



Municipality of the District of East Hants

Facility Management Agreement for East Hants Sportsplex

Between:
Municipality of the District of East Hants
and
East Hants Arena Association
For management of the East Hants
Sportsplex, 1076 Highway 2, Lantz, Nova
Scotia, PID 45231313 and 45231321
Approved by Municipal Council on the 20
day of July, 2021

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MANAGEMENT AGREEMENT

BETWEEN:

MUNICIPALITY OF THE DISTRICT OF EAST HANTS, a district municipality continued under the *Municipal Government Act*, 1998, c 18

(“**East Hants**”)

- and -

EAST HANTS ARENA ASSOCIATION, a society incorporated under the *Societies Act*, RSNS 1989, c 435

(the “**Association**”)

WHEREAS:

- A. East Hants has a mandate to provide recreation services to its residents;
- B. The Association is a community-based society which has played an important role in the delivery of recreational services in East Hants, including by delivering programming and services that ensure a healthy, engaged and inclusive community, and is the former owner, operator and manager of the East Hants Sportsplex, located at 1076 Highway 2, Lantz, Nova Scotia, more particularly described as property identification (PID) numbers 45231313 and 45231321 (the “Facility”);
- C. The Association conveyed the Facility to East Hants, including all real and personal property associated with the Facility;
- D. East Hants and the Association agree that all residents of East Hants should have similar recreational opportunities, regardless of gender, age, sexual orientation, ability, race, culture, faith or socio-economic status; and
- E. East Hants wishes to engage the Association to operate, manage, maintain and repair the Facility and the Association agrees to perform such services for and on behalf of East Hants in accordance with the terms of this Agreement.

IN CONSIDERATION OF the mutual covenants herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 Definitions

Capitalized words and phrases used herein shall have the meanings set out in the definitions below:

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

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

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

“Annual Budget” has the meaning attributed to it in Article 8.1;

“Annual Operation and Maintenance Report” has the meaning attributed to it in Article 8.8;

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

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

“Building Envelope” means perimeter elements of a building, both above and below ground, that divide the external from the internal environment;

“Business Day” means any day excluding Saturday, Sunday or a statutory or civic holiday;

“Business Plan” has the meaning attributed to it in Article 8.5;

“Capital Budget” has the meaning as attributed to it in Article 8.1(b);

“Capital Expenditure” means funds of at least \$10,000 required for the acquisition, construction, development, or betterment of a tangible capital asset, including the cost of its installation at the Facility and in the condition necessary for its intended use, which may be comprised of the purchase price, installation costs, design and engineering fees, legal fees, survey costs, site preparation costs, freight charges, transportation, insurance costs, and duties;

“East Hants Sportsplex Capital Fund Reserve” means a reserve fund, maintained and controlled by East Hants specifically for funding Capital Work and paying debt charges in relation to the Facility, also referred to as the Capital Fund Reserve;

“Capital Work” means work done on the Facility requiring a Capital Expenditure as directed by East Hants and approved in the East Hants’ Capital budget;

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

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

“Council” means the municipal council of East Hants;

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

“East Hants Sportsplex Reserve” means a reserve fund, maintained and controlled by East Hants for funding any type of expense related to the Facility;

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

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

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

“Facility” means the property owned by East Hants known as East Hants Sportsplex located at 1076 Highway 2 in Lantz Nova Scotia;

“Facility Condition Assessment” shall have the meaning attributed to it in Article 13.2;

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

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

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

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

“Lands” means that land located at 1076 Highway 2 in Lantz, Nova Scotia and includes two parcels of land identified as property identification numbers 45231313 and 45231321;

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

“Maintenance” means work necessary to maintain the original, anticipated useful life of the Facility. It is the upkeep of property and equipment and includes periodic or occasional inspections, adjustments, lubrication, cleaning, painting, replacement of parts, minor repairs, and other actions to prolong service and prevent unscheduled breakdowns.

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

“Operating Budget” has the meaning attributed to it in Article 8.1(a);

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

“Operating Year” means from April 1 of the current year to March 31 of the following year and is the same as the fiscal year for East Hants;

“Operations Contract” means an agreement, contract or purchase order with a value less than or equal to \$25,000.00, excluding HST, entered between the Association, as agent for East Hants, and a Supplier to furnish services, equipment, supplies or other things required for the proper operation and maintenance of the Facility during the Operating Period;

“Operations Requirements” means the requirements for the management, operation and maintenance of the Facility as set out in this Agreement and as otherwise specified from time to time by East Hants;

“Operation Services” means the provision of all labour, materials and services required to manage, operate and maintain the Facility in accordance with the terms and conditions of this Agreement. Operation Services shall include the employment and furnishing of all equipment, supplies, tools, storage, transportation and other things and services of every kind whatsoever

necessary for the proper, effective and cost efficient management, operation and maintenance of the Facility including maintenance, boiler logs, refrigeration logs, water testing, fire/life safety logs and records, and all administrative, accounting, record-keeping, and similar responsibilities of every kind whatsoever incidental to such obligations. A reference to "Operation Services" shall mean "any part and all of the "Operation Services" unless the context otherwise requires;

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

(a) adhering to "Original Equipment Manufacturer (OEM)" maintenance and service recommendations for all equipment, and ensuring service by authorized vendors capable of performing OEM work. This will validate warranties and ensure records and documentation is available should a claim be necessary;

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

(c) in relation to the operation of the Facility, to at least the standard of management and operation of a similar facility; consistent with this Agreement and consistent with the quality of operations of a prudent owner and any Facility Condition Assessment;

"Permits" means all permits, permissions and Approvals required, or as the context requires, granted by governmental authorities for the design, construction and operation of the Facility;

"Physical Plant" means the mechanical plant and refers to the necessary infrastructure used in operation and maintenance of the Facility, including the heating, ventilation, refrigeration, air-conditioning and other related equipment, not including fixtures or program supplies;

"Preventative Maintenance" means planned actions undertaken to retain an item at a specified level of performance by providing repetitive scheduled tasks that prolong system operation and useful life, including inspecting, cleaning, lubricating, and replacing parts;

"Programming" means physical, recreation, sport, cultural, educational, social and capacity building programs and other services offered to members of the public through registered or unregistered programs administered and run in or through the Facility;

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

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

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

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

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

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

(a) derived directly or indirectly from operations at the Facility (including but not limited to fees paid for services provided in or from the Facility, or for use of the Facility, or other payments from lessees or concessionaires in the Retail Space, advertising and sponsorship fees, any parking revenues and any fees from any licensee for the use of any space forming part of the Facility but not including the gross revenues of bingo, licensees, lessees or concessionaires and any other charges to such licensees, lessees or concessionaires such as taxes, common area costs or premiums for insurance), determined in accordance with GAAP consistently applied, excluding, however, the following:

(i) applicable HST, excise, sales, gross income, entertainment and use taxes or similar government charges collected directly from patrons or guests, or as a part of the sales price of any goods, services or displays, such as gross receipts, admission, cabaret or similar or equivalent taxes;

(ii) proceeds from the sale or other disposition of capital assets or unwanted inventory; and

(iii) rebates, discounts or credits of a similar nature (not including credit card discounts which shall be considered an operating expense); or

(b) by way of grants, gifts, sponsorships, bequests, donations, fund-raising or otherwise;

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

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

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

“Term” has the meaning attributed to it in Article 4.1;

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

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

ARTICLE 2 – MANAGEMENT AND OPERATION OF THE FACILITY

2.1 General

The Association agrees to manage, operate, maintain and promote the use of the Facility as agent for East Hants from and after the Effective Date and to perform the Work.

2.2 East Hants’ Objectives

The Association acknowledges that East Hants’ objectives in entering into this Agreement with the Association are as follows:

- (a) undertaking the operations of the Facility in a cost effective and efficient manner;
- (b) building a broad-based public support for the Facility through the high quality of operation making the Facility a place of civic and community pride;
- (c) establishing an informed partnership with the Association to generate innovative ideas, share resources, and increase collaboration;
- (d) making the Facility available to a wide range of community groups;
- (e) promoting fair and equitable access by user groups based on community, culture, socioeconomic status, ability, sexual identity, and sport and gender; and
- (f) ensuring the facility is sustainable for future generations of East Hants’ residents to enjoy.

The Association shall use its reasonable best efforts to promote the use of, operate, manage, and maintain the Facility to meet these objectives.

2.3 Use

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

The Association shall operate the Facility to a level of service appropriate for community use.

One ice surface shall be installed and ready for public use by August 31 of each year. The second ice surface shall be installed and ready for public use by September 15 of each year. Removal of

one ice surface shall begin April 1 of each year. Removal of the second ice surface shall begin May 1 of each year. Any changes to this schedule shall be approved in writing by East Hants.

The Association shall accommodate requests from East Hants for free access to the Facility for community programming, including access to the dome, meeting rooms and ice surfaces, to be coordinated as mutually agreed upon between East Hants and the Association.

East Hants reserves the right to use the Facility at no charge for civic priorities such as special events, including municipal elections and major sporting or cultural events, or short-term use for urgent or emergency purposes, such as emergency situations as directed by Emergency Management Operations. In the event that East Hants requires the exclusive use of the Facility, or the majority thereof, for an extended period of time for a civic priority, the costs associated with such use shall be considered in the annual budget and Facility planning process. Any use of the Facility for emergency situations shall take priority over use of the Facility for any other purpose.

ARTICLE 3 - DUTIES AND RESPONSIBILITIES OF THE ASSOCIATION

3.1 Association Mandate

The Association shall perform its duties and exercise the powers and authority set out in this Agreement in a timely, diligent, competent, professional and dependable manner and according to the Performance Standard.

The Association shall perform its duties and responsibilities in a diligent, honest, competent and professional manner and in accordance with any applicable directives from East Hants not inconsistent with the terms of this Agreement and at all times maintain the Facility in the Required Condition.

The Association shall comply with all written directions from East Hants to develop policies to meet Facility operational needs. Where such policies cannot be developed in a timely manner East Hants may require the Association to follow East Hants' policies until the Association has their own in place.

3.2 Specific Duties of the Association

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

- (a) to perform Operation Services so as to provide continuous service, subject to the terms of this Agreement, to customers in compliance with all applicable Laws and Approvals including, without limiting the foregoing, according to the Annual Budget and Business Plan;

(b) At the request of East Hants, to supervise and manage all Capital Work projects recognizing that East Hants and not the Association is responsible for all Capital Expenditures;

(c) to develop, deliver and staff Programming and Services that will ensure a healthy, engaged and inclusive community and which encourage healthy lifestyles through participation in inclusive physical, recreational, cultural, educational, social and capacity-building programs in the Facility;

(d) to advertise and promote the Facility, and to cross-promote and share marketing with East Hants as applicable, but recognizing that East Hants has invested resources in developing and protecting the East Hants brand the Association agrees not to use the East Hants brand in any way without the written approval of East Hants;

(e) to consider advertising and sponsorship as potential sources of revenue for inclusion in the Annual Budget. In so doing, the Association shall use its best efforts to market and sell, at the best price and value possible, sponsorship and advertising opportunities at the Facility. All advertising, promotional, and sponsorship activities undertaken by the Association shall be conducted in accordance with, but not limited to, East Hants' directives. East Hants shall have all naming rights for the Facility and parts of the Facility. Any solicitation for naming rights is subject to review and written approval by East Hants prior to its release and any agreement for naming rights is subject to East Hants' review and written approval.

(f) to charge and collect on behalf of East Hants from users of the Facility all user charges, revenues from advertising and sponsorship contracts, rents for the Retail Space established by this Agreement, and any and all revenues received from the operations or use of the Facility, as revised from time to time in accordance with this Agreement, plus applicable taxes including HST and property taxes to deposit immediately all amounts collected to the Operating Account established pursuant to this Agreement;

(g) to conduct inspections with tenants of Retail Space moving into or out of the Facility;

(h) to conduct regular inspections of the entire Facility for the purpose of determining any Repairs, Maintenance, Renovations or capital improvements that may be required to maintain the Physical Plant and building systems and to provide East Hants with a reasonably detailed report with respect to each such inspection;

(i) to use its reasonable best efforts to collect arrears of rent, all Advertising and Sponsorship Fees, or other concession or user fees and rents for the Retail Space and to report quarterly to East Hants of any arrears, provided, however, that the Association shall not pursue any legal action on behalf of East Hants for the purpose of collecting such arrears without the express written permission of East Hants (provided further that nothing in this provision absolves the Association from its obligation to have appropriate payment procedures in place for payment of monthly rents and fees in advance by tenants and users and to collect on behalf of East Hants such advance payments of such amounts). Any

account arrears that are considered at risk, or are past 90 days need to be reported to East Hants;

(j) to interview prospective tenants and make recommendations to East Hants concerning prospective tenants and to negotiate leases or user license agreements with prospective tenants for the Retail Space consistent with a recreation facility on terms and conditions approved by East Hants;

(k) to arrange for the supply, as may be required, of electricity, gas, steam, fuel, water, telephone, internet and other services and to arrange, for the effective and economical operation, maintenance and repair of the Facility and Physical Plant (including, without limitation, any refrigeration, heating, ventilating, air-conditioning, plumbing, electrical and elevator equipment) as may be required by East Hants or so as to comply with the Performance Standard and Laws and to arrange for janitorial and any other cleaning services, including window cleaning, building security, ice and snow removal (sidewalks and parking surfaces), landscaping, grounds maintenance, painting and any alterations approved by East Hants;

(l) to provide operation and maintenance of the Physical Plant, furniture fixture and equipment (FF&E) and the Lands to the Performance Standard and arrange for technical instruction and training of staff which may be required for the proper operation and maintenance of the Facility, FF&E and the Lands;

(m) to pay all accounts payable under applicable contracts that are being retained by the Association in the ordinary course of business in a timely manner;

(n) to provide supervision and control of the activities of users of the Facility, tenants, concessionaires and holders of privileges and their employees, including the removal of users and tenants for non-payment of rent or other proper cause;

(o) to develop, implement and maintain internal policies and practices with respect of the safety of employees and visitors to the Facility and to provide same to East Hants for review and comment;;

(p) to refrain from disparaging East Hants or the Facility in public. The Association shall not provide any information to the media about East Hants without the prior written consent of East Hants;

(q) to raise funds for the operating of the Facility including through fundraising campaigns and the Association's annual golf tournament;

(r) to apply for all available government grants with all monies to be used solely for the Facility;

(s) when East Hants incorporated the Facility into its asset management program the Association shall work with East Hants' asset management staff to do so; and

(t) to amend its bylaws and other documents as required to:

(i) authorize entering into and complying with this Agreement;

(ii) align the Association's year end with East Hants' year end, i.e. April 1 to March 31 of the following year;

(iii) adding three (3) members to the Association, one of whom will be the East Hants Representative and have no voting authority; one who will be an East Hants Councillor and sit on the executive with voting authority; and one who will also be an East Hants Councillor and sit as a non-executive member with voting authority; and both Councillor members shall be from the "Sportsplex Area Rate" catchment area; and

(iv) authorizing East Hants to have access to all meeting minutes and other Association documents upon request;

(v) The Warden or Deputy Warden in the absence of the Warden may attend board meetings as a non-voting member including closed sessions to the public.

3.3 Authority to Contract on Behalf of East Hants

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

(a) for the collection of rent, advertising and sponsorship fees, facility rental rates and any other items of revenue (including HST) relating to the operation of the Facility;

(b) in the event of an Emergency requiring immediate remedial action to be taken and if the Association is unable to contact East Hants for instructions, the Association shall be authorized to act as agent for East Hants for the purpose of taking any remedial action reasonably necessary in the circumstances, but only to the minimum extent necessary to resolve the Emergency;

(c) to retain Suppliers as independent contractors pursuant to Operations Contracts subject to the Operating Budget approved by East Hants for the Facility and the terms of this Agreement;

(d) to undertake Facility rentals, as agent for East Hants, with various user groups at rents and fees set out in its Annual Budget and Business Plan.

(e) to enter into, as agent for East Hants, leases and other tenancy agreements, contracts, licenses or other arrangements, at market value, on forms approved by East Hants with

tenants, occupants, licensees, concession grantees or other users consistent with a recreation facility;

(f) to enter into, as agent for East Hants, advertising and sponsorship contracts; and

(g) as otherwise authorized from time to time by East Hants in writing.

3.4 Limitations of Authority

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

(a) obtain loans for East Hants, whether secured or unsecured, or give or grant options, rights of first refusal, deeds of trust, mortgages, pledges, security interests, or otherwise encumber the Facility or any portion thereof or any interest of East Hants therein, or obtain replacements of any mortgage or mortgages;

(b) prepay, in whole or in part, refinance, increase, modify, consolidate or extend any obligation affecting the Facility or any portion thereof, except to the extent contemplated by the Annual Budget and Business Plan approved by East Hants or as contemplated and approved in writing by East Hants;

(c) cause East Hants to extend credit or to make any loans or become a surety, guarantor, endorser or accommodation endorser for any person, firm or corporation;

(d) cause East Hants to enter any contracts with respect to the Facility other than contracts in the ordinary course of managing the Facility which are in accordance with the provisions of this Agreement;

(e) sell, exchange or convey the Facility or any portion thereof;

(f) release, compromise, assign or transfer any claim, right or benefit of East Hants, except in the ordinary course of managing the Facility pursuant to this Agreement;

(g) cause or allow any judgment to be entered against East Hants or the Lands or Facility or any assets associated with the Facility or any lien, judgment or other encumbrance to be registered against the Lands or Facility;

(h) modify, change or amend, in any material way, any drawings, maps, plans or specifications prepared for or in connection with the Facility;

(i) grant easements or other property rights in the Lands or Facility;

(j) lease, purchase or sell any real property on behalf of East Hants;

(k) install or modify closed circuit television equipment;

(l) undertake purchases where the Association has not complied with the practices set out in Article 5 hereof;

(m) permit or undertake cash advances from any Facility bank accounts; or

(n) utilize Facility funds for any purposes other than the operation of the Facility.

3.5 Renovations by the Association

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

3.6 Lease Arrangements

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

(a) provide tenant and users coordination services including the review of rental applications, and offers to lease, and to engage in good-faith consultations with East Hants regarding the terms thereof;

(b) prepare leases or user license agreements as applicable on forms approved by East Hants;

(c) negotiate with tenants and/or users regarding any modification to the terms of such leases or user license agreements and to arrange for their execution;

(d) receive plans and specifications for any tenant changes, leasehold improvements, signage or other agreements and to arrange for any approvals required in connection with them; and

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

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

The Association shall supervise the moving in and out of tenants and, so far as is reasonably possible, to arrange the times thereof so that there shall be a minimum of disturbance to the operation of the Facility and inconvenience to any other users.

The Association shall use its reasonable best efforts to arrange for performance of all covenants, duties and obligations of East Hants pursuant to all leases, licenses, and other agreements and/or user license agreements which are in effect during the Operating Period in so far as such performance is consistent with the terms of this Agreement and any subsequent instructions given from time to time by East Hants.

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

3.7 Advertising and Sponsorship Contracts

With respect to advertising and sponsorship contracts, the Association agrees to:

- (a) provide coordination services for advertising and sponsorship in the Facility, including the review of advertising and sponsorship contracts and good-faith consultations with East Hants regarding the terms thereof; and
- (b) receive plans and specifications for any associated signage, including arranging for any approvals required in connection therewith. East Hants shall consult with the Association on digital signage advertising content provided by East Hants to be used in the Facility to ensure advertisements and sponsorships are not in conflict with Association sponsorship and advertising agreements.

East Hants intends to install a television screen kiosk to display to visitors at the Facility with content controlled by East Hants. The content will be a mix of municipal and community content as well as Facility messaging. A reliable internet connection will be required to be provided by the Association. East Hants will supply the television and receiver required to run the kiosk. The Association will be responsible for ensuring the kiosk is operational on a day to day basis.

3.8 Employees

All personnel employed by the Association in the management, administration and operation of the Facility shall be selected for employment by and be employees of the Association, and shall under no circumstances or at any time be deemed or implied to be employees of East Hants. The Association shall be solely responsible for the hiring, dismissing, controlling, directing, supervising, instructing, and training of its employees. The wages, salaries and benefits of such employees are the responsibility of the Association and shall be paid directly by Association.

The Association shall be responsible for the development of employment policies, and will ensure appropriate coverage for Workers' Compensation purposes, statutory payroll deductions and remittance to appropriate taxing authorities. The Association shall ensure that criminal records checks and sex-abuse registry records have been obtained and are in place in respect of all employees of the Facility where required by law or otherwise prudent or applicable, such as when employees are dealing with cash or working with vulnerable populations. The Association will take all measures required in compliance with the *Occupational Health and Safety Act* to ensure the safety of employees and onsite contract workers.

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

3.9 Property of East Hants

All equipment located in or purchased for the Facility at any time by the Association and material relating to the management, operation, capital and maintenance of the Facility shall be and remain the property of East Hants.

The Association shall identify any surplus equipment or material and East Hants will facilitate its disposal.

ARTICLE 4 - TERM

4.1 Term

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

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

ARTICLE 5 - OPERATIONS CONTRACTS

5.1 Association's Right to Enter into Operations Contracts

The Association may enter into Operations Contracts on behalf of East Hants; provided that the Association shall not thereby be relieved of any of its obligations to East Hants as set forth in this Agreement.

All Operations Contracts shall be in writing. If the Operations Contract is for an expenditure, it shall be for an expenditure that is within the limits of the Annual Budget and Business Plan approved by Council pursuant to this Agreement.

5.2 Prices Subject to Competitive Bidding

When making operational purchases on behalf of East Hants for the Facility, the Association shall comply with the following:

- (a) for operational purchases under \$5,000, three competitive bids/quotes are recommended;
- (b) for operational purchases valued at \$5,000-\$25,000, three competitive bids/quotes are required unless:
 - (i) East Hants provides express written permission to use an alternative method of procurement; or
 - (ii) an unforeseeable situation of urgency exists and the goods or services cannot be obtained in time seeking competitive bids/quotes;
- (c) operational purchases valued above \$25,000 must be solicited by East Hants, and shall not be divided into multiple purchases so as to reduce the purchase value below this threshold;
- (d) when selecting a list of vendors to be provided the opportunity to provide bids/quotes, the Association is responsible to ensure a fair and open process is followed;
- (e) document attempts to obtain best value, and retain such documentation (including quotes) and make it available to East Hants for review upon request;
- (f) draw upon East Hants' standing offers for the acquisition of commonly purchased goods and services whenever possible, unless East Hants provides express written consent permitting otherwise; and
- (g) East Hants' standing offers contain commercial confidential information and this information shall not be shared outside of the relationship between the Association, East Hants and the standing offer holder.

5.3 Conditions Respecting Operations Contracts

The Association agrees that:

- (a) it shall make available to East Hants a copy of all executed Operations Contracts for the Facility upon request;
- (b) no Operations Contract shall be amended, varied or terminated without the prior consent of East Hants; provided however that East Hants' prior consent is not required for amendments or variations which do not cause the Operation Services to vary from the Operations Requirements or the terms and conditions of this Agreement;

(c) the Association shall make available to East Hants a copy of all amendments or variations to all Operations Contracts forthwith, upon execution thereof;

(d) any Operations Contracts awarded by the Association in accordance with this Agreement shall require contractors to provide the Association with a Certificate of Insurance evidencing a Commercial General Liability policy with limits of not less than Five Million Dollars (\$5,000,000.00) with the Association and East Hants as additional insureds on the policy; and

(e) all Operations Contracts shall require the contractors to provide evidence of Workers' Compensation Board coverage for their employees, with the same required of any sub-contractors contemplated by the Operations Contract, with any exceptions to be approved in writing by East Hants.

5.4 Long-Term Operations Contracts

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

ARTICLE 6 – CAPITAL WORK

With respect to Capital Work:

(a) East Hants shall be responsible for the cost of all Capital Work approved in the Capital work plan;

(b) the Association has no authority to enter into any contracts for Capital Work;

(c) no Capital Work shall proceed without the approval of East Hants;

(d) The Association shall be responsible for supervising and managing all Capital Work, keeping East Hants up-to-date on the progress of such work and providing East Hants with any information or documentation it requires with respect to such work;

(e) East Hants shall give reasonable consideration to requests or comments provided by the Association relating to Capital Work, including with respect to prioritization, cost, and performance of Capital Work.

ARTICLE 7 – FINANCIAL ARRANGEMENTS

7.1 Management Fee

No management fee shall be paid by East Hants to the Association for activities carried out pursuant to this Agreement.

7.2 Revenues

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

7.3 Capital Fund Reserve

East Hants shall establish and maintain an East Hants Sportsplex Capital Fund Reserve. The Capital Fund Reserve shall only be used to fund Capital Work that is not, in the sole discretion of East Hants but in consultation with the Association, regular maintenance, and that:

- (a) is a new construction, expansion, renovation, or replacement project for the Facility, including costs of land, engineering, architectural planning, and contract services required for the project;
- (b) is a purchase of major equipment (assets) with a useful life of at least ten (10) years;
- (c) is a major maintenance or rehabilitation project for the Facility with an economic life of at least ten (10) years;
- (d) is otherwise included in the Capital Budget approved by East Hants; or
- (e) is any debt related to the facility at Council's discretion.

7.4 Operating Account

The Association shall maintain a bank account (the "Operating Account") for Revenue and such account shall be acceptable to East Hants.

7.5 Payment of Expenses

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

- (a) East Hants' written approval is first obtained;

(b) the expenditure relates to a monthly or recurring operating charge and East Hants' approval has been provided by the approval of Operating Budget or by acceptance of lease agreements with tenants; or

(c) any such work is urgently required to be done and failure to do so would cause personal injury or damage to the Facility or its equipment or contents or could impair the value of East Hants' investment and East Hants or its duly authorized representatives cannot be located for the purpose of giving approval for such work, or if failure to do such work might expose either East Hants or the Association, or both to the imposition of penalties, fines, or any other liability, then, in any such case, the Association is authorized to proceed with any such work.

7.6 Fee for Service Arrangements

The Association and East Hants may enter into arrangements whereby East Hants charges the Association fees for various services delivered by East Hants to the benefit of the Association in delivering the Association's responsibilities in this agreement. These arrangements will be the subject of separate agreements.

7.7 Taxes

The Association will deliver to East Hants, no later than the 22nd day of each month, such information and supporting documentation as may be required for East Hants to enable it to compute the amount of HST or other Value Added Taxes collected by the Association on East Hants' behalf during the preceding month with respect to the operation of the Facility. HST collected by the Association (in its capacity of agent for East Hants) in respect of the Facility's operations (under East Hants' HST number) will be accounted for and remitted by East Hants and HST paid in respect of expenses of maintaining and operating the Facility will only be claimed by East Hants. The Association shall, in respect of any property or services acquired by it on behalf of East Hants pursuant to this Agreement, obtain from the supplier of such property or service sufficient evidence, in such form as may be required from time to time pursuant to the *Excise Tax Act* and any regulations made thereunder, as will be necessary to enable the amount of any tax credits which may be claimed by East Hants in respect of such expenses to be determined and validly claimed. The Association is liable for any applicable taxes that it is required to collect for amounts it receives to perform the services that it renders to East Hants under this Agreement.

7.8 Receipts and Documentation

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

7.9 Limitations of Financial Authority

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

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

7.10 Donations

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

All donations made to East Hants shall follow Council's Acceptance of Donations Policy

ARTICLE 8 – REPORTING REQUIREMENTS

8.1 Annual Budget

Not later than December 31st or 30 days after receipt of a request from East Hants in each Operating Year, the Association shall deliver a detailed proposed Annual Budget for the Facility which shall be informed by any Facility Condition Assessment and contain:

- (a) an Operating Budget, including:
 - (i) projections of anticipated revenues (including a breakdown of use by user groups where applicable);
 - (ii) proposed user charges for the Facility for the upcoming Operating Year;
 - (iii) operating and maintenance expenses; and
 - (iv) a complete and accurate inventory of all FF&E and all personal property at the Facility including computers, chairs, tables, etc.
- (b) a Capital Budget for the next Operating Year which shall:
 - (i) be based on a Capital Work program which shall:

- include work plans, priorities, budgets and funding estimates;
- be determined having regard to the age and “good state of repair”;
- be sufficient to enable the Facility to continuously meet the Laws and Approvals; and
- be consistent with good industry practice.

(ii) set out the estimated amount of Capital Expenditures required for the Capital Work proposed to be completed under the Capital Work program during the next Operational Year.

(c) a 5-year strategic plan for financing service level improvements and alterations to the Facility as a planning guide for future service level improvements and alterations to the Facility, to be updated annually.

As part of setting the proposed budget for the Facility, the Association and East Hants staff shall jointly review the proposed Annual Budget for the Facility to agree upon the priorities for operations and to discuss potential alternatives available with respect to capital projects and ensure alignment with Council priorities and Council’s direction on East Hants’ annual budget.

Where directed by East Hants in consultation with the Association, the Association shall include in its Annual Budget the implementation of initiatives associated with the Parks, Recreation and Culture master plans and Council priorities. East Hants shall provide such initiatives to the Association at least thirty (30) days before the Annual Budget is due to be provided by the Association pursuant to this Article 8.1. East Hants shall advise the Association of any changes required by East Hants, acting reasonably, to the proposed Annual Budget for the Facility and, within one (1) month thereafter, the Association shall submit to East Hants a revised budget reflecting the changes required by East Hants.

The final proposed Annual Budget for the Facility will subsequently be included within East Hants’ annual budget for consideration by East Hants Council and the Association shall be prepared to present to East Hants Council if requested, and to answer questions of councilors with respect to the proposed Annual Budget for the Facility.

The proposed Annual Budget, or revised budget, as the case may be, approved by East Hants in writing shall constitute an approved operating budget for the Facility (“Operating Budget”) for the purposes of expenditures for operations and maintenance for the applicable Operating Year, but shall not be considered authorization for the Association to undertake any Capital Expenditure (all of which must be specifically approved in writing by East Hants).

If, during any Operating Year, the Association proposes changes to the Facility’s operation outside of the approved Operating Budget and Business Plan to support the proposed operational change shall be provided to East Hants and will require approval by Council.

8.2 Community Access & Pricing

The Association shall establish user charges for the services offered at the Facility subject to the approval of East Hants. Any increases to fees shall be approved in writing by East Hants.

8.3 Current Year Surplus and Accumulated Surplus

East Hants expects the Association to operate in a surplus. The operating surplus shall be transferred to East Hants to fund the East Hants Sportsplex Reserve and shall be for the exclusive use of the Facility. The parties shall agree to the date for the transfer annually, following the end of the Operating Year. All transfers of surpluses shall be a transfer of cash to East Hants. Surplus funds in the reserve account will earn interest which will be added to the East Hants Sportsplex Reserve for the use of the Facility.

8.4 Operating Deficit

If in any Operating Year a deficit is projected or realized in excess of the budget approved by Council in accordance with this Agreement, the Association shall prepare and submit a written report at the time it submits its Annual Budget to East Hants or within 30 days of projecting the deficit, whichever is sooner, outlining the magnitude of the projected or realized deficit, the reasons, and the recommendations for dealing with it in the current or coming year.

8.5 Annual Business Plan

Not later than December 31st, or 30 days after receipt of a request from East Hants, in each Operating Year, the Association shall deliver a detailed Business Plan for the Facility that encompasses Programming focus areas and Council priorities, containing, at a minimum:

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

The Business Plan shall be in such form as required by East Hants.

8.6 Quarterly Financial Reports

The Association shall prepare and furnish to East Hants quarterly, in a form and at a time satisfactory to East Hants, a statement of receipts and disbursements and a report on the operations of the Facility including:

- (a) amount of rent and other Revenue collected including advertising and sponsorship fees;
- (b) the amount of any arrears of rent, Facility rentals and advertising and sponsorship fees;

- (c) aged summary of accounts receivable;
- (d) schedule of allowance for doubtful accounts;
- (e) a description of any maintenance work, in an amount equal to or exceeding \$5,000.00, performed in respect of the Facility and the cost of the same;
- (f) unaudited financial information including a Statement of Financial Position and a Statement of Operations and Accumulated Surplus prepared in accordance with GAAP;
- (g) discussion and analysis of quarterly results highlighting significant variances from budget and latest quarterly forecast;
- (h) discussion and analysis of updated annual forecast and significant variances against budget; and
- (i) discussion and analysis on all recreational programs and sporting events held, to include detailed Facility membership numbers, participants per sporting event, recreational activities, rentals, etc.

8.7 Annual Financial Statement and Audits

Within sixty (60) days after the end of each Operating Year the Association shall provide East Hants with audited year-end financial statements on the operation of the Facility for each Operating Year, prepared in accordance with GAAP and setting out all Revenues and expenditures.

The Association shall have the option to utilize East Hants' auditor through an optional pricing clause.

8.8 Annual Operation and Maintenance Report

Within sixty (60) days after the end of each Operating Year the Association shall provide East Hants with an Annual Operation and Maintenance Report, prepared in a form acceptable to East Hants and including but not limited to the following for the year ended:

- (a) a general overview of the operation of the Facility in the previous year, including usage of the Facility, Revenues and expenditures and physical status of the Facility at year end;
- (b) detailed information on the use of the Facility by category of Facility users and Revenues, with annual totals and comparisons to previous years, and a brief written narrative to highlight significant changes, if any;
- (c) an annual report on all recreation programs and sporting events held, to include detailed Facility membership numbers, participants per sporting event, recreational activities, rentals, etc.;

(d) detailed information, by month, of the status of leasing arrangements and the volume of sales revenue generated from Retail Space in the Facility to the extent applicable to determining proportionate rent;

(e) detailed information, by month, of operations and maintenance activities and costs for the Facility, with annual totals and comparison to previous years' activities and costs, and a brief written narrative to highlight significant changes, if any;

(f) the fee schedule for all recreational programs, as well as Facility rental rates, for the previous year; and

(g) all other information reasonably requested by East Hants.

8.9 Acknowledgement of Report

East Hants shall acknowledge any report within thirty (30) Business Days after receipt. The acknowledgement will include any areas of concern and any incidents of non-compliance with this Agreement as identified in East Hants' review of the report.

8.10 Reports Not Binding on East Hants

The Association agrees that East Hants' receipt of any report shall not imply that East Hants approves of the Association's management, operation or maintenance of the Facility.

8.11 Other Reports

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

ARTICLE 9 - BOOKS, ACCESS, AUDIT AND INSPECTIONS

9.1 Association's Obligations

The Association shall:

(a) secure and maintain invoices, bills and accounts for all expenses related to the Facility, copies of all correspondence, contracts, inventories and records of income, deposits and charges with respect to the Facility and its operation;

(b) prepare and maintain complete and accurate maintenance logs, inspection records, plans, equipment records and all permits and approvals associated with the Facility;

(c) prepare and maintain complete and accurate books and records in connection with the management and operations of the Facility in accordance with GAAP;

(d) ensure that East Hants has access to such books, records, accounts and documents in order that it may exercise its rights of inspection and audit and provide East Hants with all requested information and documentation and access thereto on a timely basis;

(e) ensure that such books, records, accounts and documents shall not be destroyed until East Hants' rights of access, inspection and audit have expired or, if arbitration or court proceedings to which such books, records, accounts or documents are relevant have been commenced, until such arbitration or court proceedings have been finally concluded.

9.2 Right to Audit

East Hants shall have the right at its own expense, and upon reasonable notice and at all reasonable times during normal business hours to audit, examine, make copies and take extracts from the books of account and records maintained by the Association pursuant to this Agreement. Such right may be exercised through any agent or employee designated by East Hants.

9.3 Right to Enter and Inspect

East Hants shall have the right to enter the Facility at any time and conduct or cause to be conducted such on-site observations and inspections, including for purposes of a Facility Condition Assessment, and such civil, structural, mechanical, electrical, chemical or other tests as East Hants deems desirable to ascertain whether the Association is in compliance with this Agreement. Unless deemed an emergency reasonable notice of a minimum of seventy-two (72) hours, will be given to the Association of any inspections and or tests.

The Association shall:

(a) coordinate and cooperate with and assist East Hants in all aspects of the inspection of the Facility;

(b) provide reasonable access to the Facility;

(c) permit motors, electrical and other systems to be inspected and tested;

(d) provide all relevant maintenance records, operational logs, inspections and service reports and records which relate in any way to the inspections and condition of the asset; and

(e) provide such other assistance and facilities as are required by East Hants such that it can perform the necessary inspection and assessment.

9.4 Annual Inspections

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

ARTICLE 10 - OPERATIONAL OBLIGATIONS

10.1 Work Management / Office

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

10.2 General Manager

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

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

The Association shall provide East Hants with the name, address, day and night phone numbers, e-mail address, and fax number of the General Manager.

10.3 Meetings and Access to Personnel

The Association shall cause the General Manager to meet with the East Hants' Representative upon East Hants' request to discuss and review the management, operation and maintenance of the Facility. In addition, the General Manager shall inform the East Hants Representative in a timely manner of all Emergencies, the occurrence of any uncontrollable events, and any other significant information as would be expected under customary and prudent business practices given the nature of the Facility.

10.4 Observance of Applicable East Hants' Directives

The Association covenants that it will act consistently with all directives provided to it by East Hants during the Term of this Agreement.

10.5 Occupational Health and Safety Inspections

At a mutually agreed upon time, East Hants and the Association may conduct at least one occupational health and safety audit of the Facility annually. East Hants shall be responsible to implement any recommendations regarding Capital Work. The Association shall be responsible to implement any non-capital recommendations and shall provide a report to East Hants within sixty (60) days of the audit report outlining how implementation will occur.

10.6 Compliance with Occupational Health and Safety Laws and Environmental Laws

The Association:

- (a) shall use, operate, manage, maintain and repair the Facility (and to cause its employees, sub-tenants, licensees, occupants and invitees to use the Facility), in compliance with all Laws related to the protection of the environment, health and safety.
- (b) acknowledges that
 - (i) it will be the occupier of and employer at the Facility during the Operating Period and will have far greater control over the Facility than East Hants on a day-to-day basis,
 - (ii) it has the authority and the obligation under this Agreement to assume the primary responsibility for creating and maintaining a safe and healthy workplace at the Facility, and
 - (iii) as part of the provision of Operation Services, the Association shall undertake all necessary and prudent actions in respect of occupational health and safety at the Facility.
- (c) shall take every precaution that is reasonable in the circumstances to operate and maintain the Facility in a manner that ensures the health and safety of persons thereupon;
- (d) shall exercise the precautions and duties of an "occupier of lands or premises used as a workplace" and "employer", as those terms are used in the *Occupational Health and Safety Act* and the regulations;
- (e) shall adopt and comply with internal policies relative to workplace health and safety, shall comply with East Hants' directives with respect to developing such policies and shall operate the Facility in accordance with the *Occupational Health and Safety Act* and the regulations;

(f) shall produce such reports from time to time as East Hants may reasonably require to audit and verify the Association's efforts in respect of health and safety and the Facility; and

(g) shall immediately disclose to relevant governmental authorities and to East Hants the occurrence of an event whereby the Association failed to comply with the *Occupational Health and Safety Act* or the regulations.

ARTICLE 11 - EAST HANTS COVENANTS

11.1 East Hants Representative

East Hants shall provide the Association with the name, address, day and night telephone numbers, e-mail address, and fax number of the East Hants Representative.

ARTICLE 12 - OPERATIONAL OR FACILITY MODIFICATIONS

12.1 Modifications by East Hants

(a) Operational

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

(b) Facility

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

ARTICLE 13 - FACILITY CONDITION

13.1 Required Condition

The Association covenants and agrees that, except to the extent the Association is relieved of any of the following obligations under the provisions of this Agreement, at all times, including on the Termination Date, the Facility shall meet the Required Condition according to the Performance Standard.

13.2 Facility Condition Assessment

East Hants may conduct an assessment of the condition of the Facility (the “Facility Condition Assessment”) at any time during the Operating Period or after any termination of this Agreement. The assessment may include but may not be limited to an examination of:

- structural components, decks and roofs;
- Building Envelope including all architectural features, adjacent pavement and landscaping;
- Physical Plant;
- electrical systems and equipment;
- FF&E requirements;
- plumbing and drainage systems;
- the condition of leasehold improvements in retail premises; and
- finishes.

The Facility Condition Assessment report shall contain recommendations as to the work, if any, that is essential to ensure the integrity of the Facility and its equipment, with a time frame for that work, and, if necessary, that certain items or procedures be amended or updated.

13.3 Correction of Deficiencies

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

The Association shall not be responsible for deficiencies that are a result of deferred capital repairs that are known to East Hants or work undertaken pursuant to Article 12.1(b).

13.4 Additional Criteria for the Facility

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

- (a) all structural components including foundations and Building Envelope shall be in a good state of repair;
- (b) any cracks or spalling of concrete or other defects shall be adequately repaired;
- (c) all interior and external steel surfaces shall be in good state of repair, with new applications of suitable protective coatings;
- (d) electrical systems and lighting shall be in a good state of repair;
- (e) the exterior of the structure, including all architectural features, adjacent pavements, landscaping, vegetation and other ancillary components shall be in good condition;
- (f) all parking areas are to be in a good state of repair;
- (g) all Physical Plant, mechanical systems, controls, elevators and other equipment and systems including the FF&E and all systems related to the maintenance, are to be in a satisfactory working condition; and
- (h) All roofing to be in a good state of repair.

ARTICLE 14 – TERMINATION

14.1 Termination for Any Reason

This Agreement may be terminated at any time by either party for any reason whatsoever on six (6) months' written notice to the other party.

Termination for multi-year.

14.2 Termination for Breach of Agreement

This Agreement may be terminated in writing by either party for a breach of any of its terms, provided that the party alleged to be in breach is first given written notice of the breach and twenty (20) Business Days or such other time as the parties may agree to remedy the breach. If the breach is not remedied within the required time the non-defaulting party may terminate this Agreement.

14.3 East Hants' Remedies on Breach

If East Hants terminates this Agreement as a result of the Association's failure to remedy a breach within the required time, it shall have the following remedies:

- (a) terminate in whole or in part, the rights or obligations of the Association under this Agreement;
- (b) take possession of the Facility; and

(c) remedy or cause to be remedied the default.

14.4 Association's Obligations at Termination

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

- (a) stop the performance of all work and services hereunder;
- (b) terminate any Operations Contracts as East Hants may specify in writing;
- (c) provide to East Hants a detailed list of all tangible and intangible property relating in any way to the management, operation and maintenance of the Facility, all equipment, machinery, fixtures, supplies, designs, concepts, plans, drawings, specifications, schedules, models, samples, patents, technology leases, licenses, books and records and an updated list of the names, contact information and addresses of all users of the Facility;
- (d) assign and transfer to East Hants the Association's right, title and interest in and to any licenses, permits and approvals, if any, used by the Association in the operation of the Facility;
- (e) deliver all maintenance records, operational logs, inspections and service reports, books and plans (drawings/construction drawings);
- (f) make reasonable accommodation to the new Facility manager to assess the current state of the Facility and to prepare for takeover of operations including approaching existing staff for employment;
- (g) remove from the Facility all material, debris, equipment and supplies that are designated in writing by East Hants to be so removed;
- (h) deliver to East Hants a sufficient quantity of inventory and supplies to operate and maintain the Facility for at least thirty (30) Business Days;
- (i) take no action which may affect East Hants' reputation or its relationship with the community or users of the Facility; and
- (j) take any other action which East Hants, acting reasonably, shall request in writing.

14.5 Requirement to Deliver up Possession

At the expiration or sooner termination of the Term, the Association shall deliver up possession of the Facility to East Hants in the same condition as required to be maintained by the Association during the Term, together with all fixtures, improvements and personal property associated with the Facility, free of all rubbish and in a clean and tidy condition and to deliver to East Hants all keys and security devices and codes.

ARTICLE 15 – INSURANCE

The Association will cooperate with East Hants to determine the most cost-effective method of maintaining adequate, in East Hants' sole opinion, insurance arrangements. The Association shall reimburse East Hants for the cost of any insurance coverage paid for by East Hants.

15.1 Settlement of Claims

Settlement authority for claims against or on behalf of East Hants or the Association or involving the Facility shall be at the sole authority of East Hants.

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

15.2 Notification of Claims

The Association shall notify the East Hants Representative in writing as soon as possible after:

- (a) receipt of notice of any injury occurring in, on or about the Facility, that could reasonably be expected to result in a claim being made against East Hants and/or the Association that involves the Facility, or
- (b) any claims made of legal proceedings commenced against East Hants and/or the Association which involve the Facility.

The Association shall take no action (such as the admission of liability) which may operate to bar East Hants from obtaining any protection afforded by any policies of insurance it may hold or which may operate to prejudice the defence in any legal proceedings involving East Hants or the Facility, or otherwise prevent East Hants from protecting itself against any such claim, demand or legal proceeding. The Association shall fully cooperate with East Hants in the defence of any claim, demand or legal proceeding.

ARTICLE 16 – INDEMNITY AND LIMITATION OF LIABILITY

16.1 Indemnification

The Association shall indemnify, defend and save harmless the East Hants, its councilors, employees, contractors and agents, from any and all liabilities, damages, costs, claims, suits or actions arising out of any breach, violation or non-observance by the Association of any of its covenants and obligations under this Agreement including, without limitation, any damage to property while said property shall be in or about the Facility including the systems, furnishing and amenities thereof, as a result of the willful or negligent acts or omissions of the Association, its invitees, licensees, agents, servants, contractors or employees; and any injury to any licensee, invitee, agent, servant or employee of the Association, including death occurring on or about the Facility; and this indemnity shall survive the expiry or earlier termination of this Agreement.

16.2 Limitation of Liability

The Association hereby acknowledges and agrees that East Hants shall not be liable for any injury to any person (including death) or for any loss of or damage to any property, any special, indirect, consequential, incidental or punitive damages, arising out of the performance, or termination of this Agreement, or with respect to the Facility, including for theft, loss, destruction or damage, of any kind, to persons or property unless such loss or damage is caused as a result of the willful negligence or gross misconduct on the part of East Hants. This section shall survive the termination of this agreement for any reason.

ARTICLE 17 - CONFIDENTIAL INFORMATION

17.1 Information to be Held in Confidence

Confidential information shall be held in the strictest confidence by the Association and East Hants and no such information shall be disclosed to any person, except where the party consents in writing or as required by law.

17.2 Municipal Government Act

East Hants is a municipal body governed by provincial legislation, including the *Municipal Government Act* (Nova Scotia) and the *Personal Information International Disclosure Protection Act* (Nova Scotia) and as such this Agreement and all documents relating to the Facility are subject to the freedom of information and protection of privacy provisions of such legislation. The Association shall cooperate with East Hants Access & Privacy Office within the legislated timelines for requested records.

17.3 Provisions to Remain in Force

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

ARTICLE 18 - DISPUTE RESOLUTION

18.1 Good Faith Efforts to Settle Disputes

In the event of a disagreement among the parties with respect to this Agreement they shall negotiate in good faith for a period of ten (10) Business Days in an effort to settle such dispute.

18.2 Commercial Arbitration Act

In the event that the parties are unable to settle such disagreement or dispute within such ten (10) Business Day period, they agree to resolve such disagreement or dispute in accordance with the provisions of the *Commercial Arbitration Act* (Nova Scotia).

The arbitration shall be determined by the decision of a single arbitrator acceptable to both parties or, if the parties cannot agree upon such a person, by the majority decision of three arbitrators, one chosen by each party and the third chosen by the two arbitrators so appointed. The decision of the arbitrator or arbitrators shall be binding upon the parties. The costs of such arbitration shall be borne equally by the parties, unless otherwise determined by the arbitrator.

18.3 Continued Performance of Obligations

Notwithstanding that a matter or matters have been referred to the dispute resolution procedures as set out herein, each of the Association and East Hants shall, to the extent reasonably possible, continue to perform their obligations under this Agreement without interruption or delay including payment of all Revenue to East Hants.

ARTICLE 19 – NOTICES

19.1 Notices

Any correspondence required or permitted to be given or made pursuant to this Agreement shall only be effective if in writing and shall be sufficiently given or made if delivered during normal business hours on a Business Day and delivered as set forth below:

to the Association, addressed as follows:

Attention: Scott Forward
East Hants Arena Association
1076 Highway 2
Lantz, NS B2S 1M8
Tel: 902 883 9906 x2
Fax: 902 883 4306
Email: sforward@easthantsplex.org

to East Hants, addressed as follows:

Attention: Chief Administrative Officer
Municipality of the District of East Hants
15 Commerce Court
Elmsdale, NS B2S 3K5
Tel: 902-883-6217
Fax: _____
Email: caoc@easthants.ca

ARTICLE 20 – GENERAL

20.1 Entire Agreement

This Agreement is the entire agreement between East Hants and the Association with respect to operation, management and Maintenance of the Facility. This Agreement supersedes all prior agreements, understandings or writings among the parties, whether written or oral and whether legally enforceable or not in respect of the management and operation Facility.

20.2 Time of the Essence

Time shall be of the essence of this Agreement.

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

20.3 No Partnership, Joint Venture

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

20.4 Assignment

The Association may not assign this Agreement except with the consent of East Hants. East Hants may assign any or all of its interest in this Agreement to a third party without the consent of the Association.

20.5 Amendments in Writing

No amendment, variation or waiver of the provisions of this Agreement shall be effective unless made in writing and signed by each of the parties.

20.6 No Waiver

Any failure by East Hants to enforce or require strict compliance or performance of any term of this Agreement shall not constitute a waiver of such term and shall not affect or impair such term in any way or the right of East Hants to enforce same.

20.7 Severability

If any portion of this Agreement or the application thereof to any circumstance shall be held invalid or unenforceable the remainder of the provision in question and the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

20.8 Further Assurances

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

20.9 Governing Law

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

20.10 Independent Legal Advice

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

20.11 Enurement

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

IN WITNESS WHEREOF the parties have duly executed this agreement on the day and year first written above.

Sheralee M^{CEO} Ewom
Witness

[Signature]
Witness

) **MUNICIPALITY OF THE DISTRICT**
) **OF EAST HANTS**

) Per: [Signature]
) Kim Ramsay, CAO
) Date: July 21, 2021

) **EAST HANTS ARENA ASSOCIATION**

) Per: [Signature]
) Name: Bill Falkenberg
) Title: President
) Date: July 22, 2021



