CITY OF HAMILTON

MOTION

Council Date: June 13, 2007

MOVED BY COUNCILLOR ........................................

SECONDED BY ........................................................

(a) That the City of Hamilton advise Golden Horseshoe Sports & Entertainment Inc ("Golden Horseshoe") that it is prepared to enter into an Option Agreement with Golden Horseshoe in the form attached hereto as Schedule "A"; and

(b) That the Mayor and City Clerk be authorized to execute the Option Agreement once advised by the City Solicitor that it has been accepted and executed by Golden Horseshoe; and

(c) That the City of Hamilton is of the opinion that the Management Agreement attached as Appendix "A" to the Option Agreement contains technical, commercial, financial or labour relations information, supplied to the City in confidence, the disclosure of which could reasonably be expected to prejudice significantly the competitive position of the City and/or Golden Horseshoe, or to interfere significantly with the contractual or other negotiations of the City and/or Golden Horseshoe; and

(d) That the Management Agreement attached as Appendix "A" to the Option agreement be kept confidential until the earlier of:

1. The expiry of the Option Agreement; or
2. The termination of the Option Agreement; or
3. The execution of the Management Agreement by the City and Golden Horseshoe.
HECFI FACILITIES OPTION AGREEMENT

THIS AGREEMENT made this 13th day of June, 2007

BETWEEN:

CITY OF HAMILTON

(hereinafter called the "City")

OF THE FIRST PART

- and -

GOLDEN HORSESHOE SPORTS & ENTERTAINMENT INC.

A corporation incorporated under the
Business Corporations Act, R.S.O. 1990, Chapter B.16, as amended

(hereinafter called "Golden Horseshoe")

OF THE SECOND PART

WHEREAS the City is the owner of the Victor K. Copps Trade Centre-Arena (the "Arena"), the Hamilton Convention Centre, Hamilton Place Theatre and the Hamilton Convention Centre Parking Garage
(hereinafter called the "HECFI Facilities") located in the City of Hamilton, Ontario;

AND WHEREAS Golden Horseshoe has requested from the City an Option to operate and manage the HECFI Facilities to enable it to use, manage, operate and promote the said HECFI Facilities on its sole account as is more particularly described in this Agreement;

AND WHEREAS the City has agreed to grant such an Option on the terms and conditions set out in the draft "Operating and Management Agreement" which has been provided to the City and initialed for identification and hereinafter referred to as the "Management Agreement";

AND WHEREAS the Council of the City, at its meeting held on the 30th day of May, 2007, authorized the City to enter into, and did enter into an Option Agreement dated May 30, 2007 which agreement is to be replaced by this agreement.

NOW THEREFORE in consideration of the payments, covenants, terms, conditions and provisos contained in this Agreement, the parties agree as follows:
1. **GRANT OF OPTION**

The City hereby grants Golden Horseshoe an Option to operate and manage the HECFI Facilities on the terms and conditions set out in this Option Agreement and in the Management Agreement attached hereto as Appendix “A”. Golden Horseshoe hereby agrees to operate and manage the HECFI Facilities on such terms and conditions upon exercise of the Option.

2. **NATIONAL HOCKEY LEAGUE TEAM**

Golden Horseshoe or its nominee intends to acquire a National Hockey League ("NHL") Team. Upon the occurrence of certain events, Golden Horseshoe may submit an application to the NHL seeking the NHL’s consent to relocate the Team to Hamilton and to use the Arena for the playing of all of the Team’s home games.

If Golden Horseshoe or its nominee is successful in acquiring a Team and also obtains the NHL’s consent to relocate the Team to the City of Hamilton, Golden Horseshoe desires to enter into the Management Agreement with the City of Hamilton to enable it to use, manage, operate and promote the HECFI Facilities for its sole account.

3. **DISCLOSURE**

Since various terms of the Management Agreement remain to be negotiated and/or finalized, City or its representatives shall not make any announcement or other disclosure to any third party of the contents of the Management Agreement or the transactions contemplated thereunder, either during the term of this Agreement or upon it’s termination under any circumstances, without the prior written consent of Golden Horseshoe, except to professional advisors on a need-to-know basis and as legal or regulatory obligations require. City will advise Golden Horseshoe prior to the release of approved information and will strongly adhere to the “Freedom of Information” legislation.

4. **EXPIRY OF THIS AGREEMENT**

This Agreement expires on the following dates:

(a) December 30, 2007 if Golden Horseshoe or it’s nominee has not, by the close of business on that date, acquired a Team;

(b) June 30, 2010 if, by December 30, 2007 Golden Horseshoe or its nominee has acquired a Team; and
(c) at the sole option of the City, upon thirty (30) days written notice, if Golden Horseshoe, or its nominee, has entered into negotiations for the use, lease or licence of another facility for the playing of an NHL Team’s home games, or has entered into an option agreement for the use, lease, or licence of another facility for the playing of an NHL Team’s home games.

5. **NOTICE OF INTENTION TO EXERCISE OPTION TO LEASE**

At any time, prior to the expiry of this Agreement pursuant to paragraph 4, but only after Golden Horseshoe or its nominee has acquired a Team, Golden Horseshoe may serve notice upon the City that it wishes to exercise its Option and enter into the Management Agreement.

Upon service of the notice, the City shall enter into the Management Agreement with Golden Horseshoe.

6. **DUE DILIGENCE**

Despite the requirements of paragraph 5, prior to entering into the Management Agreement with Golden Horseshoe, the City shall have the right to make all inquiries regarding the financial capacity of Golden Horseshoe and its principals, and all other such due diligence inquiries, as the City in its sole unfettered discretion shall deem prudent and advisable.

For the purposes of enabling the City to complete its due diligence, Golden Horseshoe and its principals or nominees agrees to make available to the City its books, financial records, corporate minute book and any other information requested by the City, and the information contained therein shall remain confidential, subject to any statutory requirements or orders which may be imposed upon the City.

If the City is not satisfied following the making of its inquiries, it shall have the right to decline to enter into the Management Agreement.

For greater certainty, the City may decline to enter into the Management Agreement if James L. (Jim) Balsillie does not then control both the Team and Golden Horseshoe.

Without limiting the generality of the foregoing, the City may decline to enter into the Management Agreement unless, prior to its execution, the City has been satisfied by Golden Horseshoe that Golden Horseshoe's renovation/retrofit plans for the Arena are substantive in nature and that the timing of the renovation/retrofit work and other aspects of the renovation/retrofit plans are sufficient in the City's opinion to guarantee the performance of the renovation/retrofit plans, the City is entitled to exercise its sole and unfettered discretion in regard to deciding whether renovation/retrofit plans are satisfactory to it.
The City shall not be liable to Golden Horseshoe for any damages whatsoever arising out of its exercise of its rights under this paragraph.

7. **PRIVATE MEMBER’S BILL**

Following notification by Golden Horseshoe that it wishes to exercise its Option and enter into a Management Agreement the City shall seek passage of a Private Member’s Bill by the Ontario Legislature, with application to the Hamilton Place Theatre, the Hamilton Convention Centre, the Victor K. Copps Trade Centre-Arena and the Convention Centre parking garage ("the Facilities"), which shall:

(a) Exempt the City of Hamilton from the application of Section 106 of the Municipal Act, 2001, as amended, in respect of the operation of "the Facilities", or any of them individually, by a private commercial operator;

(b) Permit the City of Hamilton to exempt a private commercial operator of "the Facilities", or any of them individually, from the payment of realty taxes (both municipal and education);

(c) Permit the City of Hamilton to exempt a private commercial operator of "the Facilities", or any of them individually, from the payment of municipal fees and charges, including development charges and building permit fees, but excluding water and sewer rates.

8. **TERMINATION OF HECFI’S RIGHT TO OPERATE HECFI FACILITIES**

Prior to entering into the Management Agreement with Golden Horseshoe, the City of Hamilton shall exercise its rights under 7(2) of the City of Hamilton Act, 1985 to divest The Hamilton Entertainment and Convention Facilities Inc. (hereinafter referred to as "HECFI") of its responsibilities for the management and operation of the HECFI Facilities.

9. **HECFI SEVERANCES**

Golden Horseshoe will indemnify, save harmless and defend the City and HECFI from any and all claims for severance of HECFI employees which are due solely to the divesting of the HECFI Facilities from HECFI pursuant to the terms of this Agreement.

Golden Horseshoe acknowledges that it may become subject to “successor rights” pursuant to the Labour Relations Act, 1995, S.O. 1995, as amended, in respect of persons employed by HECFI prior to the start date of the Management Agreement, and accepts that the liabilities, if any, which may flow from that are solely the obligation of Golden Horseshoe.
10. EXCLUSIVITY

In the event Golden Horseshoe or it's nominee acquires a Team on or before December 30, 2007, the City shall not, during the term of this Option, directly or indirectly through any agent, representative or otherwise, (i) solicit, initiate or encourage submission of proposals or offers from any third party, relating in any way to allowing an NHL team to play all or a substantial portion of it's regular season home games at the Arena; (ii) participate in any discussions or negotiations regarding, or otherwise cooperate in any way with, or assist or participate in, facilitate or encourage, any effort or attempt by any person to do or seek any other foregoing.

11. REGISTRATION

Golden Horseshoe will not register this Agreement against the title to the HECFI Facilities.

12. AUTHORITY NOT FETTERED

Nothing herein contained derogates or limits the authority of the City in its capacity as a municipality, from exercising its rights under municipal by-laws, the Municipal Act, 2001, the Planning Act, the Building Code Act, the City of Hamilton Act, 1983, or any other legislation.

13. BANKRUPTCY, INSOLVENCY ETC. OF GOLDEN HORSESHOE

Notwithstanding anything in this Agreement contained, if any of the goods, chattels or effects of Golden Horseshoe shall at any time during the term of the Agreement be seized or taken in execution of attachment or if a writ of execution shall be issued against the goods, chattels or effects of Golden Horseshoe, or if Golden Horseshoe shall make any assignment for the benefit of creditors, or if Golden Horseshoe shall be adjudged bankrupt, commit any act of bankruptcy or make any proposal under or take advantage of any of the provisions of any act or statutes whatsoever that may be in force regarding bankrupt or insolvent debtors or debtors who are not able to or do not pay their debts promptly and in full, or if a receiving order or winding up order shall be made against or in respect of Golden Horseshoe, or in case any winding up proceedings are taken by, against or in respect of Golden Horseshoe, or a receiver manager is appointed to control Golden Horseshoe's operations, the Agreement is terminated.

14. NO ASSIGNMENT, TRANSFER OR ENCUMBRANCE

Golden Horseshoe shall not assign, transfer or encumber, in any manner or part, this Agreement or any right or obligation hereunder without the prior written consent of the City. Such consent may be arbitrarily or unreasonably withheld by the City notwithstanding any statutory provision to the contrary. Any attempt to assign, transfer or encumber any of the rights, duties or obligations of this Agreement
without such consent of the City is void. Golden Horseshoe shall not undergo a change in effective voting
control, without the prior written consent of the City which may be unreasonably or arbitrarily withheld
notwithstanding any statutory provision to the contrary.

15. NOTICES

All notices, or any other thing to be given or delivered pursuant to this Agreement, unless otherwise
specified, shall be given in writing and delivered personally, transmitted by facsimile or by prepaid
registered mail, and addressed to the City at:

City of Hamilton,
City Hall,
71 Main Street West,
P.O. Box 2040,
Hamilton, Ontario L8N 3T4

Attention: City Clerk

And to Golden Horseshoe at:

c/o Gardiner Roberts LLP
40 King Street West
Suite 3100
Toronto, Ontario M5H 3Y2

Or such other address as City or Golden Horseshoe may, from time to time, advise each other by notice in
writing. All notices delivered by facsimile shall be deemed received upon mechanical confirmation of
transmittal. All notices mailed hereunder shall be deemed to have been given and received by the
addressee seventy-two (72) hours following mailing. In the event of actual or threatened postal
interruption, all notices shall be delivered personally or by facsimile.

16. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties hereto with respect to the subject
matters hereof. It is agreed that there is no verbal or written statements, representations, warranties,
covenants, collateral agreements or conditions affecting this Agreement, except as expressed in it. No
amendment, modification or supplement to this Agreement shall be valid or binding unless set out in
writing and executed by the parties hereto;

17. RESCISSION OF MAY 30TH OPTION AGREEMENT

The Option Agreement dated May 30th, 2007 between the City and Golden Horseshoe is hereby rescinded
and is of no future force or effect.
IN WITNESS WHEREOF the parties hereto have duly executed this Agreement their officers duly authorized in that behalf and caused to be affixed their corporate seal.

CITY OF HAMILTON

Mayor:

City Clerk -

June 13, 2007       Date

GOLDEN HORSESHOE SPORTS & ENTERTAINMENT INC.

Name:
Title:

June 13, 2007       Date