disclosure.

14.3 Non-Confidential Information

No Party shall owe an obligation of confidentiality in relation to:

- (a) disclosures of information contemplated in Sections 14.1 and 14.2;
- (b) disclosures of information by a Party to its professional advisors and consultants to the extent necessary to enable the Party to perform its obligations or enforce its rights under this Agreement;
- (c) information that was already known to the Party receiving the information (in each case, the "**Receiving Party**") at the time such information is received from the Party disclosing the information (the "**Disclosing Party**");
- (d) information that is developed by the Receiving Party without reference to any confidential information disclosed by the Disclosing Party;
- (e) information that is or has become or hereafter becomes publicly known or available through no fault or breach of confidence by the Receiving Party;
- (f) information that is required to be disclosed under Applicable Laws or similar requirements of or by a Governmental Authority, including a court of competent jurisdiction; or

- (g) information that is subsequently lawfully obtained by a Party from another Person in bona fide belief that such other Person is lawfully entitled to have and disclose the information without breach of any obligation of confidence on its part.

14.4 Survival

The duties and obligations to protect the Confidential Information survive termination of this Agreement and must continue until the Party originally claiming information to be confidential releases that claim by deed or action.

14.5 Improper Disclosure or Use

Improper disclosure or use of Confidential Information may cause irreparable harm to the City or the Manager, as the case may be, and such harm may not be adequately compensated by damages. As a result, in addition to all other remedies a Party may have, a Party may seek and obtain from any court of competent jurisdiction injunctive relief in respect of any actual or threatened disclosure or use of any Confidential Information contrary to the provisions of the Agreement.

14.6 Indemnity

Each Party will indemnify and save the other Parties harmless from and against any and all liabilities, claims, suits or actions, losses, costs, damages and expenses which may be brought against or suffered by the other Parties as a consequence of the disclosure by the indemnifying Party of the Confidential Information of the other Parties contrary to the terms of this Agreement.

ARTICLE 15 REPRESENTATIONS AND WARRANTIES

15.1 Representations and Warranties of City

The City represents and warrants as of the date hereof as follows and acknowledges that the Manager is relying on such representations and warranties in connection with the transactions contemplated by this Agreement:

- (a) the City has the power, approval, financial capacity and right:
 - (i) to enter into and deliver this Agreement; and
 - (ii) to perform its obligations under and as contemplated to be performed pursuant this Agreement;
- (b) this Agreement constitutes a valid and legally binding obligation of the City, enforceable against the City in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court;
- (c) the entering into and the delivery of this Agreement and the performance of the obligations of the City hereunder will not result in the violation of:

- (i) any agreement or other instrument to which the City is a party or by which the City is bound; or
 - (ii) any Applicable Laws, bylaws, ordinances, rules and regulations of any Governmental Authority having jurisdiction; and
- (d) there are no actions, suits or proceedings, or circumstances which could reasonably be expected to result in an action, suit or proceeding, that are pending or threatened against or affecting the City or its undertakings, property or assets or that could be reasonably expected to have an adverse effect on the Event Centre or its ability to carry out its obligations in this Agreement, whether at law or equity, in or before any court or any Governmental Authority.

15.2 Representations and Warranties of the Manager

The Manager represents and warrants as of the date hereof as follows and acknowledges that the City is relying on such representations and warranties in connection with the transactions contemplated by this Agreement:

- (a) the Manager is a limited partnership duly formed, organized and subsisting under the laws of the Province of Alberta and its general partner, CSE Real Estate Corporation, is a corporation duly incorporated, organized and subsisting under the laws of the Province of Alberta;
- (b) the Manager (by its general partner) has the power, authority, financial capacity, approval and right:
 - (i) to enter into and deliver this Agreement; and
 - (ii) to perform its obligations under and as contemplated to be performed pursuant this Agreement;
- (c) this Agreement constitutes a valid and legally binding obligation of the Manager, enforceable against the Manager in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court; and
- (d) the entering into and the delivery of this Agreement and the performance of the obligations of the Manager hereunder will not result in the violation of:
 - (i) any of the provisions of the limited partnership agreement, constating documents or by-laws of the Manager or its general partner;
 - (ii) any agreement or other instrument to which the Manager is a party or by which the Manager is bound;
 - (iii) any Applicable Laws, bylaws, ordinances, rules and regulations of any Governmental Authority having jurisdiction; or

- (iv) any obligations of the Manager to, or the requirements of, the National Hockey League, Western Hockey League, National Lacrosse League or any other applicable sports association, league or body;
- (e) the Manager has obtained all necessary approvals and consents from the National Hockey League, Western Hockey League, National Lacrosse League or any other applicable sports association, league or body to enter into, deliver and perform this Agreement;
- (f) the Manager has all of the requisite skills, knowledge, experience and resources, including qualified and competent personnel, to carry out its obligations under this Agreement and to discharge such obligations and duties in an efficient manner in keeping with the standards of the industry for projects similar to the Event Centre;
- (g) there are no actions, suits or proceedings, or circumstances which could reasonably be expected to result in an action, suit or proceeding, that are pending or threatened against or affecting the Manager or its undertakings, property or assets or that could be reasonably expected to have an adverse effect on the Event Centre or its ability to carry out its obligations in this Agreement, whether at law or equity, in or before any court or any Governmental Authority; and
- (h) the Manager is in good standing under any and all contracts, licenses, permits and undertakings to which it is a party or subject to, as the case may be, where failure to be in good standing is reasonably likely to have an adverse effect on the Event Centre or its ability to carry out its obligations in this Agreement.

ARTICLE 16 END OF TERM OBLIGATIONS

16.1 Handback Transition

- (a) On or before the Handback Commencement Date, the Manager shall prepare and submit to the Oversight Committee, for its approval, a Handback Plan which must take into account any relevant changes to the Event Centre from and after the Turnover Date.
- (b) Once the Handback Plan has been submitted to the Oversight Committee for its approval, the Oversight Committee shall work to finalize the same as soon as possible and, after the Oversight Committee has approved the same, the Manager shall comply with the Handback Plan.
- (c) From the Handback Commencement Date until the expiration or earlier termination of this Agreement, the Parties shall continue to perform and observe their respective obligations and covenants under and in accordance with this Agreement.

16.2 Surrender on End of Term

Upon the expiry or earlier termination of this Agreement, the Manager shall, at its sole cost and expense:

- (a) peaceably surrender and yield up to the City the Event Centre in good and substantial repair and condition and in the repair and condition in which it is required to be maintained pursuant to this Agreement, subject to reasonable wear and tear only, with each part or component of the Event Centre, all Building Systems and all Required FF&E functioning properly and having been professionally cleaned, with the intent and to the effect that the Event Centre could be occupied immediately and used for the Primary Use. If any part of the Event Centre, any Building Systems or any Required FF&E fails to meet this standard to the satisfaction of the City, the Manager shall, at its sole cost and expense, take any steps as are necessary to bring the foregoing up to such standard prior to the expiration or termination of this Agreement. The City may, if the Manager has failed to meet this standard in the City's sole discretion, take any steps as are necessary to bring the foregoing up to such standard, and the Manager shall pay to the City all costs and expenses incurred by the City in doing so within ten (10) days of its receipt of the City's invoice for same, plus interest at the Interest Rate calculated from the date the City incurred such costs until such costs are paid in full (both before and after judgment until fully paid); and
- (b) surrender all keys, pass cards, fobs, and all other access, security, monitoring and control devices for the Event Centre, and notify the City in writing of all master or administrative level usernames, codes, lock combinations, passwords and the like for each system and device located at the Event Centre.

The provisions of this Section 16.2 shall survive the expiration or sooner termination of this Agreement.

16.3 Removal of FF&E and Additional Improvements

- (a) Upon the expiry or termination of this Agreement, the Manager shall, at its sole cost and expense, remove any: (i) FF&E, other than the Required FF&E and any other FF&E agreed to remain in the Event Centre pursuant to the Handback Plan; and (ii) any Additional Improvements that the Oversight Committee indicated would require removal upon the expiration of the Term or sooner termination of this Agreement when such Additional Improvements were approved by the Oversight Committee pursuant to Article 6 hereof. The Manager shall immediately repair, at its sole cost and expense, any damage to the Event Centre caused by such removal and shall leave the Event Centre in a neat and professionally cleaned condition, all to the City's satisfaction.
- (b) Subject always to Section 5.8(e), at the expiration or termination of this Agreement, all goods, furnishings, equipment, other personal property and FF&E (other than Required FF&E) not removed by the Manager shall, at the City's election, be deemed to become the property of the City without payment or compensation of any kind whatsoever, and may be sold, removed, destroyed or otherwise disposed of by the City at the Manager's cost and without liability of any kind to the City whatsoever. The Manager shall pay to the City all costs incurred by the City in connection therewith, within ten (10) days of its receipt of the City's invoice for same, plus interest at the Interest Rate calculated from the date the City incurred such costs until such costs are paid in full (both before and after judgment until fully paid).

- (c) The provisions of this Section 16.3 shall survive the expiration or sooner termination of this Agreement.

ARTICLE 17 GUARANTEE

17.1 Guaranteed Obligations

- (a) The Guarantor hereby agrees that it absolutely and unconditionally guarantees to the City, the prompt payment when due, of all amounts due under this Agreement including, without limitation, administration fees, interest, charges and other amounts of any kind whatsoever payable under this Agreement by the Manager and the observance and performance of all other covenants, provisions and obligations of whatsoever kind contained in or arising out of this Agreement, which are to be observed and performed by the Manager under this Agreement (collectively the **"Guaranteed Obligations"**).
- (b) If any or all of the Guaranteed Obligations are not duly paid or performed by the Manager and are not paid or performed by the Guarantor under Section 17.1(a) for any reason whatsoever, the Guarantor shall, as a separate and distinct obligation, indemnify and save harmless the City from and against all losses resulting from the failure of the Manager to pay or perform such Guaranteed Obligations, other than any Guaranteed Obligations for which the Manager has a defense or are otherwise not enforceable against the Manager unless, in any such case, such defence or unenforceability is as a result of an Event of Insolvency in respect of the Manager.

17.2 No Discharge or Diminishment of Guarantee

- (a) The obligations of the Guarantor hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than the payment in full and performance in full of the Guaranteed Obligations), including (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration, or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate or partnership existence, structure or ownership of the Manager or of any other Person liable for any of the Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Manager and the Guarantor (including, without limitation, any Event of Insolvency) (each, an **"Obligated Party"**), or their assets or any resulting release or discharge of any obligation of any Obligated Party; or (iv) the existence of any claim, setoff or other rights which any Guarantor may have at any time against any Obligated Party, the City or any other Person, whether in connection herewith or in any unrelated transactions.
- (b) The obligations of the Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of Applicable Law purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.

- (c) Further, the obligations of the Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the City to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations; or (iii) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of the Guarantor or that would otherwise operate as a discharge of the Guarantor as a matter of law or equity (other than the payment in full and performance in full of the Guaranteed Obligations).

17.3 Defenses Waived

To the fullest extent permitted by Applicable Law, the Guarantor hereby waives any defense based on or arising out of any defense of the Manager or the Guarantor or the unenforceability of all or any part of the Guaranteed Obligations from any cause, or the cessation from any cause of the liability of the Manager or the Guarantor, other than the payment in full and performance in full of the Guaranteed Obligations. Without limiting the generality of the foregoing, the Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by Applicable Law, any Notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Obligated Party, or any other Person. The City may, at its election, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, without affecting or impairing in any way the liability of the Guarantor under this guarantee except to the extent the Guaranteed Obligations have been fully paid and performed. To the fullest extent permitted by Applicable Law, the Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to Applicable Law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of the Guarantor against any Obligated Party or any security.

17.4 Guarantor Acknowledgements

The Guarantor hereby acknowledges that the City shall not be required to (and the Guarantor hereby waives any right to require the City to):

- (a) proceed against or exhaust any remedy against the Manager or any other indemnifier or guarantor or any other Person;
- (b) proceed against or exhaust any security given by the Manager or any other Person to the City; or
- (c) pursue any other remedy available to the City. The City has the right to enforce this guarantee regardless of the acceptance of additional security from the Manager or any other Person and regardless of any release or discharge of the Manager by the City or by others or by operation of any law,

before making a claim hereunder against the Guarantor.

17.5 Demand

If any Guaranteed Obligation is not performed or paid for any reason whatsoever when due or payable by the Manager, the City may treat such Guaranteed Obligation as due or payable and may demand forthwith from the Guarantor: (a) performance of the applicable Guaranteed Obligation to be performed hereunder; and/or (b) payment of the total amount of the applicable Guaranteed Obligation guaranteed hereunder. The Guarantor shall pay to or perform in favour of the City the total amount (or the total performance) of the applicable Guaranteed Obligation forthwith after demand therefor is made to the Guarantor.

17.6 Rights of Subrogation

The Guarantor will not assert any right, claim or cause of action, including, without limitation, a claim of subrogation, contribution or indemnification that it has against any Obligated Party, or any collateral, until Manager and the Guarantor have fully performed all of the obligations, provisions and covenants to be performed by the Manager under this Agreement.

17.7 Information

The Guarantor assumes all responsibility for being and keeping itself informed of the Manager's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that the Guarantor assumes and incurs under this guarantee, and agrees that the City shall not have any duty to advise the Guarantor of information known to it regarding those circumstances or risks.

17.8 Representations and Warranties of the Guarantor

The Guarantor represents and warrants as of the date hereof as follows and acknowledges that the City is relying on such representations and warranties in connection with the transactions contemplated by this Agreement:

- (a) the Guarantor is a limited partnership duly formed, organized and subsisting under the laws of the Province of Alberta and its general partner, Calgary Sports and Entertainment Corporation, is a corporation duly incorporated, organized and subsisting under the laws of the Province of Alberta;
- (b) the Guarantor (by its general partner) has the power, authority, financial capacity, approval and right:
 - (i) to enter into and deliver this Agreement; and
 - (ii) to perform its obligations under and as contemplated to be performed pursuant this Agreement;
- (c) this Agreement constitutes a valid and legally binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court; and

- (d) the entering into and the delivery of this Agreement and the performance of the obligations of the Guarantor hereunder will not result in the violation of:
 - (i) any of the provisions of the limited partnership agreement, constating documents or by-laws of the Guarantor or its general partner;
 - (ii) any agreement or other instrument to which the Guarantor is a party or by which the Guarantor is bound;
 - (iii) any Applicable Laws, bylaws, ordinances, rules and regulations of any Governmental Authority having jurisdiction; or
 - (iv) any obligations of the Guarantor to, or the requirements of, the National Hockey League, Western Hockey League, National Lacrosse League or any other applicable sports association, league or body;
- (e) the Guarantor has obtained all necessary approvals and consents from the National Hockey League, Western Hockey League, National Lacrosse League or any other applicable sports association, league or body to enter into, deliver and perform this Agreement;
- (f) there are no actions, suits or proceedings, or circumstances which could reasonably be expected to result in an action, suit or proceeding, that are pending or threatened against or affecting the Guarantor or its undertakings, property or assets or that could be reasonably expected to have an adverse effect on the Event Centre or its ability to carry out its obligations in this Agreement, whether at law or equity, in or before any court or any Governmental Authority; and
- (g) the Guarantor is in good standing under any and all contracts, licenses, permits and undertakings to which it is a party or subject to, as the case may be, where failure to be in good standing is reasonably likely to have an adverse effect on the Event Centre or its ability to carry out its obligations in this Agreement.

17.9 Additional Covenants of the Guarantor

The Guarantor acknowledges and agrees that the provisions of each of Sections 4.11 (Notice of Material Events), 4.18 (Rivers District Endorsement), 10.3 (Assignment by the Manager) and 10.4 (Non-Competition) shall apply to the Guarantor, *mutatis mutandis*, and the Guarantor covenants to comply with the provisions thereof.

17.10 Defaults by the Guarantor

The Guarantor and the Manager each agree that if any of the Events of Default described in Sections 11.1(c), 11.1(d), 11.1(e) or 11.1(f) occur in respect of the Guarantor and continue beyond the expiration of any cure period provided for in such Sections, or if the covenant of the Guarantor in Section 17.13 is breached, then, in any such case, an Event of Default shall be deemed to have occurred in respect of the Manager pursuant to such applicable Section.

17.11 Interest

The Guarantor shall pay interest at a rate of interest per annum equal to the Interest Rate on all amounts required to be paid by the Guarantor to the City under this Agreement from the due date of payment thereof until paid to the City (both before and after judgment until fully paid).

17.12 Manager Event of Insolvency

If the Guarantor has obtained any sublease or license of all or any portion of the Event Centre from the Manager in accordance with the provisions of Section 5.3 hereof, the Guarantor agrees that, if an Event of Insolvency occurs in respect of the Manager, the Guarantor shall not be entitled to and shall not exercise any right which it may have under any Applicable Laws to obtain a direct lease from the City.

17.13 No Relocation

The Guarantor represents and warrants that one of the assets of the Guarantor is a franchise from the National Hockey League to operate a professional hockey club which presently participates in the National Hockey League under the name "Calgary Flames". The Guarantor covenants and agrees that it shall not cause such franchise to relocate from the City of Calgary for a period of 35 years commencing on the Turnover Date. Notwithstanding the foregoing, in the event of a breach of the foregoing covenant, the remedies of the City arising therefrom shall be limited to only those remedies as specifically set forth in Section 11.8 hereof. Any transfer, assignment, sale or otherwise disposition by the Guarantor of its interest in such franchise shall be subject to the Guarantor first delivering to the City a written covenant from such transferee that it shall assume and be bound by the covenants in this Article 17.

17.14 Survival

The provisions of this Article 17 shall survive the expiration of the Term or sooner termination of this Agreement including, without limitation, any disclaimer of this Agreement by or on behalf of the Manager if an Event of Insolvency occurs in respect of the Manager.

ARTICLE 18 GENERAL PROVISIONS

18.1 Project Framework Agreement and Development Management Agreement

- (a) The Parties acknowledge and agree that, as of the date hereof, the Event Centre has not been constructed and is subject to the detailed design, development, construction, funding, commissioning and turnover processes contemplated by the Project Framework Agreement and the Development Management Agreement and, as a result thereof, not all of the specifics of the Event Centre or the requirements for the Operation thereof are known as of the date of this Agreement. In order to finalize the foregoing matters in this Agreement following their determination and settlement in accordance with the provisions of the Project Framework Agreement and the Development Management Agreement, within 30 days following the Turnover Date, the City and the Manager shall enter into an amending agreement to this Agreement in form and content acceptable to the Parties, each acting reasonably, in respect of, without limitation, the following:

- (i) Schedule A to this Agreement shall be replaced with the legal description of the Lands following registration of the Subdivision Plan;
 - (ii) Schedule B to this Agreement shall be replaced with an up to date site plan for the Lands showing the as-built location of each component of the Event Centre completed as part of the Construction Data, together with the identification of all Critical City Infrastructure (if any);
 - (iii) Schedule C shall be replaced with a detailed list of all Structural Components identified in the Construction Data;
 - (iv) if the Parties have elected to not construct the Secondary Facility in accordance with the provisions of the Project Framework Agreement and the Development Management Agreement, all references to the Secondary Facility contained in this Agreement shall be deleted and all consequential amendments to this Agreement shall be made to reflect the fact that the Event Centre does not include the Secondary Facility;
 - (v) the Lifecycle Plan for the Event Centre prepared and finalized as part of the Overall Commissioning Program shall be attached as Schedule E to this Agreement; and
 - (vi) the Minimum Annual Maintenance Schedule for the Event Centre prepared and finalized as part of the Overall Commissioning Program shall be attached as Schedule F to this Agreement.
- (b) If the Project Framework Agreement is terminated prior to the Turnover Date, the Parties agree as follows:
- (i) If the Project Framework Agreement is terminated as a result of the Parties failing to satisfy or waive: (A) the Environmental Conditions (as defined in the Project Framework Agreement) on or before the date that is 15 days after receipt by the Parties of the Phase 1&2 Report (as defined in the Project Framework Agreement); (B) the Threshold Conditions (as defined in the Project Framework Agreement) on or before the Pre-Commencement Date (as defined in the Project Framework Agreement); or (C) the Construction Conditions (as defined in the Project Framework Agreement) on or before the Construction Phase Commencement Date (as defined in the Project Framework Agreement), in each case in accordance with the provisions of the Project Framework Agreement, then, in any such case, this Agreement shall automatically terminate and be null and void, and the Term as set out in Section 3.1 hereof shall not commence. Any such termination of this Agreement in the circumstances described in this Section 18.1(b)(i) shall be without any liability of the Parties to one another pursuant to this Agreement.
 - (ii) If the Project Framework Agreement is terminated as a result of the default of the Manager thereunder or as a result of the default of the City thereunder that occurs and continues beyond the expiration of any applicable cure period provided therefor, then, in any such case, this Agreement shall concurrently terminate and be null and void, and the Term

as set out in Section 3.1 hereof shall not commence, except in the event that the Manager is the Terminating Party (as defined in the Project Framework Agreement) and as Terminating Party the Manager exercises its rights under Section 10.5(a)(i) of the Project Framework Agreement to elect to complete the Project (as defined in the Project Framework Agreement), in which case this Agreement shall continue in full force and effect. Any termination of this Agreement in the circumstances described in this Section 18.1(b)(ii) shall be without any further liability of the Parties to one another pursuant to this Agreement, except in respect of obligations which survive the termination of this Agreement.

- (c) If the Development Management Agreement is terminated prior to the Turnover Date as a result of the default of Calgary Municipal Land Corporation thereunder that occurs and continues beyond the expiration of any applicable cure period provided therefor, the City shall be entitled, in its sole discretion, to elect to terminate this Agreement on no less than 90 days' written notice to the Manager. Any such termination of this Agreement by the City in the circumstances described in this Section 18.1(c) shall be without liability of the Parties to one another pursuant to this Agreement.

18.2 Notices

- (a) Any notice herein provided or permitted to be given by the Manager to the City in connection with this Agreement shall be in writing and shall be sufficiently given if delivered to the City by personal delivery or written electronic communication which results in a written or printed notice at:

The City of Calgary
8th Floor, 800 Macleod Trail SE
Calgary, Alberta T2G 2M3

Attention: City Manager
Fax No.: 403-268-2578

with a copy to:

The City of Calgary
8th Floor, 800 Macleod Trail SE
Calgary, Alberta T2G 2M3

Attention: City Solicitor
Fax No.: 403-268-4634

- (b) Any notice herein provided or permitted to be given by the City to the Manager in connection with this Agreement shall be in writing and shall be sufficiently given if delivered to the Manager by personal delivery or written electronic communication which results in a written or printed notice at:

c/o Calgary Sports and Entertainment Corporation
555 Saddledome Rise SE
Calgary, Alberta T2G 2W1

Attention: President and Chief Executive Officer
Fax No.: 403-777-5349

- (c) Either Party may at any time give notice in writing to the other of any change of address of the Party giving such notice and from and after the giving of such notice the address therein specified shall be deemed to be the address for such Party for the giving of notice hereunder.
- (d) Any notice, if personally delivered, shall be deemed to have been validly and effectively given and received on the date of such delivery unless delivered after 5:00 pm or on a day that is not a Business Day, in which case it shall be deemed to have been effectively given on the Business Day next following the day it was sent. Any notice, if sent by facsimile, shall be deemed to have been validly and effectively given and received on the date of transmission unless delivered after 5:00 pm or on a day that is not a Business Day, in which case it shall be deemed to have been effectively given on the Business Day next following the day it was sent.
- (e) The word "notice" in this Section 18.2 shall be deemed to include any request, demand, approval, statement or other writing or communication in this Agreement provided or permitted to be given by the City to the Manager or by the Manager to the City.
- (f) Any notice herein provided or permitted to be given by any Party to the Guarantor in connection with this Agreement shall be in writing and shall be sufficiently given if delivered to the Guarantor by personal delivery or written electronic communication which results in a written or printed notice at:

c/o Calgary Sports and Entertainment Corporation
555 Saddledome Rise SE
Calgary, Alberta T2G 2W1

Attention: President and Chief Executive Officer
Fax No.: 403-777-5349

and the provisions of Sections 18.2(c) to 18.2(e) shall apply to any such notices, *mutatis mutandis*.

18.3 Status Statements

Each Party shall, upon not less than 20 days prior request by the other Party, execute and deliver a certificate stating, to the best of its knowledge, information and belief, whether this Agreement is modified or unmodified (and if modified, stating the modifications), the commencement date and expiry date of this Agreement, whether this Agreement is in full force and effect, whether the Party giving such certificate knows of any default by the other Party, and any other information regarding this Agreement as may be reasonably requested by the requesting Party.

18.4 Further Assurances

Each of the Parties shall execute and deliver all such further documents and do such further acts as the other Party may reasonably request to give full effect to this Agreement.

18.5 GST

In the event that GST or any other sales or use tax is applicable to any amounts payable to any party hereunder after assessing all reasonably available exemptions, such taxes shall be payable in respect of (and in addition to) such amounts.

18.6 Counterparts and Electronic Execution

This Agreement may be executed in counterparts each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument and notwithstanding their date of execution shall be deemed to bear the date first above written. An executed copy of this Agreement may be delivered by any party hereto by facsimile or other electronic means. In such event, such party shall forthwith deliver to the other parties hereto a copy of this Agreement executed by such party.

18.7 No Partnership or Joint Venture

Nothing contained in this Agreement is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture between the Manager and the City.

18.8 Dates

Where, in this Agreement, a number of days is prescribed, the number shall, unless otherwise specified, be computed by including the first day and excluding the last day.

18.9 Capacity of the City

The City is entering into this Agreement in its capacity as an owner of real property and not as a regulatory, statutory or approving government authority, and nothing in this Agreement shall constitute the granting by the municipality of the city of Calgary of any approval or permit as may be required pursuant to the *Municipal Government Act* (Alberta) or any other legislation in force in the Province of Alberta. Nothing in this Agreement restricts the municipality of the city of Calgary, its Council, its officers, employees or agents in the full exercise of any and all powers and duties vested in them in their respective capacities as a Government Authority.

18.10 Enurement

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

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SCHEDULE B

Event Centre Components

To be inserted following Turnover Date in accordance with Subsection 18.1(a)(ii).

SCHEDULE C

Structural Components

To be inserted following Turnover Date in accordance with Subsection 18.1(a)(iii).

SCHEDULE D

Oversight Committee Terms of Reference

A. Oversight Committee Authorizing Framework and Definition

The requirement to establish an Oversight Committee is a requirement of Section 7.1 of this Agreement.

B. Membership

The initial members of the Oversight Committee will be those individuals named in Section 7.4 of this Agreement. A Party may remove or replace any of its representatives from time to time in accordance with Section 7.4.

C. Scope and Purpose

The Oversight Committee is empowered to provide support and contribute to the governance of the Event Centre and facilitate communication among the Parties on matters related to this Agreement and the Event Centre by carrying out those functions and responsibilities set out in Section 7.2 of this Agreement including, without limitation, providing any approvals required to be given by the Oversight Committee in accordance with the provisions of this Agreement.

D. Guiding Principles

The Oversight Committee will use the following guiding principles in order to realize the Parties' vision for the Event Centre:

- (a) timely decision-making;
- (b) working collaboratively in a spirit of respect and true partnership to advance the Event Centre and ensure the success of the Event Centre; and
- (c) making use of all available information sources and adhering to best practices in order to provide informed direction to the Event Centre.

E. Oversight Committee Meetings

- (a) The Oversight Committee will meet a minimum of once per month (or such other frequency as may be determined by the Oversight Committee) and special meetings of the Oversight Committee will be called as required to address time-sensitive matters. The schedule of the monthly Oversight Committee meetings dates will be set 6 months in advance or as may otherwise be determined by the Oversight Committee. Oversight Committee meetings will be held in person at a location to be determined by the Oversight Committee, provided that attendance by phone or other means of electronic communication will be permitted as set out below in paragraph E(c) of this Schedule. In order to convene a meeting of the Oversight Committee, at least 1 City Oversight Committee member and 1 Manager Oversight Committee member are required to be in attendance. Alternate Oversight Committee members may attend all Oversight Committee meetings but shall not be entitled to vote thereat unless the primary member appointed by the

Party which appointed the alternate member is not present at the meeting, in which event the alternate member may vote in the place and stead of such primary member.

- (b) The presence of 2 members of the Oversight Committee shall constitute a quorum for the transaction of business at any meeting of the Oversight Committee provided that at least 1 Oversight Committee member appointed by each of the City and the Manager is present. If, within 30 minutes (or such longer period of time as agreed by the City Oversight Committee members and the Manager Oversight Committee members) after the time fixed for holding a meeting, a quorum for the transaction of business at the meeting is not in attendance, then the discussion of, and voting on, any matter shall be cancelled or adjourned for at least 5 Business Days with a notice of an adjourned meeting to be given to all members of the Oversight Committee. Notice of an adjourned meeting shall be given in the same manner as set out in below in paragraph 6 of this Schedule, including specifying in reasonable detail the business to be considered at the adjourned meeting. If, within 30 minutes (or such longer period of time as agreed by the City Oversight Committee members and the Manager Oversight Committee members) after the time fixed for holding the adjourned meeting, a quorum for the transaction of business at the meeting is not in attendance, such meeting may be adjourned for a second time according to the same procedure as for the first adjournment, but the member(s) of the Oversight Committee present at the second adjourned meeting shall form the quorum and may transact business and make all the decisions for which the meeting was convened, provided that such decisions arise from business specified in the notice of the second adjourned meeting.
- (c) A meeting of the Oversight Committee may be held by means of conference telephone or other communications equipment by which all members participating are able to hear each other and able to review materials prepared by the Manager and/or the City and all members so participating shall be deemed to be present in person at such meeting and the meeting shall be deemed to have been held at the place set out in the notice of such meeting. A member of the Oversight Committee may participate in a meeting of the Oversight Committee by means of a telephone or other communication facility which permits all persons participating in the meeting to hear each other, and a member participating in such a meeting by such means is deemed to be present at the meeting.
- (d) The rules and procedures for the conduct of meetings of the Oversight Committee not prescribed herein will be determined by the members of the Oversight Committee.
- (e) Requirements for additional attendees, for the purpose of making presentations or to provide additional information to support informed decision-making, will be at the Oversight Committee's discretion.

F. Oversight Committee Administration

- (a) For regularly scheduled monthly meetings of the Oversight Committee, the Manager will circulate to Oversight Committee members and supporting representatives, the following documents not less than 5 Business Days prior to the applicable Oversight Committee meeting:

the meeting agenda;

the minutes from the previous meeting; and

to the extent known, matters to be addressed at the next scheduled Oversight Committee meeting.

- (b) Items of urgent business can be added to the meeting agenda by any attendee for any meeting, as required.
- (c) Special meetings of the Oversight Committee can be called at any time as long as all members are present for the purposes of timely decision-making. Decisions and discussions of all special meetings will be recorded and distributed with the minutes of the regularly scheduled meetings.
- (d) The Manager Oversight Committee members will develop minutes from each Oversight Committee meeting, together with instruments evidencing all written resolutions of the Oversight Committee, which will create a permanent record of decisions and action items. A copy of such minutes and instruments will be sent to each member of the Oversight Committee upon request. Any failure to send minutes of a meeting to each member of the Oversight Committee within the aforesaid period shall not affect the validity of any decision made at the meeting.

SCHEDULE E

Lifecycle Plan

To be inserted following Turnover Date in accordance with Subsection 18.1(a)(v).

SCHEDULE F

Minimum Annual Maintenance Schedule

To be inserted following Turnover Date in accordance with Subsection 18.1(a)(vi).

SCHEDULE G

Facility Fee Agreement