



STAFF REPORT ACTION REQUIRED

Management Agreement with Kiwanis Club of Casa Loma

Date:	May 20, 2008
To:	Executive Committee
From:	City Manager
Wards:	All
Reference Number:	

SUMMARY

Casa Loma is a key heritage landmark, premier tourist attraction, and unique special events venue. The property is owned by the City and has been operated through a license agreement by the Kiwanis Club of Casa Loma, Toronto since 1937. In July 2007, Council approved a new Strategic Vision for Casa Loma and authorized staff to negotiate a new agreement between the City and the Kiwanis. This report recommends approval of the new agreement that implements Council's vision, creates a governance structure to provide balanced representation of community and City interests, and restructures the financial arrangements to continue Casa Loma as a self-sustaining operation, while contributing to the City's capital repair obligations including the on-going exterior restoration.

This report, as reflected in the attached Management Agreement, recommends a new relationship where the Kiwanis manages the operation on behalf of the City through a new Casa Loma Board, restructured with equal participation of members appointed by the City and by the Kiwanis. The agreement also preserves some key elements of the earlier arrangement including the Garden Club Agreement, Free Access Days, and the periodic use of the facility by the Kiwanis and the City.

The effort to revitalize Casa Loma through restructuring of the management agreement and ongoing reinvestment is timely as tourism in Ontario faces challenges due to unfavourable economic circumstances.

The current agreement with the Kiwanis expires at the end of 2008 and bookings for events in 2009 and subsequent years are already being requested. It is essential that a

new agreement be put in place immediately to ensure continuity of operations and to permit revitalization of Casa Loma in tandem with the City's ongoing restoration efforts.

RECOMMENDATIONS

The City Manager recommends that Council:

1. approve the Management Agreement with the Kiwanis Club of Casa Loma, Toronto substantially in the form of Attachment 1 to this report for a term of 20 years and 6 months beginning July 1, 2008 and ending on December 31, 2028; and
2. authorize the Chief Corporate Officer to administer and manage the Management Agreement including the provision of any consents, approvals, notices, and notices of termination provided that the Chief Corporate Officer may, at any time, refer consideration of such matters (including their content) to City Council for its determination and direction.

Implementation Points

As authorized by Council by approval of Motion M20.13 at its meeting of April 28-29, 2008, the recruitment of City appointees to the Casa Loma Board is currently underway through an open, advertised process. The Civic Appointments Committee was directed by Council to submit its nominations for consideration by City Council at its June 23-24, 2008 meeting. The CAC report should be considered concurrently with this report. It is intended that the new Board will be constituted and convened in the summer of 2008.

Financial Impact

The operation of Casa Loma will continue to be self-sustaining. As part of the agreement, the accumulated chattels (valued at over \$1.3 million) currently used at Casa Loma and owned by the Kiwanis will be purchased to form part of the City assets at no direct cost to the City. Payments of \$50 thousand per year for 20 years will be provided from Casa Loma operating revenues over the term of the agreement.

The exterior restoration of Casa Loma and other major capital repairs will continue to be the City's responsibility and form part of the Economic Development, Culture and Tourism Division's 5-year capital plan. This agreement provides for revenue of \$800 thousand per year from the operation of Casa Loma to be deposited in the City's Casa Loma Capital Reserve Fund. These annual payments, indexed to inflation, are payable for 20 years as part of the Management Agreement and will be re-invested in the renewal of the Casa Loma estate. The City's 5-year capital plan already includes this \$800 thousand per year for 5 years and \$3.7 million in debt funding. It is anticipated that the capital requirements will continue at that level for the following 5 years as well.

Under the current license agreement, the Kiwanis pays approximately \$178 thousand in 2008 property taxes. Under the proposed new relationship, this new agreement is structured as a management agreement where the Kiwanis, through a joint board, will operate the facility on behalf of the City. Accordingly it is anticipated that the assessed values for all or a portion of the estate may be exempted by MPAC from payment of property taxes in future. Any amount exempted up to the equivalent of the 2008 property taxes levied and indexed by inflation will be re-invested under the terms of this agreement in making improvements to the Casa Loma program. If approved, this will result in a small reduction in property taxes to the City.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

Equity Statement

The recruitment of public members for the Board of Casa Loma is subject to the Public Appointments Policy and is an opportunity to further the City's objectives that board membership reflect the diversity of the community and in turn result in enhanced programming that appeals to a broader community.

DECISION HISTORY

A 1997 Restoration Master Plan for Casa Loma estimated that it would cost \$20 million to restore and rebuild sections of the exterior structure of the main building and the stables. The City was unsuccessful in its grant application to SuperBuild for \$8.2 million to assist with this restoration work. The City is committed to the restoration of Casa Loma and has been dedicating all the revenue received through the current licence agreement with the Kiwanis plus additional City capital funds to this purpose. The exterior restoration work began in 2003 and will be completed in 2012.

Given the deterioration of the exterior and the potential vulnerability of the operation to a decline in tourist visits to Toronto, Council directed staff, in January 2004, to undertake a review of the operation of Casa Loma. Lord Cultural Resources, a world renowned consultant specializing in development and programming of major cultural facilities, was retained by Kiwanis in 2006 to assist in shaping the Strategic Vision. Their analysis, known as the Lord Report, examined the strengths, weaknesses and potential for Casa Loma and they made several recommendations regarding the future direction for the programming of Casa Loma.

The Kiwanis has developed the Strategic Plan which is intended to set out the initial framework and financial assumptions for implementing the Strategic Vision and the recommendations of the Lord Report. Together, the Strategic Vision, the Lord Report, and the Strategic Plan set out the shared vision of the parties and the initial structure that will be used to achieve that vision.

In July 2007, Council adopted Executive Committee Item EX10.3 entitled “Casa Loma Operations and Governance”. That report recommended changes to the governance and Strategic Vision for Casa Loma. Council endorsed a continued relationship with the Kiwanis under a new collaborative arrangement where the board that oversees operations would be reconstituted to balance community and City interests. In addition, it was necessary to ensure that the financial arrangements would result in continued re-investment in Casa Loma. Council also directed that staff negotiate a new agreement with the Kiwanis Club of Casa Loma.

This report submits for approval the management agreement between the Kiwanis Club of Casa Loma, Toronto and the City of Toronto that meets Council’s stated objectives.

ISSUE BACKGROUND

At its meeting held on July 16, 17, 18 and 19, 2007, City Council adopted a vision for the operation of Casa Loma to ensure that:

- Casa Loma’s programming, curatorial focus and interpretation fully reflect its Edwardian heritage, tell the story of Toronto in that era, and reflect the imagination, energy and innovation present in Toronto in the early 20th century;
- complementary programming, heritage walks, signage and marketing create a heritage precinct that links the Casa Loma estate to Spadina Museum and the City Archives, two important City assets in the neighbourhood; and
- a refreshed visitor experience and stimulating heritage tours attract a greater number of Torontonians to the Casa Loma estate.

At the same meeting, Council authorized the City Manager and Chief Corporate Officer, in conjunction with the General Manager of Economic Development, Culture and Tourism, to negotiate and report back on a long term extension to the licence agreement with the Kiwanis Club for the operation of Casa Loma that implements Council’s vision for Casa Loma through:

- enhanced heritage programming;
- new visitor amenities;
- expanded governance through the terms of reference, structure and composition for the Kiwanis Board of Trustees to ensure balanced representation of community and City interests;
- a restructured financial arrangement that continues Casa Loma as a self-sustaining operation and maintains contributions to the exterior restoration project;
- City approval for all alterations to the building and sub-licence agreements;
- a term of up to 20 years with performance benchmarks and a full review after 3 years;
- annual progress reports to the Economic Development Committee;
- an exciting, imaginative, interpretative restoration plan with emphasis on educating and entertaining visitors; and

- the complete reinvigoration of the top floor galleries employing leading edge museum and entertainment technology that will bring life to the history and flavour of Edwardian Toronto.

COMMENTS

In order to implement Council's direction and Strategic Vision, this report recommends adoption of a new management agreement (Attachment 1). Although Council's direction speaks of a license agreement, both parties agreed that an improved model would take the form of a management agreement. The following describes the key themes of the proposed agreement.

1. COLLABORATION AND GOVERNANCE

Casa Loma, as a key tourism and heritage landmark, is a joint responsibility between the City and the Kiwanis attracting about 350,000 visitors each year. While the City of Toronto owns Casa Loma, its grounds, and the related buildings such as the Hunting Lodge and the Stables, the Kiwanis manages the castle properties as a tourism and special events facility. The City maintains the exterior and is responsible for capital repairs and replacements including the building systems and the Kiwanis maintains the interior of the castle estate, the exhibits, the grounds, and operates the parking facilities. The success of Casa Loma is dependent on how well the City and the Kiwanis work in an aligned way.

In the past the Kiwanis took sole responsibility for making key strategic decisions regarding the shape and nature of the operations through its Board of Trustees of Casa Loma comprised of Kiwanian members. That governance structure did not provide for the complementary roles of the City and the Kiwanis for the stewardship of the facility. The new Management Agreement and new vision provide an opportunity to truly reflect a collaborative governance relationship.

The Management Agreement negotiated between the Kiwanis and City staff reflects a new governance model with equal participation on a new Casa Loma Board. For the first time governance matters are addressed as a central part of the Management Agreement. The following provisions relating to governance are included in the Management Agreement:

- A new Casa Loma Board will be responsible for making decisions regarding operations, budgets and the overall implementation of the City's strategic vision for Casa Loma and will provide direction to the Chief Executive Officer. The Kiwanis cannot overturn decisions of the Board;
- The composition of the Casa Loma Board will be 7 members appointed by the Kiwanis and 7 members appointed by the City; the Mayor will appoint the Chair from among the appointed Board members on the advice of the President of the Kiwanis;

- The two Ward Councillors, the Executive Director of the Culture Division or her designate, and the Director of Real Estate Services or his designate will be ex-officio members, entitled to attend Board meetings and receive all materials to be considered. They can participate in discussion at board meetings, but will not have voting rights;
- Each voting Board member will have one vote; in the case of a tie vote on an item, the matter is defeated;
- The Board shall have full power with respect to the stewardship of all affairs of Casa Loma and no by-law or resolution passed by the Board or any other action taken by the Board requires confirmation or ratification by the board of directors of the Kiwanis in order to become valid or to bind the management of Casa Loma;
- The term of Board appointment will be 3 years;
- Quorum for the Board is a majority of the voting members;
- Decisions that are properly the purview of the Board cannot be delegated to committees or a single member of the Board;
- A dispute resolution process to deal with any controversy, claim or dispute is outlined in the Management Agreement;
- Other governance matters outlined in the agreement include conditions under which a member may be removed from the Board, including the removal of Board members should they not attend meetings for prolonged periods without permission of the Board. Further, a requirement to create policies for conflict of interest and an open and competitive procurement must be adopted within 120 days of the commencement date of the agreement.

These governance provisions in the Management Agreement must be incorporated into the by-law for the Board.

2. REVITALIZATION AND THE STRATEGIC VISION

The Management Agreement clearly outlines the commitments of both the Kiwanis and the City to the City's Strategic Vision for Casa Loma. The following are specifically detailed in the agreement:

- the City's key objectives for Casa Loma (Strategic Vision) as approved by Council in July 2007
- the Lord Report
- the Strategic Plan developed by the Kiwanis
- the Garden Club Agreement (continued from previous agreement)

- the Heritage Designation By-Law

The Lord Report was developed by the Kiwanis in conjunction with Lord Cultural Resources. The Kiwanis has developed the Strategic Plan which is intended to set out the initial framework and financial assumptions for implementing the Strategic Vision and the recommendations of the Lord Report. Together, the Strategic Vision, the Lord Report and the Strategic Plan set out the shared vision of the parties and the structure to be used to achieve that vision (the Strategic Framework). The Kiwanis acknowledges that the City is entering into this agreement for the purpose of implementing the Strategic Vision and the Kiwanis agrees to adhere to objectives and approaches set out in the agreement.

It is understood that over the term the details in this Strategic Framework might require updating from time to time, and the parties covenant to work together throughout the term to use their best efforts to ensure that the Strategic Framework may evolve when appropriate to reflect changes in circumstances. The Kiwanis acknowledges that the City's primary goal is to maintain Casa Loma as a vibrant tourist attraction by offering interesting programs, events and activities and by varying and up-dating the approach from time to time. The qualities of the attraction, as well as the level of community and tourist participation, are as important to the City as the revenues generated through this agreement.

The City and the Kiwanis both have made commitments over the last few years to work together towards realizing the new Strategic Vision for Casa Loma. The City has contributed by committing significant capital funds to the restoration of the castle's exterior. The Kiwanis in turn has committed to the Strategic Vision by developing an implementation plan that will be used on a go-forward basis over the next decade.

As part of the Strategic Vision, the original Hunting Lodge, which was formerly utilized as a residence, will now be returned to the operations of the Casa Loma estate and will take its place as part of the Casa Loma heritage and tourism landmark.

3. REINVESTMENT IN CASA LOMA

The funding model on a go-forward basis for Casa Loma provides for a stable source of capital funds to implement the Strategic Vision in order to revitalize Casa Loma. The elements include:

- Annual payments to the City of \$800 thousand paid out of Casa Loma operating revenues will be placed in the Casa Loma Capital Reserve Fund administered by the City and used to fund the restoration and capital repairs. The City's 5-year capital plan already includes this \$800 thousand per year and \$3.7 million in debt financing and it is anticipated that a similar amount will be required for the following 5-year period;

- Establishment of a Casa Loma Improvement Fund (CLIF) to be held by the Kiwanis and funded out of net revenue from Casa Loma operations and admission ticket surcharges. The CLIF will be used to fund improvements including enhanced visitor amenities, special interior maintenance projects, technology, capital asset acquisitions such as period artefacts, programming and marketing for special events and exhibits. The CLIF is not a general reserve fund and can only be utilized to fund a revenue shortfall in the rare circumstance where no other method of covering a revenue shortfall is available.
- Acquisition by the City of the artefacts, equipment and intellectual property including trademarks acquired by the Kiwanis over the years that are essential to operating Casa Loma. Annual payments of \$50 thousand over the 20-year term of the Management Agreement will be paid from the net revenues of Casa Loma in order to ensure that the City owns all aspects of the physical assets of the Casa Loma estate. Schedule G to the Management Agreement, when executed, will list the items included. The office, catering and garden equipment, castle fixtures, and props, sets and costumes were valued at over \$630 thousand and the art and artefacts were valued at approximately \$754 thousand;
- The Kiwanis Club of Casa Loma has taken the direction of the Lord Report to heart and has proposed a plan to be implemented through 2013 to improve Casa Loma as a tourist and special events destination. Their 5-year capital plan has an estimated preliminary budget of \$4.4 million in capital expenditures. The project will provide for a series of cultural and heritage improvements, visitor amenity improvements, and interior restoration. For the period 2014 to 2018, further improvements are envisioned including the creation of new space for temporary exhibits, additional exhibits and special events, enhancements to interpretive signage throughout the Casa Loma district and additional improvements to exhibits and visitor amenities.

Casa Loma may be eligible for a property tax exemption given it is owned by the City and operated on behalf of the City. This matter will be investigated jointly among the Kiwanis, City staff and the Municipal Property Assessment Corporation (MPAC) once the Management Agreement is executed. Upon qualification for property tax exemption, the current property tax equivalent amount of about \$178 thousand per year will be placed in the CLIF for reinvestment into the operational and capital needs of Casa Loma.

The Management Agreement also requires both parties to act as a prudent and diligent building owner in carrying out their respective on-going maintenance responsibilities for Casa Loma.

4. STEWARDSHIP AND OVERSIGHT

Included in the Management Agreement are incentives and requirements to ensure each party lives up to its obligations and responsibilities. They include:

- payment of a management fee to Kiwanis of \$250,000 annually. In turn the Kiwanis uses the earned fees for charitable activities they sponsor;
- a review by the City after three years to ensure that the Management Agreement is working effectively;
- annual reporting to the City including audited financial statements and an updated Business Plan and explanation of how it implements the Strategic Vision;
- in undertaking any major Request for Proposals, the Casa Loma Board will consult with the City regarding the RFP's scope and content and will undertake an open and competitive procurement process;
- the Board will develop procedures designed to consult with and involve members of the public in matters relating to the operation of Casa Loma and at a minimum will arrange one opportunity every two (2) years for the public to be invited to attend at Casa Loma free of charge; and
- rights of audit by the City Auditor regarding compliance with the Management Agreement, including its financial requirements.

5. TRANSITIONING

The proposed term of the Management Agreement is 20 years and 6 months beginning July 1, 2008 and ending December 31, 2028. It is important for this new relationship to take effect as soon as possible in order to implement the new Strategic Vision that both parties support. From an operations perspective, stability is essential in securing future bookings and future business relationships with suppliers.

Since part of the fiscal year has already passed, it is proposed that the financial payments set out in the Management Agreement not take effect until the beginning of the next fiscal year, January 1, 2009. To accommodate this mid-year transition, appropriate accounting adjustments will be made to the budgets and financial reports.

CONTACTS

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SIGNATURE

Shirley Hoy, City Manager

ATTACHMENTS:

Attachment 1: Management Agreement for Operation of Casa Loma

CITY OF TORONTO

- and -

KIWANIS CLUB OF CASA LOMA, TORONTO

CASA LOMA MANAGEMENT AGREEMENT

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MANAGEMENT AGREEMENT

THIS AGREEMENT made as of the 1st day of July, 2008.

BETWEEN:

CITY OF TORONTO

(hereinafter called the "**City**")

OF THE FIRST PART

- and -

KIWANIS CLUB OF CASA LOMA, TORONTO

(hereinafter called "**Kiwanis**")

OF THE SECOND PART

WHEREAS:

- A. The City is the owner of the lands, buildings and improvements in the City of Toronto, referred to herein as Casa Loma or the Casa Loma Properties;
- B. In the past Kiwanis has operated the Castle and the Stables pursuant to a license agreement with the City which will soon expire;
- C. In anticipation of the expiry of the prior agreement the parties engaged in a comprehensive exploration of the future potential for the operation of Casa Loma;
- D. The parties have agreed that Kiwanis, through the Casa Loma Board, should manage all of the Casa Loma Properties for the City of Toronto, with a renewed outlook as expressed by City Council's Strategic Vision for Casa Loma;
- E. The parties are entering into this Agreement to set out their new relationship and a comprehensive framework for the operation of Casa Loma in accordance with the Strategic Vision.

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the sum of Two Dollars (\$2.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms, conditions, covenants and provisos hereinafter contained, the City and Kiwanis hereby covenant and agree as follows:

ARTICLE I

INTERPRETATION

1.1 Defined Terms

For the purposes of this Agreement, unless the context otherwise requires, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

- (a) **“Administration”** means the current and future employees working at the executive and administrative level at Casa Loma;
- (b) **“Agreement”** means this management agreement including all schedules, as amended from time to time pursuant hereto;
- (c) **“Annual Report”** means the yearly report of the Casa Loma Board as more particularly described in Section 7.5 below;
- (d) **“Building Condition Audit”** means the report or reports described in s. 5.1 below;
- (e) **“Business Day”** means a day which is not:
 - (i) a Saturday or Sunday; or
 - (ii) a day observed as a statutory or civic holiday under the laws of the Province of Ontario or the federal laws of Canada applicable in the Province of Ontario;
- (f) **“Casa Loma”** or **“Casa Loma Properties”** means the Castle, the Hunting Lodge, the Gardens, the Stables and the Tunnel, collectively;
- (g) **“Casa Loma Board”** means a board of the Kiwanis Club of Casa Loma, Toronto, charged with the responsibility to oversee the operation of Casa Loma and to fulfill the obligations of Kiwanis in this Agreement, and as more particularly described in Article III below and is sometimes referred to in this Agreement as the **“Board”**;
- (h) **“Casa Loma Capital Reserve Fund”** means the fund to be maintained by the City into which is to be paid the amount distributed to the City yearly under this Agreement, and which is to be used by the City solely for capital repairs and improvements to the Casa Loma Properties, as more particularly discussed in s. 6.3 below;
- (i) **“Casa Loma Improvement Fund”** means the fund more particularly discussed in s. 6.7 below;

- (j) "**Castle**" means the land and building at the south-east corner of Walmer Road and Austin Terrace, having a municipal address at 1 Austin Terrace in the City of Toronto, shown outlined in red on the plan annexed hereto and marked Schedule "A", known as the Casa Loma Castle, including the grounds adjacent thereto and the parking garage;
- (k) "**CEO**" means the person designated from time to time as the Chief Executive Officer of Casa Loma;
- (l) "**Chief Corporate Officer**" means the Chief Corporate Officer for the City or the person acting as such or his/her designate and is sometimes referred to herein as the "**CCO**";
- (m) "**City Auditor**" means either or both of the City Internal Auditor or the City Auditor General or the persons designated to act in those respective capacities from time to time or their delegates;
- (n) "**CPI**" means the All-Items Consumer Price Index for the City of Toronto as published by Statistics Canada (or by a successor or other government agency, including a provincial agency), or, if the Consumer Price Index is no longer published or is not published for the relevant period or time, an index published in substitution for the Consumer Price Index or for such relevant period or time, or any comparable replacement index designated by the City, acting reasonably, and in consultation with the Casa Loma Board. If a substitution or replacement is required, the City, acting reasonably, and in consultation with the Casa Loma Board, will make the necessary conversions. If the base year for the Consumer Price Index (or the substituted or replacement index) is changed by Statistics Canada (or by its successor or other governmental agency), the City will make the necessary conversion. If any calculation is required to be made under this Agreement based on the CPI as at a particular date or for a particular period and the CPI for such date or period is not available as at the time such calculation is required to be made, the City, acting reasonably, and in consultation with the Board, shall be entitled to estimate the CPI for the purposes of such calculation, subject to adjustment following the CPI for the relevant date or period becoming available;
- (o) "**CPI Index Ratio**" means a fraction, the numerator of which is the CPI for the month ended October 31, immediately prior to the commencement of a Fiscal Year, and the denominator of which is the CPI for the month ended October 31 immediately prior to the commencement of the Fiscal Year 4 years preceding;
- (p) "**Director**" means the Executive Director of Culture for the City or the person acting as such or his/her designate;
- (q) "**Fiscal Year**" means January 1 to December 31 in any year of the Term, except that the first Fiscal Year shall be the period beginning on January 1, 2009 and ending on December 31, 2009;

- (r) **“Garden Club Agreement”** means an agreement among The Corporation of the City of Toronto, Kiwanis Club of West Toronto, Inc. and The Garden Club of Toronto made the 13th day of September, 1989, a copy of which is attached hereto as Schedule “B”;
- (s) **“Gross Revenue”** means, without duplication, all revenues of every nature and kind with respect to box office and admission charges, parking charges, goods sold or leased or licensed, booking and filming fees, food and beverage services and services performed in or from the Castle Properties or from revenue received by or on behalf of Kiwanis from the use or operation of the Castle Properties including revenues from rentals and licensing of the Castle Properties or any part thereof which constitute operating revenues determined in accordance with generally accepted accounting principles, whether for cash, credit, exchange of merchandise or other consideration; including, without limitation, all revenues from tenants, lessees, licensees and concessionaires and other persons occupying space within the Castle Properties and/or rendering services to Casa Loma guests. Gross Revenue shall not include (i) gross receipts of any tenant, licensee or concessionaire; (ii) refunds granted to the extent that such receipts were included in Gross Revenue; (iii) Goods and Services tax, Provincial retail sales taxes, levies or other direct taxes imposed upon sales collected from the customers and remitted to the applicable governmental authority; or (iv) ticket surcharges now existing or imposed by the Board from time to time;
- (t) **“Hunting Lodge”** means the lands and building at the north-west corner of Walmer Road and Austin Terrace, having a municipal address of 328 Walmer Road in the City of Toronto, shown outlined in red on the plan annexed hereto and marked Schedule "A", and the grounds adjacent thereto;
- (u) **"Legal Requirements"** means all laws, ordinances, directions, zoning by-laws, orders, requirements, rules, regulations and by-laws of any federal, provincial or municipal governmental authority and any department, commission, board or officer thereof or any other authority having jurisdiction including, without limitation, all police, fire, health, safety, environmental and sanitary regulations imposed by any governmental authorities (whether federal, provincial or municipal) or made by fire insurance underwriters and the fire safety maintenance duties set out in Schedule "C" attached hereto;
- (v) **“Lord Report”** means the December, 2006 report entitled “Casa Loma Day – Visitor Experience Concept Executive Summary” prepared by Lord Cultural Resources, a copy of which is attached hereto as Schedule “C”;
- (w) **“Net Revenue”** has the meaning set out in s. 6.6 below;
- (x) **“Operating Costs”** has the meaning set out in s. 4.8 below;
- (y) **“Property Tax Equivalent Payment”** has the meaning set out in s. 6.5 below;

- (z) **“Restoration Work”** means the exterior restoration work at Casa Loma to be undertaken by the City and the repairs and improvements detailed in the Building Condition Audit, as more particularly discussed in s. 4.2 (c) and s. 5.1 below;
- (aa) **"Stables "** means the land and building on the west side of Walmer Road, north of Austin Terrace, and having a municipal address at 330 Walmer Road in the City of Toronto, outlined in green on the plan annexed hereto and marked Schedule "A";
- (bb) **“Strategic Framework”** has the meaning set out in s. 2.1 below;
- (cc) **“Strategic Plan”** is the business plan developed by Kiwanis and attached hereto as Schedule “D”, as more particularly described in s. 2.1 (d) below;
- (dd) **“Strategic Vision”** has the meaning set out in s. 2.1 below;
- (ee) **"Term"** means the period of twenty (20) years and six (6) months commencing on July 1, 2008 and ending on December 31, 2028.
- (ff) **"Tunnel"** means the underground tunnel under Austin Terrace and Walmer Road which connects the Castle, the Hunting Lodge and the Stables and is used in connection therewith.

1.2 Schedules

The following schedules are attached to and form part of this Agreement:

- Schedule “A” - Sketch of the Casa Loma Properties
- Schedule “B” – Garden Club Agreement
- Schedule “C” - Lord Report
- Schedule “D” - Strategic Plan
- Schedule “E” – Heritage Designation By-law
- Schedule “F” - Fire Safety Maintenance Duties
- Schedule “G” - Inventory

ARTICLE II

FRAMEWORK AND ENGAGEMENT OF MANAGER

2.1 Strategic Framework

At its meeting of July 16, 17, 18 and 19, 2007, City Council adopted a vision for Casa Loma to ensure that, amongst other matters:

- (a) Casa Loma’s programming, curatorial focus and interpretation fully reflect its Edwardian heritage, tell the story of Toronto in that era, and reflect the imagination, energy and innovation present in Toronto in the early 20th century;
 - (b) complementary programming, heritage walks, signage and marketing create a heritage precinct that links the Casa Loma estate to Spadina Museum and the City Archives, two important City assets in the neighbourhood; and
 - (c) a refreshed visitor experience and stimulating heritage tours attract a greater number of Torontonians to the Casa Loma estate,
- (collectively, Council’s “**Strategic Vision**”).
- (d) At the same meeting, City Council had before it the Lord Report, developed by Kiwanis in conjunction with Lord Cultural Resources. Subsequently, Kiwanis has developed the Strategic Plan which is intended to set out the initial framework and financial assumptions for implementing the Strategic Vision and the recommendations of the Lord Report. Together, the Strategic Vision, the Lord Report and the Strategic Plan set out the shared vision of the parties and the initial structure to be used to achieve that vision (the “**Strategic Framework**”). Kiwanis acknowledges that the City is entering into this Agreement for the purpose of implementing the Strategic Vision through the Strategic Framework, and Kiwanis agrees to use its best efforts to do so, and in so doing will adhere to objectives and approaches set out therein.

It is understood that over the Term the details in the original Strategic Framework might require updating from time to time, and the parties covenant to work together throughout the Term to use their best efforts to ensure that the Strategic Framework may evolve when appropriate to reflect changes in circumstances. Kiwanis acknowledges that the City’s primary goal is to maintain Casa Loma as a vibrant tourist attraction by offering interesting programs, events and activities and by varying and up-dating these from time to time. The qualities of the attraction, as well as the level of community and tourist participation, are as important to the City as the revenues generated through this Agreement.

2.2 Engagement and Managerial Framework

The City hereby appoints Kiwanis to manage the operation and maintenance of Casa Loma in order to realize the City’s Strategic Vision within the Strategic Framework, subject to and in accordance with the terms of this Agreement for the Term, and subject to termination as hereinafter provided.

The parties acknowledge and agree that Kiwanis’ obligations as set out in this Agreement shall be implemented under the direction of the Casa Loma Board, and for the most part shall be fulfilled by the Administration. The Administration, in consultation with and under the stewardship of the Casa Loma Board, will be responsible for all of the day-to-day operations at Casa Loma, including but not limited to:

- (a) developing and implementing the programs, activities and events to be offered from time to time at Casa Loma and promotion of same;
- (b) ensuring the proper functioning of the business organizational framework at Casa Loma, including the development and implementation of human resources and purchasing policies;
- (c) managing and coordinating the operational responsibilities at Casa Loma, including but not limited to tours, parking, gift shop, catering, location filming and special events;
- (d) carrying out the maintenance and repair responsibilities during the Term;
- (e) creating, developing and implementing new projects as contemplated by the Strategic Vision and approved by the Board from time to time; and
- (f) preparing the annual budgets and business plans to support all of the foregoing,

having due regard at all times for the City's Strategic Vision. Kiwanis agrees that the services and functions to be fulfilled by the Board and Administration hereunder shall be performed in a diligent manner, in keeping with the standards of the industry for heritage tourist destinations of similar age, quality and use to Casa Loma. In performing the services and functions contemplated by this Agreement, Kiwanis through the Board and the Administration shall exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent owner. Kiwanis covenants and agrees that in performing its duties pursuant to this Agreement, it shall use its best efforts, subject to s. 2.1, to maximize the amount of Gross Revenue and Net Revenue derived from its operations hereunder and to carry out the operations at Casa Loma using prudent business management practices.

2.3 Heritage Asset

The parties agree that Casa Loma forms an important heritage asset and tourist attraction of the City of Toronto. Further, the parties acknowledge that Casa Loma is a heritage home, not a museum. In entering into this Agreement, and in operating Casa Loma pursuant hereto, the parties shall always have regard for these key concepts. Throughout the Term, Kiwanis shall responsibly and prudently manage the operation and maintenance of Casa Loma in accordance with this Agreement in a businesslike manner consistent with standards of a reasonable and prudent owner, taking into account Casa Loma's age, cultural significance, and importance as a heritage home and tourist attraction. All alterations shall be planned and undertaken with due regard for the heritage attributes and/or reasons for designation as set out in the description of the Castle Property's heritage attributes in the Heritage Designation By-Law.

2.4 Public Participation

Kiwanis acknowledges that Casa Loma and its operation are matters of importance to City of Toronto residents. In keeping with the degree of interest and involvement demonstrated by residents and stakeholders during the period leading up to City Council's

decision to extend Kiwanis' mandate to operate Casa Loma, Kiwanis agrees that it will develop procedures designed to consult with and involve members of the public in matters relating to the operation of Casa Loma. Without limiting the generality of the foregoing, whether for the purpose of discussing and/or consulting on a specific matter that has arisen for which community engagement is appropriate, or in order to welcome the community to an open house to showcase past achievements, recent developments or future plans, the Board will arrange at least one opportunity every two (2) years for the public to be invited to attend at Casa Loma free of charge.

2.5 Three Year Review

The parties acknowledge that in the adoption of the report articulating the Strategic Vision, Council stipulated that a review of the agreement between the City and Kiwanis should be conducted after it has been in operation for three years. The parties agree that they will jointly establish the terms of reference for such a review and the manner of completing it, and that the review will be conducted early in the fourth year of the Term. The parties further agree that: (a) it shall be up to the Director to decide whether the results of the review should be reported to City Council; and (b) if the results of the review include recommendations for certain changes to this Management Agreement, the review shall be reported to City Council and the parties will work cooperatively towards amending this Agreement with a view to implementing the recommendations arising from the review, within the context of the Strategic Framework (which itself might be amended in the course of the review). Furthermore, if the Director decides to submit a report, prior to finalizing the report the Director shall give feedback to the Board regarding the comments or concerns which gave rise to the decision to submit the staff report, and allow the Board an opportunity to respond.

ARTICLE III

GOVERNANCE

3.1 Mandate of the Casa Loma Board

The affairs of Casa Loma will be managed by the Casa Loma Board created pursuant to a by-law adopted by the Board of Directors of Kiwanis Club of Casa Loma, Toronto. The mandate of the Board is to implement the Strategic Framework as agreed to between the parties as set out in this Agreement, as it may be amended by agreement of the parties from time to time over the Term. In carrying out its mandate, the Board shall approve and implement renewed strategic and business plans as required, provide financial management, and shall make related policy decisions. The Board shall consult with stakeholders and members of the public from time to time in order to fulfill its mandate. The Board shall provide guidance, direction and stewardship to the CEO, who shall oversee the day to day operations of Casa Loma.

The role of the Board members will be to assist the Board in fulfilling its mandate in accordance with this Agreement, so that Casa Loma continues to operate as a landmark heritage venue, as a tourist attraction and for the hosting of special events in the City of Toronto.

3.2 Establishment and Organization of the Casa Loma Board

Kiwanis agrees that the by-law adopted by the Board of Directors of Kiwanis Club of Casa Loma, Toronto creating the Casa Loma Board and respecting the operations of Kiwanis at Casa Loma shall contain, amongst other matters, as a minimum the following provisions:

- (a) **Composition of the Board:** The Board shall be composed of fourteen (14) members, of whom seven (7) shall be appointed by Kiwanis and seven (7) by the City. The City's appointees need not be members of Kiwanis.
- (b) **Appointment of the Chair:** The Chair shall be selected from the members of the Board, appointed by the Mayor of the City on the nomination and advice of the President of Kiwanis. The Chair need not be a member of Kiwanis, but will be invited to become a member upon appointment as Chair.
- (c) **Officers:** In addition to the Chair of the Board, there shall be a Vice-Chair of the Board and a Secretary, who shall be appointed from the members of the Board. No person may hold more than one office.
- (d) **Term of office:** The Chair and all appointees to the Board shall serve for a period of three (3) years unless terminated for reasons set out in subsection (e) below, provided however that despite the 3 year term, City appointees serve at the pleasure of City Council and may be removed by a majority vote of City Council.
- (e) **Removal from office:** The office of a member of the Board shall be terminated if such member:
 - (i) becomes bankrupt or is declared insolvent;
 - (ii) becomes of unsound mind;
 - (iii) resigns office by notice in writing to the Board;
 - (iv) has been absent from more than three (3) consecutive meetings of the Board unless a leave of absence has been obtained; or
 - (v) dies.
- (f) **Vacancies:** Vacancies on the Board, however caused, in respect of Kiwanis appointees shall be filled by Kiwanis and in respect of City appointees shall be filled by the City.
- (g) **Quorum:** A majority of the voting members of the Board.

- (h) Voting: A vote passes by a majority vote of those members present. Each member has one vote.
- (i) Powers: The Board shall have full power with respect to the stewardship of all affairs of Casa Loma and no by-law or resolution passed by the Board or any other action taken by the Board requires confirmation or ratification by the board of directors of Kiwanis in order to become valid or to bind Casa Loma.
- (j) Remuneration: Kiwanis shall determine the remuneration to be paid to members of the Casa Loma Board, provided that all Board members shall be treated equally; provided however that Kiwanis may grant special remuneration to the Chair and/or officers of the Board.
- (k) Power of Committees: No committee shall have the power to act for or on behalf of Casa Loma or otherwise commit or bind Casa Loma. Committees shall only have the power to make recommendations to the Board.
- (l) Duties of the Chief Executive Officer: The CEO, whose appointment shall be approved by the Board, shall not be a member of the Board, and shall have responsibility for the general direction and supervision of the affairs and business of Casa Loma, including the power to appoint and remove all employees and agents of Casa Loma not appointed by the Board, and to settle the terms of their employment and remuneration. The CEO shall support the Board in its decision making by preparing budgets, business plans, reports, proposals and other information needed by the Board in order to fulfill its mandate. The CEO shall be an ex-officio member of the Board and all of its committees.
- (m) Delegation of Duties: The Board may delegate certain duties to the CEO or Administration, but no Board duties may be delegated to a single member of the Board or a committee of the Board.
- (n) Persons entitled to be Present: Unless otherwise invited by the Chair, the only persons entitled to be present at a meeting of the Board shall be Board members, including ex-officio members.
- (o) Ex-Officio members: The following shall be ex-officio members of the Board:
 - (i) the Councillors for Wards in which Casa Loma is located;
 - (ii) the Executive Director of Culture for the City of Toronto or his/her designate;
 - (iii) the Director of Real Estate Services for the City of Toronto or his/her designate; and
 - (iv) the CEO.

Each ex-officio member shall be entitled to receive notice of, and agendas for, all meetings in the same manner as other members of the Casa Loma Board, to participate in all discussions at said meetings, and to receive a copy of the minutes of each meeting. Ex-officio members shall not be entitled to vote on any matters, nor shall they receive any remuneration for attendance at meetings.

- (p) Cheques: All cheques or other orders for the payment of money, notes or other evidence of indebtedness issued in the name of Casa Loma shall be signed by the CEO or designate together with one member of the Board as determined in the by-law.
- (q) Indemnification: All members of the Board shall be indemnified and saved harmless out of Operating Costs from and against all costs, charges and expenses which such member sustains or incurs:
 - (i) in or about any action, suit or proceeding that is brought, commenced or prosecuted against such member for or in respect of any act, deed, matter or thing whatsoever, made done or permitted by such member in or about the execution of the duties of the office; and
 - (ii) in or about or in relation to the affairs of Casa Loma, except such costs, charges or expenses as are occasioned by the willful neglect or default of such member.

No member shall be liable for the acts, receipts, neglects or defaults of any other member or for the Administration or for joining in any receipt or other act for conformity, or for any loss, damage or expense happening to Casa Loma through the insufficiency or deficiency of title to any property acquired by order of the Board for or on behalf of Casa Loma, or for the insufficiency or deficiency of any security in or upon which any of the moneys of Casa Loma shall be invested, or for any loss or damage arising from the bankruptcy or tortious act of any person or firm with whom any moneys, securities or effects of Casa Loma shall be deposited, or for any loss, conversion, misapplication or misappropriation of or any damage resulting from any dealings with any moneys, securities or other assets belonging to Casa Loma, or for any loss occasioned by any error of misjudgment or oversight on such person's part, or for any loss, damage or misfortune whatever which may happen in the execution of the duties of such office or in relation thereto unless the same shall happen through such person's own wilful neglect or default.

The Board may rely upon the accuracy of any statement or report prepared by the auditors and shall not be responsible or held liable for any loss or damage resulting from any actions based upon such statement or report.

Kiwanis represents and warrants that as of the commencement date of this Agreement, the by-law creating the Casa Loma Board is duly authorized and enacted by Kiwanis and, subject to the appointment of the members and Chair of the Board, is in full force and

effect. As noted in s. 2.2 above, wherever this Agreement speaks of the obligations of Kiwanis in the operation of Casa Loma, those obligations will be carried out by the Administration, being employees of Kiwanis, but under the stewardship of the Board. The actions taken and decisions made by the Board in accordance with the by-law are final and binding and cannot be overturned by Kiwanis, save and except if such actions and decisions create additional obligations for or have an adverse financial impact upon Kiwanis. Kiwanis may from time to time amend its by-laws relating to the Casa Loma Board, but in no event will Kiwanis enact or adopt any by-law that is inconsistent with the foregoing provisions.

3.3 Procurement Policy

Within one hundred and twenty (120) days of the commencement date of this Agreement, the Casa Loma Board will adopt a procurement policy relating to the award of contracts relating to the operation of Casa Loma. The policy will adhere to the principles of open and competitive procurement.

3.4 Conflict of Interest Policy

Within one hundred and twenty (120) days of the commencement date of this Agreement, the Casa Loma Board will develop and adopt a conflict of interest policy concerning the members of the Board and the operation of Casa Loma.

ARTICLE IV

MANAGEMENT SERVICES TO BE RENDERED

4.1 Scope of Services

Kiwanis covenants and agrees that the CEO and the Administration shall furnish and perform such management services as are needed to operate, manage, maintain and promote Casa Loma in a manner consistent with the standards and objectives set out in this Agreement.

4.2 Interior Maintenance

- (a) Through the Board and the Administration, Kiwanis shall throughout the Term carry out, with due diligence and dispatch, in a good and workerlike manner and in accordance with the Legal Requirements, all maintenance of the interior of the Casa Loma Properties which shall include, without limitation, the maintenance of the following interior and mechanical elements:
- (i) interior partitions and wall finishes, floors, staircases, balustrades, panelling including the painting and/or varnishing thereof;
 - (ii) light fixtures, emergency light fixtures, exit lights;
 - (iii) sanitary fittings, kitchen equipment;

- (iv) fire alarm and detection system, fire hose system;
- (v) sprinkler system, building plumbing system, building electrical system;
- (vi) security system;
- (vii) emergency gas-fired generator, emergency gas-fired fire pump, the boiler
- (viii) plant and the building heating system, and air conditioning units; and
- (ix) elevator,

subject however to subsection (c) below. The cost of fulfilling the foregoing responsibilities shall form part of, and be paid as, Operating Costs.

- (b) The Administration shall carry out monthly and annual inspections of the interior of the Casa Loma Properties in accordance with all Legal Requirements and shall keep accurate records of such inspections and reports. The CCO shall be entitled to view copies of the inspection records and reports upon request after reasonable notice. Where an inspection report indicates that maintenance work is required, the Administration shall undertake and complete the required work in a good and workerlike manner.
- (c) Notwithstanding anything to the contrary in this Agreement, the parties acknowledge that any matters related to interior maintenance of the Casa Loma Properties which have been identified in the Building Condition Audit are the responsibility of the City and will be performed in accordance with a schedule for Restoration Work to be developed by the City in consultation with the Casa Loma Board and the CEO.

4.3 Grounds and Sidewalk Maintenance

- (a) Kiwanis shall at all times during the Term maintain the lawns and flowerbeds of the Casa Loma Properties in a reasonably attractive condition in accordance with the provisions of the Garden Club Agreement.
- (b) Kiwanis shall at all times during the Term keep the public sidewalks adjacent to the Casa Loma Properties and running along Austin Terrace, Walmer Road adjacent to the Stables property and Davenport Road clear of ice and snow.
- (c) The costs incurred in performing the aforesaid grounds and sidewalk maintenance responsibilities shall form part of, and be paid as, Operating Costs.
- (d) Notwithstanding the foregoing, the City shall, during the Term and at its sole expense, maintain the boulevards of the City streets abutting the Casa Loma Properties in reasonably attractive condition.

4.4 Parking

- (a) Kiwanis shall, to the satisfaction of the City, the Toronto Police Services and the residents in the immediate vicinity of the Casa Loma Properties, effect and maintain arrangements for the parking and operation of motor vehicles on the Casa Loma Properties. Kiwanis shall be responsible for all ongoing maintenance of the surface parking lot and the parking structure located on the Casa Loma Properties including, without limitation, general cleaning, cleaning of drains, snow removal, ice removal, garbage removal, line marking and surface sealing, subject to the City's obligation to repair items identified in the Building Condition Audit.
- (b) Kiwanis shall use its best efforts to ensure that there is as little disruption as possible to the neighbourhood in which the Casa Loma Properties are situate from visitors to the Casa Loma Properties including, without limitation, the disruption resulting from buses idling. If Kiwanis or the City receives any complaints in respect of the foregoing, Kiwanis shall immediately take all necessary, reasonable steps to attempt to rectify the matter.
- (c) The cost of performing the parking garage maintenance shall form part of, and be paid as, Operating Costs.

4.5 No Damage

Kiwanis, through the Board in its management of Casa Loma, shall exercise all due diligence to prevent any part of the Casa Loma Properties from being damaged, defaced, destroyed, disturbed or removed in any manner and shall post prominent notices to this effect at various places on the Casa Loma Properties, and Kiwanis shall at all times maintain good order in and about the Casa Loma Properties, and in the event of the removal of any part of the Casa Loma Properties Kiwanis will assist the police or other authorities in endeavouring to recover such part.

4.6 Additional Covenants

Kiwanis further covenants in respect of the use of the Casa Loma Properties as follows:

- (a) not to use the Casa Loma Properties for any purpose contrary to this Agreement and not to carry on or permit to be carried on therein any other trade or business.
- (b) not to use the Casa Loma Properties for a purpose which would be a nuisance including, without limitation, the making or permitting of any improper or unusually loud noise in the Casa Loma Properties;
- (c) to permit the City or its authorized representatives at all reasonable times during the Term to enter and inspect the Casa Loma Properties for any reason

whatsoever including, without limitation, viewing the state of repair of the Casa Loma Properties and to enter from time to time for the purpose of making repairs and providing such services to the Casa Loma Properties as are required hereunder;

- (d) not to overload the floor of the Casa Loma Properties or any utility systems or any transmission equipment in the Casa Loma Properties such as wiring, mains, pipes, conduits, valves and connections in or serving the Casa Loma Properties or any other fixtures or equipment or make use of them such as to constitute a hazard;
- (e) not to commit, suffer or permit any act or omission in the Casa Loma Properties which shall result in an illegal use or cause any breach of any of the Legal Requirements;
- (f) to indemnify and save the City harmless from and against any and all claims, liability, and costs which may be incurred by the City by virtue of:
 - (i) Kiwanis's non-compliance with the Legal Requirements; and
 - (ii) any taxes which may be levied or assessed and payable against the Casa Loma Properties or the City by virtue of the management of the Casa Loma Properties by Kiwanis or by other parties authorized by the Casa Loma Board to carry on business at Casa Loma;
- (g) to maintain in force during the Term all necessary licences, permits, and authorizations relating to the use and occupancy of the Casa Loma Properties by Kiwanis; and
- (h) to use its best efforts to support City Council's policy of encouraging film and television production in Toronto by operating the Casa Loma Properties as a film-friendly location.

4.7 Signs

Any sign to be painted or affixed on any part of the outside or inside of the Casa Loma Properties whatsoever shall be designed and installed in a manner consistent with the standards described in s. 2.3 above.

4.8 Operating Costs

Kiwanis shall pay, out of Gross Revenue, all of the costs and expenses of maintaining and operating the Casa Loma Properties, their services, equipment and facilities including, without limiting the generality of the foregoing, all utility charges, heating, snow and ice removal and clearance, administrative charges and salaries, repairs and replacement of equipment, fixtures and facilities, landscaping contracts, grass cutting, lighting, cleaning, supplies, supervising and all other expenses paid or incurred by Kiwanis (save as expressly excepted in this Agreement) in connection with the maintenance, operation and management of

all buildings, services, equipment, fixtures, facilities and programming comprising Casa Loma (the “**Operating Costs**”).

ARTICLE V

CITY OBLIGATIONS

5.1 Building Condition Audit

A Building Condition Audit of the Casa Loma Properties is being prepared by the Director which will describe the current physical condition of the Casa Loma Properties, identify matters which require or are expected to require repair or replacement during the Term, and recommend a schedule of work to address the matters identified. The City shall be responsible for the repair or replacement of the matters identified in the Building Condition Audit, as and when the City shall determine. Upon receipt and review of the Building Condition Audit, the City will prepare a one-year and a five-year plan describing the capital repairs and improvements to be undertaken in each year, provided however that the City, in consultation with the Casa Loma Board, shall determine the priority to be given to the matters requiring repair or replacement, having due regard to the Strategic Framework and the amount of money available to the City for such work in any year. The one-year and five-year plans will be updated annually, and a copy will be provided to the Casa Loma Board by the Director each year, once finalized. The then-current one-year and five-year plans are hereinafter referred to as the “**Restoration Work**”. In each year of the Term, the City agrees to use its best efforts to undertake and complete the current year’s Restoration Work with the funds allocated to the Casa Loma Capital Reserve Fund.

5.2 City Repairs

The City agrees to keep Casa Loma in a state of good repair and to undertake and, subject to s. 6.9, to fulfill its obligations relating to the Restoration Work to the standard of a prudent owner of a heritage property. To that end:

- (a) Provided that: such replacements, repairs and/or restorations are: (I) required as part of the Restoration Work; or if not then (II) required in the sole opinion of the Director and the Director has obtained any necessary budget approvals and subject to Kiwanis’ fulfillment of its responsibilities pursuant to the provisions of Article IV hereof, from time to time during the Term the City shall replace, repair and/or restore the following elements of the Casa Loma Properties at a time which is convenient to both the City and Kiwanis,
 - (i) exterior walls and windows;
 - (ii) roofs and supporting roof structures;
 - (iii) eavestroughs and downpipes;

- (iv) masonry and wrought iron boundary fences;
 - (v) parking garage and paved surface parking; and
 - (vi) surfacing and structure of the south terrace including the steps and balustrade wall.
- (b) The City shall undertake in a timely manner only necessary major repairs to or replacement of the following mechanical elements of the Casa Loma Properties:
- (i) boiler plant and heating system;
 - (ii) air conditioning units;
 - (iii) emergency fire pump;
 - (iv) sprinkler pump;
 - (v) fire alarm replacement;
 - (vi) main electrical panel or switch gear; and
 - (vii) emergency gas-fired generator.
- (c) If the City has not carried out its repair obligations pursuant to subsections 5.2(a) and (b) hereof, and a matter arises which constitutes either an emergency situation or a situation where there is a reasonable risk of danger to the health or safety of Kiwanis, its employees, invitees or to visiting members of the public, then Kiwanis shall have the right to deliver written notice thereof to the Director and to undertake forthwith such repair work, subject to reimbursement from the City for the reasonable, documented costs so incurred by Kiwanis within forty-five (45) days.

ARTICLE VI

FEES, DISTRIBUTIONS, PAYMENTS AND FUNDS

6.1 Assumptions/Framework

The parties acknowledge that the allocations of Gross Revenue and Net Revenue set forth in this Article VI are based on the Strategic Plan assumptions set out in the Strategic Plan attached hereto as Schedule “D”. On that basis, the revenues to be generated and paid to each of Kiwanis and the City will be sufficient to pay for the City’s Restoration Work and the Casa Loma Board’s responsibilities as set out in this Agreement, including the improvements and programming as described in the Strategic Plan for the first five years of the Term. Based

upon the Strategic Plan Assumptions, in the first five years of the Term, it is projected that Kiwanis will invest Four Million Four Hundred Thousand Dollars (\$4,400,000) in furtherance of the capital investments and operating initiatives described in the Strategic Plan.

Throughout the Term, Kiwanis shall continue to be a non-profit organization as recognized under the *Income Tax Act* (Canada). Kiwanis' purposes include charitable activities such as but not limited to activities for the benefit of under-privileged, needy or crippled children; donations to registered charities; community service work, especially among children; the promotion of good citizenship generally through the development of high ideals in social or community activities; and the encouragement of the basic education of young people towards useful lives.

6.2 Management and Fee

The City recognizes that the management of Casa Loma by Kiwanis constitutes one of Kiwanis' principal charitable undertakings in each year and that, in assuming and fulfilling this responsibility to manage Casa Loma, Kiwanis performs a valuable service to the community at large. In consideration of the services to be performed by Kiwanis pursuant to this Agreement, Kiwanis shall receive a management fee of Two Hundred and Fifty Thousand Dollars (\$250,000.00) annually. Kiwanis covenants and agrees that it shall use the management fee to further Kiwanis' not-for-profit and charitable purposes and activities, which may include purposes at or related to Casa Loma.

6.3 City's Share of Gross Revenue

In each year of the Term, Kiwanis shall distribute to the City the sum of Eight Hundred Thousand Dollars (\$800,000.00) from Gross Revenue. The City's distribution shall be retained by the City in the Casa Loma Capital Reserve Fund, and shall be used solely for the purpose of funding the costs of completing the Restoration Work in any given year.

6.4 Inventory

Attached hereto as Schedule "F" is a list of all furniture, artifacts, equipment, works of art, goodwill, intellectual property and trademarks located at or associated with the operations of Casa Loma, (the "**Inventory**"). The parties acknowledge and agree that the Inventory is currently the property of Kiwanis, but that it is in both parties' interest that the Inventory, and all furniture, equipment, works, trademarks, intellectual property and similar items acquired in the future for the purposes of Casa Loma, be the property of the City in order to remain with Casa Loma regardless of who might be responsible to manage the Casa Loma Properties from time to time. The value of the Inventory is agreed by the parties to be One Million Dollars (\$1,000,000.00). In order to become the owner of the Inventory, the City agrees to pay \$1,000,000.00 exclusive of GST (the "**Inventory Payment**") to Kiwanis in annual installments as follows:

- (a) from and after January 1, 2009, the unpaid balance of the Inventory Payment will bear interest at the interest rate quoted by the Royal Bank of Canada for a non-redeemable Guaranteed Investment Certificate (GIC) for a term of 1 year to be

renewed at the prevailing interest rate when the funds mature and are reinvested for an additional one year-term;

- (b) each annual payment shall be the sum of Fifty Thousand Dollars (\$50,000.00) exclusive of GST plus the interest accrued to date;
- (c) each annual payment, including interest, shall be made from Gross Revenue and be paid on December 31st of each year during the Term commencing December 31, 2009.

The parties acknowledge and agree that all assets which would previously have been considered as Inventory, but which are acquired after the commencement date of this Agreement, shall be acquired as determined by the Casa Loma Board, from Gross Revenue generated pursuant to this Agreement and shall be the property of the City. The parties further agree that if this Agreement is terminated at any time prior to the date when the Inventory Payment together with all applicable interest has been paid in full, then the City shall pay to Kiwanis the unpaid balance of the Inventory Payment together with interest to the date of payment.

6.5 Realty Taxes/Property Tax Equivalent Payment

Prior to the commencement of this Agreement, Kiwanis paid realty taxes in respect of its license agreement to occupy and operate Casa Loma. Under the newly structured relationship between the parties as described in this Management Agreement, it is the expectation of the parties that the Casa Loma Properties will be wholly or partly exempt from realty taxes. Kiwanis shall pay out of Gross Revenue all realty taxes assessed against Casa Loma, but to the extent that the operation of Casa Loma is exempt from realty taxes at any point during the Term, Kiwanis agrees that the annual savings represented by not paying realty taxes (the “**Property Tax Equivalent Payment**”) will be deposited to the Casa Loma Improvement Fund in the manner described in s. 6.8 below. The parties agree that the Property Tax Equivalent payment as of the commencement date of this Agreement is \$178,036.76.

6.6 Net Revenue

“**Net Revenue**” means the difference (if positive) between:

- (a) All of the Gross Revenue (determined in accordance with generally accepted accounting principles) generated by Kiwanis from its management, use and operation of Casa Loma as provided hereunder; and
- (b)
 - (i) Operating Costs;
 - (ii) the management fee to be paid to Kiwanis as provided in section 6.2 hereof; and
 - (iii) the distribution of Gross Revenue to be paid to the City as provided in section 6.3 hereof; and

- (iv) the Inventory Payment as provided in section 6.4 hereof; and
- (v) the Property Tax Equivalent Payment provided in section 6.5 hereof.

All Net Revenue, once determined pursuant to the yearly audited financial statements as approved by the Board, shall be deposited to the Casa Loma Improvement Fund.

6.7 Casa Loma Improvement Fund

Kiwanis has established the Casa Loma Improvement Fund (“CLIF”). In addition to the annual deposit of Net Revenue as noted in s. 6.6 above, Kiwanis shall deposit to the CLIF on a quarterly basis all ticket surcharges imposed by the Board from time to time on admission fees to Casa Loma, and the Property Tax Equivalent Payment. The CLIF shall be used by the Casa Loma Board solely for Casa Loma purposes, including: enhanced visitor amenities, special interior maintenance projects, technology, capital asset acquisitions to replace or add to Inventory, contingencies and unexpected Casa Loma purposes, and extraordinary programming and marketing expenses related to special exhibits or events. Without limiting the generality of the foregoing, it is acknowledged and agreed that the CLIF will not normally be used for the payment of Operating Costs. It is acknowledged that Kiwanis may retain a balance in the CLIF from time to time in accordance with prudent management practices, the parties confirm their mutual intention that most funds from time to time credited to the CLIF will be spent for the enhancement of Casa Loma, and not retained as an ongoing reserve fund.

6.8 Timing of and Adjustments to Payments

- (a) The payments described in s. 6.2 (the Kiwanis management fee), s. 6.3 (the City’s share of Gross Revenue) and s. 6.5 (the Property Tax Equivalent Payment) shall be paid by Kiwanis, commencing on March 31, 2009, quarterly in arrears as follows:
 - (i) on the last day of March, fifteen per cent (15%) of the total annual amount;
 - (ii) on the last day of June, twenty-five per cent (25%) of the total annual amount;
 - (iii) on the last day of September, forty per cent (40%) of the total annual amount;
 - (iv) on the last day of December, twenty per cent (20%) of the total annual amount.
- (b) The annual amount of the payments described in s. 6.2, 6.3 and 6.5 above will be adjusted every four (4) years throughout the Term by the CPI Index Ratio. The first adjustment will take effect after the first four (4) full years of operation of this Agreement, on January 1, 2013

6.9 **Shortfalls**

In the event that there is in any Fiscal Year a shortfall in Gross Revenue such that the Operating Costs and other amounts payable out of Gross Revenue as listed in s. 6.6 above cannot be satisfied, such shortfall shall be addressed as follows:

- (a) firstly, any unexpended funds remaining in the CLIF may be used to cover the shortfall;
- (b) the payments on account of Inventory set out in s. 6.3 may be deferred until such time as there is sufficient Gross Revenue to make such payments. To the extent that the Inventory Payment is not made, then the interest accruing on the unpaid amount shall include the amount of the deferred payment, and when payment resumes, the first payment shall include all interest accrued to the date of payment;
- (c) if the deferrals described in (b) and (c) above are not sufficient to satisfy the shortfall, then Kiwanis and the City agree to defer receipt of its management fee and the payment to the Casa Loma Reserve Fund respectively, on a pro rata basis, to the extent required to address the shortfall.

If the foregoing measures are insufficient to absorb the shortfall, then the parties agree that revisions to the Strategic Plan will be required to address the causes of the shortfall and the steps required to improve Gross Revenue and/or decrease Operating Costs, and that they will work cooperatively and in a timely fashion to deal with any such situation. When funds become available to repay any shortfall owing to the parties, the shortfalls described in subsection (b) will be repaid first, on a pro rata basis, followed by repayment of the shortfall described in subsection (c).

6.10 **Fundraising**

In addition to the sources of Gross Revenue contemplated in this Agreement, Kiwanis and the Board shall be entitled to engage in fundraising activities from time to time for the benefit of Casa Loma. If they do so, all funds raised (after accounting for the costs associated with the fundraising drive) shall be deposited to the Casa Loma Capital Reserve Fund, unless a special fund has been established in connection with the fundraising programme, and the net proceeds of the fundraising drive will be used solely for the benefit of Casa Loma.

6.11 **Donations**

It is anticipated that from time to time during the Term, individuals and/organizations will offer to donate objects such as art, artefacts, memorabilia and furniture from or reminiscent of the period associated with Casa Loma. During the Term of this Agreement, the Administration will consider any such offers having due regard for its acquisitions policy, and determine whether the object is suitable for acceptance. The acquisition policy shall at all times include appropriate provisions regarding the need for appraisals relating to the value of objects to be acquired. If it decides to accept the donation, the Administration

shall advise the City of the value of the donation. The City shall issue a receipt to the donor and the donated object shall become part of the inventory of Casa Loma, provided however that where the value of the donation is greater than one thousand dollars (\$1,000.00), the City shall require an appraisal supporting the amount of the receipt before the receipt can be issued.

ARTICLE VII

BUDGETS, BANK ACCOUNTS, ANNUAL REPORTS

7.1 Annual Budgets

Prior to December 31 of each year, the Administration will prepare an annual budget for the operation of Casa Loma for presentation and adoption by the Board in each Fiscal Year, having due regard for Kiwanis' obligations as set out in this Agreement. The details and form of the budget shall be determined by Administration in consultation with the Board, but shall contain, as a minimum:

- (a) appropriate line items for revenues and expenditures incurred in the management of Casa Loma by the Board and the projected operational net revenue or loss for the Fiscal Year. The annual operating budget shall include all revenues, costs and expenses related to the operation of the Casa Loma Properties, including expenses and costs under this Agreement;
- (b) an annual cash flow budget reflecting the current year's Business Plan and the Board's obligations under this Agreement for the next Fiscal Year; and
- (c) an annual capital budget reflecting the current year's Business Plan and the Board's obligations under this Agreement for the next Fiscal Year.

7.2 Bank Accounts

Kiwanis shall establish and maintain one or more operating, payroll and other bank accounts for the operation of Casa Loma. All Gross Revenue collected from the operation of the Casa Loma Properties, including revenues from box office and gift shop sales, facility or equipment rentals, food and beverage concessions, or any other source, are to be utilized by Kiwanis for application as provided herein. All Operating Costs and all other payments and applications of funds to be made by the Board hereunder shall be paid from such accounts. Any amounts remaining in such accounts upon termination for any reason, after payment of Operating Costs as provided in this Agreement shall be paid to the City as set out in Section 13.3. Should any of such receipts be lost, stolen or otherwise unlawfully removed from the custody and control of Kiwanis by persons for whom Kiwanis is responsible, Kiwanis shall continue to be responsible therefor and Kiwanis shall indemnify the City against any such loss, theft or unlawful removal.

7.3 Business Plan

The Strategic Plan is a high level iteration of Casa Loma’s business direction. Prior to December 31st of each year, the Administration shall prepare and the Casa Loma Board shall adopt a Business Plan for the coming Fiscal Year (the “**Current Business Plan**”), as well as a five-year Business Plan (the “**Projected Business Plan**”) which are consistent with the Strategic Plan. Each Business Plan shall include, in respect of the period covered in such plan, sufficient detail for the City to determine whether the Business Plans conform to the Strategic Plan, and shall in any event state:

- (a) any material variances in the projected ability of Kiwanis to meet or continue to meet the City’s Strategic Vision; and
- (b) any material variances from the Business Plan then in effect.

The Current Business Plan and the Projected Business Plan will be included in the Annual Report described below. The Administration shall carry on the business operations of Casa Loma in accordance with the Business Plan then in effect.

7.4 Annual Financial Statements

Kiwanis shall prepare an annual financial statement with respect to its management and operations at Casa Loma for the Fiscal Year just ended. Financial statements will be prepared in accordance with generally accepted accounting principles, consistently applied, and shall be accompanied by a report from Kiwanis’ auditor. The financial statements will include detailed information as to Gross Revenue, Operating Costs, Net Revenue, Property Tax Equivalent Payment, deposits to and withdrawals from the CLIF, fund raising results, and any other matters material to the financial performance of Kiwanis relative to Casa Loma. The annual financial statement shall be delivered to the City as part of the Annual Report described below.

7.5 Annual Report

On or about June 1st of each year, the Board through the Chair and the Chief Executive Officer of Casa Loma (or in such other manner as the Board may determine from time to time) shall submit an annual report the “**Annual Report**”) to the Director. The Annual Report shall contain the following information in respect of the Fiscal Year just ended:

- (a) overview of programs, projects and activities undertaken in the context of the Strategic Framework;
- (b) the annual audited financial statements;
- (c) confirmation of having completed all monthly and annual inspections required pursuant to s. 4.2(b);
- (d) such explanations, notes and information as are required to summarize the results of the Fiscal Year and to explain material variances in actual results from objectives and/or budgeted amounts set forth in the then current Business Plan;

In addition, the Annual Report shall contain:

- (e) the Business Plan for the current Fiscal Year;
- (f) an updated five-year Business Plan;
- (g) the operating and capital budget for the current Fiscal Year;
- (h) information regarding any matter that is likely to materially affect the City's Strategic Vision;
- (i) any reasonable additional information as the City may specify from time to time.

Upon receipt and review the Annual Report, the Director or his or her designate shall determine, in his or her sole discretion, whether the Annual Report and/or matters arising therefrom should be reported to the Economic Development Committee and City Council. If the Director decides to submit a report, prior to finalizing the report the Director shall give feedback to the Board regarding the comments or concerns which gave rise to the decision to submit the staff report, and allow the Board an opportunity to respond. Following submission of a report to the Economic Development Committee, members of the Board shall make themselves available, if requested, to meet with members of the Committee and/or Council to discuss any matters arising from the Annual Report and/or the staff report in relation thereto.

7.6 City's Audit Rights

In addition to the requirement for annual audited financial statements as set out in s. 7.4, the City, through the Deputy City Manager/Chief Financial Officer or the City Auditor, shall have the rights to review and/or audit Kiwanis's financial records in respect of all matters relating to its operations at Casa Loma and this Agreement, including Gross Revenue and Operating Costs, and including without limitation cash register tapes, credit card invoices and supplier invoices. The cost of such audit shall be for the City's account and shall not form part of the Operating Costs. Such audit may be performed upon reasonable prior notice to Kiwanis and in the event of any such audit Kiwanis shall co-operate fully with the City's representatives, in making available to them such books and records, answering such questions and providing such assistance as they may reasonably require. Kiwanis shall consider and respond to recommendations, if any, arising from any such review or audit by the Deputy City Manager/Chief Financial Officer or the City Auditor.

ARTICLE VIII

SPECIAL USES OF PREMISES

8.1 Official City Functions

Provided no reservation therefor has been received by the Administration, the Board shall make available to the City for use for any official City function, such part or parts of Casa Loma as may be requested by City Council for such purpose, without charge to the City. It is understood and agreed that, in such instances, although the use of Casa Loma shall be without charge to the City, the City shall pay for any and all expenses incurred by the Administration associated with the preparation of the part or parts of Casa Loma so utilized by the City. In addition, the City will work cooperatively with Kiwanis and the Board to establish at Casa Loma from time to time during the Term and free of charge, such displays and exhibitions as have been authorized by Toronto City Council at locations in Casa Loma and in a manner that are mutually acceptable to the City and the Board, acting reasonably.

8.2 City Interference

Kiwanis agrees that the City, acting reasonably, shall be entitled at any time and from time to time and following consultation with Kiwanis, to temporarily interfere with the rights granted to Kiwanis by this Agreement by giving Kiwanis prior written notification to close Casa Loma or the relevant portion of Casa Loma or otherwise obstruct Casa Loma if necessary in connection with the construction, maintenance or repair of Casa Loma or with the construction, maintenance, repair or demolition of improvements or utility services on, over, or under Casa Loma or lands abutting or adjoining Casa Loma. In this regard, Kiwanis agrees to close Casa Loma or the relevant portion of Casa Loma promptly and at a mutually agreed time following receipt of such written notification and to keep Casa Loma closed for the period specified in the written notification from the City.

8.3 Kiwanis Use of Casa Loma

In its management of Casa Loma on behalf of the City, Kiwanis shall be entitled to hold its meetings and up to five (5) other community and charitable events in Casa Loma annually, and such other events that will not adversely impact on the revenue generated by the operation of the Casa Loma Properties as shall be determined between Kiwanis and the Board from time to time during the Term. Further, Kiwanis shall be entitled to maintain, during the Term, its existing office in the Castle Property without charge.

8.4 Free Access Days

Free access to the Casa Loma gardens shall be offered on the following dates and times:

- (a) (i) the second Monday in the months of May, June, July, August, September and October in each year of the Term during the normal operating hours of the Casa Loma, provided that, if in any such month during the Term the second Monday of such month should be a statutory holiday, free access to the Casa Loma Gardens in such month shall be on the third Monday in such month; and
- (ii) each Tuesday night during the months of May to October, inclusive, from 4:00 p.m. until dusk

(the “**Free Access Days**”);

- (ci) all of the costs of implementing the Free Access Days shall form part of Operating Costs;
- (cii) the Director or the person acting as such or his designate shall have the right to advertise the Free Access Days during each year of the Term.

ARTICLE IX

ALTERATIONS AND IMPROVEMENTS

9.1 Alterations

- (a) Subject to subsections (c) and (e)(i) below, the Board shall not authorize or undertake any material alterations to the Casa Loma Properties without the prior written approval of the CCO.
- (b) The Board acknowledges that if such alterations would be likely to have a significant impact on the structural or heritage elements of the Casa Loma Properties, they will require the prior written approval of the CCO, in consultation with the Toronto Preservation Services. The CCO may decline approval for any proposed alteration which might have the effect of violating the reasons for designation set out in the Heritage Designation By-law.
- (c) If the Administration is proposing to undertake any alterations having a cost of less than ten thousand dollars (\$10,000.00) and such alterations are not likely to have a significant impact on the structural or heritage elements of the Casa Loma Properties, the prior approval of the CCO shall not be required.
- (d) Whenever the Administration is proposing to undertake any alterations having an estimated cost greater than ten thousand dollars (\$10,000.00), it shall request approval from the City of such alterations by providing the CCO with a written request for approval of proposed alterations. Any such request shall be accompanied by sufficient information regarding the nature and extent of the alterations and the manner of completing the proposed work, including work schedules, to allow the CCO to reach an informed decision.
- (e) If the proposed alterations have:
 - (i) an estimated cost greater than ten thousand dollars (\$10,000.00), up to and including fifty thousand dollars (\$50,000.00), the CCO shall provide a written response to the Administration’s request within ten (10) Business Days from the date of receipt of written notice. If no response has been

issued within 10 Business Days, the CCO shall be deemed to have approved the request;

- (ii) an estimated cost greater than fifty thousand dollars (\$50,000.00), the CCO shall provide the Board with a written response to the Board's request within thirty (30) Business Days from the date of receipt of written notice. It is understood and agreed that, depending on the nature and significance of the proposed alterations, the CCO's response may be an approval or denial of some or all of the proposed alterations, or a letter regarding the issues or concerns raised by the request and suggesting the process to be followed for moving forward to address the issues or concerns with a view to obtaining the requested approval.
- (f) Once approved, all alterations shall be completed in accordance with the Legal Requirements and plans and specifications submitted to and approved by the CCO.
- (g) Notwithstanding the foregoing, if the need for any repair arises on an urgent basis which will not allow the completion of the aforesaid procedure, the Administration shall be permitted to undertake the repair without the prior approval of the CCO, but shall notify the CCO as soon as possible regarding the nature of the emergency and the repair undertaken.
- (h) The dollar amounts set out in subsections (c), (d) and (e) shall be adjusted by the CPI Index Ratio every four years throughout the Term.

9.2 Alterations Become Property of City

All alterations and all fixtures except trade fixtures or Kiwanis's fixtures in or upon Casa Loma, whether placed there by Kiwanis or the City, shall be the City's property without compensation therefor to Kiwanis and shall not be removed from Casa Loma at any time during or after the Term hereof without the prior written consent of the City, save and except if so required in writing by the City in which event such alterations shall promptly be removed by Kiwanis at its sole expense.

9.3 Access by City

The City, its employees and agents shall have access without notice and acting reasonably to Casa Loma and all buildings on Casa Loma at all times throughout the Term to view their state of repair.

ARTICLE X

INSURANCE

10.1 City Insurance

The City shall, from time to time and at all times during the Term, keep and maintain, at its sole expense, the following insurance:

- (a) All-Risk Property insurance against loss or damage as the City as a prudent owner would usually obtain for buildings comparable to Casa Loma, including the Hunting Lodge, in an amount equal to not less than the full replacement cost thereof; and
- (b) coverage for the repair and replacement of boilers, pressure vessels, air-conditioning equipment and miscellaneous electrical apparatus on a broad form blanket coverage basis.

Kiwanis shall not be an insured under the policies with respect to the City's Insurance, nor shall it be deemed to have any insurable interest in the property covered by such policies, or any other right or interest in such policies or the proceeds.

10.2 Kiwanis' Insurance

Kiwanis shall, from time to time and at all times during the Term, keep and maintain, the following insurance, the cost of which shall be paid for as part of Operating Costs:

- (a) all risks property insurance in an amount equal to one hundred (100%) percent of the full replacement cost, insuring:
 - (i) all property owned by Kiwanis or for which Kiwanis is legally liable in accordance to this agreement and/or installed by or on behalf of Kiwanis, or located in the premises including, without limitation, chattels, furniture, artefacts and works of art, stock, office equipment and other equipment, fixtures, contents; and
 - (ii) extra expense insurance in such amounts as will reimburse the Kiwanis for extra expenses incurred arising out of prevention of access to the Casa Loma Properties.
- (b) commercial general liability insurance including owners' and contractors' protective, completed operations liability, bodily injury, personal injury, employer's liability, tenant's legal liability, blanket contractual liability, occurrence property damage, and provisions for cross liability and severability of interests with limits of not less than Ten Million Dollars (\$10,000,000.00) per occurrence; if serving alcohol on the premises for compensation, liquor liability insurance in amounts no less than \$2,000,000 per occurrence; the City is to be added as an additional insured; and
- (c) crime insurance against the loss of money and other valuable instruments, which includes employee dishonesty, theft, disappearance, destruction, forgery or alteration; and

- (d) directors' & officers' liability to cover the Board in the amount of One Million (\$1,000,000);
- (e) automobile liability insurance with limits of not less than one million dollars (\$1,000,000.00) in respect of any one accident; and
- (f) any such other forms of insurance as the City, acting reasonably, may require from time to time.

10.3 Policy Provisions

- (a) **Waiver of Subrogation:** All policies of insurance required to be taken out by Kiwanis, except automobile insurance, shall contain a waiver of any subrogation rights that Kiwanis' insurers may have against the City and against those for whom it is in law responsible.
- (b) **Approval of Insurers:** All policies of insurance required to be taken out by Kiwanis shall be placed with insurers licensed in the Province of Ontario which are in a form to be approved by the City, acting reasonably.
- (c) **Notice of Material Change or Cancellation:** Each policy shall contain an endorsement requiring the insurers to notify the City in writing, by registered mail, at least thirty (30) days prior to any material change that restricts or reduces the insurance required under this clause, or cancellation thereof.
- (d) **Breach of Conditions:** Each policy will contain a waiver in favour of the City of any breach of a policy condition or warranty such that the insurance policy in question will not be invalidated in respect of the interest of the City by reason of a breach of any condition or warranty contained in such policies.
- (e) **Deductibles:** The parties agree that insurance policies may be subject to deductible amounts, such amounts to be subject to the approval of the City.
- (f) **Primary Coverage:** The insurance policies required pursuant to this clause shall be primary and shall not call into contribution any insurance available to the City.
- (g) **Limits of Insurance:** The City, acting reasonably, may require the limits of the insurance policies provided by Kiwanis to be increased from time to time.

10.4 Increased in Insurance Premiums and Cancellation of Insurance

Kiwanis agrees that it, its employees, agents, occupants and invitees will not keep in or upon Casa Loma any article or substance which may be prohibited by the insurance policies mentioned above, or do or omit, or permit to be done or omitted anything which will cause any increase in the insurance premiums or the cancellation of any insurance policy. If any insurance policy should be cancelled or the coverage reduced or a threat of cancellation or reduction of

coverage made by reason of anything arising out of the use or occupation of the premises by Kiwanis, whether or not the first sentence of this section has been complied with, and if Kiwanis fails to remedy the condition giving rise to such cancellation, reduction or threat, upon ten (10) days' notice thereof by the City, the City may enter the premises and remedy the condition at the sole cost and expense of Kiwanis.

10.5 Evidence of Insurance

Upon execution of this agreement, Kiwanis shall deliver to the City evidence of the insurance required hereby in the form of Certificates of Insurance, in form and detail satisfactory to the City, acting reasonably, signed by an authorized representative of the insurer. Kiwanis will make available the complete original certified copies of all applicable policies delivery to the City if required. Certificates of insurance evidencing renewal or replacement of policies shall be delivered to the City fifteen (15) days prior to the expiration of then current policies, without demand having to be made therefore by the City.

10.6 City Not Liable

Kiwanis agrees that the City shall not be liable for any bodily injury or death of, or loss or damage to any property belonging to Kiwanis or its members, employees, invitees or licensees or any other person in, on or about Casa Loma unless resulting from the actual wilful misconduct or gross negligence of the City or its employees, agents or servants and in no event shall the City be liable:

- (a) for any damage which is caused by water, rain or snow or other thing which may leak into, issue or flow from any part of Casa Loma or from the pipes (excluding steam pipes) or plumbing works, including, without limitation, the sprinkler system (if any) therein or from any other place or for any damage caused by or attributable to the condition or arrangement of any electric or other wiring, or of sprinkler heads (if any) in or about Casa Loma;
- (b) for any act or omission on the part of any contractor or its employees from time to time engaged to perform any work in or about Casa Loma;
- (c) for any loss or damage, however caused, to money, securities, negotiable instruments, papers or other valuables of Kiwanis;
- (d) for any damages for personal discomfort or illness resulting from the operation or non-operation of the ventilating or heating system or of any other equipment or machinery in the buildings located on Casa Loma or in or on Casa Loma;
- (e) for any business interruption or loss; or
- (f) for indirect or consequential damages.

10.7 Indemnity

- (a) The City shall not be liable for any death, injury, or damage to or loss of property, of Kiwanis, its employees, agents, invitees or any other person, occurring in or about Casa Loma, unless such death, injury, damage or loss resulted from the negligence of the City, its contractors, agents or employees or other persons for whom it may be responsible. All property of Kiwanis within Casa Loma shall be at the risk of Kiwanis only.
- (b) Kiwanis shall during the term of this Agreement, indemnify and save harmless the City from any and all liabilities, damages, costs and expenses, claims, suits, or actions incurred by it as a result of or arising out of:
 - (i) any breach, violation or non-performance of any covenants, condition or agreements set forth and contained herein, on the part of Kiwanis, its officers, employees, agents, customers, contractors, other invitees and any others permitted by Kiwanis to be on the Casa Loma Properties, to be fulfilled, kept and observed and performed;
 - (ii) any damage to property occasioned by Kiwanis's use and occupation of the premises; and
 - (iii) any injury to person or persons, including death, resulting at any time therefrom occurring in or about the Casa Loma Properties and/or on the sidewalks adjacent to same, unless the same is caused by the negligence of the City or those for whom it is responsible.

ARTICLE XI

APPROVALS

11.1 Approval Required

Except where otherwise specifically stipulated in this Agreement, in carrying out its rights and responsibilities under this Agreement, Kiwanis shall first obtain the approval of the CCO with respect to:

- (a) any agreement respecting the use or operation of Casa Loma which would be for a term extending beyond the date that this Agreement is scheduled to expire;
- (b) a proposed assignment of this Agreement;
- (c) any change to accounting or auditing practices or procedures;
- (d) changes to insurance coverage;
- (e) alterations.

11.2 Approval Procedure

- (a) Where the City's approval is required pursuant to this Agreement, Kiwanis shall make a request in writing to the Director except in respect of alterations, in which case the request shall be made in writing to the CCO. Subject to s. 9.1 with respect to alterations, and to subsection (c) below, the City shall respond in writing to Kiwanis no later than thirty (30) days after receipt of a request for approval.
- (b) It is understood and agreed that in some instances the City's response to Kiwanis might be in the nature of a request for more information rather than approval or denial of the request. If so, the City shall attempt to expedite a reply upon receipt of the information requested, but in any event shall respond in writing to Kiwanis no later than thirty (30) days after receipt of the all of the additional information requested.
- (c) Any approval permitted or required to be given by the City may be given by the CCO or the Director as the case may be, from time to time, his or her successor, or his or her designate(s) from time to time (collectively, for the purposes of this clause, the "CCO"). However, the CCO specifically reserves the right to submit the issue which is the subject matter of the request for approval to City Council for its determination. Where the CCO has determined that the matter is to be referred to City Council for its determination, the matter shall be submitted to City Council through the appropriate standing committee and the time for the City's response shall be extended until such matter has been considered and decided by Council.

11.3 Special Approval Process

It is anticipated that certain major contracts related to the operation of Casa Loma, which will result in Kiwanis transferring to the successful bidder any of the rights or obligations granted to Kiwanis under this Agreement, will be awarded through a competitive bidding process such as but not limited to a tender, Request for Qualifications, Request for Expressions of Interest or Request for Proposals (referred to generically in this paragraph as an "RFP") and that, in such instances, the RFP process might not accommodate the timing necessary for approval to be granted by the City upon completion of the RFP process. Without limiting the generality of the foregoing, the type of contract to be included in this process would relate to matters such as the granting of the right for exclusive catering services, or other opportunities where the selected proponent would be awarded an exclusive service contract or the use of a significant portion of one of the Casa Loma Properties. In such instances, the City's approval to initiate the RFP process will be required. The parties hereby agree that, if the Casa Loma Board decides to initiate an RFP, it shall work cooperatively with the City in determining the scope of the RFP, the nature of the RFP process, and certain key parameters of the contract to be entered into upon selection of a successful bidder through the RFP. Notwithstanding s. 11.1 above, provided that the City gives its approval in writing to the issuance of the RFP document as described in this s. 11.3, and provided further that the Casa Loma Board follows an open, fair and impartial process

in the administration of the RFP and the award to the successful bidder, the City's approval of the Board's selected bidder and the contract resulting therefrom will not be required.

- (r) With respect to a major contract that would have the effect of granting exclusive rights to the use of certain premises within Casa Loma, or have the effect of delegating responsibility for the provision of services to be rendered by Kiwanis pursuant to this Agreement, then notwithstanding s. 16.2 below:
 - (vi) where the Board has undertaken and completed a formal procurement procedure with respect to any matter related to the exercise of its rights and obligations herein;
 - (vii) where such procedure includes the requirement for competitive bids as described in this s. 2.4 (such as but not limited to a tender or request for proposals); and
 - (viii) where the City has been given an opportunity to review, comment on and approve of the material issued in conjunction with the launch of the procurement in question; and
 - (ix) where the subject matter of the procurement is consistent with the Strategic Vision; and
 - (x) provided more than one proponent has submitted a bid or proposal in response thereto,

Kiwanis may enter into a binding agreement with a successful bidder without obtaining the City's approval, even if the effect thereof would be to grant a lease or licence to the successful bidder.

ARTICLE XII

REPRESENTATIONS

12.1 Representations and Warranties of Kiwanis

Kiwanis represents and warrants as of the date hereof and acknowledges that the City is relying on such representations and warranties in entering into this Agreement:

- (a) Kiwanis is a corporation duly incorporated, organized and subsisting under the laws of the Province of Ontario;
- (b) Kiwanis has the power, authority and right: (i) to enter into and deliver this Agreement; and (ii) to perform its obligations under and as contemplated to be performed pursuant this Agreement, including the delegation thereof to the Casa Loma Board;

- (c) this Agreement constitutes a valid and legally binding obligation of Kiwanis, enforceable against Kiwanis in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court; and
- (d) the entering into and delivery of this Agreement and the performance of the obligations of Kiwanis hereunder will not result in the violation of:
 - (i) any of the provisions of the constating documents or by-laws of Kiwanis; or
 - (ii) any agreement or other instrument to which Kiwanis is a party or by which Kiwanis is bound.

12.2 Representations and Warranties of the City

The City represents and warrants as of the date hereof as follows and acknowledges that Kiwanis is relying on such representations and warranties in connection with the Transactions contemplated by this Agreement:

- (a) the City has the power, authority and right: (i) to enter into and deliver this Agreement; and (ii) to perform its obligations under and as contemplated to be performed pursuant this Agreement;
- (b) this Agreement constitutes a valid and legally binding obligation of the City, enforceable against the City in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court; and
- (c) the entering into and the delivery of this Agreement and the performance of the obligations of each of the City and the Board hereunder will not result in the violation of any agreement or other instrument to which the City is a party or by which the City is bound.

ARTICLE XIII

DISPUTE RESOLUTION AND TERMINATION

13.1 Consultation Required

- (a) For the purposes of this s. 13.1, a “**Dispute**” means:

- (i) any controversy, claim or dispute arising out of or relating to this Agreement concerning any matter pertaining to this Agreement that could, if unresolved, result in termination of this Agreement; or
 - (ii) a decision by the Board that could be interpreted as causing a breach of this Agreement; or
 - (iii) a decision by the Board that is likely to result in additional liabilities or obligations on Kiwanis which are not acceptable to Kiwanis; or
 - (iv) a decision by Kiwanis to decline, refuse or neglect to implement a decision of the Casa Loma Board.
- (b) At any time during the Term, a party who becomes aware of a Dispute (save and except an event of insolvency as described in s. 13.3 below, in which case this s. 13.1 shall not apply) may serve notice on the other party, specifying the nature of the Dispute with reasonable particularity. Upon the provision of such notice, the parties agree to attempt to resolve the Dispute through good faith negotiation between the parties using reasonable commercial efforts (without the requirement to expend material amounts of money or to incur additional material obligations or liabilities in so doing).
- (c) If, despite such good faith negotiations and all related reasonable efforts, including without limiting the generality of the foregoing, if necessary referring matters arising from the Dispute back to the Board and/or City Council and/or reconstituting the Board, no resolution of the Dispute has been reached within six (6) months following delivery of the notice, then either party shall have the right to terminate this Agreement pursuant to the other provisions of this Article XIII.
- (d) The foregoing approach to Dispute resolution shall not apply to urgent matters or emergencies when immediate action is required.

13.2 Termination Upon Default

Each of the City or Kiwanis may terminate this Agreement upon a default by the other party hereunder. A party shall be in default hereunder if, subject to the provisions of s. 6.9 and s. 13.1:

- (a) such party fails to pay any sum payable herein within ten (10) Business Days after notice thereof from the other party; or
- (b) such party fails to perform or comply with any of the other material terms, covenants, agreements or conditions hereof and such failure continues for more than thirty (30) Business Days after written notice thereof from the other party or a lesser period of time if such failure could reasonably have been cured sooner provided that, if a default (other than a default in the payment of money) is not reasonably susceptible to being cured within the thirty (30) Business Day period, the defaulting party shall not be considered in default if it shall within such thirty

(30) Business Day period have commenced with due diligence and dispatch cure such default and thereafter complete with dispatch and due diligence the curing of such default.

13.3 Pre-emptive Termination

If an event of insolvency occurs to one party, the other party may terminate this Agreement by notice (the “**Notice of Termination**”) to the insolvent party stating that this Agreement is terminated and the reason for termination. Such termination shall be effective as and from the date on which the Notice of Termination is received by the insolvent party.

13.4 Duties Flowing from Termination

Upon termination of this Agreement, the City shall:

- (e) assume any contracts entered into by Kiwanis for the benefit of Casa Loma in accordance with this Agreement; and
- (f) pay for the cost of all services, materials and supplies ordered by Kiwanis in accordance with the provisions of this Agreement but which may not have been charged to and paid by Kiwanis at the time of termination.

Upon termination of this Agreement, Kiwanis shall assist the City for a period of 120 days in operating Casa Loma and transitioning the management of Casa Loma to City staff or another operator and the City agrees to pay Kiwanis for its services rendered in this regard the fee provided in s. 6.2, pro-rated over such termination period. The parties agree to prepare a full and final accounting of all Gross Revenue, Net Revenue and Operating Costs to the date of termination and all sums payable pursuant to this Agreement shall be adjusted to the said date of termination. If, upon termination and after completing all of the aforesaid adjustments, there is a credit balance in the CLIF, Kiwanis agrees to pay over the entire balance in the CLIF to the City for the continued operation of Casa Loma.

This s. 13.4 shall survive the termination of this Agreement.

13.5 Delivery Of Records

If this Agreement is terminated, notwithstanding such termination, Kiwanis shall forthwith upon such termination and from time to time thereafter deliver to the City all records and documents including, without limitation, all contracts with users of the Casa Loma Properties, all operating and maintenance agreements, and all other operating records, books of account and ancillary documents maintained with respect to the Casa Loma Properties which are then in the possession or control of Kiwanis, which the City reasonably requires and which relate directly to the Casa Loma Properties. Kiwanis may elect, at its own expense, to retain copies of all records, books of account and ancillary documents, and the City will produce same upon request by Kiwanis, for the purpose of legal proceedings or dealing with governmental authorities. If Kiwanis so elects to retain, or otherwise requests, copies of all records, books of account and ancillary documents, same will be held in strict confidence and shall only be

disclosed to the extent necessary for such legal proceedings or dealings with governmental authorities.

13.6 Non-Exclusive Remedies

The exercise by the City or Kiwanis of remedies and rights provided herein shall in no way affect any other right or remedy available to the City or Kiwanis except that no form of double recovery shall be allowed.

13.7 Kiwanis to Vacate

Upon the expiration of this Agreement or in the event of a termination, Kiwanis shall vacate the Casa Loma Properties upon the effective date of such expiration or termination. The Casa Loma Properties and all Inventory associated with Casa Loma shall be handed over to the City. All reports, records, including financial records, and documents required to be maintained under this Agreement and related to this Agreement shall be immediately surrendered to the City by Kiwanis upon termination or expiration. Upon expiration or termination of this Agreement, Kiwanis shall provide to the City a then current inventory of Casa Loma equipment and furnishings.

13.8 City Remedies

Mention in this Agreement of any particular remedy of the City or Kiwanis in respect of the default by the other party does not preclude party from any other remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for in this Agreement. No remedy shall be exclusive or dependent upon any other remedy, but either party may from time to time exercise any one or more of such remedies generally or in combination, such remedies being cumulative and not alternative. In the event of a breach by a party of any of the covenants, provisions or terms hereof, the other party shall have the right to invoke any remedy allowed at law or in equity (including injunction) as if re-entry, in the case of the City, and other remedies were not provided for herein.

13.9 Damage to Premises

- (a) Notwithstanding anything hereinbefore contained including s. 13.1 above, if, at any time during the Term, the Castle is materially destroyed or damaged, as determined by the City in its sole discretion by fire, lightning, tempest or other perils, the City shall have the right to terminate this Agreement and to enter into possession of Casa Loma upon giving not less than sixty (60) days' prior written notice thereof to Kiwanis.
- (b) Kiwanis hereby acknowledges that it shall have no claim for any damages whatsoever against the City upon the exercise by the City of its rights of termination hereunder save and except for the actual wilful misconduct or gross negligence of the City or its employees, agents or servants or those for whom it is responsible at law, and any and all such claims for damages are hereby expressly waived by Kiwanis.

ARTICLE XIV

NOTICE

14.1 Notice

Any notice, approval or other communication required or permitted to be given ("**Notice**") shall be in writing and shall be personally delivered, sent by prepaid registered mail, or sent by fax and, in the case of notice to the City, addressed to it as follows:

Executive Director, Culture
East Tower, 9th Floor
City Hall, 100 Queen Street West,
Toronto ON M5H 2N2
Fax No.: (416) 392-5600

And to:

City of Toronto Chief Corporate Officer
East Tower, 4th Floor
City Hall, 100 Queen Street West,
Toronto ON M5H 2N2

Attention: Director of Real Estate Services
Fax No.: (416) 392-1880

With a copy to:

City Solicitor
City of Toronto
Station 1260, 26th Floor
Metro Hall
55 John Street
Toronto ON M5V 3C6
Fax No.: (416) 397-5624

and in the case of Notice to Kiwanis:

Kiwanis Club of Casa Loma, Toronto
1 Austin Terrace
Toronto, Ontario M5R 1X8
Attention: The President
Fax Number: (416) 923-5734

with separate copies to each of:

Chief Executive Officer and Chair of the Board
Casa Loma
1 Austin Terrace
Toronto, Ontario M5R 1X8
Fax Number: (416) 923-5734

Any Notice so given shall be deemed conclusively to have been given and received on the date of delivery if personally delivered, or on the third (3rd) Business Day following the date of mailing if sent by prepaid registered mail, on the day of transmission by fax (if transmitted prior to 5:00 p.m. on a Business Day), and on the business day next following transmission (if transmitted after 5:00 p.m., or if transmitted on other than a business day), provided that if there is any anticipated or existing postal dispute, Notice shall be personally delivered or transmitted by fax. Either party may from time to time change its address for service by Notice to the other party to this Offer.

No communication or dealing between Kiwanis and any department, committee, body, officer, employee, agent, representative or elected or appointed official of the City that is not clearly in respect of and in accordance with this Agreement shall be deemed to be a communication or dealing under this Agreement between Kiwanis and the City as parties to this Agreement or affect the City with notice of any such communication or dealings. It is intended and agreed that any communication or dealing between Kiwanis and the City as parties to this Agreement shall only be effective if delivered in accordance with the notice provisions in this Agreement. No communication or dealing between the City as party to this Agreement and Kiwanis as a party to this Agreement shall relieve Kiwanis from the responsibility of discharging its lawful obligations to the City imposed by statute, regulation, by-law or by any other lawful manner separate and apart from the obligations imposed under this Agreement.

ARTICLE XV**TRANSITION PROVISIONS****15.1 Reasons for Transition Provisions**

It is anticipated that the members of the Casa Loma Board will be appointed to take office as of July 1, 2008 and that upon appointment, it will take some time for the members to become familiar with the Casa Loma Properties and the operation of Casa Loma, and to review all of the relevant information, including this Agreement, in order to assume full responsibility for the operation of Casa Loma and the fulfillment of the terms of this Agreement. Moreover, this Agreement requires the Board to adopt a budget and business plan. Although the budget and business plans are prepared by the Administration, they must be reviewed and considered by the Board and cannot be adopted simultaneously with the creation of the Board. In addition, the City must complete the Building Condition Audit and prepare a description of the Restoration Work.

15.2 Transition Framework

This Agreement is intended to replace the existing agreement between the City and Kiwanis with respect to the Casa Loma Properties, which is currently scheduled to end on December 31, 2008. The parties agree that the financial provisions of the existing agreement will continue to apply for the remainder of 2008, and that the new payment structure will take full effect on January 1, 2009. For the interim period:

- (a) the budget for the operation of Casa Loma will be Kiwanis' 2007-2008 budget;
- (b) the payments provided for in s. 6.2-6.5 inclusive will not be made, provided however that if the Casa Loma Properties become exempt from realty taxes and receive an exemption and/or refund for any portion of the year 2008, any such realty tax savings shall be deposited to the CLIF;
- (c) as Kiwanis' current fiscal year end is September 30, 2008, it will complete its current fiscal year, including the preparation of audited financial statements. It will then operate until December 31, 2008 on a truncated fiscal year and prepare financial reports and audited statements for the period from October 1, 2008-December 31, 2008, before adopting the new Fiscal Year when the financial terms of this Agreement take effect on January 1, 2009;
- (d) save and except as described above relating to the financial provisions, upon the appointment of the Board this agreement shall take effect and in assuming its responsibilities, the Board shall be guided by the City's Strategic Vision;
- (e) The current CEO of Casa Loma shall be deemed to be approved by the Board.

15.3 Catering Services

Notwithstanding s. 11.2 and s. 11.3, the parties acknowledge that the Strategic Framework articulated the importance of engaging a qualified catering company to provide food and beverage service for Casa Loma and identified the significant opportunities available at Casa Loma for innovations in the way in which food and beverage services are made available. The City acknowledges that prior to but in anticipation of the commencement of this Agreement, Kiwanis issued a two-stage request for proposals to initiate the search for a catering company to provide food and beverage service for Casa Loma, the initial stage of which was in essence a request for qualifications which resulted in several proponents expressing serious interest in the opportunity presented in the RFP document. Subsequently, in recognition of the importance of the potential significant physical and operational changes to Casa Loma that might result upon the selection of a successful bidder, the RFP process was suspended in order that the process could be more closely managed and completed by the Board. The City acknowledges that the RFP was approved by the City, and if the new Casa Loma Board elects to complete the selection of the caterer for Casa Loma by continuing with the RFP document already issued (with only minor changes to reflect the new governance and timing), no further approval of the City will be required.

ARTICLE XVI

GENERAL

16.1 Kiwanis an Independent Contractor

Nothing in this Agreement shall be construed as or shall constitute a partnership, joint venture, employee/employer relationship or agency relationship between Kiwanis and the City. The duties to be performed and the obligations assumed by Kiwanis through its Administration and the stewardship of the Casa Loma Board under this Agreement shall be performed and assumed by them as an independent contractor and not as an agent of the City.

16.2 No Assignment

Neither this Agreement nor any of the rights, entitlements, duties and obligations arising from it shall be assignable in whole or in part by Kiwanis except with the prior approval of the City, which may be unreasonably withheld.

16.3 Arbitration

If any dispute or difference arises between the City and Kiwanis with respect to any matter included in this Agreement, and the dispute or difference has not been resolved through completion of the negotiations described in s. 13.1, then such dispute shall be subject to arbitration in accordance with the following provision. The parties expressly agree that the provisions of the *Municipal Arbitrations Act*, R.S.O. 1990, Chap. M.48 shall not apply at any time to any arbitration whatsoever initiated pursuant to this Agreement. Arbitration initiated pursuant to this Agreement shall proceed in accordance with the provisions of the *Arbitration Act*, 1991, S.O. 1991, Chap. 17, by a sole arbitrator. Arbitration shall be initiated by the party desiring arbitration (the “**Initiating Party**”) delivering notice (“**Notice**”) to the other party to the

dispute (the “**Responding Party**”) referring a matter in dispute to arbitration and providing the name or names of a proposed arbitrator. Upon receiving such Notice, the Responding Party will have 20 days to deliver to the Initiating Party a response, either agreeing to the proposed arbitrator, or proposing a different arbitrator (the “**Response**”). If the Responding Party fails to deliver a Response within the time required, then that party shall be deemed to agree to the arbitrator or arbitrators proposed in the Notice. If the Initiating Party and Responding Party cannot agree on an arbitrator within 20 Days of delivery of the Response, then an arbitrator shall be appointed by a judge of the Superior Court of Justice upon the application of either party to the arbitration. Any determination by arbitration in accordance with this provision shall include an award for the costs of the arbitration.

16.4 Construction Liens

- (a) If any lien under the *Construction Lien Act* of Ontario or any like statute shall at any time be registered against Casa Loma by reason of work done or materials supplied for or to Kiwanis or for or to anyone holding an interest in Casa Loma through Kiwanis or if the City is given notice of any such lien, the construction lien shall be discharged and vacated by tile Club within thirty (30) days after tile construction lien is filed or sooner if Casa Loma is in jeopardy of forfeiture or sale by the party performing the work in respect of which the construction lien was filed even if the validity of the construction lien is being contested, if requested by the City. If Kiwanis wishes to contest the amount or validity of any lien and has so notified the City, and if Kiwanis has deposited with the City or paid into court to the credit of the lien action the amount of the lien plus a reasonable amount for costs and has registered a discharge of such lien, Kiwanis may defer payment of such lien for a period of time sufficient to enable Kiwanis to contest the lien with due diligence, provided always that Casa Loma shall not thereby become liable to forfeiture or sale.
- (b) The City may, but shall not be obliged to, discharge and vacate any lien if, in the CCO’s judgment, Casa Loma become liable to immediate forfeiture or sale or are otherwise ill jeopardy, and any amount paid by the City in so doing, shall be reimbursed to the City by Kiwanis within fifteen (15) days after demand.

16.5 City Street Extensions

Whenever and so often during the Term as the City shall require for street extensions or widening, any part or parts of the lands forming part of the Casa Loma Properties, the City shall have the right to take and use such part or parts of such lands for such purposes, or any of them, without payment to Kiwanis of any compensation whatsoever therefor, anything to the contrary herein contained notwithstanding.

16.6 No Fettering of Discretion

Nothing in this Agreement derogates from, interferes with, or fetters the exercise by the City of all of its rights and obligations as a municipality (whether discretionary or mandatory), or imposes any obligations on the City in its role as a municipality, and the City shall not be

prevented from or prejudiced in carrying out its statutory rights and responsibilities, including its planning rights and responsibilities. Nothing in this Agreement derogates from, interferes with, or fetters the exercise by the City's officers, employees, agents, representatives or elected and appointed officials of all of their rights, or imposes any obligations on the City's officers, employees, agents, representatives or elected and appointed officials, other than as expressly set out in this Agreement.

16.7 Communications with City

The parties acknowledge that they have established open lines of communication at the staff and executive level which have served the parties well in their past dealings with Casa Loma. Notwithstanding s.14.1 regarding the need for formal communications between Kiwanis and the City, the parties confirm their commitment to continue to communicate and consult with one another on an ongoing basis regarding matters affecting Casa Loma on an informal basis.

16.8 Interest on arrears

Subject to the delay in payment provisions contained in s. 6.9, all amounts payable to the City or to Kiwanis under this Agreement will bear simple interest at the rate of 1.25% per month (15% per year) (the "**Default Rate of Interest**"). Subject to the provisions of this Agreement, interest will be calculated and payable from and including the day after the day the amount is due until payment in full of the overdue amount is received by the City or Kiwanis. Interest will be calculated only on the principal amount outstanding from time to time, and interest charges will not be added to the outstanding principal amount for purposes of calculating interest. Payments received by the City will be applied first to outstanding interest charges and the balance (if any) will be applied to the outstanding principal amount.

16.9 Returned Cheque Fee

Kiwanis will pay to the City, immediately on demand, a charge of thirty-five dollars (\$35.00) for every cheque tendered by the Kiwanis to the City that is not honoured by the institution on which it is drawn (the "**Returned Cheque Fee**"). The Returned Cheque Fee may be increased by the City from time to time by notice to the Kiwanis, so that it is at all times equal to the charge payable in respect of cheques tendered in payment of tax, water and court service charges that are not honoured by the institution on which they are drawn.

16.10 No Waiver

Any condoning, excusing, or overlooking by the City of any default, breach or non-observance by Kiwanis at any time during the Term in respect of any covenant, proviso or condition herein contained shall not operate as a waiver of the City's rights hereunder in respect of any subsequent default, breach or non-observance and shall not defeat or affect in any way the rights of the City herein in respect of any subsequent default or breach.

16.11 Headings

The article numbers, article headings, section numbers and section headings contained herein are inserted for convenience of reference only and are not to be considered when interpreting this Agreement.

16.12 **Covenants**

Each obligation of the City or Kiwanis expressed in this Agreement, even though not expressed as a covenant, is considered to be a covenant for all purposes. The covenants, representations, warranties, and indemnity of Kiwanis herein set forth shall survive the expiry of the Term.

16.13 **Entire Agreement**

This Agreement contains all the representations, warranties, covenants, agreements, conditions and understandings between the City and Kiwanis concerning Casa Loma or the subject matter of this Agreement.

16.14 **Governing Law**

This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.

16.15 **Illegal Provision**

If any provision of this Agreement is illegal or unenforceable it shall be considered separate and severable from the remaining provisions of this Agreement, which shall remain in force and shall be binding as though the said provision had never been included.

16.16 **Amendments**

This Agreement may not be amended or modified except with the written consent of the parties hereto.

16.17 **Renewal**

Upon the expiry of the Term, the City agrees that provided:

- (a) Kiwanis has duly and regularly performed all of the terms, conditions, covenants and provisos required to be performed by it hereunder without any material default;
- (b) the City, acting reasonably, has been satisfied with Kiwanis' operation of Casa Loma;
- (c) the City does not require the Casa Loma Properties for other municipal purposes,

then if Kiwanis desires to continue managing and operating Casa Loma, the City shall duly consider any such request by Kiwanis, and will consider the possibility of entering into a renewed relationship

with Kiwanis in the context of a refreshed and current comprehensive framework for the operation of Casa Loma.

IN WITNESS WHEREOF the City and Kiwanis have hereunto affixed their respective corporate seals attested by the hands of their respective proper officers in that behalf duly authorized as of the date first written above.

CITY OF TORONTO

Per: _____

—
Name:

Title: c/s

Per: _____

—
Name:

Title:

**KIWANIS CLUB OF CASA LOMA,
TORONTO**

Per: _____

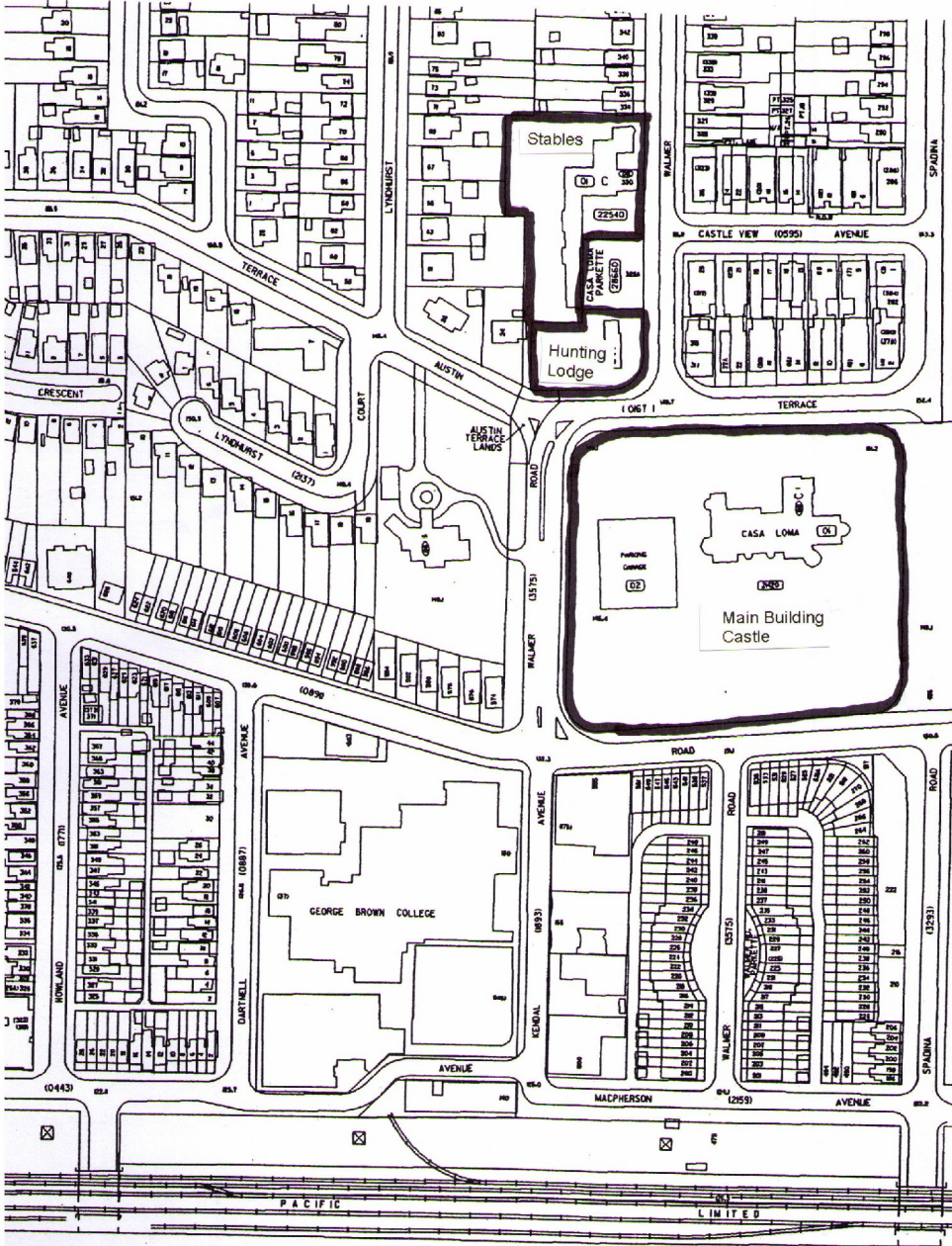
—
President

c/s

Per: _____

—
Secretary

Schedule "A" Casa Loma Properties



SCHEDULE "B"
GARDEN CLUB AGREEMENT

SCHEDULE “C”

LORD REPORT

SCHEDULE "D"
STRATEGIC PLAN

SCHEDULE "E"
HERITAGE DESIGNATION BY-LAW

SCHEDULE “F”
FIRE SAFETY MAINTENANCE DUTIES

SCHEDULE “G”
INVENTORY