CITY OF HAMILTON
MOTION

Council Date: May 30, 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”.

(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.

(c) That the City of Hamilton advise Golden Horseshoe that, provided that the Option Agreement is accepted and executed by Golden Horseshoe, the City is prepared to enter into negotiations with Golden Horseshoe with regard to its request for amendments to the Option Agreement, including Golden Horseshoe’s proposal to expand its Option to include the management and operation of other City owned facilities.

(d) That a Steering Committee be appointed to oversee the negotiations, consisting of:

Mayor Eisenberger
Councillor Whitehead
Councillor Jackson
Councillor ___________

(e) That the Steering Committee report back to Council at its meeting of June 13, 2007 with respect to the negotiations, together with any recommendations for consideration by Council regarding changes to the Option Agreement that it may have, either in the form of amendments to the Option Agreement, or in the form of a fresh Option Agreement.
OPTION AGREEMENT

THIS AGREEMENT made this 30th day of May, 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") located in the City of Hamilton, Ontario;

AND WHEREAS Golden Horseshoe has requested from the City an Option to operate and manage the Arena to enable it to, on an exclusive basis, use, manage, operate and promote the said Arena 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 herein, and in the "Material Terms and Conditions of a Lease of Copps Coliseum" attached hereto as Appendix "A";

AND WHEREAS the Council of the City, at its meeting held on the 30th day of May, 2007, authorized the City to enter into 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 enter into a lease to operate and manage the Arena on the terms and conditions set out in the Appendix “A”. Golden Horseshoe hereby agrees to operate and manage the Arena 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 a lease with the City of Hamilton to enable it to use, manage, operate and promote the Arena for its sole account.

3. **EXPIRY OF THIS AGREEMENT**

This Agreement expires:

(a) September 30, 2009 if Golden Horseshoe or its nominee has not, by the close of business on that date, acquired a Team;

(b) June 30, 2011 if, by September 30, 2009 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.

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

At any time, prior to the expiry of this Agreement pursuant to paragraph 3, 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 a lease on the terms and conditions set out in Appendix “A”.

Upon service of the notice, subject to its rights under this Agreement and under the terms and conditions set out in Appendix “A”, the City shall enter into a lease with Golden Horseshoe.

5. DUE DILIGENCE

Despite the requirements of paragraph 4, prior to entering into a lease with Golden Horseshoe, the City shall have the right to make all necessary and prudent inquiries regarding the financial capacity of Golden Horseshoe and its principals, Golden Horseshoe’s nominee, if applicable, and its principals, and all other such due diligence inquiries that are reasonably prudent for the City to make.

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

6. PRIVATE MEMBER’S BILL

Following notification by Golden Horseshoe that it wishes to exercise its Option and enter into a lease 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.

Despite the requirements of Paragraph 4, no lease shall be entered into between the City and Golden Horseshoe, unless and until the Private Member’s Bill has received Royal Assent.

7. TERMINATION OF HECFI’S RIGHT TO OPERATE ARENA

Prior to entering into the lease 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 Arena.
8. 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 Arena from HECFI pursuant to the terms of this Agreement and the lease.

9. EXCLUSIVITY

During the term of this Agreement, the City shall not 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.

10. REGISTRATION

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

11. 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, 1985, or any other legislation.

12. 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.

13. 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.

14. 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.
15. FINAL FORM AND CONTENT OF LEASE

The final form and content of the lease contemplated by this Agreement shall be subject to the approval of Hamilton City Council.

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.

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 -

May 30, 2007 Date
APPENDIX "A"

MATERIAL TERMS AND CONDITIONS
OF A LEASE OF COPPS COLISEUM

1. TERM

The term of the Lease shall be for five years. GOLDEN HORSESHOE shall have a right of renewal for a further two terms of five year each, on the same terms and conditions subject to the rent adjustment in accordance with Section 2 herein.

2. RENT

GOLDEN HORSESHOE shall pay to the City of Hamilton rent of $2,000,000.00 per annum in equal monthly installments, paid in advance.

On each anniversary date of the Lease the rent shall be adjusted upwards or downwards by the same percentage as the year over year change in the Consumer Price Index -All Items, for Ontario, as published by Statistics Canada. All such increases shall be cumulative.

3. TAXES AND FEES

Pursuant to Private Legislation which the City shall have obtained, GOLDEN HORSESHOE will be exempted from the payment of any realty taxes or municipal fees (including development charges and building permit fees, but excluding water and sewer charges) which would otherwise arise out of its operation of Copps Coliseum or the terms of its Lease.

Such exemptions shall not apply to sub-tenants of GOLDEN HORSESHOE as they may exist from time to time, provided that such sub-tenants are at "arms length" from GOLDEN HORSESHOE.

Subject to the foregoing, the GOLDEN HORSESHOE shall pay all taxes applicable to their lease of the Premises.

4. LEASEHOLD IMPROVEMENTS

GOLDEN HORSESHOE may, at its sole expense, bring the facilities at Copps Coliseum up to the standards required by the National Hockey League for an arena in which an NHL Team plays its home games. This may include, but is not limited to, upgrades to concession facilities, increased arena seating, upgrades to scoreboards, upgrades to broadcast facilities, sound systems, lighting systems, and construction of press and corporate/luxury boxes or suites.

All such facilities shall be considered as Leasehold improvements.
Improvements or upgrades to existing facilities which are for the benefit of GOLDEN HORSESHOE and its operations, shall be carried out at GOLDEN HORSESHOE’s sole expense, and shall be considered to be Leasehold improvements. For greater certainty, once an element of the building has been upgraded or improved for the benefit of GOLDEN HORSESHOE and its operations, the entire element and not simply the upgraded portion, is thereafter to be treated as a Leasehold improvement.

All Leasehold improvements shall become the sole, unencumbered property of the City upon the termination of the Lease, regardless of the timing or cause of the termination, at no cost to the City.

All construction and Leasehold improvements shall be completed to standards set by the City.

GOLDEN HORSESHOE shall repair, maintain and renew the Leasehold improvements so as to maintain a standard to be established by the City prior to the Start Date of the Lease.

The City shall be entitled to unfettered access to the facility to monitor compliance with these conditions throughout the life of the Lease. Specifically, the City shall be entitled to perform, directly or through a contractor, an annual facility audit with respect to the physical condition of the facility and the Leasehold improvements.

5. OPERATING EXPENSES

Unless specifically exempted by other terms in the Lease, GOLDEN HORSESHOE shall be solely responsible for all operating expenses of Copps Coliseum.

6. UTILITIES

For the purposes of the Lease "utilities" refers only to electrical power and heat provided through the City's Central Utility Plant (CUP).

The City shall establish the baseline utility usage for Copps Coliseum based upon the usage in the one year prior to GOLDEN HORSESHOE assuming control of the facility.

The City shall provide to GOLDEN HORSESHOE utilities up to the baseline usage at no cost.

Where GOLDEN HORSESHOE exceeds the baseline usage, GOLDEN HORSESHOE shall pay the City for all utilities used over and above the baseline usage at market value.

The City shall have access to the facility for purpose of efficiency improvements providing said improvements do not negatively impact the
operations of the facility.

Where efficiency improvement are made, the City shall be entitled to any costs savings as result of such process or operational change except where the GOLDEN HORSESHOE has made a financial contribution to the efficiency improvement in which case utility costs saving will shared on the basis of efficiency investment by both parties.

GOLDEN HORSESHOE shall actively pursue improvements in the effectiveness and efficiency of the Facility (Copps Coliseum) and is encouraged to approach the City with recommendations for any efficiency improvement.

The City shall be entitled to all cost savings resulting through future energy contracts.

7. MAINTENANCE

Subject to the Capital Reserve Fund requirements set out below, during the life of the Lease the City shall be responsible to maintain, repair and renew the building elements in existence on the day before the Lease Start Date, in a condition as good as that which existed on the day before the Lease Start Date, at its sole expense.

For certainty, where elements of the building have been improved and become Leasehold improvements pursuant to Paragraph 4, the City shall no longer be responsible for the maintenance, repair or renewal of those elements.

8. CAPITAL RESERVE FUND (CRF)

The City shall establish a CRF and shall pay into it, up to $2,000,000.00 annually. The CRF shall be used to finance the City's obligations under Paragraph 7. The City shall be entitled, in its sole discretion, to defer any obligation under Paragraph 7 until such time as there are sufficient funds in the CRF to pay for the required maintenance, repair or renewal of a building element.

Funds in the CRF shall, at all times, remain City funds and their expenditure shall be controlled by the City.

Funds in the CRF may, in the City's discretion, be used to assist in the financing of Leasehold improvements or other upgrades to the facility.

If a balance of funds remains in the CRF upon the termination of the Lease, any such funds may be transferred by the City into such other reserve or account as the City deems fit.

9. UTILITIES AND CRF AGGREGATE

The City's total annual cost for the provision of utilities pursuant to Paragraph 6, and payments into the CRF pursuant to Paragraph 8, shall in no event exceed $2,000,000.00 per year. The City shall be entitled to reduce its contributions to
the CRF in any given year to ensure that this $2,000,000.00 aggregate is not exceeded.

10. PARKING

The City shall provide to GOLDEN HORSESHOE, 650 parking spaces at the Convention Centre garage for two hours before each event at Copps Coliseum until two hours after the end of the event, at no charge.
11. FACILITY NAMING RIGHTS

GOLDEN HORSESHOE shall have the right to alter the name of the facility in accordance with a sponsorship deal, provided that the name "Victor K. Copps" be, and remain, incorporated into the name of the facility.

12. REVENUE SOURCES

Except as specifically exempted by these terms and conditions, GOLDEN HORSESHOE shall have the right to retain 100% of all gross revenues generated by its operation of Copps Coliseum, including revenue from:

1. "Club" Seats
2. "Luxury" Suites
3. Personal Seat Licenses
4. Concessions
5. Sale of souvenirs and novelties
6. Advertising from signage including rink board, zamboni, scoreboard, and in ice advertising, in arena signage, outside marquee signage (All advertising, within or outside the arena, shall comply with City policies regarding advertising in City owned facilities as those policies may exist from time to time.)
7. Sponsorship
8. Sale of beer or alcohol
   Pouring rights
9. Virtual advertising such as computer animation
10. Restaurants
11. Family tours
12. Retail stores
13. Use of trademarks and/or designs (excepting trademarks or designs owned by the City of Hamilton or HECFI)

13. INSURANCE AND INDEMNITY

GOLDEN HORSESHOE shall agree to indemnify, save harmless and defend the City, its officers, and employees with respect to GOLDEN HORSESHOE’s operation of Copps Coliseum.

GOLDEN HORSESHOE shall provide and maintain insurance in form, content and amounts satisfactory to the City throughout the term of the Lease.

14. SECURITY

GOLDEN HORSESHOE shall post such security for the performance of its obligations under the Lease, in form and amount satisfactory to the City, as the City shall require. Such security will consist, at minimum of an irrevocable letter of credit in form satisfactory to the City, drawn upon a financial institution satisfactory to the City, in the amount of $5,000,000.00.
15. ASSUMED OBLIGATIONS

GOLDEN HORSESHOE shall assume all contractual obligations of HECFI which are related to the operation of Copps Coliseum, as they exist on the date of the execution of a Lease between GOLDEN HORSESHOE and the City of Hamilton.

16. MUNICIPAL EVENTS

The City shall be entitled to the use of Copps Coliseum for up to 12 full days per year for City sponsored community events.

Such usage shall be rent free. GOLDEN HORSESHOE shall be entitled to recover reasonable out of pocket event expenses related to the City's events.

17. APPLICABLE LAW

The law of the contract shall be the law of Ontario.

GOLDEN HORSESHOE shall comply with all applicable law, including regulations thereunder, applicable to Copps Coliseum or the GOLDEN HORSESHOE operations at Copps Coliseum.

18. LIENS, ENCUMBRANCES, MORTGAGES

GOLDEN HORSESHOE shall not permit any construction liens, security interests, mortgages or encumbrances of any sort to be registered against the facility, against Leasehold improvements, or against fixtures installed in the facility. In the event of such registration GOLDEN HORSESHOE will forthwith and at its own expense, take all steps necessary to remove the lien, security interest, mortgage or encumbrance.

19. LIMITATION ON EVENTS

GOLDEN HORSESHOE will not seek, promote or present any form of event for which the designated seating capacity is less than four thousand (4,000) patrons.

20. GENERAL TERMS AND CONDITIONS

In addition to the foregoing it is acknowledged that the final form of the Lease will contain clauses which a prudent commercial lessor would require, including but not limited to, clauses which address:

- Bankruptcy or insolvency of GOLDEN HORSESHOE
- Ownership
- Non-assignment
- "Key Man"
- Default
- Remedies
- Force Majeure
Alteration of Premises
Destruction of premises
Severability
Termination, expiration or lapse
Indemnification
Insurance