

**VICTORIA CENTRE FACILITY
OPERATING AGREEMENT**

THE CORPORATION OF THE CITY OF VICTORIA

and

RG FACILITIES (VICTORIA) LTD.

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VICTORIA CENTRE FACILITY OPERATING AGREEMENT

THIS AGREEMENT is dated for reference the 10th day of October, 2002.

BETWEEN:

THE CORPORATION OF THE CITY OF VICTORIA

City Hall, #1 Centennial Square
Victoria, British Columbia.
V8W 1P6
(the "**City**")

OF THE FIRST PART

AND:

RG FACILITIES (VICTORIA) LTD.

(Incorporation No. 641815)
#2088 - 1177 West Hastings Street,
Vancouver, British Columbia,
V6E 2K3
("RG Facilities")

OF THE SECOND PART

WHEREAS:

- A. The City has entered into a Partnering Agreement with RG Facilities, RG Victoria (Construction) Ltd. and RG Properties Ltd. for the design, construction and operation of a multipurpose facility (the "Victoria Centre Facility") to be located on the Victoria Memorial Arena Site.
- B. Under the terms of the Partnering Agreement it is agreed that, following Substantial Performance of construction of the Victoria Centre Facility, RG Facilities will operate, manage and maintain the Victoria Centre Facility on behalf of the City, subject to the terms and conditions set out herein;
- C. The City and RG Facilities wish to set out in this Operating Agreement the terms and conditions under which RG Facilities will operate, manage and maintain the Victoria Centre Facility on behalf of the City.

NOW THIS AGREEMENT WITNESSES that in consideration of the premises, the terms and conditions hereinafter contained, the sufficiency and receipt of which is hereby acknowledged, the parties covenant and agree each with the other as follows:

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1.0 DEFINITIONS

In this Operating Agreement, the following terms shall have the meanings set out below:

- 1.1 **“Additional City Use Time”** means the time for use of the Victoria Centre Facility that the City may reserve pursuant to Part 25.0;
- 1.2 **“Additional Operating Revenue Share”** means the payment required to be made to the City pursuant to section 30.3, 30.6 and 30.9;
- 1.3 **“Approved Capital Repairs”** means Capital Repairs that have been approved by the City pursuant to section 15.4;
- 1.4 **“Approved Design”** has the meaning provided under the Design Build Contract;
- 1.5 **“Approved Performance Specifications”** has the meaning provided under the Design Build Contract;
- 1.6 **“Capital Improvement”** means an addition or improvement to, or an enhancement of the Victoria Centre Facility that is not a Capital Repair and is permitted to be capitalized in accordance with generally accepted accounting principles (“GAAP”);
- 1.7 **“Capital Repair”** means for the purposes of this Agreement, that a replacement item(s) is purchased, or a repair is undertaken, that:
- (a) is a major repair or replacement of the Victoria Centre Facility, made necessary by wear and tear, damage, loss, breakdown or failure, and
 - (b) is valued at \$10,000 per unit or \$10,000 per grouping of like items that require repair or replacement at the same time;
 - (c) enhances or prolongs the life of the asset compared to its then existing condition.

including repairs and replacements of major facility structures, fixed assets and major operating equipment including the roofing, structural elements, exterior wall systems, HVAC systems, plumbing and drainage systems, foundation, elevators, electrical and sound systems, fixed and portable seating, parking facility re-paving, permanent fixtures (toilets, sinks, showers), flooring, irrigation systems, public art, ice re-surfacing equipment, power edgers, forklift, lockers, arena end zone protective netting, stage, arena curtain, arena removal seating tiers, score board and control modules, rink dasher boards, exterior fall arrest system, interior fall arrest system, and ice cover portable floors (but such floor not to be replaced more than once every 5 years), club-lounge and box suite furnishings (but such furnishings not to be replaced more than once every 10 years) and Meeting Facilities furnishings (but such furnishings not to be replaced more than once every 10 years). Capital Repairs also include the purchase of a replacement item or a repair that meets the criteria established in sections 1.7(a),

(b) and (c), and that is eligible to be capitalized in accordance with generally accepting accounting principles (“**GAAP**”). Capital Repairs excludes repairs and replacements of all other furniture, office equipment, computers, radio systems, workshop equipment, janitorial equipment, trash containers, first aid and safety equipment, ice painting material, administration office equipment and furnishing, restaurant and lounge equipment, fixtures and furnishings, concession equipment, fixtures and furnishings, window coverings and curtains, washer and dryer, pavement repairs, room painting/re-decorating and tenant improvements and chattels.

- 1.8 “**Capital Reserve Fund**” means the fund established by the City under Part 14.0;
- 1.9 “**City Lands**” means the area of Parcel Identifier: 001-488-023 Lot A, Suburban Lots 1 and 2, Victoria City, Plan 42163 on which the Victoria Centre Facility is located, as outlined in bold on the plan attached as Schedule “1”;
- 1.10 “**City of Victoria Administration and Office Area**” means the area of the Victoria Centre Facility designated as such on the plan referred to in Part 5.0;
- 1.11 “**Commencement Date**” means the date referred to in section 2.2;
- 1.12 “**Community Meeting Room Time**” means the time for use of the Meeting Facilities that is reserved for the City or its designees under Part 24.0;
- 1.13 “**Community Use Activities**” means non-ticketed activities and events such as public skating, organized sports under the control of non-profit organizations, rental of time to community groups for non-profit community activities, non-profit community special events, recreational programs or activities operated by and under the authority of the City’s Parks, Recreation and Community Services Department, or dry floor events that are consistent with the above criteria, provided that for the purpose of this Operating Agreement, Community Use Activities for which a User Fee is charged shall be considered as non-ticketed events and activities;
- 1.14 “**Community Use Schedule**” means a schedule for Community Use Time established under section 23.2(c);
- 1.15 “**Community Use Time**” means the time for use of the Victoria Centre Facility that is reserved for the City under Part 23.0;
- 1.16 “**Consumer Price Index**” means the All Items Consumer Price Index for Greater Victoria as published from time to time by Statistics Canada utilizing the base year of 1986, or if the base year for the Consumer Price Index is changed by Statistics Canada, the replacement index together with a reasonable provision for conversion to permit the calculation of inflation over the Term, or if the Consumer Price Index is no longer published by Statistics Canada then the replacement index agreed upon by the parties from time to time or, if they are unable to agree, the replacement index determined by arbitration, with appropriate adjustments as a result of the change in the index.

- 1.17 “**Controlling Ownership**” means the control of a corporation by a person, within the meaning of section 1(4) of the *Company Act*, RSBC 1996 c.62;
- 1.18 “**Design Build Contract**” means the contract for the design and construction of the Victoria Centre Facility between the City and RG Construction dated for reference the 10th day of October, 2002;
- 1.19 “**Dry Floor Season**” means the period between approximately mid-April and the next Labour Day long weekend in any Year during which the Victoria Centre Facility will be predominantly used for dry floor activities;
- 1.20 “**Entertainment Activities**” means commercial activities or events such as Major Tenant games, practices and visiting team practices, and concerts, sports contests, entertainments, performances, circuses, displays, exhibits, conventions, trade shows, meetings, and social gatherings, the admission to which requires purchase of a ticket or payment of an admission or rental fee, but does not include any Community Use Activity, Additional City Use Time, Community Meeting Room Time, fund raising events scheduled under Part 26.0, or Other Use Time;
- 1.21 “**Environmental Contaminant**” means a substance the presence of which in soil, sediment, groundwater, air or otherwise is prohibited by, or the quantity or concentration of which exceeds, prescribed criteria, standards or conditions set out in Environmental Laws;
- 1.22 “**Environmental Laws**” means the *Waste Management Act*, RSBC 1996 c.482, and Regulations thereto, and all other legislation and regulations that prohibit or regulate activities for the purpose of protecting the environment;
- 1.23 “**First Ten Year Period**” means the First Ten Year Period during which this Operating Agreement is in effect, as provided under section 2.1;
- 1.24 “**Four Year Average**” means the four year average in Ticket Revenue Share provided for under Part 18.0.
- 1.25 “**Fixtures, Furnishings and Equipment**” means all furnishings, furniture, supplies, goods, machinery, fixtures, chattels and equipment, fixed or non-fixed, required for the operation of the Victoria Centre Facility as described in the schedule that will be provided following Substantial Completion, pursuant to section 1.2(f)(ix) of the Design Build Contract, and additional and replacement items acquired by RG Facilities during the Term where required under the terms of this Operating Agreement, but does not include any Tenant Improvements or Tenant Chattels;
- 1.26 “**Force Majeure**” means any act reasonably beyond the control of the party seeking to invoke the benefit of Force Majeure under this Operating Agreement, including but without restricting the generality of thereof, severe weather conditions that materially impede the operation of the Victoria Centre Facility, lightning, earthquakes, fires, floods and storms, strikes, lockouts and industrial

disturbances, any acts, rules, regulations, orders or directives of any government or agency thereof (other than the City if the City is the party seeking the benefit of Force Majeure), civil disturbances, explosions, transportation embargoes, or failure or delays in transportation, breakdown or mechanical or operational failure of any technical facilities, excessive electrical power fluctuation, excessive water pressure fluctuations, the order of any court, or any other causes either herein enumerated or otherwise not reasonably within the control of such party; provided that financial incapacity, insolvency and general economic conditions shall not in any event constitute or be deemed to constitute an event of Force Majeure;

- 1.27 “**Governing Legislation**” means the *Local Government Act*, RSBC 1996 c.320, as amended or replaced from time to time, and all other statutes and regulations of British Columbia that concern the assessment and taxation of real property;
- 1.28 “**GST**” means the goods and services tax assessed under the *Excise Tax Act* (Canada) as amended or replaced from time to time;
- 1.29 “**Gross Naming Rights Revenue**” means the total of all money or other consideration received by RG Facilities in respect of agreements for or concerning Naming Rights to the Victoria Centre Facility, and includes the value of products or services received by RG Facilities in respect of Naming Rights, at quoted retail prices, after deduction of the retail value of any boxes, club seats, seasons tickets or tickets that RG Facilities provides to the purchaser of Naming Rights as part of the agreement for those rights, provided always that the value of any other goods, services or consideration provided by RG Facilities under a Naming Rights agreement will not be subject to the said deduction.
- 1.30 “**Ice Season**” means the period between approximately the Labour Day long weekend and mid-April of the following year during which the Victoria Centre Facility will be used predominantly for ice activities;
- 1.31 “**Major Community Emergency**” means an emergency (as that term is defined by the *Emergency Program Act*, R.S.B.C. 1996, c.111) that triggers the implementation of the City’s local emergency plan;
- 1.32 “**Major Sport Tenant**” means a WHL team or other hockey team that becomes a major tenant of the Victoria Centre Facility, and whose permanent training and home game facility is the Victoria Centre Facility and, for whose games, tickets are sold;
- 1.33 “**Marketing and Promotional Standard**” means the performance standard provided under Part 18.0;
- 1.34 “**Meeting Facilities**” means the facilities in the Victoria Centre Facility that are available for community meeting room time, as designated on the plan that is attached as Schedule “3”;

- 1.35 **“Naming Rights”** means the right to name the Victoria Centre Facility or any part thereof;
- 1.36 **“Non-Public Purpose Area”** means the areas of the Victoria Centre Facility that are designated as such on the plan referred to in section 42.2;
- 1.37 **“Operating Agreement”** means this agreement;
- 1.38 **“Operating Expenses”** means all of the costs, taxes, expenses and permit and licence fees necessary for the operation, management and maintenance of the Victoria Centre Facility, including without limitation the specific costs and expenses identified in section 6.3 hereof, but excluding any costs, taxes, expenses or permit or licence fees that this Operating Agreement requires the City to pay;
- 1.39 **“Operating Revenue”** means revenue from the sources identified in section 29.1;
- 1.40 **“Other Use Time”** means ice or dry floor rental time booked by a third party through RG Facilities other than for Entertainment Activities and for which the third party pays RG Facilities a rental fee at the commercial rate charged by RG Facilities from time to time;
- 1.41 **“Parking Facilities”** means the surface parking facilities at the Victoria Centre Facility, as designated on the plan that is attached as Schedule “2”;
- 1.42 **“Partnering Agreement”** means the agreement by that name entered into between the City, RG Properties Ltd., RG Victoria (Construction) Ltd. and RG Facilities and dated _____, 2002.
- 1.43 **“Period”** in reference to the Term of the Operating Agreement means any one of the First, Second or Third Ten Year Periods;
- 1.44 **“Preferred City Rate”** means a rate that is from time to time mutually agreed to between the City and RG Facilities and is to be payable by the City for Additional City Use Time under the provisions of Part 25.0. The Preferred City Rate will be negotiated annually by the parties but will be not more than 20% greater than the average of the rates charged from time to time for similar adult services provided at other recreational facilities in the Greater Victoria region;
- 1.45 **“Property Taxes”** means all property taxes charged to a property owner under an annual property tax statement, whether retained by the City or payable to the Province of British Columbia, the Capital Regional District, the Vancouver Island Regional Health Authority, the British Columbia Assessment Authority, British Columbia Transit, or any other taxing jurisdiction that may be authorized, from time to time, to require the City to collect property based taxes on its behalf;
- 1.46 **“PST”** means the social service tax assessed under the *Social Services Tax Act* (British Columbia) as amended or replaced from time to time;

- 1.47 **“Public Purpose Area”** means the areas that are designated as such on the plan referred to in section 42.2;
- 1.48 **“Repairs and Maintenance”** means all work (including all labour, supplies, materials and equipment) that is necessary for the cleaning, preventative and routine maintenance and repairs of the Victoria Centre Facility, including without limitation its structures, facilities, Fixtures, Furnishings and Equipment, or any other component of the Victoria Centre Facility, in order to preserve the Victoria Centre Facility to the standard of a first class sport and entertainment facility and in accordance with the Repair and Maintenance Standards established under Part 9.0, but does not include any Capital Repairs;
- 1.49 **“Repair and Maintenance Standards”** means the standards for repair and maintenance of the Victoria Centre Facility that are approved by the City under section 9.10;
- 1.50 **“Restaurant and Concession Facilities”** means the restaurant and concession facilities that are to be operated in the areas so designated on the plan that is attached as Schedule “3”;
- 1.51 **“Season”** means an Ice Season or a Dry Floor Season;
- 1.52 **“Scheduled Events”** means Entertainment Activities, Community Use Time, Other Use Time, fund raising events scheduled under Part 26.0, Additional City Use Time and Community Meeting Room Time;
- 1.53 **“Second Ten Year Period”** means the Second Ten Year Period of this Operating Agreement as provided for under section 2.1;
- 1.54 **“Site”** means the City Lands, as defined herein, as well as the areas of public highway that are outlined in the Site Plan attached hereto as Schedule “2”;
- 1.55 **“Substantial Performance”** has the meaning provided under the Design Build Contract;
- 1.56 **“Tenant Chattels”** means chattels and all other non-fixed property that are placed and maintained within the Non-Public Purpose Area, other than any Fixtures, Furnishings and Equipment;
- 1.57 **“Tenant Improvements”** means improvements to the Non-Public Purpose Area that are constructed or installed by or with the approval of RG Facilities in accordance with Part 12.0;
- 1.58 **“Term”** means the term of this Operating Agreement as set out in Section 3.1;
- 1.59 **“Third Ten Year Period”** means the Third Ten Year Period of this Operating Agreement as provided for under section 2.1;

- 1.60 **“Ticket Manifest”** means a summary statement of all tickets generated or sold for an Entertainment Activity, and that indicates the price paid for each ticket sold.
- 1.61 **“Ticket Revenue Share”** means the surcharge on tickets sold that the City requires RG Facilities to collect on behalf of the City, pursuant to Part 33.0;
- 1.62 **“User Fees”** means fees or rates that are charged or levied by the City in respect of Community Use Activities, Community Meeting Room Time, Additional City Use Time or fund raising events scheduled under Part 26.0;
- 1.63 **“Victoria Centre Facility”** means the arena complex to be constructed on the Site under the Design Build Contract, together with all Fixtures, Furnishings and Equipment, and includes the Site and all pavement surfaces, hard and soft landscaping, signs, and the Parking Facilities, but does not include any Tenant Improvements or Tenant Chattels;
- 1.64 **“WHL”** means the Western Hockey League;
- 1.65 **“WHL Team”** means the WHL Team Franchise that the parties contemplate may be the Major Sport Tenant of the Victoria Centre Facility;
- 1.66 **Interpretation**

In this Operating Agreement:

- (a) the headings and captions are for convenience only and do not form a part of this Partnering Agreement and will not be used to interpret, define or limit the scope, extent or intent of this Partnering Agreement or any of its provisions;
- (b) The word "including" when following any general term or statement is not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar terms or matters but rather as permitting it to refer to other items or matters that could reasonably fall within its scope;
- (c) A reference to currency means Canadian currency;
- (d) A reference to a statute includes every regulation made pursuant thereto, all amendments to the statute or to any such regulation in force from time to time and any statute or regulation that supplements or supersedes such statute or any such regulation;
- (e) A reference to time or date is to the local time or date in Victoria, British Columbia;
- (f) A reference to a “party” or “parties” is a reference to a party, or parties, to this Agreement;

- (g) A word importing the masculine gender includes the feminine or neuter, and a word importing the singular includes the plural and vice versa;
- (h) A reference to approval, authorization, consent, designation, waiver or notice means written approval, authorization, consent, designation, waiver or notice;
- (i) A capitalized cognate of a defined term has a meaning corresponding to that of the defined term; and
- (j) A reference to Part means a Part of this Operating Agreement and the word Section means a separately enumerated provision within a Part, and the words Section or Part followed by a number or some combination of numbers and letters refers to a Section or Part of this Operating Agreement.
- (k) A statement in this Operating Agreement that one party agrees to a condition or arrangement is to be interpreted as imposing a binding obligation on that party with respect to that condition or arrangement such as to give rise to a claim for breach of contract by the other party if that condition or arrangement is not met or fulfilled.

2.0 TERM OF AGREEMENT AND COMMENCEMENT

- 2.1 This Operating Agreement will be for a term of up to thirty years (the "Term"), divided into three periods of ten years each (referred to as the "First Ten Year Period", "Second Ten Year Period" and "Third Ten Year Period", respectively), unless otherwise terminated as herein provided.
- 2.2 This Operating Agreement will commence upon the receipt by the City of the whole of the payment referred to in section 30.2 herein.

3.0 OWNERSHIP OF THE VICTORIA CENTRE FACILITY

- 3.1 The City and RG Facilities agree that the Victoria Centre Facility is owned by the City and shall remain the property of the City during the Term free and clear of any claim by RG Facilities.
- 3.2 Without limiting the generality of section 3.1, the parties agree that this Operating Agreement shall not be interpreted as granting or conveying to RG Facilities any legal or equitable title, claim, interest or estate in the Victoria Centre Facility, except as expressly provided for herein.

4.0 LEASE AND LICENCE

- 4.1 During the Term, and subject to the terms and conditions of this Operating Agreement, RG Facilities shall have a licence to occupy and use the Public

Purpose Area (excluding the City of Victoria Administration and Office Area) of the Victoria Centre Facility, and to authorize others to occupy and use those areas subject to the terms and conditions of this Operating Agreement, to the extent necessary to implement this Operating Agreement and to carry out its rights and obligations hereunder.

- 4.2 The City hereby leases to RG Facilities the Non-Public Purpose Area of the Victoria Centre Facility for the Term, commencing on the Commencement Date subject to all of the terms, conditions and restrictions of this Operating Agreement, provided that at the expiration of the Term, or upon early termination in accordance with this Operating Agreement, this grant of lease shall terminate and RG Facilities will immediately surrender the Non-Public Purpose Area in a peaceable way and in the state of repair required under Part 47.0.
- 4.3 RG Facilities will maintain, repair and keep insured any Tenant Improvements that are constructed within the Non-Public Purpose Area, to a standard that is substantially equivalent to the standards of maintenance, repairs and insurance that apply to the Victoria Centre Facility under this Operating Agreement.
- 4.4 At the expiration of the Term, or upon early termination in accordance with this Operating Agreement, RG Facilities will, if required by the City, remove all Tenant Improvements and Tenant Chattels from the Victoria Centre Facility, and shall repair any damage to the Victoria Centre Facility caused by such removal, to a standard that is substantially equivalent to the standards of maintenance and repair that apply to the Victoria Centre Facility under this Operating Agreement, all at the sole cost and expense of RG Facilities.
- 4.5 Any Tenant Improvements remaining on or in the Victoria Centre Facility at the end of thirty (30) days following the expiration of the Term, or early termination in accordance with this Operating Agreement shall become the property of the City absolutely without any compensation of any kind being payable to RG Facilities, unless the City decides otherwise.

5.0 CITY OF VICTORIA ADMINISTRATION AND OFFICE AREA

- 5.1 For the Term of this Operating Agreement, an area within the Victoria Centre Facility of no less than 4,000 square feet, as designated on the plan attached hereto as Schedule "3", shall not be included in the area leased to RG Facilities under the Non-Public Purpose Area Lease, and shall remain available during the Term for the use and quiet enjoyment of the City, and without any fee or compensation to RG Facilities except as provided under section 5.3.
- 5.2 The City reserves the right to make the area referred to in section 5.1 available to any sport and recreation related non-profit organization, and to charge such organization a fee for the rental or use or leasing of that area, without any fee or compensation to RG Facilities.
- 5.3 The City will be responsible for payment of all utility costs, maintenance costs, applicable property taxes, repairs to tenant improvements and insurance costs

for the City of Victoria Administration and Office Area. For the purpose of this provision, utility costs shall mean all charges for water, gas, telephone, electric light and power, whether separately metered to the City Administration and Office Area, or as allocated to the City Administration and Office Area by RG Facilities, acting reasonably.

- 5.4 The City of Victoria Administration and Office Area will have its own direct exterior access, including disabled access, that is independent of any other exits or entrances at the Victoria Centre Facility.
- 5.5 The City will use the City of Victoria Administration and Office Area only for non-commercial or non-profit purposes that are:
- (a) compatible with a first class sports and recreation facility of the age of the Victoria Centre Facility at the time of the use, and
 - (b) do not compete or conflict with the business interests of RG Facilities in operating the Victoria Centre Facility.
- 5.6 The City will obtain the consent of RG Facilities to any such use or a change in use of the City of Victoria Administration and Office Area, provided that RG Facilities may not withhold its consent unreasonably and will only withhold its consent if, acting reasonably, the proposed use is in conflict with the principles identified in section 5.5.

6.0 OPERATION OF THE VICTORIA CENTRE FACILITY

- 6.1 RG Facilities will manage, operate and maintain the Victoria Centre Facility during the Term in accordance with the terms and conditions set out in this Operating Agreement.
- 6.2 Subject to the limitations contained in this Operating Agreement, RG Facilities will manage, operate and maintain the Victoria Centre Facility as a first class sports and entertainment arena complex that will provide the City of Victoria with the following:
- (a) a venue for Community Use Activities;
 - (b) a venue for Entertainment Activities and Other Use Time;
 - (c) the City of Victoria Administration and Office Area;
 - (d) facilities for broadcasting and media production of events at the Victoria Centre Facility;
 - (e) commercial and retail space for the sale of goods or the provision of services other than the following, which shall not be permitted uses of the commercial and retail areas at the Victoria Centre Facility:
 - i) the sale of tobacco;

- ii) the sale of products or services, the access to or use of which is limited by law to persons aged 16 years or older (except for the service of liquor at a licensed restaurant or similar facility where food and beverages are sold for consumption on the premises);
 - iii) the sale of obscene or pornographic material;
 - iv) the sale of paraphernalia or other material that promotes the use of illegal drugs or other illegal substances;
 - v) the sale of products or services that promote, or the dominant characteristic of which is, undue violence or the undue exploitation of sex;
 - vi) tattoo parlours;
 - vii) escort services and body rub parlours; and
 - viii) massage parlours (excepting licensed physiotherapy and massage therapy clinics);
- (f) the operation of restaurant and concession outlets and catering facilities as contemplated under the Approved Design, including the sale of alcoholic beverages where duly licenced, and off premises sales of beer and wine from a licensed lounge or pub, where permitted under provincial regulations;
- (g) uses that are ancillary to or reasonably connected with the operation of a similar sports and entertainment arena complex.
- 6.3 The parties acknowledge that RG Facilities may request that the City give consideration to changes to the limitations on the sale of alcoholic beverages provided under section 6.2.
- 6.4 Without limiting the generality of its obligations under this Part of the Operating Agreement, and except as specifically provided elsewhere in this Operating Agreement, RG Facilities:
- (a) will supply at its sole cost and expense all administration, supervision, labour, equipment, material, supplies and other services necessary for the management, operation and maintenance of the Victoria Centre Facility during the Term, and
 - (b) shall be solely responsible for all other Operating Expenses during the Term, including, without limitation, all utility and similar charges for the use of electric current, water, sewer, natural gas, garbage removal, telephone services, cable television and any other such fees or charges for services and utilities which may be assessed and charged by the City or a private or public utility company.

- 6.5 RG Facilities shall continuously operate the Victoria Centre Facility during the Term and shall ensure that it is open and accessible for Scheduled Events to the extent reasonably required for the purpose of this Operating Agreement, subject to Force Majeure.
- 6.6 Without limiting the generality of its obligations under this Part of the Operating Agreement, RG Facilities will throughout the Term:
- (a) market and promote the use of the Victoria Centre Facility for the purposes stated in subsection 6.2(b) in accordance with the Marketing and Promotional Standard set out in Part 18.0;
 - (b) provide for the operation of the restaurant and concession outlets and catering facilities described in section 6.2(f), either on its own behalf, or through the use of subcontractors as authorized herein;
 - (c) manage the Non-Public Purpose Area, in accordance with the terms and conditions set out in Part 16.0;
 - (d) carry out all Repairs and Maintenance of the Victoria Centre Facility in accordance with the standards set out in Part 9.0;
 - (e) provide for all box office services for the Victoria Centre Facility either on its own behalf, or through the use of subcontractors as authorized herein;
 - (f) provide for the security of the Victoria Centre Facility, in accordance with the requirements of Part 8.0;
 - (g) manage and operate the Victoria Centre Facility in a manner that is appropriate for a community public recreational and athletic facility attended by families and minors.
- 6.7 Except as expressly provided for elsewhere in this Operating Agreement, RG Facilities will not use, manage or operate the Victoria Centre Facility for any use or purpose other than as expressly provided for under section 6.2, except with the advance written consent of the City.
- 6.8 RG Facilities will not occupy or use the Victoria Centre Facility for any illegal or unlawful purpose and will take all reasonable steps to ensure that the Victoria Centre Facility or any part thereof is not used or occupied for any illegal or unlawful purpose by any agent, tenant, licensee, contractor or invitee of RG Facilities.
- 6.9 RG Facilities shall not permit or carry out upon the Lands any gaming, wagering, betting, gambling or lotteries, and shall not permit the installation of any electronic gaming devices or slot machines within the Victoria Centre Facility, except with the advance written consent of the City, and subject to all applicable regulatory requirements.
- 6.10 RG Facilities shall not commit or permit any waste, damage or injury to the Victoria Centre Facility or any part thereof.

6.11 In its operation of the Victoria Centre Facility, RG Facilities:

- (a) shall comply with all of the guidelines, specifications and limitations described in the Approved Performance Specifications, and in any manufacturer's or other third party warranty for any component of the Victoria Centre Facility;
- (b) shall not compromise the safety, design or intended function of the Victoria Centre Facility.

7.0 CITY NOT RESPONSIBLE FOR OPERATING EXPENSES

7.1 Except where expressly provided elsewhere under this Operating Agreement:

- (a) the City shall not be obliged to furnish any services or materials for the operation of the Victoria Centre Facility or to make repairs or alterations in or to the Victoria Centre Facility, and
- (b) the City shall not be responsible for the payment of any Operating Expenses for the Victoria Centre Facility.

8.0 SECURITY AT THE VICTORIA CENTRE FACILITY

- 8.1 RG Facilities shall, during the Term, provide for such security personnel, security patrols, and security and fire alarm system monitoring services at the Victoria Centre Facility that are in accordance with the standard that would be provided by a prudent owner of a comparable sports and entertainment facility from time to time.
- 8.2 RG Facilities shall implement an emergency preparedness plan that is in accordance with the standard that would be provided by a prudent owner of a comparable sport and entertainment facility.
- 8.3 RG Facilities shall implement such policies and measures as are reasonably necessary to prevent unlawful activities from being carried out within the Victoria Centre Facility, including the trafficking or use of illicit drugs, or other unlawful substances and the unauthorized consumption of alcohol, and to effectively respond to and manage drunken or disorderly conduct of persons attending Scheduled Events.
- 8.4 RG Facilities will utilize reasonable screening procedures, including criminal record checks for those employees who have unsupervised access to children, and when hiring contractors that provide janitorial services or instructional programs.

9.0 REPAIR AND MAINTENANCE STANDARDS

- 9.1 During the Term, RG Facilities will undertake all Repairs and Maintenance of the Victoria Centre Facility such that the Victoria Centre Facility is maintained to a standard applicable to comparable first class sports and entertainment complexes, and in a condition of good and efficient repair so that it is safe and useable by the public.
- 9.2 During the Term, RG Facilities will undertake all Repairs and Maintenance required to keep the Victoria Centre Facility in good order and condition, reasonable wear and tear excepted, to the satisfaction of the City, acting reasonably, and in accordance with the Maintenance Standards that are to be provided under section 9.10, once those Maintenance Standards are approved by the City.
- 9.3 All Repairs and Maintenance shall be attended to promptly, and on a regular basis so as to at all times ensure that the Victoria Centre Facility is maintained in a clean, sanitary, litter free and safe state and condition to a first class standard appropriate for a facility attended and used by the general public.
- 9.4 RG Facilities will keep the Victoria Centre Facility and the Site fully usable for the purposes for which the Victoria Centre Facility was erected and constructed, and in the same manner and to the same extent as a prudent owner, will make any and all repairs, replacements or approved alterations to the Victoria Centre Facility and the Site, and will undertake all Approved Capital Repairs, to a standard that is substantially equivalent to the standard of materials and workmanship required under the Approved Performance Specifications;
- 9.5 RG Facilities will keep in good order and condition, and replace as necessary, all Fixtures, Furnishings and Equipment.
- 9.6 RG Facilities will, in the same manner and to the same extent as a prudent owner, implement preventative maintenance standards and schedules that ensure compliance at all times with all applicable laws and industry standards (which shall be identified in and form part of the Repair and Maintenance Standards to be provided under section 9.10), and with manufacturers' recommended guidelines and specifications.
- 9.7 RG Facilities shall at all times ensure that it does not jeopardize or void any warranties or guarantees for the Victoria Centre Facility or any part or component thereof.
- 9.8 RG Facilities will ensure that, at the end of the Term, the Victoria Centre Facility will be in a condition of repair such that, while it will be an aged facility, its structure, building systems and Furniture, Fixtures and Equipment will remain functional and usable for their intended purposes without the requirement of Capital Repairs, provided that this section will not oblige RG Facilities to undertake any Capital Repairs other than any Capital Repairs that are made necessary or breach of this Operating Agreement by RG Facilities, or by the

negligence or wrongful acts or omissions of RG Facilities or its employees, agents, contractors, invitees or others for whom it is in law responsible.

- 9.9 RG Facilities will undertake all Repairs and Maintenance that are required under this Operating Agreement at its sole cost and expense.
- 9.10 RG Facilities will, within 6 months of the date of commencement of this Operating Agreement provide objective standards and a schedule for Repairs and Maintenance of the Victoria Centre Facility (the "Repair and Maintenance Standards") to the City for the City's approval, acting reasonably, and once approved the Repair and Maintenance Standards shall be incorporated into and form part of this Operating Agreement, and RG Facilities shall thereafter perform all Repairs and Maintenance to the standards described in and in accordance with the Repair and Maintenance Standards.
- 9.11 RG Facilities will maintain records of all Capital Repairs, repairs, maintenance, replacements and alterations of the Victoria Centre Facility, including drawings, maintenance manuals and other building records, all to the standard of a prudent owner of a comparable facility.

10.0 FIXTURES, FURNISHINGS AND EQUIPMENT

- 10.1 Unless otherwise provided herein, or agreed to between the parties, the City shall own and have title to all Fixtures, Furnishings and Equipment, and all replacements thereof, throughout the Term.
- 10.2 Unless otherwise provided herein, or agreed to between the parties, any contract entered into by RG Facilities for the replacement of any of the Fixtures, Furnishings and Equipment shall require that title to the replacement of Fixtures, Furnishings or Equipment be transferred to the City free and clear of any encumbrances no later than upon delivery of the replacement item to the Victoria Centre Facility.
- 10.3 The City and RG Facilities may, from time to time, on terms mutually acceptable to both parties, mutually designate and determine that certain of the Fixtures, Furnishings and Equipment, and replacements thereof, otherwise provided by RG Facilities to the City under the Design-Build Contract, be acquired and held by RG Facilities and utilized by RG Facilities solely in the operation, management and maintenance of the Victoria Centre Facility so that the consequences of ownership of such fixtures, furnishings and equipment will be attached to RG Facilities throughout the Term.

11.0 INSPECTION AND REPAIR BY CITY

- 11.1 The City and RG Facilities agree that it shall be lawful for a representative of the City at all reasonable times during the Term and on 24 hours notice to RG Facilities to enter all parts of the Victoria Centre Facility for the sole purpose of

inspecting the Victoria Centre Facility and to determine whether it is being maintained in accordance with the standards required by Part 9.0.

- 11.2 Following such inspection, the City may give to RG Facilities written notice of any Repairs and Maintenance that the City considers are required in accordance with Part 9.0 of this Operating Agreement, and RG Facilities shall, within 60 days after every such notice commence to well and sufficiently maintain, repair, restore and make good the Victoria Centre Facility accordingly and will proceed diligently thereafter to the completion of that work.
- 11.3 If at any time during the Term RG Facilities fails to repair or maintain the Victoria Centre Facility in the condition required by the provisions of Part 9.0 of this Operating Agreement, then the City may, but will not be obliged to, enter upon those parts of the Victoria Centre Facility required for the purpose of repairing or maintaining the Victoria Centre Facility to the standard required by Part 9.0 of this Operating Agreement, and the City may thereafter undertake all Repairs and Maintenance necessary for that purpose.
- 11.4 The City will undertake Repairs and Maintenance of the Victoria Centre Facility pursuant to section 11.3 only after giving RG Facilities 60 days written notice of its intention to do so, except in the case of an emergency when no notice to RG Facilities will be required.
- 11.5 Any amount paid by the City, or expenses incurred by the City under section 11.3 in undertaking Repairs and Maintenance of the Victoria Centre Facility shall be reimbursed to the City by RG Facilities on demand, together with interest at the Prime Rate plus 2%.
- 11.6 The provisions of this Part are in addition to the rights of the City to terminate this Operating Agreement in accordance with section 46.4.
- 11.7 Within 10 days of receipt of a notice from the City under section 11.2 or section 11.4, RG Facilities may refer the matter to dispute resolution under the provisions of Part 48.0, and except in the case of an emergency, the City will take no further steps under the notice given to RG Facilities until the conclusion of the dispute resolution process.

12.0 **REPLACEMENT, CHANGES, ALTERATIONS AND SUBSTITUTIONS**

- 12.1 Other than as may be required under Part 9.0, or as expressly permitted under section 12.3, RG Facilities shall not make or permit to be made any material changes, alterations, replacements, substitutions or additions to the Victoria Centre Facility without the prior written approval of the City thereto.
- 12.2 Except as may be required under Part 9.0, or expressly permitted under section 12.3, RG Facilities shall not undertake any construction or place any fixtures or improvements upon the Site or within the Victoria Centre Facility, other than

those that are part of the Approved Design, without the advance written consent of the City.

- 12.3 RG Facilities may, at its sole cost and expense, and without the advance written consent of the City, carry out or authorize Tenant Improvements within the Non-Public Purpose Area, provided always that the standard of materials and workmanship of such alterations and improvements must be of a standard that is substantially equivalent to the standards contained in the Approved Design and Approved Performance Specifications.

13.0 BUILDERS' LIENS AND FINANCIAL ENCUMBRANCES

- 13.1 Subject to section 13.2, RG Facilities shall, throughout the Term at its own cost and expense, cause any and all builders' liens and other liens for labour, services or materials alleged to have been furnished during the Term with respect to the Victoria Centre Facility, which may be registered against or otherwise affect the Victoria Centre Facility or the Lands, (save and except any such liens that are registered as a result of work undertaken upon the Lands by the City and not by RG Facilities) to be paid, satisfied, released (including, without limitation, the release of all such liens from the interest of the City in the Lands), or vacated within 42 days after the City has sent to RG Facilities written notice by registered mail of any claim for any such lien.
- 13.2 In the event of a bona fide dispute by RG Facilities of the validity or correctness of any claim for any such lien, RG Facilities shall not be bound by section 13.1, but shall be entitled to defend against the same in any proceedings brought in respect thereof, subject always to its obligations to indemnify and save harmless the City in respect of such claim of builders' lien as provided for under Part 40.0.
- 13.3 Except as expressly provided for elsewhere in this Operating Agreement, RG Facilities shall not sell, dispose of, transfer, assign, mortgage, or pledge or use as security any part of the Victoria Centre Facility unless the express written consent of the City is first obtained.

14.0 CAPITAL RESERVE FUND

- 14.1 The City will establish a dedicated capital reserve fund that will be used to assist the City in the financing of Capital Repairs at the Victoria Centre Facility. The Capital Reserve Fund will be funded through annual contributions made by RG Facilities and the City, as provided for herein.
- 14.2 During the First Ten Year Period RG Facilities will contribute \$50,000 annually into the Capital Reserve Fund, each payment to be adjusted to reflect any increase or decrease in the Consumer Price Index measured over the 12 months preceding the date the payment is due, but in no event will any payment during the first Ten Year Period be less than \$50,000. RG Facilities' contributions to the

Capital Reserve Fund will be due and payable to the City at the beginning of each year of the First Ten Year Period.

- 14.3 If this Operating Agreement continues for the Second Ten Year Period, during the Second Ten Year Period, RG Facilities will contribute \$60,000 annually into the Capital Reserve Fund. The first such payment will be adjusted for increases or decreases in CPI measured from the Commencement Date to the date that payment is due. Each subsequent payment during the Second Ten Year Period will be adjusted to reflect any additional increase or decrease in CPI measured over the 12 months preceding the date the payment is due, but in no event will the adjusted payment be less than the first contribution to the Capital Reserve Fund made by RG Facilities made during the Second Ten Year Period. RG Facilities' annual contributions to the Capital Reserve Fund will be due and payable to the City at the beginning of each year of the Second Ten Year Period.
- 14.4 If this Operating Agreement continues for a Third Ten Year Period, during the Third Ten Year Period RG Facilities will contribute \$70,000 annually into the Capital Reserve Fund. The first such payment will be adjusted for increases or decreases in CPI measured from the Commencement Date to date that payment is due. Each subsequent payment during the Third Ten Year Period will be adjusted to reflect any additional increase or decrease in CPI measured over the 12 months preceding the date the payment is due, but in no event will the adjusted payment be less than the first contribution to the Capital Reserve Fund made by RG Facilities during the Third Ten Year Period. RG Facilities' annual contributions to the Capital Reserve Fund will be due and payable to the City at the beginning of each year of the Third Ten Year Period.
- 14.5 During each year of the Operating Agreement, the City will make a contribution to the Capital Reserve Fund in an amount equal to the contribution required to be made by RG Facilities for that year under this Part.

15.0 CAPITAL REPAIRS

- 15.1 The City and RG Facilities will conduct a joint inspection of the Victoria Centre Facility on an annual basis to determine whether any Capital Repairs should be undertaken by RG Facilities for the purpose of maintaining the Victoria Centre Facility to the standards required by Part 9.0 of this Operating Agreement.
- 15.2 In addition, if at any time during the Term either the City or RG Facilities considers a Capital Repair to be necessary, that party shall notify the other party of the Capital Repair that the first party considers necessary, whereupon the parties shall undertake a joint inspection of the Victoria Centre Facility in the manner provided for under section 15.1.
- 15.3 RG Facilities will provide to the City such cost estimates, engineering reports or other consultant's reports, as well as maintenance and operating records of the Victoria Centre Facility as the City may reasonably require in order to determine whether any proposed or contemplated Capital Repair is necessary. Where such

cost estimates, engineering reports or other consultant's reports are required by the City, and are to be prepared by a third party, RG Facilities and the City, both acting reasonably, will agree in advance to a budget for the preparation of these estimates or reports by the third party, and the third party's costs will be paid from the Capital Reserve Fund.

- 15.4 Following a joint inspection conducted under section 15.1 or 15.2, if the City, acting reasonably, agrees that a proposed or requested Capital Repair is necessary and should be undertaken by RG Facilities, and provided that the amount required to pay for the proposed or requested Capital Repair does not exceed the amount that is then held by the City in the Capital Reserve Fund, the City, acting reasonably, will authorize RG Facilities to proceed with the Capital Repair, and to utilize funds from the Capital Reserve Fund for the purpose of that Approved Capital Repair. Without limiting the circumstances under which the City may reasonably withhold its agreement to a proposed or requested Capital Repair, the City may have regard to the age of the Victoria Centre Facility and the remaining duration of the Term when determining if that Capital Repair is necessary or should be undertaken by RG Facilities.
- 15.5 RG Facilities will undertake any Approved Capital Repair within a reasonable time and will submit all invoices for the work to the City's Director of Finance for payment or reimbursement from the Capital Reserve Fund.
- 15.6 In the event that the City, acting reasonably, determines that a proposed Capital Repair is necessary, but the total estimated cost of the proposed or requested Capital Repair the City agrees is necessary exceeds the amount then held in the Capital Reserve Fund, then:
 - (a) the City, acting reasonably, may authorize RG Facilities to proceed with the Capital Repair (in which case the Capital Repair shall be an Approved Capital Repair), provided funds for the proposed or requested Capital Repair are made available under the City's standard capital budgeting process, subject always to the unfettered discretion of City Council in approving the City's budget and to the requirements of the *Local Government Act* as they relate to municipal budgets and expenditures, and subject to the City being reimbursed from subsequent contributions to the Capital Reserve Fund as and when available; or
 - (b) should financing for the Capital Repair be unavailable through the City's normal capital budgeting process, RG Facilities may elect to undertake the Capital Repair at its cost and expense, subject to being reimbursed from subsequent contributions to the Capital Reserve Fund as and when available, with interest at the Prime Rate plus 2%, provided that RG Facilities may only undertake a Capital Repair under this provision if RG Facilities first demonstrates that the failure to undertake the Capital Repair will cause an increase in RG Facilities' Operating Expenses, or will cause a reduction in RG Facilities' revenue from the Victoria Centre Facility, and provided the City, acting reasonably, consents (in which case the Capital Repair shall be an Approved Capital Repair).

- 15.7 If RG Facilities fails to perform any Approved Capital Repair within a reasonable time and such failure continues for 30 days after notice from the City, then the City, at its option, may undertake the Approved Capital Repair utilizing funds from the Capital Reserve Fund.
- 15.8 Except for Capital Repairs that are made necessary by the negligence or breach of this Operating Agreement by RG Facilities, and are not covered by the insurance that is required under this Operating Agreement, the maximum amount required to be paid by RG Facilities for Capital Repairs during the Term will not exceed the total of all contributions of RG Facilities to the Capital Reserve Fund for the Term, as provided for by Part 14.0. RG Facilities will, at its sole cost and expense, undertake any Capital Repairs that are made necessary by the breach of this Operating Agreement by RG Facilities, or by the negligence or wrongful acts or omissions of RG Facilities or its directors, employees, agents, licensees, contractors or invitees, and are not covered by insurance.
- 15.9 It is acknowledged that changes in technology or within the competitive environment may cause the City and RG Facilities to consider using the Capital Reserve Fund for Capital Improvements as may be mutually beneficial and the parties may agree to fund such Capital Improvements from the Capital Reserve Fund. However, during the Term, the City will not be obliged to consent to the use of the Capital Reserve Fund for Capital Improvements to the Victoria Centre Facility.
- 15.10 Any balance in the Capital Reserve Fund at the end or termination of this Operating Agreement will remain the property of the City.
- 16.0 MANAGEMENT OF NON-PUBLIC PURPOSE AREAS**
- 16.1 RG Facilities will, on behalf of the City, manage the Non-Public Purpose Area, and without limiting its obligations will:
- (a) advertise for and select suitable tenants or occupants of the Non-Public Purpose Area;
 - (b) negotiate with prospective tenants or occupants the terms of lease or licence arrangements for the Non-Public Purpose Area, subject to the provisions of section 16.3 and section 17.2;
 - (c) assume all risk and responsibility for monitoring, managing and enforcing the terms of any lease or licence arrangements entered into for the Non-Public Purpose Area;
 - (d) ensure that any lease or licence arrangement for the Non-Public Purpose Area is consistent with the provisions of this Operating Agreement.
- 16.2 Unless otherwise provided herein, RG Facilities will not enter into lease or licence agreements with third parties for the Non-Public Purpose Area without the advance written consent of the City, such consent not to be unreasonably withheld or delayed.

16.3 Subject to section 17.2 of this Operating Agreement, RG Facilities may grant sub-leases of the Non-Public Purpose Area or any part thereof, provided that the proposed use of the Non-Public Purpose Area under such sub-lease is consistent with the restrictions contained in section 6.2 of this Operating Agreement, and provided that RG Facilities provides the City's Representative with at least 7 days notice of its intention to enter into the proposed sub-lease. If the City's Representative considers that the proposed sub-lease is not permitted under the terms of this Operating Agreement, the City's Representative shall inform RG Facilities of his or her objection to the proposed sub-lease in writing within 3 days after receipt of notice from RG Facilities. If the parties are unable to agree as to whether the proposed sub-lease is permitted under this Operating Agreement, the matter shall be referred to dispute resolution under Part 48.0.

17.0 RESTRICTION ON CONTRACTING RIGHTS

17.1 Subject always to the restrictions on assignments provided under Part 49.0 and except as expressly provided for elsewhere in this Operating Agreement, RG Facilities shall not enter into any contracts or subcontracts for the performance of any of its obligations or the enjoyment of any of its rights under this Operating Agreement without the advance written consent of the City, such consent not to be unreasonably delayed or withheld.

17.2 During any Period of this Operating Agreement, RG Facilities shall not enter into any of the following categories of agreements where the term of that agreement is for a period that extends beyond the end of the Period in which the agreement is made, or which may through the exercise of a right of renewal extend beyond the end of the Period in which that agreement is made, without the advance written consent of the City:

- (a) agreements for Naming Rights;
- (b) lease or licence agreements with subtenants in respect of the Non-Public Purpose Area;
- (c) agreements for the sale or lease of box suites or club seats at the Victoria Centre Facility;
- (d) licence agreements or other contracts in respect of the Public Purpose Area;
- (e) agreements for the provision of any services or facilities that RG Facilities is obliged to provide under the terms of this Operating Agreement.

18.0 MARKETING AND PROMOTIONAL STANDARD

18.1 RG Facilities will market and promote the use of the Victoria Centre Facility so as to attain a high level of use of the Victoria Centre Facility for Entertainment Activities. RG Facilities' performance in that respect will be assessed by reference to an objective measurement of the number of Entertainment Activities

being presented at the Victoria Centre Facility, and the level of attendance at those events. The City and RG Facilities agree that the objective measurement for the purpose of this Part, to be known as the Marketing and Promotional Standard, will be as follows:

- (a) At the end of the sixth year of this Operating Agreement, the average annual Ticket Revenue Share received by the City during years three to six inclusive, but excluding for the purpose of the calculation the one year of years three to six inclusive in which the Ticket Revenue Share was highest, will be calculated (the "Four Year Average").
- (b) The Four Year Average will be adjusted at the beginning of the Second Ten Year Period and Third Ten Year Period for increases or decreases in the Consumer Price Index from the end of the sixth year of this Operating Agreement;
- (c) If the Ticket Revenue Share that the City receives in the seventh year and in each subsequent year of this Operating Agreement is not less than two thirds of the Four Year Average, RG Facilities will be deemed to have satisfied the Marketing and Promotional Standard.

19.0 OPERATION AND MANAGEMENT OF PARKING FACILITIES

- 19.1 During the Term, RG Facilities will manage and perform Repairs and Maintenance of the Parking Facilities at the Site on behalf of the City.
- 19.2 RG Facilities will be responsible for Repairs and Maintenance of the Parking Facilities in accordance with the applicable standards provided under Part 9.0.
- 19.3 RG Facilities may reserve a portion of the Parking Facilities for the exclusive use of Box Suite or Club Seat owners for attendance at Entertainment Activities, however, RG Facilities will ensure that at all times during Entertainment Activities that a minimum 20% of on-site parking spaces (excluding the spaces that are reserved under section 19.6) are available for the purpose of providing accessible, disabled parking and to accommodate parking by non-Box Suite and non-Club Seat owners. RG Facilities will work in partnership with BC Transit and other groups to promote alternate transportation to events at the Victoria Centre Facility. RG Facilities will also participate in the development of a Traffic Demand Management Plan.
- 19.4 Unless the City provides its advance written consent, RG Facilities will manage and operate the Parking Facilities for the purpose of providing parking that is accessory to the use of the Victoria Centre Facility, including parking by:
 - (a) employees of the Victoria Centre Facility,
 - (b) commercial tenants at the Victoria Centre Facility and their employees,
 - (c) users of the Victoria Centre Facility.

- 19.5 RG Facilities will be permitted to set hourly, daily and monthly parking rates for use of the Parking Facilities, provided that those rates are consistent with the prevailing market rates for similar facilities within the City of Victoria.
- 19.6 Thirty stalls within the Parking Facilities, adjacent to the Victoria Curling Club and Victoria City Police Headquarters will be reserved on a 24 hour per day basis, and shall be so marked, for use by the Victoria Curling Club (20 stalls) and by visitors to the Victoria City Police Headquarters (10 stalls). RG Facilities will not be responsible for monitoring the use of those reserved parking stalls or for the towing of vehicles from those stalls.
- 19.7 The City will ensure that its lease with the Victoria Curling Club contains an indemnity and release in respect of liability for personal injury or property damage sustained by the members of the Curling Club or their guests or visitors while using the parking spaces reserved for their use, provided that this shall not relieve RG Facilities of its obligation to conduct Repairs and Maintenance of the Parking Facilities, and RG Facilities shall remain liable for any such claims that arise due to its failure to maintain the Parking Facilities to the standard required under Part 9.0 of this Operating Agreement.
- 19.8 The City will indemnify and save harmless RG Facilities from and against any claims, suits, demands, actions, causes of action, costs or expenses that arise from personal injury or property damage sustained by visitors to the Victoria Police Headquarters in connection with their use of the parking spaces reserved for their use under this Part, provided that this shall not relieve RG Facilities of its obligation to conduct Repairs and Maintenance of the Parking Facilities, and RG Facilities shall remain liable for any such claims that arise due to its failure to maintain the Parking Facilities to the standard required under Part 9.0 of this Operating Agreement.

20.0 THIRD PARTY SITE ACCESS

- 20.1 The Victoria Curling Club shall have and enjoy access to the Site as follows:
- (a) the Victoria Curling Club and its members, contractors, employees, agents and invitees shall have the right to pass and repass over the sidewalks, vehicle aisles, driveways and roads that are constructed on the Site, whether by vehicle or on foot, for the purpose of:
- i) gaining access to and from the Victoria Curling Club and the parking spaces reserved for the use of the Victoria Curling Club under section 19.6 of this Operating Agreement;
 - ii) gaining access to and using the service doors that are located at the west side of the Victoria Curling Club; and
 - iii) gaining access to the exterior of the Victoria Curling Club for maintenance purposes.

- 20.2 The Victoria Police Department shall have access to the site as follows:
- (a) the officers, members, employees, contractors, agents and invitees of the Victoria Police Department, and visitors to the Victoria Police Headquarters, shall have the right to pass and repass over the sidewalks, vehicle aisles, driveways and roads that are constructed on the Site, whether by vehicle or on foot, for the purpose of:
 - i) gaining access to and from the Victoria Police Headquarters and to the parking spaces reserved for the use of visitors to the Victoria Police Headquarters under section 19.6 of this Operating Agreement; and
 - ii) gaining access to the exterior of the Victoria Police Headquarters for maintenance purposes.
- 20.3 Public and private utility companies shall have access to the Site, for the purpose of placing, maintaining, repairing and replacing from time to time the electrical, water, gas, sewer, telephone, cable or other utility services and infrastructure that service the Victoria Curling Club and the Victoria Police Headquarters.
- 20.4 RG Facilities will not hinder or interfere with the rights of access reserved by the City for the benefit of the Victoria Curling Club, the Victoria Police Department, and public and private utility companies under this Part.
- 20.5 RG Facilities will not obstruct or impede the use of any emergency exit from the Victoria Curling Club or the Victoria Police Headquarters.

21.0 SOLID WASTE MANAGEMENT SERVICE

- 21.1 During the Term, RG Facilities will provide a solid waste disposal bin or bins on the Site for the use of the Victoria Curling Club and the Victoria Police Headquarters, and RG Facilities shall arrange for regular disposal of all waste collected in that bin or bins. RG Facilities shall seek reimbursement for its reasonable direct costs (excluding overhead) incurred in providing that service directly from the Victoria Curling Club and from the City.

22.0 WHL FRANCHISE OR OTHER MAJOR SPORT TENANT

- 22.1 RG Facilities covenants and agrees that during the Term, any agreement that it enters into with the owner of the WHL Team or other similar hockey or other sports team that may from time to time be substituted therefore as a Major Sport Tenant at the Victoria Centre Facility, shall be assignable to the City in the event of early termination of this Operating Agreement by either RG Facilities or the City.
- 22.2 RG Facilities covenants and agrees that any agreement that it enters into for the lease or use of any part of the Victoria Centre Facility by the owner of the WHL Team or other Major Sport Tenant as referred to in section 22.1, shall provide, to

the reasonable satisfaction of the City, and the WHL Team or other Major Sport Tenant, for rights of access to and use of, for a minimum of 20 hours per week, the WHL Team or other Major Sport Tenant weight room facilities by high performance athletes affiliated with the Commonwealth Centre for Sport Development, without any fee or compensation to RG Facilities, the WHL Team, or other Major Sport Tenant, provided that the WHL Team or Major Sport Tenant shall have priority of use of the weight room facilities.

23.0 COMMUNITY USE TIME

23.1 Reservation, Use and User Fees

- (a) The City and RG Facilities agree that 2,000 hours per year of use of the Victoria Centre Facility will be reserved as Community Use Time. Save as expressly provided elsewhere in this Part, the Community Use Time will be reserved for the City's use at no cost to the City, and with no additional compensation or payment to RG Facilities.
- (b) The City will use Community Use Time only for Community Use Activities.
- (c) The City reserves the right to establish and charge User Fees in connection with Community Use Activities held during Community Use Time.
- (d) RG Facilities will not be permitted to charge any User Fees or any other form of admission fee to the public in respect of Community Use Activities or Community Use Time, other than the fees or charges that it normally charges to members of the public for the use of the Concession or Restaurant Facilities, or for the provision of other services such as skate and other equipment rentals, and skate sharpening, in the event those services are not provided by the City during Community Use Time.
- (e) Community Use Time hours shall not include the time needed by RG Facilities to prepare the Victoria Centre Facility for Community Use Time, but shall include the time necessary for ice cleaning during or at the end of a Community Use Activity..
- (f) RG Facilities, acting reasonably, may limit the spectator seating that is available during Community Use Time in order to minimize maintenance requirements related to Community Use Activities.
- (g) RG Facilities may charge the City for its reasonable costs incurred in relation to Community Use Activities for which there are more than 300 spectators, but only to the extent that those costs exceed the costs usually incurred in relation to Community Use Activities. If the City expects more than 300 spectators at a Community Use Activity, the parties, acting reasonably, will by mutual agreement establish the costs that RG Facilities may charge the City under this provision.
- (h) The use of the Victoria Centre Facility during Community Use Time shall be subject to the regulations and rules established by RG Facilities from

time to time for its other users, provided that such regulations and rules must be consistent with the terms of this Operating Agreement.

23.2 Scheduling

- (a) The Community Use Time will be allocated as follows:
 - i) 950 hours (Prime Time Ice) after the Labour Day weekend and to the end of April of the following year, between the hours of 3:00 p.m. to 12:00 midnight on School District #61 school days; or between 8:00 a.m. and 12:00 midnight on non-school days.
 - ii) 750 hours (Non-Prime Time Ice) after the Labour Day weekend and to the end of April of the following year, between the hours of 6:00 a.m. to 3:00 p.m. on School District #61 school days, and between the hours of 6:00 a.m. to 8:00 a.m. on non school days.
 - iii) 300 hours (Prime Time Dry Floor) from the end of April to August 15th, between the hours of 3:00 p.m. to 12:00 midnight on School District #61 days, and between 8:00 a.m. and 12:00 midnight on non-school days.
- (b) Community Use Time will be scheduled in advance of the commencement of an Ice Season or Dry Floor Season in accordance with this Part.
- (c) RG Facilities and the City will develop a proposed schedule for the City's Community Use Time during an Ice Season or Dry Floor Season at least three months prior to the beginning of the Season being scheduled. The Ice Season proposed schedule will be developed in two phases: by June 1 of any year, the schedule for September until the end of December; and by October 1 of any year, January until the end of April of the following year. The City and RG Facilities will consult with each other before finalizing any Community Use Schedule in a manner that as much as possible accommodates both the City's interests in scheduling Community Use Activities and RG Facilities' scheduling of Entertainment Activities in the Victoria Centre Facility. Without limiting the generality of the foregoing, the City and RG Facilities agree that in scheduling Community Use Time, the following principles shall be followed by RG Facilities and the City:
 - i) at the time of scheduling, priority of use of the Victoria Centre Facility shall be given to Entertainment Activities prior to the scheduling of Community Use Time;
 - ii) after accommodating the matters referred to in section 23.2(c)(i), Community Use Time shall rank next in priority for scheduling purposes and the City may, acting reasonably, select such blocks of time within Prime Time Ice, Non-Prime Time Ice or Prime Time Dry Floor, as it considers will best accommodate its Community Use Activities;

- iii) at the time of scheduling of Community Use Time and by mutual agreement, RG Facilities and the City will designate two non-consecutive bookings within the scheduled Community Use Time that will not be permitted to be re-scheduled by RG Facilities;
 - iv) when scheduling Community Use Time for an Ice Season or Dry Floor Season, the City may also reserve Additional City Use Time for that season in accordance with Part 25.0.
- (d) The City shall provide RG Facilities with a schedule of planned Community Use Activities within its Community Use Schedule three (3) months in advance of any scheduled activity. The City may change its use within the Community Use Schedule, acting reasonably, and shall provide any revised schedule of use to RG Facilities.
- (e) After a Community Use Schedule is established, RG Facilities, may reschedule, subject to the other provisions of this section, the City's Community Use Time into other time blocks, provided that the total amount of Prime Time Hours and Non-Prime Time Hours required under section 23.2(a) must be provided to the City in each year of this Operating Agreement. RG Facilities may only reschedule Community Use Time to accommodate WHL or Major Sport Tenant games, WHL Team or Major Sport Tenant or visiting team practices and other Entertainment Activities scheduled by RG Facilities from time to time. Notice of rescheduling must be given to the City at least thirty (30) days in advance of the time scheduled for the Community Use Time, and RG Facilities must, at the time it provides notice of rescheduling, make available to the City a replacement time of equivalent value and duration (Prime Time Ice for Prime Time Ice, Non-Prime Time Ice for Non-Prime Time Ice and Prime Time Dry Floor for Prime Time Dry Floor) that is, to the reasonable satisfaction of the City, and available within thirty (30) days before or after the Scheduled Time, unless otherwise agreed by both parties.
- (f) If the notice of rescheduling by RG Facilities as per subsection 23.2(e) results in the need to reschedule Community Use Time that is scheduled within the first 15 days or the last 15 days of the Ice Season, RG Facilities may provide a replacement time in accordance with subsection 23.2(e) that is available within 45 days, before or after the Scheduled Time unless otherwise agreed by both parties.
- (g) Should RG Facilities fail to reschedule Community Use Time in accordance with the requirements of subsections 23.2(e) and 23.2(f), RG Facilities will compensate the City for the equivalent number of hours at the Preferred City Rate.
- (h) Notwithstanding the foregoing, if acceptable to both parties, the City and RG Facilities may trade hours of use within the Victoria Centre Facility.

23.3 Set Up and Staffing

- (a) For Community Use Time during the Ice Season, RG Facilities will at its sole cost and expense ensure that the Victoria Centre Facility is ready and available with clean ice. For Community Use Time during the Dry Floor Season, RG Facilities will at its sole cost and expense ensure that the Victoria Centre Facility is ready and available with dry floor.
- (b) In fulfilling its obligations under section 23.3(b), RG Facilities will ensure that public washrooms, change rooms, relevant program equipment and seating and viewing areas adjacent to the arena floor are open and available for use during Community Use Time.
- (c) RG Facilities will at its sole cost and expense provide the ice cleaning necessary for Community Use Time during the Ice Season. The ice shall be cleaned in accordance with the requirements of the Repair and Maintenance Standards.
- (d) RG Facilities will provide at its sole cost and expense all maintenance, security and other personnel as are necessary for the safe operation and maintenance of the Victoria Centre Facility as an ice arena or dry floor facility during Community Use Time.
- (e) RG Facilities will also make available, at the City's sole cost and option, such other personnel that are in the City's opinion necessary for the safe and effective implementation and supervision of Community Use Activities during Community Use Time, including skate patrol and program supervisors. RG Facilities will at the commencement of each Year of the Term provide to the City a schedule of fees for the provision of skate patrol, program supervisors and other personnel as may be required by the City for Community Use Activities, provided that the schedule of fees shall be based on wages and benefits paid by RG Facilities plus a reasonable amount for administration and overhead.
- (f) Notwithstanding section 23.3(e), the City reserves the right to provide program supervisors, skate patrol and other personnel that the City considers necessary for Community Use Activities through the use of its own independent contractors.

23.4 RG Facilities will provide the City with reasonable access to promotional space within the Victoria Centre Facility, at the main public entrance, the box office area and at other mutually agreed locations, for the purpose of promoting Community Use Activities and other City programs and events.

23.5 RG Facilities may book non-commercial activities at the Victoria Centre Facility and such bookings shall be deemed as Other Use Time, provided that RG Facilities may not reschedule Community Use Time or Additional City Use time to accommodate such bookings.

24.0 COMMUNITY MEETING ROOM TIME

- 24.1 RG Facilities will ensure that 500 hours of use of the Meeting Facilities, during the hours of 8:00 am and 9:00 pm, on any day of the week, will be made available and ready for use, with tables and chairs, by the City and its designees during each Year of the Operating Agreement.
- 24.2 RG Facilities will not charge any fee to the City or its designees for Community Meeting Room Time, unless any part of the required use falls outside of the hours of 8:00 am to 9:00 pm, and then only for that part of the required use that falls outside of those hours.
- 24.3 The City may book the use of the Meeting Facilities under this Part on forty-eight (48) hours notice to RG Facilities, and RG Facilities shall act reasonably in accommodating such requests, subject only to the Meeting Facilities being unavailable due to previously scheduled Entertainment Activities.
- 24.4 RG Facilities shall be permitted to charge for its reasonable costs associated with additional room set up requirements (other than basic set up with tables and chairs which is required to be provided under section 24.1), or extraordinary clean up costs incurred in connection with Community Meeting Room Time.
- 24.5 RG Facilities shall retain the exclusive right to provide catering services, at RG Facilities' normal charges for such services, to users of Community Meeting Room Time, provided that if RG Facilities refuses to provide such catering services, the users of Community Meeting Room Time may make alternative arrangements.
- 24.6 The City may establish and charge User Fees to its designees for Community Meeting Room Time.
- 24.7 RG Facilities, and on thirty (30) days notice to the City, may reschedule Community Meeting Room Time, where required to accommodate Entertainment Activities, provided that RG Facilities shall act reasonably and shall consult with the City in respect of the time or times that Community Meeting Room Time is to be rescheduled to.

25.0 BOOKING OF ADDITIONAL CITY USE TIME

- 25.1 Provided there is no conflict with scheduled Entertainment Activities or Other Use Time at the Victoria Centre Facility, the City may on reasonable notice to RG Facilities reserve such additional time at the Victoria Centre Facility as the City considers necessary or desirable, at the Preferred City Rate. The City may cancel time booked as Additional City Use Time, and receive a refund of any amounts paid to RG Facilities for the booking of that time, provided that 14 days notice of the cancellation is provided.
- 25.2 The City may set and charge User Fees for events or activities held at the Victoria Centre Facility during Additional City Use Time.

- 25.3 The City shall only use Additional City Use Time for activities that are not Entertainment Activities, unless RG Facilities consents.
- 25.4 Where such Additional City Use Time is reserved, RG Facilities shall ensure that the Victoria Centre Facility is ready and available for the City's use at the scheduled time, in accordance with the requirements and standards for Community Use Time, or as requested by the City from time to time.
- 25.5 RG Facilities, and on thirty (30) days notice to the City, may reschedule Additional City Use Time, where required to accommodate Entertainment Activities, provided that RG Facilities shall act reasonably and shall consult with the City in respect of the time or times that Additional City Use time is to be rescheduled to.
- 25.6 The use of the Victoria Centre Facility during Additional City Use Time shall be subject to the regulations and rules established by RG Facilities from time to time for its other users, provided that such regulations and rules must be consistent with the terms of this Operating Agreement.

26.0 **FUND RAISING EVENTS**

- 26.1 The Victoria Centre Facility may be used by the City twice yearly for fund-raising events where 100% of the net proceeds of the event are for the benefit of Non-Profit Organizations. In the event of such use, the City will reimburse RG Facilities for the costs RG Facilities incurs in operating the Victoria Centre Facility for those fund raising events, other than for any operational costs and expenses that are for services equivalent to those provided by RG Facilities under sections 23.3(a) to (c) in relation to Community Use Time.
- 26.2 The City will provide RG Facilities with reasonable notice of its intention to schedule a Fund Raising Event, and will provide RG Facilities with the opportunity to participate as a co-sponsor of that Fund Raising Event.
- 26.3 Each Fund Raising Event scheduled by the City under this Part may be for a period of up to twenty-four (24) continuous hours.
- 26.4 In connection with Fund Raising Events scheduled under this Part, in the event that a Non-Profit Organization intends to use the services of a third party for event services such as event management, talent booking, advertising booking and any event related service that RG Facilities provides to other users or has expertise in, RG Facilities will have first right of refusal to provide such service in connection with the Fund Raising Event, provided that RG Facilities may only charge the fee that the third party would have charged for these services, even if a reduced or nominal fee.
- 26.5 RG Facilities will use best efforts to accommodate the City's requests to schedule a Fund Raising Event, provided that RG Facilities will not be required to reschedule Other Use Time or Entertainment Activities to accommodate a Fund

Raising Event, and once scheduled, RG Facilities may not reschedule a Fund Raising Event into another time block, and may not schedule any Entertainment Activities or Other Use Time at the same time or in place of the Fund Raising Event.

- 26.6 Once a Fund Raising Event is scheduled, the City may not reschedule that Fund Raising Event except by providing six (6) months written notice in advance of the originally scheduled date, unless RG Facilities consents. The City may cancel a Fund Raising Event at any time, provided that RG Facilities will not be obliged to provide another time in substitution, in the event of cancellation by the City.
- 26.7 In the event a Non-Profit Organization is unable to pay RG Facilities for any expenses due to RG Facilities for services rendered in connection with the Fund Raising Event, the City will be responsible to pay RG Facilities for such services and to collect subsequently for the City's account from the Non-Profit Organization.

27.0 SCHEDULING CONFLICTS

- 27.1 When requested by RG Facilities, the City will use all reasonable efforts to arrange time for WHL Team, Major Sport Team and visiting team practices in alternate facilities in neighbouring municipalities to assist RG Facilities in resolving scheduling conflicts at the Victoria Centre Facility. RG Facilities will reimburse the City for the cost of arranging or booking times in alternate facilities under this section.

28.0 USE AS EMERGENCY RECEPTION CENTRE

- 28.1 The City may use the Victoria Centre Facility as an Emergency Reception Centre in the event of a Major Community Emergency. The City will be solely responsible for determining whether or not the Victoria Centre Facility can be safely used for that purpose. Such use will be at no cost to the City except that:
- (a) the City will be responsible for any direct loss or damage caused to the Victoria Centre Facility as a result of such use;
 - (b) the City will be responsible for any and all liabilities, costs, expenses, suits or claims arising as a result of such use, except where resulting from the failure of RG Facilities or its officers, directors, employees, servants, agents or contractors to perform Repairs and Maintenance of the Victoria Centre Facility to the standards required under this Operating Agreement, provided that the obligation of RG Facilities to perform Repairs and Maintenance during use of the Victoria Centre Facility as an Emergency Reception Centre will only continue to the extent that such use does not interfere with the ability of RG Facilities to perform Repairs and Maintenance;

- (c) the City will compensate RG Facilities for uninsured business losses or increased or additional costs incurred by RG Facilities as a result of such use.

28.2 RG Facilities will act reasonably in re-arranging Entertainment Activities to minimize the extent of any business losses it incurs in the event the Victoria Centre Facility is used as an Emergency Reception Centre.

28.3 If the City and RG Facilities cannot agree to an appropriate level of compensation for uninsured business losses or increased or additional costs of RG Facilities under this section, they will resolve the issue under the dispute resolution provisions of this Operating Agreement.

29.0 OPERATING REVENUES

29.1 For the purposes of this Operating Agreement, Operating Revenues shall mean revenue derived from uses of the Victoria Centre Facility that are permitted under this Operating Agreement, including without restriction:

- (a) revenue from the rental of the Non-Public Purpose Area of the Victoria Centre Facility, whether under the terms of a lease, licence or other form of agreement;
- (b) revenue from the operation of the Restaurant and Concessions at the Victoria Centre Facility, or from contracts or licences entered into with respect to the operation of the Restaurant and Concessions at the Victoria Centre Facility, as authorized under the terms of this Operating Agreement;
- (c) revenue from the operation of the Parking Facilities;
- (d) revenue from contracts for the placement of commercial advertisements within the Victoria Centre Facility and on the Site;
- (e) revenue from the use of the Victoria Centre Facility for Entertainment Activities or Other Use Time;
- (f) revenue from the sale of box suites and club suites;
- (g) revenue from the operation and placement of vending machines within the Victoria Centre Facility;
- (h) revenue from box office services located within or, associated with the Victoria Centre Facility;
- (i) revenue from locker rentals;
- (j) revenue from contracts for the Naming Rights as provided for under Part 32.0 of this Operating Agreement.

29.2 For greater clarity, for the purposes of this Operating Agreement, Operating Revenues shall not include:

- (a) User Fees charged by the City for Community Use Time under Part 23.0 of this Operating Agreement;
- (b) User Fees charged by the City for Community Meeting Room time under Part 24.0 of this Operating Agreement;
- (c) User Fees charged by the City in connection with Additional City Use Time under Part 25.0 of this Operating Agreement;
- (d) Ticket Revenue Share that is collected by RG Facilities on behalf of the City pursuant to Part 33.0; and
- (e) Any rental revenue, fee, consideration or contribution received by the City in respect of the area reserved for the City's use under section 5.1.

30.0 CONSIDERATION AND CITY'S SHARE OF OPERATING REVENUE

- 30.1 In consideration for undertaking the management, operation, and maintenance of the Victoria Centre, and in lieu of receiving a fee from the City for the services provided under this Operating Agreement during the Term, RG Facilities will be entitled to retain all Operating Revenues from the Victoria Centre Facility, save as provided in this Part 30.0 and Part 32.0.
- 30.2 RG Facilities will pay to the City, within five business days of Substantial Performance of the Victoria Centre Facility, the sum of \$2,000,000.00 (the "**Initial Payment**"), representing the City's guaranteed non-refundable share in advance of Operating Revenue for the First Ten Year Period of this Operating Agreement.
- 30.3 In addition, during the First Ten Year Period RG Facilities will pay to the City an Additional Operating Revenue Share of \$30,000.00 at the commencement of each year of the First Ten Year Period. After the first such payment, each subsequent payment of the Additional Operating Revenue Share will be adjusted to reflect any increase or decrease in the Consumer Price Index measured over the 12 months preceding the date the payment is due. Each payment of the Additional Operating Revenue Share will be due at the beginning of each year of the First Ten Year Period.
- 30.4 Notwithstanding section 30.3, at the end of the third year of the First Ten Year Period, should the Additional Operating Revenue Share as adjusted for changes in the Consumer Price Index be less than the total Additional Operating Revenue Share would have been had it been subject to adjustment for any increases over that same time period in the Non-Residential Building Construction Price Index published by Statistics Canada, the City may, by written notice to RG Facilities within 60 days of the end of the third year of the First Ten Year Period, require that the Non-Residential Building Construction Price Index be substituted for and in place of the Consumer Price Index for the purpose of calculating adjustments in the Additional Operating Revenue Share, effective from the date the City exercises that option. Should the City exercise this option, its decision shall be irrevocable.

- 30.5 Other than the obligation of RG Facilities to make payments to the City under this Part, but excepting the provisions for sharing of Naming Rights Revenue under Section 32.0 of this Operating Agreement, any remaining Operating Revenues from the operation of the Victoria Centre Facility during the Term, will be for the account of RG Facilities.
- 30.6 In the event this Operating Agreement continues for the Second Ten Year Period, for each year of the Second Ten Year Period, RG will pay the City a guaranteed, non-refundable share in advance of revenue from the Operation of the Victoria Centre Facility of \$200,000.00, plus payment of an additional amount equivalent to the Additional Operating Revenue Share provided for under section 30.3, as adjusted to the end of the First Ten Year Period pursuant to section 30.3 or 30.4, as the case may be. The \$200,000.00 portion of the first such payment will be adjusted to reflect annual increases in the Consumer Price Index measured from the Commencement Date to the date the payment is due (the total payment as adjusted is referred to as the "Second Period Annual Payment"). Each subsequent Second Period Annual Payment will be further adjusted for any additional increase or decrease in CPI measured over the 12 months preceding the date the payment is due, but in no event will the adjusted payment be less than the first Second Period Annual Payment.
- 30.7 The Second Period Annual Payments will be due and payable 6 months in advance of the beginning of each year of the Second Ten Year Period.
- 30.8 The terms and conditions outlined in paragraphs 30.6 and 30.7 governing payments through the continuation of this Operating Agreement for a Second Ten Year Period will govern payments through the continuation of this Operating Agreement for a Third Ten Year Period, with the necessary adjustments.
- 30.9 Any Operating Losses from the operation of the Victoria Centre Facility during the Term, will be for the account of RG Facilities.
- 30.10 For greater clarity, all payments required to be made by RG Facilities under this Part will be due and payable to the City at the time required for payment hereunder, whether or not RG Facilities receives sufficient Operating Revenue for or in respect of the Year of the Term in respect of which the payment is due, and despite the fact that RG Facilities may have incurred any Operating Losses during that Year or any other Year of the Operating Agreement.
- 30.11 In the event RG Facilities does not secure a WHL Franchise for the Victoria Centre Facility prior to the Commencement Date, RG Facilities agrees that for each year of the First Ten Year Period of the Operating Agreement it will make an additional payment to the City in an amount equal to the lesser of:
- (a) \$60,000.00; or
 - (b) (i) for the first year of the First Ten Year Period, \$120,000.00 less the amounts actually received by the City for Ticket Revenue Share for that year; or

- (ii) for each subsequent year of the First Ten Year Period, \$200,000.00 less the amounts actually received by the City for Ticket Revenue Share for each such year.

30.12 Each additional payment required to be made under section 30.11 will be due and payable within 30 days of the end of the year in respect of which the payment is to be made.

30.13 If at any time during the First Ten Year Period RG Facilities obtains a WHL Franchise for the Victoria Centre Facility that satisfies the conditions listed in subsection 8.5(b) of the Partnering Agreement, as confirmed by the City's nominee under the process established by section 8.5(c) of the Partnering Agreement, RG Facilities will be released from any further payment obligations under section 30.11.

30.14 If RG Facilities obtains a WHL Franchise for the Victoria Centre Facility, the arrangements for which do not fulfil the conditions listed in subsection 8.5(b) of the Partnering Agreement, as confirmed by the City's nominee under the process established by section 8.5(c) of the Partnering Agreement, RG Facilities will be released from any further payment obligations under section 30.11, provided however that in the event the WHL Franchise ceases to use and occupy the Victoria Centre Facility during the First Ten Year Period, the payment obligations contained in section 30.11 will be automatically reinstated for the remainder of the First Ten Year Period.

30.15 If a hockey team other than a WHL Franchise becomes a Major Sport Tenant of the Victoria Centre Facility and uses the Victoria Centre Facility for games for which tickets are sold, and which generate Ticket Revenue Share for the City under the terms of this Operating Agreement, then the amount of the additional annual payment required under section 30.11(a) will be reduced each year by the amount of Ticket Revenue Share generated from ticket sales for games played by that hockey team at the Victoria Centre Facility.

31.0 **GOODS AND SERVICES TAX**

31.1 RG Facilities will pay any GST or other similar federal or provincial tax that is payable or assessed with respect to any payments made by RG Facilities to the City -under this Operating Agreement, including payments made to the City under Part 30.0, contributions by RG Facilities to the Capital Reserve Fund made under Part 14.0, and payments by RG Facilities of the City's share of Naming Rights Revenue made under Part 32.0.

31.2 RG Facilities covenants and agrees that it is solely responsible for the collection and remittance of any GST and PST that may be payable in respect of the supply of goods and services at, or the sale of goods within the Victoria Centre Facility, to the extent that those goods and services are supplied or sold by, on behalf of or under the control of RG Facilities.

- 31.3 The City covenants and agrees that it is solely responsible for the collection and remittance of any GST and PST that may be payable in respect of the supply of services by the City pursuant to Parts 5.0, 23.0, 24.0, 25.0 and 26.0 of this Operating Agreement, provided that RG Facilities agrees to collect any User Fees on the City's behalf, RG Facilities shall properly collect and account to the City for all applicable taxes.
- 31.4 RG Facilities covenants and agrees that it will indemnify and hold harmless the City against any claims, demands or assessments of any kind whatsoever that may be brought against the City by the Government of Canada or the Government of British Columbia in respect of the failure or neglect of RG Facilities to fully collect and remit any GST or PST that is payable in respect of a good or service supplied or sold by RG Facilities at the Victoria Centre Facility.
- 31.5 The City covenants and agrees that it will indemnify and hold harmless RG Facilities against any claims, demands or assessments of any kind whatsoever that may be brought against RG Facilities by the Government of Canada or the Government of British Columbia in respect of the failure or neglect of the City to fully collect and remit any GST or PST that is payable in respect of the services supplied by the City under the Parts of this Operating Agreement that are referred to in section 31.3.

32.0 NAMING RIGHTS AND NAMING RIGHTS REVENUE

- 32.1 During the Term, RG Facilities will have the sole right to enter into an agreement with a third party for the Naming Rights to the Victoria Centre Facility.
- 32.2 RG Facilities will consult with the City prior to entering into an agreement with a third party for the Naming Rights to the Victoria Centre Facility and will obtain the City's consent to any name proposed as part of such agreement, such consent not to be unreasonably withheld.
- 32.3 Except with the advance written consent of the City, during the First Ten Year Period RG Facilities shall not enter into any agreement for Naming Rights the term of which, or any right or obligation provided thereunder extends or by the exercise of a right of renewal could extend beyond the end of the First Ten Year Period.
- 32.4 For each year of this Operating Agreement, to the extent that RG Facilities receives revenues for the Naming Rights for the Victoria Centre Facility, RG Facilities will pay to the City the greater of:
- (a) 10% of the Gross Naming Rights Revenue received by RG Facilities in any year; or
 - (b) 25% of the Gross Naming Rights Revenue received in excess of \$100,000.00 in that year.

32.5 RG Facilities will remit to the City the City's share of Naming Rights Revenue annually, within 30 days of the end of the year of this Operating Agreement in which the revenue was received.

33.0 **TICKET REVENUE SHARE**

33.1 In accordance with this Part, and on behalf of the City, RG Facilities will collect and remit to the City a surcharge on every ticket sold, whether by:

- (a) RG Facilities; or
- (b) RG Facilities' approved third party ticket agent; or
- (c) the individual or company approved by RG Facilities promoting the Entertainment Activity for which the ticket is sold ("Promoter"); or
- (d) the Promoter's approved third party ticket agent;

for Entertainment Activities held at the Victoria Centre Facility, but excluding:

- i) private functions where tickets are not available to be purchased by the public; and
- ii) commercial hourly or daily rentals where tickets are not available to be purchased by the public; and
- iii) where more than 50% of the ticket price for an Entertainment Activity is allocated for food and beverage, that portion of the ticket price that is a bona fide allocation of the value of the food and beverage provided.

For the purpose of this Part, a ticket shall be considered to be sold where it is exchanged for money or other consideration that has monetary value.

33.2 The Ticket Revenue Share for the whole of the 30 year Term of this Operating Agreement will, except as provided in sections 33.3 and 33.5, be as follows:

- (a) for every ticket sold for an Entertainment Activity where the ticket is priced from \$0.01 up to and including \$14.99: \$0.50 per ticket;
- (b) for every ticket sold for an Entertainment Activity where the ticket is priced from \$15.00 to \$24.99: \$1.00 per ticket; and
- (c) for every ticket sold for an Entertainment Activity where the ticket is priced \$25.00 and over: \$2.00 per ticket.

33.3 The number of generated tickets that are allocated to Box Suites and Club Seats will be considered as tickets sold for the purpose of section 33.2, for each Entertainment Activity in respect of which the Box Suite or Club Seat provides a right of attendance.

- 33.4 During the first year of this Operating Agreement, RG may select 15 Entertainment Activities at the Victoria Centre Facility. In respect of those 15 Entertainment Activities, the City will exempt tickets priced \$25.00 and over from the Ticket Revenue Share.
- 33.5 For the Second Ten Year Period and Third Ten Year Period of this Operating Agreement, the Ticket Revenue Share and associated base ticket prices referred to in section 33.2 will be adjusted to reflect annual increases in the Consumer Price Index, measured from the Commencement Date to the beginning of the Second and Third Year Periods, respectively. The adjusted amounts will be rounded to the nearest five cents.
- 33.6 At the end of each quarter of a Year of this Operating Agreement RG Facilities will remit all Ticket Revenue Share that it has collected under this Part to the City during the quarter just ended, together with a statement in such a form as is acceptable to the City, that indicates:
- (a) the dates and a general description of all Entertainment Activities held at the Victoria Centre Facility during that quarter;
 - (b) a total for the quarter of the number and price of all tickets sold, including tickets considered as sold pursuant to section 33.3;
 - (c) the total for the quarter of the Ticket Revenue Share collected by RG Facilities.
- 33.7 The foregoing payments by RG Facilities are the maximum amounts that the City requires RG Facilities to collect or pay in respect of City of Victoria ticket taxes or ticket surcharges. Provided always that if any additional City of Victoria income taxes, ticket taxes or ticket surcharges, or similar ticket taxes or ticket surcharges imposed by the City whether acting alone or in conjunction with another local government, are imposed in respect of tickets for Entertainment Events at the Victoria Centre Facility, then RG Facilities shall be entitled to deduct the amount thereof from amounts otherwise payable by RG Facilities to the City under this Operating Agreement.
- 33.8 The foregoing provisions shall not prevent the City from imposing any new tax that is of general application to similar commercial operations in Victoria, other than a tax, municipal income tax, or surcharge that is imposed on the sale of tickets or the revenue received therefrom.
- 34.0 **ACCOUNTING AND RECORD KEEPING**
- 34.1 During the Term of this Operating Agreement, RG Facilities shall keep and maintain accurate records, to a standard or in such form as would normally be kept by a prudent owner or operator of a comparable facility, of all maintenance and repair activities undertaken pursuant to Part 9.0, including without limiting the foregoing all records and expenditures in relation to any Capital Repairs undertaken.

- 34.2 During the Term, RG Facilities shall keep and maintain accurate financial and accounting records in a form that is in accordance with generally accepted accounting principles, of all Ticket Revenue Share and any User Fees collected on behalf of the City, and all Naming Rights Revenue received.
- 34.3 The books, accounts, financial records and other records of RG Facilities with respect to the matters referred to in section 34.1 shall be open for audit and inspection by the City and its auditors upon 24 hours notice to RG Facilities during regular business hours, and the City may take copies and extracts therefrom.
- 34.4 The books, accounts, financial records and other records of RG Facilities with respect to the matters referred to in section 34.2, including the Ticket Manifest of RG Facilities for all Entertainment Activities, shall be open for audit and inspection by the third party auditors for the City upon 24 hours notice to RG Facilities during regular business hours for the sole purpose of verifying:
- (a) the information contained in the statements provided to the City pursuant to section 33.6;
 - (b) the amount of any User Fees collected by RG Facilities on behalf of the City; and
 - (c) the amount of all Naming Rights Revenue received by RG Facilities.

The third party auditors for the City will not be entitled to provide the City with photocopies of any records referred to in this section 34.4. The third party auditors for the City will not be entitled to provide the City with any information derived from the records referred to in this section 34.4 other than the extent necessary and for the sole purpose of verifying the matters referred to in subsections 34.4(a), (b) and (c).

35.0 CONFIDENTIALITY AND FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

- 35.1 The City is a public body under the terms of, and is subject to, the provisions of the *Freedom of Information and Protection of Privacy Act*. The parties agree that the information RG Facilities is obliged to provide the City with access to under section 33.6 and Part 34.0 of this Operating Agreement is commercial and financial information of RG Facilities that will be supplied to the City on a confidential basis, and that the disclosure of that information by the City to third parties would harm significantly the competitive position of, and would result in undue financial loss or gain to, RG Facilities.
- 35.2 Subject to any order made under the *Freedom of Information and Protection of Privacy Act* obliging the City to disclose information, the content of any information contained in all books, accounts, financial records and other records of RG Facilities that are audited and/or inspected by the City or the City's

auditors pursuant to Part 34.0, and information provided by RG Facilities to the City pursuant to section 33.6, shall be and remain confidential and shall not be released and disclosed to any third party whatsoever, without the prior written consent of RG Facilities.

36.0 LIQUOR LICENCE

- 36.1 RG Facilities agrees to make application in its name for the issuance of all necessary licences, to permit and enable liquor to be served in the Victoria Centre Facility. The City agrees to cooperate and assist in obtaining such licences. RG Facilities agrees that it will maintain such licences in good standing with the Provincial licensing authority for the duration of the term of this Agreement.
- 36.2 A transfer in favour of the City of any liquor licences held by RG Facilities from time to time will be executed and held in escrow by the City for the duration of the Term of this Operating Agreement, or until early termination in accordance with the terms of this Operating Agreement. Upon the termination of this Operating Agreement the City will be at liberty to use the said transfer and to apply for a transfer to the City of the liquor licences issued to RG Facilities, subject always to the terms of those licences and the applicable legislation.

37.0 PROOF OF GOOD STANDING

- 37.1 During each Year of the Term, RG Facilities shall provide the City with proof to the City's satisfaction that it remains an incorporated company in good standing with the Registrar of Companies of British Columbia.

38.0 LIABILITY INSURANCE

- 38.1 During the Term, RG Facilities will obtain and maintain in force commercial general liability insurance, including for personal injury, bodily injury and death resulting therefrom, and property damage, in the amount of not less than \$10,000,000 per occurrence in respect of the operation and use of the Victoria Centre Facility and will include the City as an additional named insured on that policy of insurance.
- 38.2 All policies of insurance under this Part shall contain a cross liability clause and a waiver of subrogation clause in favour of the City and shall contain a clause requiring the insurer not to cancel or change the insurance without first giving the City 30 days prior written notice.
- 38.3 All policies of insurance required to be obtained under this Part shall be with insurers that are duly licenced to carry on the business of insurance in British Columbia.

- 38.4 RG Facilities shall be responsible for any deductible amounts payable under the insurance policies required to be obtained under this Part.
- 38.5 As requested by the City from time to time, RG Facilities shall provide the City with a copy of all policies of insurance required under this Part, or if requested by the City, a certificate of insurance signed by an authorized representative of the insurer as evidence of such coverage, accompanied by evidence satisfactory to the City that the premiums in respect of that policy or policies have been paid.
- 38.6 If RG Facilities fails to obtain or maintain liability insurance as required under this Part, the City will be entitled to obtain equivalent coverage and recover its costs from RG Facilities.
- 38.7 RG Facilities will not use or occupy the Victoria Centre Facility for any purpose or in such manner as will result in the cancellation of, or in the refusal of any insurer to issue or maintain, any of the insurance that is required to be placed by RG Facilities under this Part.

39.0 **PROPERTY INSURANCE**

- 39.1 During the term of this Operating Agreement the City will obtain and keep in force property insurance including extended perils coverage with respect to the Victoria Centre Facility, including its structural components and all improvements, fixtures and equipment that are supplied to the City under the terms of the Design Build Contract. Such insurance coverage shall be in respect of such perils and to such limits as a prudent owner, acting reasonably, would obtain.
- 39.2 For greater certainty, the City shall not be obliged to obtain any property insurance with respect to any Tenant Improvements or Tenant Chattels at the Victoria Centre Facility.
- 39.3 The insurance coverage obtained by the City under section 39.1 shall include coverage against the risk of loss or damage resulting from earthquake, but only if that coverage is commercially available at a reasonable cost, such that a prudent owner acting reasonably would provide such coverage.
- 39.4 The insurance coverage obtained by the City under section 39.1 shall at the City's option include boiler and machinery coverage in respect of all boilers and machinery that are supplied to the City under the terms of the Design Build Contract.
- 39.5 The insurance coverage obtained by the City pursuant to section 39.1 will include an endorsement for business interruption and loss of rental income for the benefit of RG Facilities, which coverage shall include the interests of RG Facilities, provided that the City may satisfy its obligations under this section by including the interests of RG Facilities on a policy of property insurance that covers other scheduled City assets and interests, and which policy may limit the amount payable for business interruption and loss of rental income in respect of a single

loss or occurrence that affects a number of City assets. RG Facilities shall reimburse the City for the cost of including the interests of RG Facilities on that endorsement for business interruption and loss of rental income.

- 39.6 All policies of insurance obtained by the City under section 39.1 shall contain a cross liability clause and waiver of subrogation clause in favour of RG Facilities.
- 39.7 Except for any insurance proceeds payable in respect of business interruption or rental income losses incurred by RG Facilities, which insurance proceeds shall be payable to RG Facilities directly, all proceeds of insurance from the policy referred to in section 39.1 shall be payable to the City, and subject to the terms and conditions of the policy, shall be first applied towards the restoration, reconstruction or replacement of the loss or damage in respect of which such insurance proceeds are payable, and the balance of any amounts payable shall be the sole property of the City.
- 39.8 The City and RG Facilities hereby mutually agree to release and hold each other harmless, as well as their respective successors and assigns, from any and all liability for loss or damage caused by any of the perils against which the City is obligated to obtain insurance under this Part, provided that if any loss or damage to the Victoria Centre Facility occurs as a result of the negligence, wrongful acts or omissions, or breach of this Operating Agreement on the part of RG Facilities, or its contractors, employees, agents, licensees or invitees, RG Facilities shall pay any deductible amount in respect of the insurance proceeds payable under that policy.
- 39.9 RG Facilities will not use or occupy the Victoria Centre Facility for any purpose or in such a manner as will result in the cancellation of, or in the refusal of any insurer to place or maintain, any of the insurance that is required to be placed by the City under this Part.

40.0 INDEMNITIES

- 40.1 RG Facilities shall indemnify and save harmless the City, its servants, agents, successors and assigns from any and all manner of actions, causes of action, suits, damages, loss, costs, builders' liens, claims, and demands which arise out of and to the extent of any:
- (a) the negligence or wrongful acts or omissions of RG Facilities or its directors, officers, employees, agents, contractors, licensees and invitees; or
 - (b) any breach, violation or non-performance of any covenant, condition or agreement in this Operating Agreement that is required to be fulfilled, kept, observed and performed by RG Facilities.
- 40.2 No provision of this Operating Agreement shall require RG Facilities to indemnify the City against any actions, causes of action, suits, claims or demands for

damages arising out of the breach of this Operating Agreement by the City, or the negligence or wrongful acts or omissions of the City, its directors, officers, servants, agents or employees.

- 40.3 The City shall indemnify, defend and hold harmless RG Facilities and its officers, directors, employees, successors and assigns from and against all manner of actions, causes of action, suits, damages, loss, costs, claims and demands arising out of any personal injury, including death resulting therefrom, or property damage occurring in connection with the City's use of the Victoria Centre Facility during Community Use Time, provided that the City's obligation under this section shall not require the City to indemnify RG Facilities or its officers, directors, employees, successors and assigns against any actions, causes of action, suits, claims or demands for damages arising out of a breach of the provisions of this Operating Agreement by RG Facilities, or the negligence or wrongful acts or omissions of RG Facilities, its officers, directors, employees, servants, agents or contractors, unless the said officers, directors, employees, servants, agents or contractors are acting under the direct supervision and control of the City at the time of the occurrence.
- 40.4 The obligations of RG Facilities and the City to indemnify under this Part with respect to liability by reason of any matter arising prior to the end of the Term, shall survive any termination of this Operating Agreement.

41.0 **LABOUR CONDITIONS**

- 41.1 RG Facilities has been engaged by the City as the City's contract manager of the Victoria Centre Facility. As the contract manager, RG Facilities will carry out the operations of the Victoria Centre Facility on behalf of the City.
- 41.2 The City agrees and warrants that as contract manager of the City's Victoria Centre Facility, RG Facilities is not and during the term of this Operating Agreement will not be bound by the City's collective bargaining obligations.
- 41.3 It is understood and agreed that RG Facilities will hire and supervise its own labour force in carrying out its responsibilities under this Operating Agreement as the contract manager of the City's Victoria Centre Facility.
- 41.4 It is further understood and agreed that the City will have no role or involvement in the hiring and supervision of RG Facilities' labour force.

42.0 **PROPERTY TAXES**

- 42.1 RG Facilities and the City agree that Property Taxes in respect of the Victoria Centre Facility will be paid in accordance with the following principles.
- 42.2 Attached as Schedule "3" to this Operating Agreement is a plan of the Victoria Centre Facility that designates the "Public Purpose Area" and "Non-Public Purpose Area".

- 42.3 RG Facilities will pay all Property Taxes that are payable in respect of the Non-Public Purpose Area of the Victoria Centre Facility, as designated under section 42.2, at the taxation rates that are applicable to similar commercial facilities within the City from time to time.
- 42.4 Except as provided under section 42.5, in the event any part of the Public Purpose Area (excluding the Major Sport Tenant office area, weight room and dressing rooms) is determined to be assessable and taxable in the name of RG Facilities, the City will be responsible for obtaining any available exemptions from such tax, whether under the *Local Government Act* or under provincial legislation, or for paying the applicable tax. The City will not be responsible in any circumstances for the payment of property taxes levied in respect of the Major Sport Tenant office area, weight room and dressing rooms.
- 42.5 RG Facilities agrees that should it alter the use, or permit the alteration of the use, of any of the Public Purpose Area in a way that, under the terms of the Governing Legislation would render it subject to taxation as a Non Public Purpose Area, that RG Facilities will be responsible for any Property Tax assessed or payable as a result of that change in use.
- 42.6 In the event the Governing Legislation changes, or is interpreted by a competent authority, such that:
- (a) any part of the Public Purpose Area is assessable and taxable in the name of RG Facilities; or
 - (b) tax exemptions obtained in respect of the Public Purpose Area are no longer available; or
 - (c) the provincial or regional levels of government do not grant discretionary exemptions from provincial or regional Property Tax in respect of the Public Purpose Area, as requested by the City; and
 - (d) as a result of any of the foregoing RG Facilities is liable to taxation in respect of the Public Purpose Area,

then the City shall forthwith reimburse RG Facilities for the amount of all such taxes and should the City fail to do so, RG Facilities may deduct the same from amounts otherwise payable to the City under this Operating Agreement together with interest thereon at the Prime Rate plus 2%.

43.0 REFERRAL OF COMMERCIAL BUSINESS

- 43.1 Without limiting its discretion with respect to the management of its other facilities, the City will use reasonable efforts to refer commercial or revenue producing activities that could be accommodated in the Victoria Centre Facility to RG Facilities, for scheduling during non-Community Use Time.

44.0 OBSERVANCE OF REGULATIONS

- 44.1 Through the Term, RG Facilities shall comply at its own expense, with all applicable laws in respect of the management and operation of the Victoria Centre Facility, including without limitation, municipal, regional, provincial and federal legislative enactments concerning, without limitation, all Environmental Laws, police, fire and sanitary regulations, zoning and building bylaws, and any municipal, regional, provincial, federal or other governmental regulations that may apply to the equipment and maintenance of the Victoria Centre Facility, or to the operation of, occupation, and use of the Victoria Centre Facility or the Site. RG Facilities shall also comply with all such laws in respect of the making of any repairs, replacements, alterations, additions, changes, substitutions, or improvements of or to the Victoria Centre Facility, the Site, or any part thereof, provided that any such repairs, replacements, alterations, additions, changes, substitutions or improvements that are a Capital Repair as defined in this Operating Agreement shall be subject to the provisions of Part 15.0.
- 44.2 Without limiting the generality of the foregoing, at all times during the Term RG Facilities will, in respect of the Victoria Centre Facility:
- (a) be responsible for compliance with all applicable occupational health and safety regulations, whether under the *Workers' Compensation Act* or otherwise;
 - (b) obtain and maintain in good standing all requisite permits, licences and authorizations in respect of the operation of the Victoria Centre Facility;
 - (c) not introduce, spill, bury or release any Environmental Contaminant into the Site;
 - (d) at its sole cost and expense remove any Environmental Contaminant that is introduced, spilled, buried or released to the Site by RG Facilities.

45.0 EARLY TERMINATION BY RG FACILITIES

- 45.1 RG Facilities may at its option terminate this Operating Agreement effective the end of the First Ten Year Period or effective the end of the Second Ten Year Period.
- 45.2 In order to terminate this Operating Agreement effective the end of the First Ten Year Period, RG Facilities must give written notice to the City at least twelve months before the end of the First Ten Year Period.
- 45.3 In order to terminate this Operating Agreement effective the end of the Second Ten Year Period, RG Facilities must give written notice to the City at least twelve months before the end of the Second Ten Year Period.

46.0 EARLY TERMINATION BY CITY**46.1 Bankruptcy or Insolvency of RG Facilities**

If:

- (a) there is filed by or against RG Facilities in any court a petition in bankruptcy or insolvency or for reorganization of RG Facilities or for appointment of a liquidator of RG Facilities' property;
- (b) RG Facilities makes an assignment or petitions for or enters into an arrangement for the benefit of creditors;
- (c) RG Facilities becomes a party to proceedings under which it seeks protection from its creditors, whether under the *Companies Creditors Arrangement Act* or any similar law of Canada or any province of Canada;
- (d) being an incorporated company, proceedings are begun to wind up or dissolve RG Facilities.

and such occurrence is not remedied within a period of 60 days after the City gives RG Facilities notice of same, this Operating Agreement shall, at the option of the City, be terminated.

46.2 Notwithstanding section 46.1, the City, acting reasonably as a prudent owner, may extend the time period for the remedying of an occurrence identified under section 46.1, provided that:

- (a) RG Facilities has begun remedying the occurrence within ten (10) days of receipt of the City's notice;
- (b) the occurrence cannot reasonably be remedied within sixty (60) days;
- (c) RG Facilities provides the City with a schedule, reasonably acceptable to the City, for remedying the occurrence as quickly as is practicable;
- (d) RG Facilities remedies the occurrence in accordance with the schedule accepted by the City under this section; and
- (e) the City is satisfied that an extension of time will not prejudice the rights or interests of the City.

46.3 Breach of this Operating Agreement – Default of Payment

- (a) In the event that RG Facilities is in default of a payment that is due to the City under the terms of this Operating Agreement, the City may by written notice require that RG Facilities rectify that default within 10 business days. If RG Facilities wishes to dispute the amount of the payment that is due, it must within 10 business days of receipt of notice of default pay the amount demanded under the City's notice and by written notice to the City require that the dispute be referred to an arbitrator. The arbitrator will have the authority to decide whether RG Facilities is in default of a payment that

is due, whether the amount of the payment demanded by the City is subject to any set-off in respect of the City's obligations under this Operating Agreement, or to require repayment by the City to RG Facilities in respect of that set-off amount.

- (b) If within 10 business days of receiving the notice provided under section 46.3(a) RG Facilities has failed to remedy the default and has not given notice within the time limit requiring the appointment of an arbitrator then the City will be at liberty to terminate this Operating Agreement on twelve months written notice to RG Facilities.
- (c) Any amounts required to be repaid by the City under section 46.3(a) to RG Facilities will bear interest at a rate equal to the Royal Bank of Canada prime rate plus 2% until paid.

46.4 Breach of this Operating Agreement – Maintenance Standards and Terms other than Marketing and Promotional Standard

- (a) If RG Facilities does not maintain the Victoria Centre Facility in accordance with section 9.1, or is in breach of any other term of this Operating Agreement, other than the Marketing and Promotional Standard or a requirement for payment, the City may by written notice require that RG Facilities remedy the breach within 60 days.
- (b) If within 60 days of receiving the notice provided under section 46.4(a) RG Facilities has failed to remedy its breach of this Operating Agreement, and has not given a dispute notice under section 46.4(c) within the time limit prescribed in that section 46.4(c), then the City will be at liberty to terminate this Operating Agreement on 12 months written notice to RG Facilities.
- (c) If RG Facilities wishes to dispute the notice received under section 46.4(a) (either as to whether or not a default has occurred or whether or not the cure period is appropriate), it must within 10 business days of receipt of the notice, by written notice to the City (the "Dispute Notice"), require that the dispute be referred to an arbitrator. If the parties have not resolved the matter within 10 business days of the Dispute Notice then the matter shall be referred to binding arbitration. The arbitrator shall determine:
 - i) whether or not RG Facilities has failed to comply with the provisions of this Operating Agreement;
 - ii) If so, the appropriate reasonable cure period within which RG Facilities must cure the breach or default;
 - iii) the entitlement to costs of the arbitration proceedings of the City or RG Facilities with the general rule being if the City's notice is upheld then the costs will be paid by RG Facilities and if the Dispute Notice is upheld then the costs will be paid by the City; and
 - iv) such other orders or directions as this Operating Agreement may provide for.

46.5 Breach of this Operating Agreement – Marketing and Promotional Standard

- (a) If, in any year following year 6 of this Operating Agreement, the Ticket Surcharge Revenue received by the City falls below two-thirds (2/3rds) of the Four Year Average (as adjusted for CPI, as provided for in Section 18.1(b) (a "Shortfall"), then the City may give to RG Facilities a notice thereof (a "Shortfall Notice") and require that the Shortfall be cured within 12 months;
- (b) Upon receipt of the Shortfall Notice, RG Facilities shall have 20 business days within which to give a notice to the City (the "Special Circumstances Notice") stating that the reasons for the Shortfall were special circumstances beyond the control of RG Facilities (the "Special Circumstances");
- (c) If a Special Circumstances Notice is given, then either the City will accept the position of RG Facilities in which case no "Confirmed Shortfall" will be deemed to have occurred or, if the City does not accept the position of RG Facilities, then the matter shall be referred to binding arbitration;
- (d) If the arbitrator determines that there were Special Circumstances, then there will be no "Confirmed Shortfall";
- (e) If the arbitrator determines that there were no Special Circumstances, then a "Confirmed Shortfall" shall be deemed to have occurred and the City is entitled to provide notice to RG Facilities advising that if there is a Confirmed Shortfall for the year immediately following the year of the Confirmed Shortfall (the "Second Confirmed Shortfall"), then RG Facilities will be in default under this Operating Agreement;
- (f) If, following a Confirmed Shortfall, the Ticket Revenue Share received by the City for the year immediately following the year of the Confirmed Shortfall (the "Second Shortfall") period does not increase to at least two-thirds (2/3rds) of the Four Year Average (adjusted for C.P.I. as required) then the City may give a Shortfall Notice to RG Facilities;
- (g) If RG Facilities believes that the reason for the Shortfall was Special Circumstances, then it shall provide a Special Circumstances Notice to the City;
- (h) If the City does not accept the Special Circumstances Notice then the matter shall be referred to binding arbitration;
- (i) If the arbitrator determines that there were Special Circumstances in respect of the Second Shortfall, then there will be no Confirmed Shortfall.
- (j) If the arbitrator determines that there were no Special Circumstances, then a Second Confirmed Shortfall shall be deemed to have occurred and in as much as this is the second consecutive Confirmed Shortfall, the City may, for a period of 30 days after the arbitrator's decision, terminate this Operating Agreement on 6 months notice to RG Facilities.

46.6 Unless in conflict with the provisions of this Part, the provisions of section 48.3 will apply to the arbitration of a dispute under this Part.

46.7 If this Operating Agreement is terminated effective during the First Ten Year Period, the City will reimburse RG Facilities for funds paid by RG Facilities in respect of the unexpired portion of the First Ten Year Period of this Operating Agreement, at the rate of \$200,000 per year for each unexpired year or any portion of a year pro-rated on a daily basis together with interest thereon at the Royal Bank prime rate plus 2% calculated thereon from the Commencement Date to the date of payment to RG Facilities, provided that the City may withhold an amount from that payment as a set-off for any costs, damages or expenses for which RG Facilities may be liable under this Operating Agreement.

47.0 **END OF TERM**

47.1 At the conclusion of the Term, or upon early termination in accordance with the provisions of this Operating Agreement, RG Facilities shall at its sole cost:

- (a) provide the report of an engineer as to the condition of the Victoria Centre Facility, with a schedule of any Capital Repairs that may be required, as well as any other maintenance or repair work that the engineer may recommend;
- (b) as reasonably required by the City, following the receipt of the engineer's report required under section 47.1(a), undertake any Repair or Maintenance that is required to restore the Victoria Centre Facility to the condition in which it was required to be maintained under section 9.8;
- (c) surrender to the City the Non-Public Purpose Area of the Victoria Centre Facility to the City, subject to any third party rights that have been granted with the consent of the City, and surrender its use and occupancy of the Public Purpose Area of the Victoria Centre Facility, all in the condition in which they were required to be kept by RG Facilities under the provisions of this Operating Agreement;
- (d) cooperate fully with the City in the transfer of its obligations with respect to the operation and maintenance of the Victoria Centre Facility to the City or to such other party as the City may designate;
- (e) provide the City with all operating and maintenance records in respect of the Victoria Centre Facility; and
- (f) at the request of the City or RG Facilities the parties will execute and deliver a mutual release and provide quit claim in such form as may be agreed between them acting reasonably.

47.2 RG Facilities shall ensure that any subleases, licences and agreements into which it enters with respect to the operation or maintenance of the Victoria Centre Facility, or with respect to any of the matters enumerated in section 17.2, shall expire or be cancellable at the conclusion of the Term, except to the extent

approved in writing by the City, or upon early termination of the Operating Agreement, without cost or penalty to the City, unless otherwise approved in writing by the City.

48.0 DISPUTE RESOLUTION

- 48.1 During the Term, the City and RG Facilities will each appoint a person as that party's representative for the purpose of coordinating all matters and obligations of the parties as required by this Operating Agreement. The City and RG Facilities will each advise the other party in writing of the name, telephone number and fax number of its representative and each party may change its representative from time to time by notice in writing to the other party.
- 48.2 Other than a dispute under Part 46.0 to which the dispute resolution provisions of that Part will apply, if any dispute arises between the City and RG Facilities with respect to this Operating Agreement, then, within 7 days of written notice from one party to the other, or such time as agreed to by both parties, the representatives of the parties will participate in good faith discussions in order to resolve and settle the dispute. In the event that such representatives are unable to resolve the dispute within 14 days of the first written notice, or such other time period agreed to by both parties, each party will appoint a senior representative that has not been previously involved in the manner in dispute, to attempt to resolve the dispute. If the senior representatives of the parties are unable to resolve the dispute within 14 days of their appointment, they will agree upon the selection of a qualified independent mediation practitioner versed in the resolution of commercial disputes in order to assist the parties in the resolution of the disputes within the 45 day time frame set out in section 48.3. Each party will bear their own costs of the formal mediation process.
- 48.3 If the matter is not settled through the process in section 48.2 within 45 days of the notice of the dispute being given, then unless the parties mutually agree to extend the 45 day period, the matter will be referred to a single arbitrator, pursuant to the *Commercial Arbitration Act* of British Columbia. The single arbitrator will be selected by agreement of the parties or failing agreement of the parties a person shall be selected as follows:
- (a) Within 14 days of written notice from one party to the other of the intention to arbitrate, each party shall appoint an arms-length representative ("Appointment Agents") who will, pursuant to this Agreement be given the authority to meet and agree upon the selection and appointment of a single arbitrator.
 - (b) If within the 14 days, either party fails or refuses to appoint its Appointment Agent, or if the Appointment Agents fail to appoint a single arbitrator within 10 days thereafter, then a single arbitrator will be appointed pursuant to the provisions of the *Commercial Arbitration Act* of British Columbia.

- 48.4 A single arbitrator will be an experienced professional versed in the matters in dispute. The costs of the arbitration will be awarded by the arbitrator in accordance with the provisions of the *Commercial Arbitration Act*.
- 48.5 The arbitrator hearing a dispute under this Part shall:
- (a) determine whether or not a party has fulfilled its obligations, agreements or terms or has breached a warranty under the Operating Agreement;
 - (b) make such order as is necessary, including an order for the payment of damages or for the adjustment of the amount of any payment required to be made under the Operating Agreement, so as to place the party for whose benefit the warranty was given or who has not failed to fulfill an obligation, agreement or term under the Operating Agreement, to the extent possible, in the position that such party would have been in had the other party not breached its warranty or failed to fulfill its obligations, agreements or terms under the Operating Agreement.

49.0 **ASSIGNMENT**

- 49.1 RG Facilities will not assign its interest in the Operating Agreement or any part thereof without the advance written consent of the City, such consent not to be unreasonably withheld or delayed.
- 49.2 For the purpose of this Part, an agreement for the transfer, assignment or sale of shares in RG Facilities that results, or may through the exercise of an option or the exercise of rights under a security agreement, result in a change in the Controlling Ownership of RG Facilities shall be deemed to be an assignment of this Operating Agreement.
- 49.3 Without limiting the other circumstances in which it may be reasonable for the City to withhold its consent to an assignment, it shall be reasonable for the City to withhold its consent in the following circumstances:
- (a) where in the City's reasonable judgment, the proposed assignee does not have the financial capability and experience to operate the Victoria Centre Facility or is not creditworthy;
 - (b) where in the City's reasonable judgment, the proposed assignee does not enjoy a good reputation as a manager or operator of similar community, recreational and entertainment facilities;
 - (c) where the City is in litigation with the proposed assignee;
 - (d) where in the City's reasonable judgment, the proposed assignment does not contain adequate financial and performance guarantees;
 - (e) where the City does not receive sufficient information from RG Facilities about the proposed assignee to enable it to make a determination concerning the matters herein set out.

49.4 The City shall not be liable to RG Facilities for any loss, costs, damages or expenses where, in giving good faith consideration to any request of RG Facilities under this provision, it withholds its consent to a proposed assignment of this Operating Agreement.

49.5 The City will not assign its interest under this Operating Agreement without the consent of RG Facilities, not to be unreasonably withheld, provided that the City may assign this Operating Agreement to a board or commission that is established by the City, either on its own or jointly with another local government, to undertake the service of providing an arena facility, and may do so without the consent of RG Facilities.

50.0 **CONDITION PRECEDENT**

50.1 It is a condition precedent to the exercise by RG Facilities of any rights under this Operating Agreement that RG Construction first fulfil its obligations under the Design Build Contract to the point of Substantial Performance of the Victoria Centre Facility, as certified by the Quantity Surveyor. In the event that RG Construction does not fulfil its obligations under the Design-Build Contract as aforesaid, this Operating Agreement shall be terminated without reimbursement or compensation to RG Facilities.

51.0 **FORCE MAJEURE**

51.1 If at any time either party hereto is unable to fulfil an obligation under this Operating agreement due to an event of Force Majeure, that party shall be relieved from its obligation (excluding the obligations of RG Facilities to make payments to the City under Parts 14.0, 30.0 and 42.0) for the duration of such event of Force Majeure, provided that the party claiming the benefit of this section shall within twenty-four (24) hours of the occurrence of the event that party claims is an event of Force Majeure provide to the party a notice in writing specifying:

- (a) the event that party claims is an event of Force Majeure;.
- (b) the circumstances which that party claims prevents it from performance of its obligations under the Operating Agreement.

51.2 The provisions of section 51.1 shall not relieve a party of its obligation to continue to take all reasonable steps within that party's control to fulfil its obligations under this Operating Agreement, or to resume the carrying out of its obligations hereunder at the earliest opportunity, or to mitigate the extent of the loss or damage it may suffer or incur as a result of the event of Force Majeure.

52.0 REPRESENTATIONS AND WARRANTIES

52.1 RG Facilities represents and warrants to the City, with the intent that the City shall rely on such representations and warranties in entering into this Operating Agreement, that as of the date of this Operating Agreement, RG Facilities is a corporation duly incorporated and existing under the laws of British Columbia, has the power and authority to enter into this Operating Agreement and to carry out the transactions contemplated by this Operating Agreement, all of which have been duly and validly authorized by all requisite proceedings, and that this Operating Agreement constitutes a legal, valid and binding obligation of RG Facilities in accordance with its terms.

53.0 GENERAL PROVISIONS

53.1 Notice

It is hereby mutually agreed that any notice required to be given under this agreement will be deemed to be sufficiently given if:

- (a) delivered at the time of delivery; and
- (b) mailed from any government post office in the province of British Columbia by prepaid registered mail addressed as follows:

if to the City:

City Hall
#1 Centennial Square
Victoria, B.C. V8W 1S6
Attention: Corporate Administrator

if to RG Facilities:

#2088 - 1177 West Hastings Street,
Vancouver, B.C. V6E 2K3
Attention: Graham Lee

Unless otherwise specified herein, any notice required to be given under this Operating Agreement by any party will be deemed to have been given if mailed by prepaid registered mail, or sent by facsimile transmission, or delivered to the address of the other party set forth on the first page of this Operating Agreement or at such other address as the other party may from time to time direct in writing, and any such notice will be deemed to have been received if mailed or faxed, 72 hours after the time of mailing or faxing and, if delivered, upon the date of delivery. If normal mail service or facsimile service is interrupted by strike, slow down, Force Majeure or other cause, then a notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the notice must utilize any other such services which have not been so interrupted or must deliver such notice in order to ensure prompt receipt thereof.

53.2 Time

Time is to be the essence of this Operating Agreement.

53.3 Binding Effect

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees.

53.4 Waiver

The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Operating Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

53.5 Headings

The headings in this Operating Agreement are inserted for convenience and reference only and in no way define, limit or enlarge the scope or meaning of this Operating Agreement or any provision of it.

53.6 Language

Wherever the singular, masculine and neuter are used throughout this Operating Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.

53.7 Cumulative Remedies

No remedy under this Operating Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

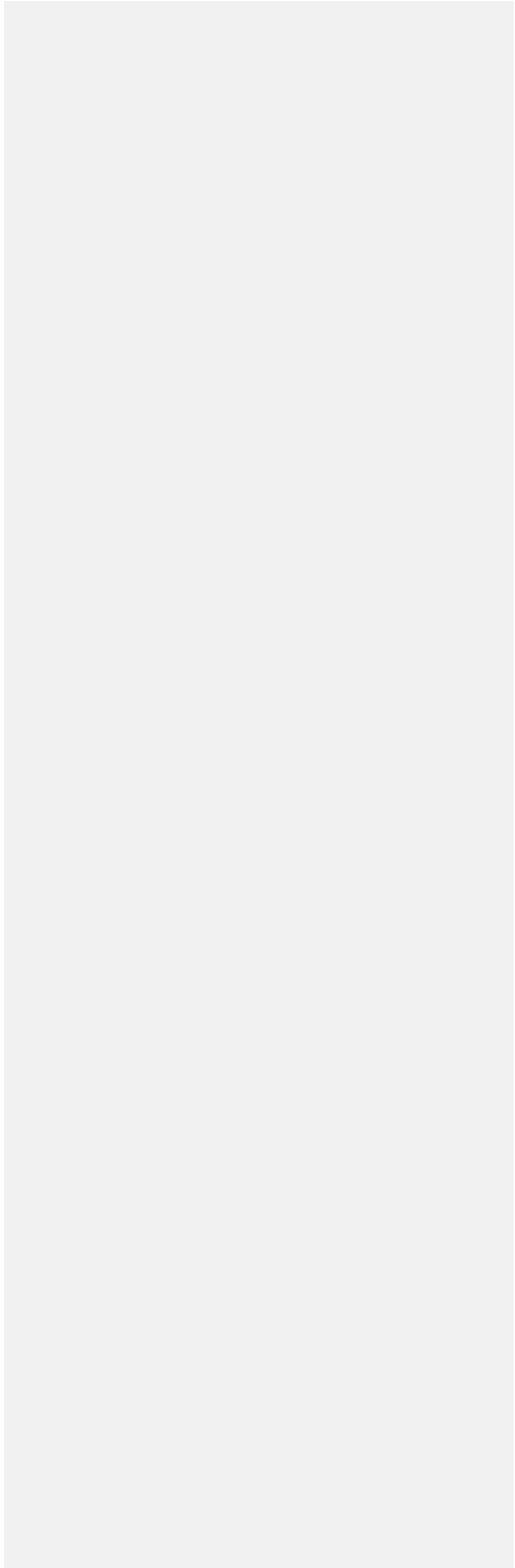
53.8 Law Applicable

This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

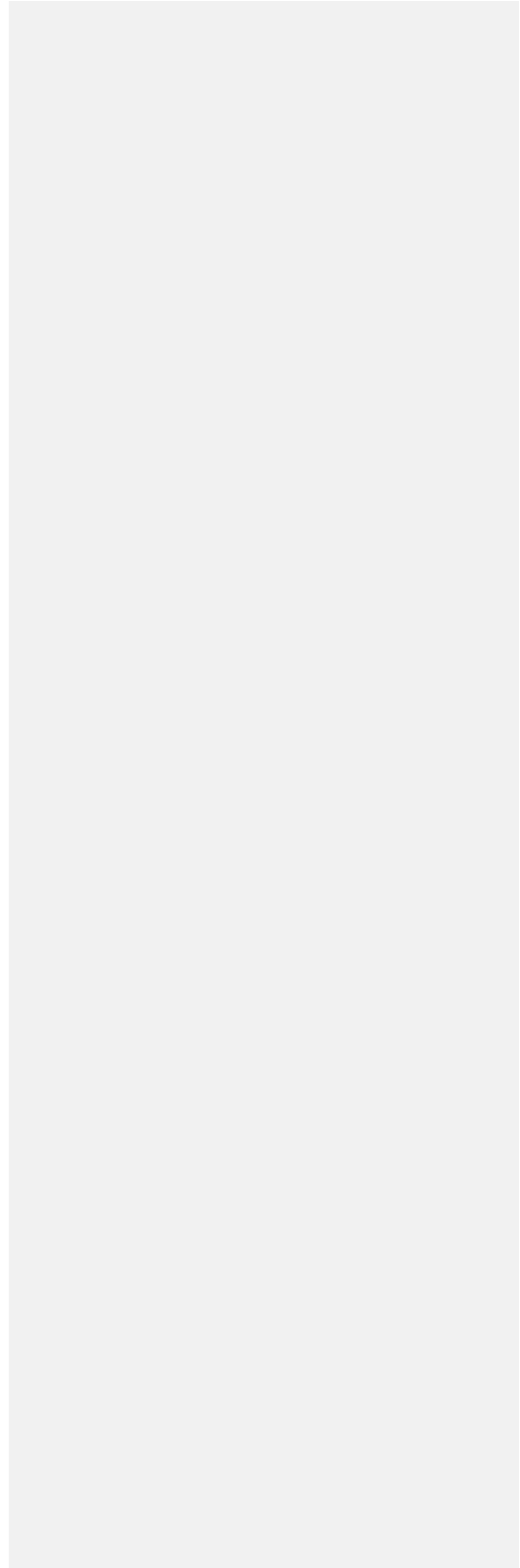
IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the day and year first above written.

THE CORPORATION OF THE CITY OF VICTORIA by its authorized signatories:)
)
)
)
)
_____)
MAYOR)
)
)
_____)
CORPORATE ADMINISTRATOR)

RG FACILITIES (VICTORIA) LTD. by its)
authorized signatory:)
)
)
)
_____)
GRAHAM LEE)

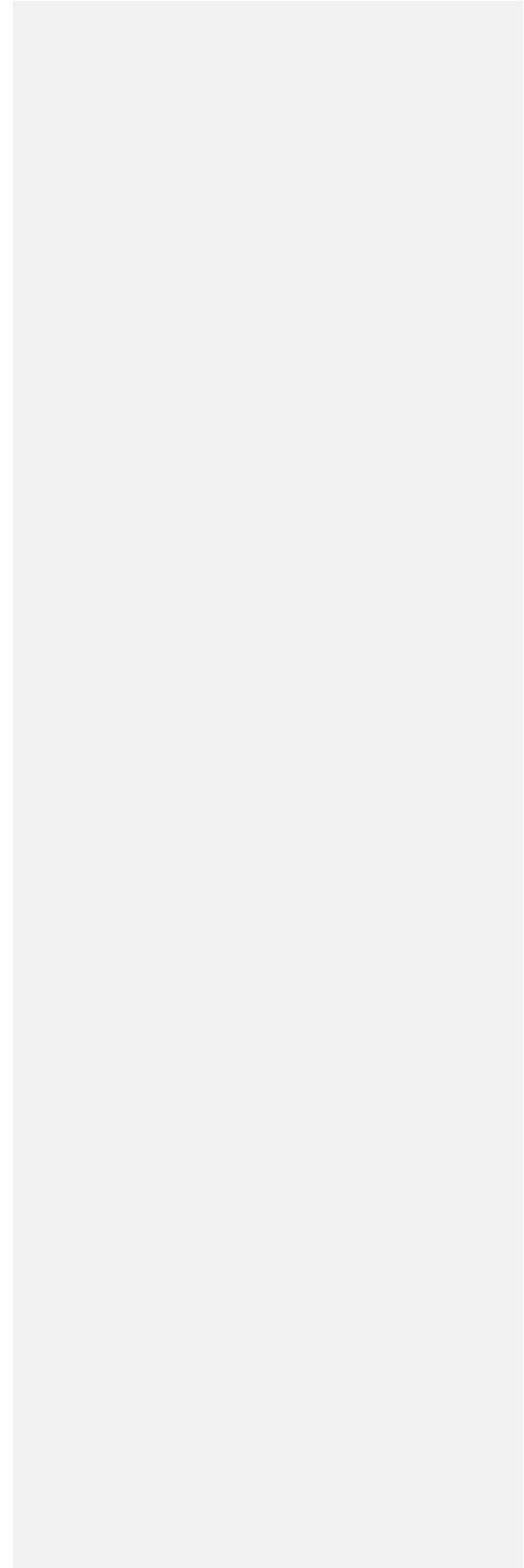


SCHEDULE 1
CITY LANDS



SCHEDULE 2

VICTORIA CENTRE FACILITY AND SITE



SCHEDULE 3

PUBLIC PURPOSE AND NON-PUBLIC PURPOSE AREAS

