

**LEWISTON CITY COUNCIL AGENDA  
SPECIAL MEETING**

**Friday, December 28, 2012**

**City Council Chambers**

**5:00 p.m. Special Meeting**

Pledge of Allegiance to the Flag.

Moment of Silence.

**SPECIAL MEETING**

1. Order giving consent to a transfer of majority ownership in Firland Management Colisee, LLC and authorizing the City Administrator to execute an Allonge and Note Modification Agreement.
2. Adjourn.

# LEWISTON CITY COUNCIL

## MEETING OF DECEMBER 27, 2012

**AGENDA INFORMATION SHEET:**

**AGENDA ITEM NO. 1**

**SUBJECT:**

Order Giving Consent to a Transfer of Majority Ownership in Firland Management Colisee LLC and Authorizing the City Administrator to Execute an Allonge and Note Modification Agreement.

**INFORMATION:**

Under the terms of Agreement of the existing loan for the Colisee, a change in the ownership structure must be agreed to by the City. Firland Management is seeking to add a new business partner, Ron Cain, who will bring additional financial and programming resources to the Colisee.

Attached is an Agreement the Council is asked to approve regarding the addition of this new business partner.

**APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:**

The City Administrator recommends approval of the requested action.

*EAB/KMM*

**REQUESTED ACTION:**

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To approve the Order giving consent to a transfer of majority ownership in Firland Management Colisee LLC and authorizing the City Administrator to execute an Allonge and Note Modification Agreement.



**City of Lewiston Maine  
City Council Order  
December 27, 2012**



**Order,** Giving Consent to a Transfer of Majority Ownership in Firland Management Colisee LLC and Authorizing the City Administrator to Execute an Allonge and Note Modification Agreement.

Whereas, under the terms and conditions of an existing note, the City must consent to the transfer of majority ownership interest in Firland Management Colisee LLC; and

Whereas, Firland is seeking such consent in order to add Ron Cain to the company's partnership; and

Whereas, this will bring additional financial and programmatic resources to the operation; and

Whereas, in consideration of the City's consent, Firland has agreed to amend the note in a manner that will potentially shorten the current fifteen year repayment period;

**Now, therefore, be It Ordered by the City Council of the City of Lewiston that**

Consent is hereby given to the transfer of majority ownership in Firland Management Colisee LLC and the City Administrator is authorized to execute the attached allonge and note modification agreement with Firland that will potentially reduce the current fifteen year repayment period,

## ALLONGE AND NOTE MODIFICATION AGREEMENT

THIS ALLONGE AND NOTE MODIFICATION AGREEMENT (the "Agreement") is made as of this \_\_\_\_ day of December, 2012 by and between FIRLAND MANAGEMENT COLISEE LLC, a Maine limited liability company (the "Debtor"), and the CITY OF LEWISTON, a Maine municipal corporation located in Androscoggin County, Maine, (the "City"), WHO AGREE as follows:

1. Recitals. This Agreement is made with reference to the following facts and objectives:
  - A. The City is the holder of a certain Promissory Note dated August 21, 2008 and subsequently amended (the "Note"), the Debtor's performance of which is secured by a Mortgage Deed and Security Agreement of even date (the "Mortgage").
  - B. The Mortgage conveys to the City, subject to the terms and limitations set forth in the Mortgage, the real property described in Schedule A to the Mortgage (the "Real Property"). The Mortgage requires the City's consent to any proposed transfer of ownership interest in the Real Property.
  - C. The Real Property includes an arena located at 190 Birch Street, Lewiston, Maine, known as the "Androscoggin Bank Colisee" (the "Colisee").
  - D. Under the terms of the Note, as amended, Debtor has agreed to pay to the City the principal sum of One Million Two Hundred Thousand Dollars (\$1,200,000.00), with no interest thereon (excepting late payments), according to the repayment schedule set forth in the Note.
  - E. The Note matures on July 1, 2027.
  - F. In consideration of the City's consent to a proposed transfer of a majority ownership of Debtor, which consent is required by the Mortgage, Debtor and the City desire to further amend the Note as set forth in this Agreement.

2. Recitals. The foregoing recitals shall be incorporated herein as if fully set forth in the text of this Agreement. Debtor and the City agree that the foregoing recitals are true and accurate.

3. Partial Acceleration of Note. The Note and Mortgage are hereby amended to provide as follows:

Should the Colisee achieve three consecutive calendar years of net operating income, defined as earnings before income tax, depreciation, and amortization (EBITDA), as determined in accordance with generally accepted accounting principles, that exceed \$200,000.00 (each year a "Qualifying Year"), then, beginning with the third Qualifying Year and continuing for each subsequent Qualifying Year, the repayment Schedule under the Note shall be partially accelerated as follows:

A. Upon the occurrence of three consecutive Qualifying Years, Debtor will pay to the City, beginning within sixty days following the end of the third Qualifying Year and continuing for each successive Qualifying Year, and in addition to the amounts set forth in the repayment Schedule contained in the Note, an additional payment (“Acceleration Payment”) calculated as follows:

i. Should the Colisee show net operating income exceeding \$200,000.00 but less than \$250,000.00 in the Qualifying Year, Debtor shall pay the City 25% of the amount of any operating income exceeding \$200,000 and less than or equal to \$250,000.

ii. Should the Colisee show net operating income exceeding \$250,000.00 in any Qualifying Year, Debtor shall pay the City 50% of any operating income in excess of \$250,000, in addition to the payment of \$12,500 (25% of \$50,000).

B. Acceleration Payments shall be applied first to the balloon payment due at the end of the Note’s repayment Schedule. Once that has been satisfied, Acceleration Payments will be applied to the principal amount due in the last year of the Note that remains outstanding.

4. Debtor further agrees and covenants to invest \$350,000.00 by December 31, 2016 toward capital improvements and major maintenance to the Colisee.

5. Financial Statements. Within thirty (30) days after the end of each year, Debtor shall provide to the City financial statements prepared in accordance with generally accepted accounting principles in a manner consistent with prior years together with a certificate from the Managing Member that to the best of his knowledge, information and belief the financial statements accurately reflect the results of operations of Debtor and that the conditions of this Allonge are satisfied. Debtor agrees that the amount of any management fee expense and other expense amounts paid to any affiliate of the Debtor shall be no greater than the amount paid in any calendar year to such affiliate for such expense for any year prior to January 1, 2012.

6. Agreements To Lend. Debtor confirms and acknowledges its understanding that, pursuant to 10 M.R.S.A. §1146(2), to the extent applicable, in order to maintain an action against the City with respect to a promise, contract or agreement to lend money, extend credit, forbear from collection of a debt or make any other accommodation of the repayment of a debt, such promise, contract or agreement (or some memorandum or note thereof) must be both (a) in writing and (b) signed by the City.

7. Effect of Allonge. Except as expressly modified in this Agreement, the Note and the Mortgage shall remain unmodified and in full force and effect, and all terms of the Note and the Mortgage, as amended by this Agreement, are ratified and confirmed by Debtor and are valid and enforceable in accordance with their terms. The original of this executed Agreement shall be attached to and incorporated by reference into the Note. If there is any conflict between the terms of this Agreement and the Note, the terms of this Agreement shall control.

8. Authority. Debtor and the City each warrants and represents to the other that each of them has the full right and legal authority to execute this Agreement.

Witness the following signatures.

WITNESSETH:

FIRLAND MANAGEMENT COLISEE LLC

\_\_\_\_\_  
Name:

By: \_\_\_\_\_  
James M. Cain  
Its Managing Member

WITNESS:

CITY OF LEWISTON, MAINE

\_\_\_\_\_  
Name:

By: \_\_\_\_\_  
Ed Barrett  
Its City Administrator



## City of Lewiston Executive Department

EDWARD A. BARRETT  
City Administrator

PHIL NADEAU  
Deputy City Administrator



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December 21, 2012

To: Honorable Mayor and Members of the City Council  
Fr: Edward A. Barrett  
Su: Transfer of Ownership in Firland Management Colisee LLC

Jim Cain of Firland Management has announced the proposed addition of a new investor, Ron Cain, to the companies that own and operate the Androscoggin Bank Colisee. Ron, who is not related to Jim, will bring additional financial and programmatic resources to the operation. He is involved in the ownership of several hockey concerns including the Portland Pirates and Portland Junior Pirates as well as the MHG Ice Center in Saco, Maine.

This partnership is intended to strengthen the overall finances and operations of the Colisee.

At the time of the Colisee's sale, the City provided \$1,200,000 to Firland Management Colisee LLC secured by a mortgage on the property. Under the terms of this loan, the City must approve any change in Firland's majority ownership. Payments to the city are scheduled to begin in July 2013 and continue for fifteen years.

Through discussions regarding the City's consent to this change, an agreement has been reached to restructure and potentially shorten the repayment period for this loan. As proposed, after the third consecutive year that the Colisee has achieved a net operating income in excess of \$200,000, Firland will accelerate its payments to the City. The additional payments will be 25% of any net operating income between \$200,000 and \$250,000 plus 50% of any amount in excess of \$250,000. Accelerated payments will be applied to balances due at the end of the term, thus shortening the fifteen year repayment period.

In addition, Jim Cain has agreed to establish a \$350,000 capital improvement and facility maintenance fund to ensure that the Colisee remains in good condition.

In order to accommodate Jim Cain's desire to close the partnership deal during this calendar year, the City Council will hold a special meeting on Thursday, December 27, 2012 at 6:00 p.m. in the City Council Chambers at City Hall. City Council approval is required to allow the sale of a portion of the ownership interest and to modify the terms and conditions of the City's loan.