

THIS PUBS OPERATING AGREEMENT is made effective the 1st day of January, 2010

BETWEEN:

FEDERATION OF STUDENTS, UNIVERSITY OF WATERLOO a corporation established under the laws of the Province of Ontario

(“**Federation**”)

- and -

UNIVERSITY OF WATERLOO, a university established by an Act of the Legislature of the Province of Ontario, with its main campus located at 200 University Avenue, Waterloo, Ontario N2L 3G1

(“**UW**”)

RECITALS

WHEREAS UW is the owner of the Federation Hall and Bombshelter Premises (as hereinafter defined);

AND WHEREAS the parties have entered into an agreement effective January 1, 2010, leasing the Premises to the Federation (the “Lease Agreement”);

AND WHEREAS the parties wish to set out the terms and conditions under which the Pubs are operated on the Premises and licensed for the service of alcohol under the liquor licence held by UW;

AND WHEREAS the parties have entered into an agreement dated April 29, 1994 and revised March 2003 governing operation of the Student Life Centre (the “SLC Operating Agreement”), whose terms and conditions relating to the Bombshelter Pub and Bombshelter Premises remain in effect, except where explicitly modified by this agreement and/or the Lease Agreement;

AND WHEREAS the parties acknowledge that this agreement is governed by the Liquor Licence Act, UW policies and procedures, and the Operating Procedures (as hereinafter defined), as they all may be amended from time to time, and is subject to the approval of the Alcohol and Gaming Commission of Ontario;

NOW THEREFORE the parties hereto covenant and agree as follows:

DEFINITIONS

Bombshelter Pub: The food and beverage facility occupying rooms 1123, 1123A, 1123B, 1123C, 1123D, 1125, 1125A, 1125B, 1529, 1530, 1531, 1532, 1812, 1813, 1814 and 1817 as of the date of this agreement (the “Bombshelter Rooms”) in the SLC and the adjacent patio.

Bombshelter Premises: The Bombshelter Rooms in the SLC and adjacent patio, their built-in fitments, equipment, and electrical and mechanical facilities as well as improvements or alterations made thereto.

Campus Bar Operations (“CBO”): the body comprised of the manager of bar operations, bar managers and all pubs staff, and managed as described herein. The management structure of CBO is set out in Schedule A attached to and forming part of this agreement.

Federation Hall: Building #35, owned by UW on the Waterloo campus of UW.

Federation Hall Premises: the building structures, decks and patios for building #35, their built-in fitments, equipment, and electrical and mechanical facilities as well as improvements or alterations made thereto.

Incident System: the application for entering and processing reports relating to non-academic student incidents at UW.

Liquor Licence Act (“LLA”): the Liquor Licence Act, R.S.O. 1990, c.L.19 and all regulations passed thereunder, as they may be amended from time to time.

Liquor Licence Holder: A senior administrator of UW appointed by UW to hold the liquor licence with respect to the Premises. At the time of execution of this agreement, the Director of University Business Operations holds this position.

Operating Procedures: the operating procedures approved by the Liquor Licence Holder on the advice of UW’s Committee on Alcohol Use and Education, as they may be amended from time to time.

Patron: any individual permitted to enter one or both of the Pubs and/or Premises while in operation.

Premises: Bombshelter Premises and Federation Hall Premises.

Pubs: Federation Hall and Bombshelter Pub.

Student Life Centre (“SLC”): Building #19, owned by UW on the Waterloo campus of UW.

1. TERM

This agreement shall come into effect on the 1st day of January, 2010 and remain in force and effect up to and including the 30th day of April, 2012 (the “Term”). This agreement shall be renewable at the end of the Term for successive one year terms unless either party gives written notice of its intention not to renew at least ninety (90) days prior to the expiration of the then-current term. If either party elects to not renew this agreement, such party may initiate negotiations for a revised agreement.

2. OVERSIGHT OF THE PUBS

The Liquor Licence Holder will have ultimate authority over the operation of the Pubs, subject to the terms of this agreement. CBO will oversee the operation of the Pubs.

3. CBO STRUCTURE AND MANAGEMENT

- a. CBO will be managed by a Directorate consisting of a senior manager appointed by UW (the “UW Appointee”; at the time of execution of this agreement, the Director of UW Food Services holds this position) and the Federation Vice-President Administration and Finance.
- b. The Federation’s General Manager may serve as a non-voting resource member of the Directorate and attend meetings of the Directorate.
- c. The Directorate will be jointly accountable to the Liquor License Holder for all aspects of management and operation of the Pubs.
- d. There will be a Manager of Bar Operations who will be accountable to the Directorate for all aspects of operation of the Pubs.
- e. The Federation Vice-President Administration and Finance will be responsible for all financial aspects of CBO including: budgeting, performance to budget, accounting, cash handling, payment authorizations, applicable tax remittances, financial reporting and financial signing authorities.
- f. The UW Appointee will have direct responsibility for ensuring compliance with the LLA.
- g. The Directorate will share responsibility for all other CBO functions.

4. CBO EMPLOYEES

- a. All employees in CBO will be employed in accordance with UW human resources policies and will be governed by UW policies and procedures, as they may be amended from time to time.
- b. The Manager of Bar Operations will be hired by the Directorate. The manager of the Bombshelter Pub and the manager of Federation Hall will be hired by the Manager of Bar Operations and the Federation Vice-President Administration and Finance, with input and advice from the UW Appointee. The employees of the Pubs will be hired by the applicable bar manager.

- c. All employees in CBO shall participate in the same bar training programs that bar staff are subject to and shall complete all courses required of such individuals by the AGCO.

5. OPERATION OF THE PUBS

- a. All cash handling of income for the Pubs will be done under the procedures and accounts of the Federation.
- b. UW will purchase all liquor for the Pubs through UW accounts.
- c. All revenue, exclusive of taxes, from the sale and service of liquor in the Pubs will be transferred to UW as provided in section 7 of this agreement.
- d. The Federation's General Manager will be responsible to the Federation Vice-President Administration and Finance for day-to-day financial matters relating to operation of the Pubs.
- e. The Federation will provide food services for the Pubs and will operate independently and autonomously from UW Food Services. Federation food services must maintain compliance with the LLA, UW policies and procedures, and the Operating Procedures.
- f. The Federation Vice-President Administration and Finance will be responsible for programming, including entertainment at the Pubs. The Liquor Licence Holder will not be involved in entertainment decisions unless such decisions create concern about safety, UW's reputation, and or compliance with the law, UW policies and procedures, and/or the Operating Procedures.
- g. The Pubs may host "all ages" events to which students under the legal drinking age for the Province of Ontario are admitted. However, UW reserves the right to prohibit such events and/or restrict access to individuals under the legal drinking age if the Liquor Licence Holder determines, in his or her sole discretion, that any related action has taken place which may constitute a breach of the LLA, or place UW's liquor licence or any member of the UW community in jeopardy.
- h. The Directorate and the Federation shall disclose immediately and fully to the Liquor Licence Holder any actions which may constitute breaches of the LLA, UW policies and procedures, or the Operating Procedures, as well as other major issues including injury to Patrons, damage to property, disorderly conduct and the presence of unauthorized persons.
- i. The Federation will ensure that all non-academic incidents involving UW students occurring on campus in relation to the Pubs and/or Premises, including injury to Patrons, damage to property, disorderly conduct, and presence of unauthorized persons, will be entered immediately in the Incident System.
- j. UW shall disclose immediately and fully to the Directorate, any allegations, official communications, charges, inspections, claims, or notices of proposal relating to the operation of the Pubs.
- k. At all times, operation of the Pubs is subject to the discretion of the Liquor Licence Holder acting in accordance with the LLA. If the Liquor Licence Holder has reason to believe that the presence

of a person or persons in the Pubs presents an unacceptable risk to UW, the Liquor Licence Holder may deny the person, or persons entry to the Pubs.

6. EXPENSES

Expenses incurred by CBO and UW with respect to the operation of the Pubs and Premises will be billed to the Federation (“Expenses”). There will be no costs, fees or payments attributable to the operation of the CBO charged by UW to the Federation except as provided for in this agreement. Expenses shall include the following:

- a. Items pertaining to operation of the Premises as outlined in the Lease Agreement.
- b. Salaries, benefits, severance and recruitment costs of all CBO employees.
- c. Alcohol licensing and purchases for the Pubs.
- d. Any services to the Pubs for which there are agreements in addition to this agreement between UW and the Federation.
- e. Insurance costs relating to the Pubs and Premises.
- f. All taxes, assessments or charges levied by federal, provincial, regional or municipal authorities against the Premises or against any aspects of the operation of the Pubs or Premises including charges for response to fire alarms, police attendance or by-law enforcement.
- g. All expenses attributable to the operation of the Pubs, Premises and CBO not outlined in this agreement including but not limited to: entertainment, advertising, food, non-alcoholic beverages, uniforms, training, long distance telephone, travel, business services, equipment and supplies.
- h. Requests by the Federation for special services from UW, such as UW Police presence at events supplemental to routine policing. Routine policing will be provided to the Premises at no charge to the Federation.
- i. At the discretion of the Liquor Licence Holder, reasonable expenses incurred by UW in relation to the Federation’s use of the Premises, including administration of pub operations by UW, legal costs, and costs for the UW Appointee’s time. At the time of signing this agreement, no attribution of these costs is contemplated.

7. PAYMENT

- a. Expenses will be billed by UW to the Federation in the month immediately following the month in which they are incurred.
- b. The Federation will transfer to UW all revenue, exclusive of taxes, from the sale and service of liquor in the Pubs (“Revenue”), which will be used to pay Expenses.
 - i. If Revenue is insufficient to cover Expenses, the Federation will transfer additional funds to UW to cover the shortfall within 30 days of being billed by UW. Alternately, at UW’s sole discretion, UW may recover the shortfall from any student fees collected by UW on behalf of the Federation.

- ii. If Revenue is in excess of Expenses, UW will, on a monthly basis, deduct the excess from any outstanding amounts owed to UW by the Federation or pay the excess to the Federation as a management fee for Pubs services.
- c. All transfers of funds between UW and the Federation related to the operation of the Pubs shall be reviewed and approved by the Directorate.
- d. If the Federation fails to pay any expenses which it has agreed to pay, UW, in addition to any other rights, may pay such expenses and charge the sums paid to the Federation, which shall pay them forthwith. Alternatively, at its discretion, UW may recover all such sums from student fees collected by UW on behalf of the Federation.
- e. The parties agree that revenues from the Bombshelter Pub will be governed by this agreement and not the provisions of the SLC Operating Agreement. All other elements of the SLC Operating Agreement relating to the Bombshelter Pub will remain in effect.

8. FINANCIAL REPORTING

The Federation will provide the Liquor Licence Holder with an annual audited financial statement on the Pubs operations prepared by the Federation's auditors.

9. INSURANCE

- a. The Federation is responsible for obtaining, maintaining in force and paying the premiums for the following policies of insurance:
 - i. Comprehensive general liability insurance providing coverage of at least \$10 million, including liquor liability coverage; this coverage is mandatory and shall be maintained during the term of this agreement and any renewal or extension thereof.
 - ii. Any other general insurance deemed necessary by the Federation.
 - iii. Any other general insurance deemed necessary by UW.
- b. UW will be named as an insured party on all policies of insurance and evidence of such coverage shall be provided to UW by the Federation. The Federation's insurer shall agree in writing that this insurance will be deemed primary coverage over any insurance maintained by UW.
- c. The Federation will provide a current certificate of insurance to UW on an annual basis.
- d. The Federation will reimburse UW for premiums for all risk property insurance on the Premises as well as any deductible amount in the event of an insured claim. The policy of insurance will be acquired by UW on a replacement cost basis. The policy deductible per claim will be determined by UW from time to time, acting reasonably and in good faith.
- e. In the event insurance coverage satisfactory to UW cannot be obtained, UW, at its option, may terminate this agreement. UW will act reasonably and in good faith in determining satisfactory insurance coverage.

10. INDEMNIFICATION

- a. The Federation will indemnify and hold harmless UW, its governors, officers, agents and employees, from any and all liabilities, damages, costs, claims, suits or actions arising out of:
 - i. Any breach, violation or non-performance of any agreement, covenant or provision contained herein on the part of the Federation.
 - ii. Any damage to property occasioned by the operation of the Pubs with the exception of reasonable wear and tear.
 - iii. Any loss or damage to property belonging to the Federation or its employees or to any other person resulting from the operation of the Pubs.
 - iv. Any injury to a person or persons, including death, resulting from the operation of the Pubs including employees of the Federation and Patrons on the campus entering or leaving the Pubs and out of the operation of motor vehicles by Patrons leaving the Pubs.

Such indemnification in respect of the above paragraphs occurring during the Term shall survive the termination of this agreement, notwithstanding anything in this agreement to the contrary; provided, however, that such indemnification shall in no event extend to the gross negligence, recklessness or wilful misconduct of UW, its agents, employees or representatives.

- b. UW will indemnify and hold harmless the Federation, its governors, officers, agents and employees, from any and all liabilities, damages, costs, claims, suits or actions arising out of any breach, violation or non-performance of any agreement, covenant or provision contained herein on the part of UW. Such indemnification shall survive the termination of this agreement, notwithstanding anything in this agreement to the contrary; provided, however, that such indemnification shall in no event extend to the gross negligence, recklessness or wilful misconduct of Federation, its agents, employees or representatives.

11. CANCELLATION OF LIQUOR LICENCE

- a. UW and the Federation acknowledge that the AGCO may cancel or suspend UW's liquor licence because of a breach of law, regulation or other occurrence, which may or may not be associated with the Pubs. In the event that UW's liquor licence is cancelled or suspended for any reason associated with the Pubs, UW and the Federation will negotiate indemnity benefits that will, as closely as possible, compensate UW for the loss of net income for the period of loss of licence, but not exceeding a period of six (6) months.
- b. In the event that UW's liquor licence is cancelled or suspended for any reason relating to a venue or incident not associated with the Pubs, UW and the Federation will negotiate indemnity benefits that will, as closely as possible, compensate the Federation for the loss of net income for the period of loss of licence, but not exceeding a period of six (6) months.

12. TERMINATION OF AGREEMENT

- a. This agreement may be terminated at any time with the written consent of both parties.
- b. UW has the right to terminate this agreement with no financial compensation to the Federation immediately upon the provision of written notice to the Federation if, without the prior written consent of UW:
 - i. There is a major breach of this agreement or the Lease Agreement by the Federation, which is not permanently corrected by the Federation at the demand of and to the satisfaction of UW. Major breaches would include, among other things: violation of the LLA, University policies and procedures, and/or the Operating Procedures; and/or repeated failure to make payments to UW when they come due.
 - ii. One or both of the Premises becomes and remains vacant or not used for a period of one academic term or 122 consecutive days while they are suitable for use by the Federation. Should the Federation subsequently wish to re-establish pub operations in the vacated Premises, and said Premises have not been committed to another use, UW will permit the re-establishment of pub operations, provided such operations conform to the terms and conditions of this agreement.
 - iii. One or both of the Premises is used by any party other than the Federation.
 - iv. The Federation becomes bankrupt or insolvent, or takes the benefit of any statute for insolvent debtors.
 - v. An order is made for the winding up or dissolution of the Federation.
- c. This agreement may be terminated at any time by a decision of the UW Board of Governors upon sixty (60) days' written notice to the Federation, at which time all outstanding amounts owing by the Federation to UW hereunder shall become due and payable as of the date of termination.
- d. This agreement may be terminated at any time by the Federation's Board of Directors upon sixty (60) days' written notice to UW at which time all outstanding amounts owing by the Federation to UW hereunder shall become due and payable as of the date of termination.

13. DISPUTE RESOLUTION

- a. If a breach of this agreement is perceived by either party, such party will notify the other in writing, and the notified party will take immediate steps to correct the breach to the satisfaction of the other.
- b. If a dispute arises between UW and the Federation as to the nature or correction of a breach, the parties will agree on the appointment of an arbitrator who shall hear and determine the matter and issue a decision which shall be binding on both parties. If the parties are not able to agree on an arbitrator within thirty (30) days after the written notice from UW alleging a major breach, either party may apply to the court in accordance with the provisions of the *Arbitrations Act* (Ontario) for the appointment of an arbitrator.

14. NOTICE TO PARTIES

Any notice, request or demand in connection with any part of this agreement will be sufficiently given if delivered or if mailed by registered mail.

To UW Secretary of the University
 University of Waterloo
 Waterloo, ON N2L 3G1

To the Federation Vice President, Administration & Finance, Federation of Students
 Student Life Centre
 University of Waterloo
 Waterloo, ON N2L 3G1

Any notice delivered or mailed as above shall be conclusively deemed to have been given two business days following the date printed on the notice. Either of the parties hereto may give notice in writing to the other of any change of address, thereafter all such notices shall be delivered or mailed to the new address so notified.

15. WAIVER

Failure of UW to insist on strict performance of any of the covenants made by the Federation herein shall not be deemed a waiver of any rights or remedies that UW may have or a waiver of any subsequent breach or default.

16. ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, oral and written, between the parties with respect to the subject matter contained therein.

17. TERMINATION OF PREVIOUS AGREEMENTS

The agreements between the parties relating to the Bombshelter Pub and Federation Hall dated April 20, 2004 are terminated.

18. AMENDMENT

This agreement may be amended in writing by mutual consent of the Parties.


19. NON-ASSIGNABILITY

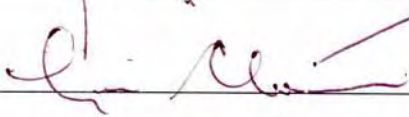
Any right or obligation of UW or of the Federation contained in this agreement shall not be assignable unless prior written approval is given by the other party.

IN WITNESS WHEREOF the parties hereto have executed this agreement on the dates shown hereunder.

Dated at Waterloo, Ontario this 4th day of December, 2009

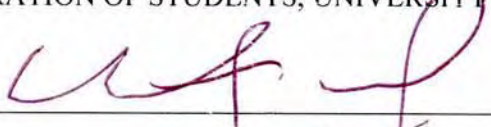
UNIVERSITY OF WATERLOO

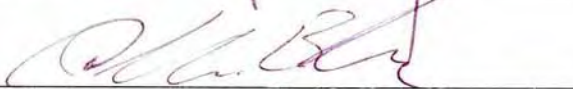
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per:  _____

Dated at Waterloo, Ontario this 8th day of December, 2009

FEDERATION OF STUDENTS, UNIVERSITY OF WATERLOO

per:  _____

per:  _____