

FIRST AMENDMENT TO THE FACILITY LICENCE AGREEMENT

This First Amendment to the Facility Licence Agreement ("Amending Agreement") is entered into as of the 4th day of December, 2006 between THE CORPORATION OF THE CITY OF WINDSOR (the "Landlord"), and the WINDSOR SPITFIRES INC., a corporation incorporated under the laws of the Province of Ontario (the "Tenant").

RECITALS

- A. The Landlord and the Tenant are parties to a Facility Licence Agreement dated as of the 23rd day of October, 2006 (the "Licence Agreement") wherein, *inter alia*, the Landlord has agreed to demise and lease unto the Tenant and the Tenant has agreed to rent from the Landlord certain portions of the Facility (as such term is defined in the Licence Agreement) on the terms and conditions set out in the Licence Agreement;
- B. The parties hereto desire to amend the Licence Agreement for the purposes of clarifying certain provisions contained in the Licence Agreement as set out herein.

THIS AGREEMENT WITNESSETH that in consideration of the covenants, agreements, warranties and payments herein set out and provided for herein and such other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto hereby respectively covenant and agree as follows:

1. *Amendments.*

- 1.1 The Licence Agreement is hereby amended by deleting Section 1.1(o) thereof in its entirety and substituting the following therefore:

"Consumer Price Index" means the "all items" Consumer Price Index for Ontario published by Statistics Canada (base year 1992 = 100). In the event such Index is not available when it is to be determined that pursuant to this Agreement, but is reasonably anticipated that it will be published within a reasonable period of time thereafter, the adjustment shall be determined when such Index is available with effect retroactively. If such Consumer Price Index is not published by Statistics Canada in any year, the adjustment shall be made by reference to such alternative source or equivalent statistical information as shall be selected by the Team and the City, acting reasonably. If the base year for the Consumer Price Index (or substituted or replacement index) is changed by Statistics Canada (or by its successor as determined by the preceding sentence) the City and the Team will make the necessary conversion;"

- 1.2 The Licence Agreement is hereby amended by deleting the second paragraph of Section 6.1 thereof in its entirety and substituting the following therefore:

"The parties agree that the Rent may be subject to increase or decrease on the 5th, 10th, and 15th anniversary dates of this Agreement (each called a "Re-evaluation Date") and such increase or decrease will be solely based on the increase or decrease in the Consumer Price Index (as defined in Section 1.1 herein) from the Commencement Date or the applicable Re-evaluation Date, as the case may be, to the applicable Re-evaluation Date. For example, on the 10th anniversary date of this Agreement the Rent may only be increased based on a corresponding increase in the Consumer Price Index

that took place between the 5th anniversary date of this Agreement and the 10th anniversary date of this Agreement. At least sixty (60) days prior to the applicable anniversary date, the City and the Team shall determine the new rate of Rent and the City shall advise the Team in writing of the new rate of Rent, provided, *however*, that in no event shall the Rent be increased by an amount greater than twelve (12%) percent on any given Re-evaluation Date.”

- 1.3 The Licence Agreement is hereby amended by deleting the third paragraph of Section 6.5 thereof in its entirety and substituting the following therefore:

“On the tenth (10th) anniversary date of Term of this Agreement the ticket surcharge may be subject to a one time increase in an amount determined in accordance with market conditions (including, without limitation, increases in the Consumer Price Index from the Commencement Date) upon one hundred eighty days (180) days advanced written notice to the Team; provided, *however*, that in no event shall the ticket surcharge be increased: (a) if average OHL ticket prices would not justify an increase in ticket prices by such an amount; and (b) in any event not by an amount greater than \$0.30 per Ticket. On the fifteenth (15th) anniversary date of the Term of this Agreement the ticket surcharge may be subject to a one time increase in an amount determined in accordance with market conditions (including, without limitation, increases in the Consumer Price Index from the the 10th anniversary date of Term of this Agreement) upon one hundred eighty days (180) days advanced written notice to the Team; provided, *however*, that in no event shall the ticket surcharge be increased: (a) if average OHL ticket prices would not justify an increase in ticket prices by such an amount; and (b) in any event not by an amount greater than \$0.30 per Ticket.”

- 1.4 The Licence Agreement is hereby amended by deleting the second section reference to “8.3” as set out on page 18 of the Licence Agreement and replacing it with “8.4”.
- 1.5 The Licence Agreement is hereby amended by deleting the heading “Payment to the Team” in Section 9.2 in its entirety and substituting the following therefore: “Payment to the City”.
- 1.6 The Licence Agreement is hereby amended by inserting the following after the last paragraph of Section 10.3 thereof:

“For the purposes of this Section 10.3, “sponsorship” means the payment by a third party for the right to promote its goods and/or services within the Facility, but excludes:

- (i) payment or in-kind donations by a third party to a community group or event organizer (other than the City or Team) for individual functions within the Facility;
- (ii) payment or in-kind donations by a third party to the City for a community event in lieu of an admission fee or rental fee for said event; and
- (iii) payment by a third party for activities and programs taking place in the community center portion of the Facility.

For greater certainty, the Team shall not be responsible for any costs associated with the items enumerated in paragraphs (i), (ii) and (iii) above.”



- 1.7 The Licence Agreement is hereby amended by deleting of Section 1.1(ee) thereof in its entirety and substituting the following therefore:

“Pouring Rights” has the meaning given to it in Section 10.5 herein;”

- 1.8 The Licence Agreement is hereby amended by deleting of Section 10.5 thereof in its entirety and substituting the following therefore:

“The City hereby grants to the Team an irrevocable exclusive right during the Term of this Agreement to designate one or more third parties to be the exclusive supplier of a beverage product of any kind or description, excluding non-alcoholic beverages, within the Facility (the “Pouring Rights”). The City acknowledges and agrees that the Team shall be entitled to all revenue generated from the Pouring Rights. The City acknowledges and agrees that the Team shall have the right to offer advertising and promotion opportunities with the Pouring Rights and the City agrees to cooperate with the Team in connection therewith and that the City shall not be entitled to any revenue therefrom or have any other rights with respect to such advertising or promotion.

The City retains the right to designate a third party the exclusive supplier (the “Exclusive Supplier”) of all non-alcoholic beverages within the Facility (the “Pepsi Pouring Rights”). The Team acknowledges and agrees that the City shall be entitled to all revenue generated from the grant of the Pepsi Pouring Rights, save and except as follows:

- (a) the Team shall be entitled to all revenue from the sale of non-alcoholic beverages within the Facility in accordance with its rights granted in Section 9.1 herein; and
- (b) the Team shall be entitled to any and all revenue with respect to Associated Advertising from the Exclusive Supplier.

For the purposes of this Section 10.5 the term “Associated Advertising” shall mean any advertising or promotion offered to the Exclusive Supplier beyond labels on the non-alcoholic beverages being sold and on any vending machine dedicated to the sale of such non-alcoholic beverages which shall be deemed included in the Pepsi Pouring Rights.”

- 1.9 The Licence Agreement is hereby amended by deleting the words “seventy-two (72) hours” from Section 11.2 thereof in their entirety and substituting the following therefore: “two (2) weeks”.

- 1.10 The Licence Agreement is hereby amended by deleting the first sentence of Section 11.3 thereof in its entirety and substituting the following therefore:

“The City shall prepare and keep in its principal office within the Facility (or in an off-site facility under the control of the City from which such books and records may be easily accessed) for a period of at least three (3) years following the end of each Fiscal Year, adequate books and records which shall show all costs and expenses relating to Game Day Staff which were reimbursed by the City, Concession Revenue received, Catering Revenue received and the amount of ticket surcharge received.

1.11 The Licence Agreement is hereby amended by deleting Subsection 11.4(a)(ii) thereof in its entirety.

1.12 The Licence Agreement is hereby amended by inserting a new Section 19.12 as follows:

"Amendment.

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby."

2. *All Other Provisions.* All other provisions of the Licence Agreement remain in full force and effect, unamended.

3. *Definitions.* Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Licence Agreement.

4. *Applicable Law.* This Amending Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

5. *Successors and Assigns.* This Amending Agreement shall enure to the benefit of and shall be binding on and enforceable by the parties and their respective successors and permitted assigns.

6. *Entire Agreement.* The Licence Agreement as amended hereby, including all schedules, together with the agreements and other documents to be delivered under the Licence Agreement shall constitute the entire agreement between the parties and supersede all prior agreements, understandings, negotiations, and discussions, whether oral or written, of the parties.

7. *No Amendment or Waiver.* No amendment or waiver in respect of the matters contemplated by this Amending Agreement will be effective unless made in accordance with the terms of the Licence Agreement.

8. *Severability.* Any term or condition of this Amending Agreement that is deemed to be invalid, illegal or unenforceable may be declared separate, severable and distinct and, in such event, a court of competent jurisdiction may provide an equitable interpretation of this Amending Agreement without the impugned term or condition.

[SIGNATURES ON FOLLOWING PAGE]

9. *Execution in Counterparts.* This Amending Agreement may be executed in counterparts and by facsimile, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF the Parties hereto have executed this Amending Agreement.

SIGNED, SEALED & DELIVERED)
in the presence of)

Authority
#250/08 #3
Approved
As To Form
M.N.
Legal Counsel

Approved as to form & content
per Parks & Berechnon
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THE CORPORATION OF THE CITY
OF WINDSOR

By: JOHN SKOROBOWARZ (CAO)
Its: Authorized Signing Officer

By: GARY CIAN D/Clerk
Its: Authorized Signing Officer

WINDSOR SPITFIRES INC.

By:
Its: