

**MANAGEMENT AGREEMENT**

**between**

**CITY OF SIOUX CITY, IOWA**

**and**

**GLOBAL SPECTRUM, L.P.  
d/b/a SPECTRA VENUE MANAGEMENT**

**Dated: As of January 2, 2018**

## MANAGEMENT AGREEMENT

This Management Agreement (“Agreement”) is made as of the 2nd day of January, 2018 (“**Effective Date**”), by and between the City of Sioux City, Iowa, an Iowa municipal corporation (“**City**”), and Global Spectrum, LP, a Delaware limited partnership d/b/a Spectra Venue Management (“**Manager**”).

### RECITALS

WHEREAS, City owns a multi-purpose sports and entertainment arena in Sioux City, Iowa currently known as the Tyson Events Center (“**Event Center**”); and

WHEREAS, the City manages a theatre in Sioux City, Iowa currently known as the Orpheum Theatre (the “**Theatre**”), which Theatre is owned by the Orpheum Theatre Preservation Project (“**Theatre Owner**”);

WHEREAS, the City has the right and authority to engage Manager to manage and operate the Event Center and the Theatre (the Event Center and the Theatre are collectively referred to herein as the “**Facilities**”);

WHEREAS, the City desires to engage Manager to manage and operate the Facilities on behalf and for the benefit of the City, and Manager desires to accept such engagement, pursuant to the terms and conditions contained herein; and

NOW THEREFORE, for and in consideration of the foregoing, the mutual covenants and promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

### ARTICLE 1 DEFINITIONS

Section 1.1. Definitions. For purposes of this Agreement, the following terms have the meanings referred to in this Section:

**Affiliate:** A person or company that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person or company.

**Capital Expenditures:** All expenditures for building additions, alterations, repairs or improvements and for purchases of additional or replacement furniture, machinery, or equipment, where the cost of such expenditure is greater than \$15,000 and the depreciable life of the applicable item is, according to generally accepted accounting principles, is in excess of five (5) years.

**Commercial Rights:** Naming rights, pouring rights, advertising, sponsorships, the branding of food and beverage products for resale, premium seating (including suites, club seats and party suites) and memorial gifts at or with respect to one or both of the Facilities and owned or controlled by the City.

**Contribution:** shall have the meaning given to such term in Section 11.3 herein.

**CPI:** The “Consumer Price Index” for the local Sioux City area, as published by the United States Department of Labor, Bureau of Labor Statistics or such other successor or similar index.

**Effective Date:** “Effective Date” shall have the meaning given to such term in the opening paragraph of this Agreement.

**Emergency Repair:** The repair of a condition which, if not performed immediately, creates an imminent danger to persons or property and/or an unsafe condition at one or both of the Facilities threatening persons or property.

**Event Account:** A separate interest-bearing account in the name of the City and under the City’s Federal ID number in a local qualified public depository, to be designated by the City, where advance ticket sale revenue is deposited by Manager. There shall be separate Event Accounts for each of the Event Center and the Theatre.

**Event of Force Majeure:** An act of God, fire, earthquake, hurricane, flood, riot, civil commotion, terrorist act, terrorist threat, storm, washout, wind, lightning, landslide, explosion, epidemic, inability to obtain materials or supplies, accident to machinery or equipment, any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities or war, a labor dispute which results in a strike or work stoppage affecting the Facilities or services described in this Agreement, or any other cause or occurrence outside the reasonable control of the party claiming an inability to perform and which by the exercise of due diligence could not be reasonably prevented or overcome.

**Existing Contracts:** Service Contracts, Revenue Generating Contracts, and other agreements relating to the day-to-day operation of either or both of the Facilities existing as of the Effective Date, a list of the same shall be provided upon request.

**Facilities:** The “Facilities” shall have the meaning ascribed to such term in the Recitals to this Agreement, and shall be deemed to include the entire Event Center and Theatre buildings, including but not limited to, as applicable, the arena, seating areas, suites, locker rooms, meeting rooms, box office, common areas, lobby areas, executive and other offices, storage and utility facilities, as well as the entrances, ground, sidewalks and parking areas immediately surrounding the Facilities and adjacent thereto, as such outdoor areas are identified on Schedule 1 hereto.

**FF&E:** Furniture, fixtures and equipment to be procured for use at one or both of the Facilities.

**Fixed Management Fee:** The fixed monthly fee the City shall pay to Manager under this Agreement, as more fully described in Section 3.1 of this Agreement.

**General Manager:** The employee of Manager acting as the full-time on-site general manager of the Facilities.

**Incentive Fee:** The contingent fee the City shall pay to Manager under this Agreement, if earned, as more fully described in Section 3.2 below.

**Initial Term:** The term “Term” shall have the meaning given to such term in Section 4.1 of this Agreement.

**Laws:** federal, state, local and municipal laws, statutes, rules, regulations and ordinances.

**Management-Level Employees:** The General Manager, Assistant General Manager, Business Manager (or employees with different titles performing similar functions), and any department head employed by Manager to perform services at the Facilities (including, if applicable, employees performing the function of the Director of Operations, Director of Sales and Marketing, Director of Security, Finance Director and Event Manager).

**Marketing Plan:** A plan for the advertising and promotion of the Facilities and Facility events, which may contain but not be limited to the following elements, as applicable: (i) market research, (ii) market position, (iii) marketing objectives, (iv) marketing strategies, (v) booking priorities, (vi) targeted events - local, regional, national and international, (vii) targeted meetings, conventions and trade shows, (viii) industry advertising campaign, (ix) internal and external support staff, (x) advertising opportunities at the local, regional and national level, (xi) attendance at various trade shows, conventions and seminars, (xii) incentive formulas for multiple event presenters, (xiii) suite and club seat sales, (xiv) merchandising and retail, (xv) food and beverage, (xvi) a plan for the sale of commercial rights, including without limitation naming rights, pouring rights, advertising signage, sponsorships (including event sponsorships), branding of food and beverage products for resale, premium seating (including but not limited to suites and club seats), and memorial gifts, (xvii) a plan regarding national, regional and local public relations and media relations, (xviii) development of an in-house advertising agency, and (xix) policies regarding the use of trade/barter.

**Net Operating Income/Loss:** shall mean the amount by which Revenue at the Facilities (on a combined, aggregate basis) exceeds Operating Expenses at the Facilities (on a combined, aggregate basis), resulting in Net Operating Income, or by which Operating Expenses at the Facilities (on a combined, aggregate basis) exceeds Revenue at the Facilities (on a combined, aggregate basis), resulting in Net Operating Loss, for the period in question.

**Operating Account:** A separate interest-bearing account in the name of the Manager and under the Manager’s Federal ID number in a local qualified public depository, to be designated by the City, where Revenue is deposited and from which Operating Expenses are paid. There shall be separate Operating Accounts for each of the Event Center and the Theatre.

**Operating Budget:** A line item budget for each of the Facilities that includes a projection of Revenues and Operating Expenses, presented on a monthly and annual basis. There shall be separate Operating Budgets for each of the Facilities.

**Operating Expenses:** All expenses incurred by Manager in connection with its operation, promotion, maintenance and management of the Facilities, including but not limited to the following: (i) employee payroll, benefits, relocation costs, severance costs, bonus and related costs, (ii) cost of operating supplies, including general office supplies, (iii) advertising, marketing, group sales, and public relations costs, (iv) cleaning expenses, (v) data processing costs, (vi) dues, subscriptions and membership costs, (vii) the Fixed Management Fee, (viii) printing and stationery costs, (ix) postage and freight costs, (x) equipment rental costs, (xi) minor repairs, maintenance, and equipment servicing, not including expenses relating to performing capital improvements or repairs, (xii) security expenses, (xiii) telephone and communication charges, (xiv) travel and entertainment expenses of Manager employees, (xv) cost of employee uniforms and identification, (xvi) exterminator, snow and trash removal costs, if applicable (xvii) computer, software, hardware and training costs, (xviii) parking expenses, (xix) utility expenses, (xx) office expenses, (xxi) ) audit and accounting fees, (xxii) legal fees, (xxiii) all bond and insurance costs, including but not limited to personal property, liability, and worker's compensation insurance, (xxiv) commissions and all other fees payable to third parties (*e.g.* commissions relating to food, beverage and merchandise concessions services and commercial rights sales), (xxv) cost of complying with any Laws, (xxvi) costs incurred by Manager to settle or defend any claims asserted against Manager arising out of its operations at the Facilities on behalf of City, unless said claim is conclusively determined by a court of competent jurisdiction to have arisen out of the negligent act or omission, or intentional misconduct on the part of the Manager or any of its employees or agents; (xxvii) amount of any deductible or self-insured retention under insurance policies; (xxviii) costs incurred under Service Contracts and other agreements relating to Facilities' operations, and (xxix) Taxes.

The term "Operating Expenses" does not include debt service on the Facilities, Capital Expenditures, Transition Costs, property taxes, insurance on the Facilities of contents within the Facilities owned by City, or the Incentive Fee, all of which costs shall be borne by the City.

**Operating Year:** Each twelve (12) month period during the Term, commencing on July 1<sup>st</sup> and ending on the following June 30<sup>th</sup>, except that the first (1<sup>st</sup>) Operating Year shall be a shorter period, commencing on the Effective Date and ending on June 30, 2018.

**Operations Manual:** Document to be developed by Manager which shall contains terms regarding the management and operation of the Facilities, including detailed policies and procedures to be implemented in operating the Facilities, as agreed upon by both the City and the Manager.

**Revenue:** All revenues generated by Manager's operation of each of the Event Center and the Theatre, including but not limited to event ticket proceeds income, rental and license fee income, merchandise income, gross food and beverage income, gross income from any sale of Commercial Rights, gross service income, equipment rental fees, box office income, and miscellaneous operating income, but shall not include event ticket proceeds held by Manager in trust for a third party and paid to such third party.

**Revenue Generating Contracts:** Vendor, concessions and merchandising agreements, user/rental agreements, booking commitments, licenses, and all other contracts or agreements generating revenue for one or both of the Facilities and entered into in the ordinary course of operating the Facilities.

**Second Contribution:** shall have the meaning given to such term in Section 11.3 herein.

**Service Contracts:** Agreements for services to be provided in connection with the operation of one or both of the Facilities, including without limitation agreements for ticketing, web development and maintenance, computer support services, FF&E purchasing services, engineering services, electricity, steam, gas, fuel, general maintenance, HVAC maintenance, telephone, staffing personnel including guards, ushers and ticket-takers, extermination, elevators, stage equipment, fire control panel and other safety equipment, snow removal and other services which are deemed by Manager to be either necessary or useful in operating the Facilities.

**Taxes:** Any and all governmental assessments, franchise fees, excises, license and permit fees, levies, charges and taxes, of every kind and nature whatsoever, which at any time during the Term may be assessed, levied, or imposed on, or become due and payable out of or in respect of, (i) activities conducted on behalf of the City at the Facilities, including without limitation the sale of concessions, the sale of tickets, and the performance of events (such as any applicable sales and/or admissions taxes, use taxes, excise taxes, occupancy taxes, employment taxes, and withholding taxes), or (ii) any payments received from any holders of a leasehold interest or license in or to the Facilities, from any guests, or from any others using or occupying all or any part of the Facilities.

**Term:** The term “Term” shall have the meaning ascribed to such term in Section 4.1 of this Agreement.

“**Transition Budget**” shall mean the budget reflecting anticipated Transition Costs attached hereto as Exhibit D.

“**Transition Costs**” shall mean the out-of-pocket costs incurred, or to be incurred, by Manager in connection with its activities related to the transition of management of the Facilities to Manager, as set forth in the Transition Budget.

## **ARTICLE 2 SCOPE OF SERVICES**

### Section 2.1 Engagement.

(a) City hereby engages Manager during the Term to act as the sole and exclusive manager and operator of the Facilities, subject to and as more fully described in this Agreement, and, in connection therewith, to perform the services described in Exhibit A attached hereto.

(b) Manager hereby accepts such engagement, and shall perform the services described herein, subject to the limitations expressly set forth in this Agreement and in the Operations Manual.

Section 2.2 Limitations on Manager's Duties. Manager's obligations under this Agreement are contingent upon and subject to the City making available, in a timely fashion, the funds budgeted for and/or reasonably required by Manager to carry out such obligations during the Term. Manager shall not be considered to be in breach or default of this Agreement, and shall have no liability to the City or any other party, in the event Manager does not perform any of its obligations hereunder due to failure by the City to timely provide such funds.

### **ARTICLE 3 COMPENSATION**

Section 3.1 Fixed Management Fee. In consideration of Manager's performance of its services hereunder, City shall pay Manager a Fixed Management Fee. Beginning on the Effective Date and continuing through June 30, 2019, the Fixed Management Fee shall be Nine Thousand One Hundred Sixty Six Dollars and sixty-six cents (\$9,166.66) per month. Beginning on July 1, 2019 and continuing on each succeeding July 1, the Fixed Management Fee shall be increased in accordance with the percentage increase in the CPI over the previous twelve (12) month period (i.e., the difference, expressed as a percentage, between the value of the CPI published most recently prior to the commencement of the preceding Operating Year and the value of the CPI published most recently prior to the commencement of the Operating Year for which the CPI adjustment will apply). The Fixed Management Fee shall be payable to Manager in advance, beginning on the Effective Date, and payable on the first (1<sup>st</sup>) day of each month thereafter (prorated as necessary for any partial months). Manager shall invoice the City by the 1<sup>st</sup> day of each month for the next month's Fixed Management Fee.

Section 3.2 Incentive Fee. In addition to the Fixed Management Fee, Manager shall be entitled to receive an Incentive Fee each full or partial Operating Year of the Term, beginning with the second (2<sup>nd</sup>) Operating Year (i.e., July 1, 2018 to June 30, 2019). No Incentive Fee shall be payable for the first (1<sup>st</sup>) Operating Year (i.e., January 2, 2018 to June 30, 2018). The Incentive Fee shall have two (2) components, a quantitative component and a qualitative component, and shall be calculated as follows:

(a) Quantitative Fee. Manager shall be entitled to receive twenty-five percent (25%) of the amount by which the actual Net Operating Income/Loss (aggregated, for both Facilities) in each Operating Year exceeds the Net Operating Income/Loss Benchmark. The Net Operating Income/Loss Benchmark shall equal the Facilities (aggregated, for both Facilities) average annual Net Operating Income/Loss for the fiscal years ending June 30, 2016, 2017 and 2018. Upon completion of the Facility audit for the year ending June 30, 2018, the City shall provide the audited statements for both Facilities to Manager for each of such three (3) years, and the parties shall calculate and document the Net Operating Income/Loss Benchmark. For any Operating Years of less than a full 12-months, the Net Operating Income Benchmark shall be prorated based on the actual

number of days elapsed in such Operating Year out of 365. There shall be no cap or maximum limit on the amount of the Quantitative Fee earnable by Manager.

(b) Qualitative Fee. Manager shall be eligible to earn a Qualitative Fee of up to twenty-five thousand dollars (\$25,000) in each Operating Year (pro-rated for any Operating Years of less than a full 12 months based on the actual number of days elapsed in such Operating Year out of 365). The Qualitative Fee shall be determined by the City, in its reasonable and good faith discretion, based on its evaluation of Manager's performance each Operating Year in each of the following five (5) performance areas (with each area equal to up to \$5,000):

- Community Involvement/Increased Community Use of the Facilities
- Repairs and Maintenance
- Results of Customer Survey Scores
- Achievement of Annual Event Goals
- Stakeholder Relationships

The Incentive Fee earned by Manager (both the Quantitative Fee and Qualitative Fee) shall be paid to Manager no later than ninety (90) days following the end of each Operating Year.

Section 3.3 Commercial Rights Fee. In addition to the other fees due Manager hereunder, the City shall pay Manager a percentage of the Revenue from Commercial Rights ("**Commercial Rights Fee**"), as set forth below. For the sake of clarity, the parties acknowledge that the Commercial Rights Fee shall be paid on all gross revenue from the sale of advertising signage, sponsorships, naming/title rights, sub-naming/title rights, branding rights, and other Commercial Rights at the Facilities, including those rights that have been secured by the Owner or any third party prior to the Effective Date to the extent the Revenue from such prior sales is attributable to any period within the Term. For purposes of this paragraph, Revenue shall include trade/barter, with such trade/barter valued at its retail price in an arms-length transaction. The Commercial Rights Commission shall be paid for the full duration of all contracts for such Commercial Rights, including any time period that extends after the end of this Agreement. Payments due under this paragraph shall be made to Manager on an annual basis, within sixty (60) days of the end of each Operating Year, with respect to Revenue received in that year from the applicable Commercial Rights contracts. The provisions of this paragraph shall survive expiration or termination of this Agreement, and such settlements shall continue on an annual basis following the end of the term with respect to Revenue from Commercial Rights received in such years until such time as all Commercial Rights Commissions due Manager under this paragraph are fully paid. Manager shall engage one (1) person to serve as an on-site sales person, the costs of whom shall be considered an Operating Expense of the Facilities.

The Commercial Rights Fee shall be as follows:

- (a) 2.5% on existing Revenue from Commercial Rights sales (including Revenue from renewals of existing Commercial Rights agreements with the same sponsors), excluding Revenue



- from any soda pouring rights agreement and the Tyson Naming Rights Agreement (but including Revenue from any sub-naming rights agreement)
- (b) 17.5% on new Revenue (i.e, Revenue from new sponsors), including from any substitute naming rights sponsor.
  - (c) If a sponsor existing as of the Effective Date is renewed at a higher dollar amount, the base Revenue shall be commissioned at 2.5%, but the incremental revenue shall be considered new Revenue and shall be subject to the 17.5% commission rate.

Section 3.4 Transition Costs. Promptly following the Effective Date (or prior to the Effective Date, as applicable), Manager shall do all things reasonably necessary to transition from the current management of the Facilities to the commencement of its management services hereunder. The City shall reimburse Manager for the Transition Costs, in accordance with the Transition Budget. Manager shall invoice the City for such costs, and the City shall pay such costs within thirty (30) days of its receipt of each such invoice. Each invoice to be provided by Manager shall be accompanied by reasonable back-up documentation evidencing the incurrence of the Transition Costs.

Section 3.5 Late Payments. Manager shall have the right to assess interest on any payments of the fees described in this Section that are not made when due. Such interest shall accrue at the rate of eight percent (8%) per annum.

## **ARTICLE 4 TERM; TERMINATION**

Section 4.1 Term. The initial term of this Agreement (the “**Initial Term**”) shall begin on the Effective Date, and, unless sooner terminated pursuant to the provisions of Section 4.2 below, shall expire on June 30, 2023. Following the Initial Term, the City may extend this Agreement for an additional five (5) years, to end on June 30, 2028, by providing written notice of such extension to Manager no later than February 28, 2023. The Initial Term plus any such extension is referred to as the “**Term**” hereunder.

Section 4.2 Termination. This Agreement may be terminated:

(a) by either party upon thirty (30) days written notice, if the other party fails to perform or comply with any of the material terms, covenants, agreements or conditions hereof, and such failure is not cured during such thirty (30) day notification period, provided, however, if such failure cannot reasonably be cured within such thirty (30) day period, then a longer period of time shall be afforded to cure such breach, up to a total of ninety (90) days, provided that the party in default is diligently seeking a cure and the non-defaulting party is not irreparably harmed by the extension of the cure period; or

(b) by either party immediately by written notice upon the other party being judged bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of the

other party shall be appointed and shall not be discharged within one hundred twenty (120) days after appointment, or if either party shall make an assignment of its property for the benefit of creditors or shall file a voluntary petition in bankruptcy or insolvency, or shall apply for bankruptcy under the bankruptcy or insolvency Laws now in force or hereinafter enacted, Federal, State or otherwise, or if such petition shall be filed against either party and shall not be dismissed within one hundred twenty (120) days after such filing.

(c) by the City on no less than ninety (90) days' prior written notice, if at the end of any City fiscal term, the City Council fails to appropriate sufficient funds for the next fiscal year for the operation of the Facilities resulting in a closure of the Facilities, or if the funds are not provided for just a portion of the Facilities, to terminate a portion of the Agreement relevant to that part of the Facilities (with the balance of this Agreement remaining in effect with respect to the remaining portion of the Facilities). The City shall not use a failure to appropriate as a means to effectuate a termination of this Agreement solely as a means to change managers.

(d) by either Party with a ninety (90) written notice to the other party given in Section 17.7 of this Agreement, in the event Manager fails to achieve the bottom line net profit/loss number in the Operating Budget for both the 2019-20 Operating Year and the 2020-21 Operating Year, in both cases by 10% or more. The earliest such notice may be provided is upon completion of the Facilities' financial audit for the 2020-21 Operating Year (the "Audit Date"), and the latest such notice may be provided is within sixty (60) days following the Audit Date. Upon any such termination of this Agreement by the City under this Subsection 4.2(d), Manager's Affiliate, Ovarions Food Services, L.P., d/b/a Spectra Food Services & Hospitality ("Ovarions"), shall have the right to terminate, without liability, its contract to provide food and beverage services at the Facilities. Ovarions shall be a third party beneficiary of this provision, entitled to enforce its terms as if it were a party hereto.

#### Section 4.3 Effect of Expiration or Termination

(a) Upon expiration or termination of this Agreement, the City shall reimburse Manager for any actual ordinary and necessary expenses incurred by Manager in withdrawing from the provision of services hereunder following such termination, unless such termination was effectuated by the City under Section 4.2(a) as the result of an uncured default by Manager. Such ordinary and necessary expenses shall include costs associated with (i) severance pay, not to exceed two (2) months, for each of Manager's Management-Level Employees who are not retained by Manager following termination of this Agreement, (ii) for Management-Level Employees at the Facilities who are retained by Manager following termination to work at another Manager-managed Facilities, reasonable household relocation expenses for such employees, but only to the extent any of such individuals had previously relocated to the Facilities (or its surrounding areas) in connection with this Agreement, and (iii) other reasonable costs actually incurred by Manager in withdrawing from the provision of services hereunder, such as those incurred in connection with the termination and/or assignment of Service Contracts, Revenue Generating Contracts, or other contracts or leases entered into by Manager pursuant to this Agreement. The City's payment of such expenses will occur only after Manager has provided reasonable evidence of the incurrence of such expenses.

(b) Also upon expiration or termination of this Agreement, the following shall apply: (i) Manager shall promptly discontinue the performance of all services hereunder, (ii) City shall promptly pay Manager all fees due Manager up to the date of termination or expiration (subject to proration if the Term ends other than at the end of the Operating Year), (iii) City shall pay to Manager all Operating Expenses incurred by Manager through the end of the Term that have not previously been paid, including costs of accrued but unused vacation time and other end of employment payments due to Manager's employees whose employment is being terminated by Manager, (iv) Manager shall make available to the City all data, electronic files, documents, procedures, reports, estimates, summaries, and other such information and materials with respect to the Facilities as may have been accumulated by Manager in performing its obligations hereunder, whether completed or in process, and (v) without any further action on part of Manager or City, the City shall, or shall cause the successor Facilities manager to, assume all obligations arising after the date of such termination or expiration, under any Service Contracts, Revenue Generating Contracts, booking commitments and any other Facilities agreements entered into by Manager in furtherance of its duties hereunder. Any obligations of the parties that are specifically intended to survive expiration or termination of this Agreement shall survive expiration or termination hereof.

## **ARTICLE 5 OWNERSHIP; USE OF THE FACILITIES**

Section 5.1 Ownership of Facilities, Data, Equipment and Materials. The City will at all times retain ownership of the Event Center, including but not limited to real estate, technical equipment, furniture, displays, fixtures and similar property, including improvements made during the Term, at the Event Center. The Theatre Owner will at all times retain ownership of the Theatre, including but not limited to real estate, technical equipment, furniture, displays, fixtures and similar property, including improvements made during the Term, at the Theater. Any data, equipment or materials furnished by the City to Manager or acquired by Manager as an Operating Expense shall remain the property of the City, and shall be returned to the City when no longer needed by Manager to perform under this Agreement. Notwithstanding the above, City shall not have the right to use any third party software licensed by Manager for general use by Manager at the Facilities and other facilities managed by Manager, the licensing fee for which is proportionately allocated and charged to the Facilities as an Operating Expense; such software may be retained by Manager upon expiration or termination hereof. Furthermore, the City recognizes that the Operations Manual to be developed and used by Manager hereunder is proprietary to Manager, and shall belong to Manager at the end of the Term; City shall not use or maintain copies thereof upon the end of the Term.

Section 5.2 Right of Use by Manager. The City hereby gives Manager the right and license to use the Facilities, and Manager accepts such right of use, for the purpose of performing the services herein specified, including the operation and maintenance of all physical and mechanical facilities necessary for, and related to, the operation, maintenance and management of the Facilities. The City shall provide Manager with a sufficient amount of suitable office space in the Facilities and with such office equipment as is reasonably necessary to enable Manager to perform its obligations under this Agreement.

Section 5.3 Observance of Agreements. The City agrees to pay, keep, observe and perform all payments, terms, covenants, conditions and obligations under any leases, bonds, debentures, loans and other financing and security agreements to which the City is bound in connection with its ownership of the Event Center and under its management contract with the Theatre Owner for the Theatre.

Section 5.4 Use by the City. Subject to availability, the City shall have the right to use the Facilities or any part thereof rent-free for meetings, seminars, training classes or other non-commercial uses, provided that the City shall promptly reimburse Manager, for deposit into the Operating Account, for any out-of-pocket expenses incurred by Manager (such as the cost of ushers, ticket-takers, set-up and take-down personnel, security expenses and other expenses) in connection with such use. Such non-commercial use of the Facilities by the City shall (i) not compete with or conflict with the dates previously booked by Manager for paying events, (ii) not consist of normally touring attractions (such as concerts and family shows), and (iii) be booked in advance upon reasonable notice to Manager pursuant to the Facilities' approved booking policies. Upon request of the City, Manager shall provide to the City a list of available dates for City use of the Facilities. To the extent that Manager has an opportunity to book a revenue-producing event on a date which is otherwise reserved for use by the City, Manager may propose alternative dates for the City's event, and the City shall use best efforts to reschedule its event to allow Manager to book the revenue-producing event. For purposes of calculating Manager's Incentive Fee, Manager shall receive a "paper" credit for an amount equal to the difference between the published Facilities rate and the rate (if any) charged to the City for such use of the Facilities.

## **ARTICLE 6 PERSONNEL**

Section 6.1 Generally. All Facilities staff and other personnel shall be engaged or hired by Manager, and shall be employees, agents or independent contractors of Manager (or an Affiliate thereof), and not of the City. Subject to the remainder of this paragraph, Manager shall select, in its sole discretion but subject to City's right to approve the Operating Budget, the number, function, qualifications, and compensation, including salary and benefits, of its employees and shall control the terms and conditions of employment (including without limitation termination thereof) relating to such employees. Manager agrees to use reasonable and prudent judgment in the selection and supervision of such personnel. The City specifically agrees that Manager shall be entitled to pay its employees, as an Operating Expense, bonuses and benefits in accordance with Manager's then current employee manual, which may be modified by Manager from time to time in its sole discretion. A copy of Manager's current employee manual shall be provided to the City upon request. City shall pay all accrued but unused vacation time to its employees whose employment with City is terminating and whose employment with Manager is commencing. Subject to passing background checks, Manager agrees to offer employment as of the Effective Date (in positions to be determined by Manager) to all of the full-time staff employed by the City at the Facilities immediately prior to the Effective Date, except for the City-Retained Employee as defined below. Such employment shall be offered at the same base compensation rates (subject to the City approving

such costs in the Operating Budget), but such employees shall receive benefits under Manager's benefits program, however, any full time employee who receives a paycheck from the City in the month of January shall be covered under the City's health insurance policy for the month of January, 2018 and shall transfer to the Manager's policy effective February 1, 2018.

Section 6.2 City Retained Employee. The parties agree that Bill Julius ("City Retained Employee"), who is currently employed by the City at the Facilities as an Event Coordinator, shall continue to perform such function at the Facilities as a City employee through December 31, 2018, unless earlier removed by the City or he resigns/retires (the "Retained Period"). The City Retained Employee shall at all times during the Retained Period remain an employee of the City and shall not be considered to be an employee of Manager or any of its Affiliates; *provided, however*, that during the Retained Period, Manager shall have the right to direct the day-to-day activities of, and supervise, the City Retained Employee solely in connection with his performance of his Event Coordinator duties. Notwithstanding anything to the contrary herein, it is the intent of the City and Manager that City shall be the sole employer of the City Retained Employee and, as such, shall be responsible for the overall control, management, evaluation and discipline of the City Retained Employee (including the provision of his compensation and benefits and, subject to the remainder of this Section 6.2, termination of employment of the City Retained Employee). City shall use its best efforts to cause the City Retained Employee to perform his Event Coordinator function and services that were performed by such City Retained Employee as of immediately prior to the Effective Date or as may otherwise be directed by Manager. Without limiting the foregoing, City shall use its best efforts to cause the City Retained Employee to (a) devote his full time and energy to performing his job function at the Facilities, (b) to serve Manager faithfully and diligently in performing such function, and (c) to act in good faith and in the best interests of the Manager in performing such function. In the case of a request by Manager for the City to remove the City Retained Employee from the Facilities (which request shall only be made for gross negligence, gross underperformance, excess absenteeism, insubordination or theft/fraud), the City shall do so, but may, in its discretion, transfer the employment of such City Retained Employee to another position with the City outside of the Facilities. At the end of the Retained Period, the City shall remove the City Retained Employee from the Facilities.

During the Retained Period, the City Retained Employee shall remain on the payroll of the City and shall remain eligible to participate in the applicable employee and welfare benefit plans, programs, policies or arrangements maintained by the City (the "City Benefit Plans"), subject to the terms of such City Benefit Plans, and City shall be responsible for receiving and administering all claims submitted or incurred by the City Retained Employee (and each beneficiary or eligible dependent thereof) pursuant to the terms and conditions of the applicable City Benefit Plans. The City shall be responsible for and will perform all tax withholding, payment and reporting duties with respect to any wages or other compensation or benefits payable to any City Retained Employee. The City shall be responsible for compliance with all legal requirements in respect of the City Retained Employee relating to payroll and City Benefit Plans matters covered under this Agreement. The City Retained Employee shall not be eligible to participate in any employee or welfare benefit plan or plan, policy, program or arrangement sponsored, maintained or contributed to by Manager.

The City Retained Employee shall be governed by the City's employment and human resources policies and procedures. The City Retained Employee shall remain subject to any confidentiality, non-disclosure, intellectual property or other restrictive covenant obligations with the City and to the extent reasonably requested by Manager, the City shall instruct the City Retained Employee to execute confidentiality, non-disclosure and/or intellectual property agreements with Manager.

The City shall maintain workers' compensation and unemployment compensation insurance coverage with respect to the City Retained Employee, as, and shall (and shall cause its insurers to) waive any right to subrogation against Manager and its respective insurers for any workers' compensation claims or costs that may arise from or are incurred in respect of City Retained Employee. The City shall indemnify and hold Manager and its insurers harmless against any claims made by the City Retained Employee for injury to the City Retained Employee.

Nothing in this Agreement shall obligate City to retain the employment of the City Retained Employee for any period of time, and the City Retained Employee shall not be a third party beneficiary of this Section 6.2 or entitled to enforce this provision or bring any claims hereunder. This Agreement does not guarantee employment to the City Retained Employee.

Section 6.3 General Manager. Personnel engaged by Manager will include an individual with managerial experience in similar facilities to serve as a full-time on-site General Manager of the Facilities. Hiring of the General Manager by Manager shall require the prior approval of the City, which approval shall not be unreasonably withheld or delayed; provided, however, in the event of a vacancy in the General Manager position, Manager may, upon notice to the City, temporarily fill such position with an interim General Manager for up to ninety (90) days without the necessity of obtaining the City's approval. The General Manager will have general supervisory responsibility for Manager and will be responsible for day-to-day operations of the Facilities, supervision of employees, and management and coordination of all activities associated with events taking place at the Facilities. Manager agrees to offer employment in the General Manager position to the person acting as the General Manager of the Facilities immediately prior to the Effective Date.

Section 6.4 Non-Solicitation. During the Term and for a period of one (1) year after the end of the Term, neither City nor any of its Affiliates shall solicit for employment, any of Manager's Management-Level Employees. The City acknowledges that Manager will spend a considerable amount of time identifying, hiring and training individuals to work in such positions, and that Manager will suffer substantial damages, the exact amount of which would be difficult to quantify, if the City were to breach the terms of this Section by soliciting for employment, any of such individuals. Accordingly, in the event of a breach or anticipated breach of this Section by the City, Manager shall be entitled (in addition to any other rights and remedies which Manager may have at law or in equity, including money damages) to equitable relief, including an injunction to enjoin and restrain the City from continuing such breach, without the necessity of posting a bond.

## **ARTICLE 7 OPERATING BUDGET**

Section 7.1 Establishment of Operating Budget. Attached hereto as Exhibit B is the Operating Budget for each of the Event Center and the Theatre for the first (1<sup>st</sup>) Operating Year (Effective Date through June 30, 2018), which Operating Budgets are hereby approved by both Manager and City, provided that such Operating Budgets shall be deemed amended to include the cost of the fees due to Manager under Article 3 above for such period. Manager agrees that in August prior to the next Operating Year, it will prepare and submit to the City a proposed initial Operating Budget for each of the Event Center and the Theatre for such year. The parties shall then review, discuss and modify (as necessary) such proposed initial budget, with the goal of reaching a final budget in accordance with City policy prior to the next Operating Year. Each annual Operating Budget for the Event Center and Theatre shall include Manager's good faith projection of Revenues and Operating Expenses, presented on a monthly and annual basis, for the upcoming Operating Year for such facility. The City agrees to provide Manager with all information in its possession necessary to enable Manager to prepare each Operating Budget. The parties acknowledge that Manager may, subject to the approval of the City, utilize certain staff members or other resources from its management of the Event Center to assist at the Theatre, and vice versa. In such case, the cost of employing such individuals or cost of other shared resources shall be allocated between the Operating Budgets for the Event Center and the Theatre in a manner mutually agreed by the Manager and the City.

Section 7.2 Approval of Operating Budget. Each of the annual Operating Budgets shall be subject to the review and approval of the City, in accordance with City policies, which approval shall not be unreasonably withheld or delayed. In order for the City to fully evaluate and analyze such budgets or any other request by Manager relating to income and expenses, Manager agrees to provide to the City such reasonable financial information relating to the Facilities as may be requested by the City from time to time. If extraordinary events occur during any Operating Year that could not reasonably be contemplated at the time the corresponding Operating Budget was prepared, Manager may submit an amendment to such budget for review and approval by the City, no later than April 1<sup>st</sup> of the then-current Operating Year with respect to such year's budget (which approval shall not be unreasonably withheld or delayed). If the City fails to approve any annual Operating Budget (or any proposed amendment thereto), the City shall promptly provide Manager the specific reasons therefor and its suggested modifications to Manager's proposed Operating Budget or amendment in order to make it acceptable. The parties shall then engage in good faith discussions and use reasonable commercial efforts to attempt to resolve the matter to the mutual satisfaction of the parties, including, if applicable, negotiation of a mutually acceptable modification to the economic terms of this Agreement to enable the Manager to achieve the compensation contemplated by its proposed Operating Budget.

Section 7.3 Adherence to Operating Budget. Manager shall use all reasonable efforts to manage and operate each of the Facilities in accordance with its Operating Budget. However, City acknowledges that notwithstanding the Manager's experience and expertise in relation to the operation of facilities similar to the Facilities, the projections contained in each Operating Budget are subject to and may be affected by changes in financial, economic and other

conditions and circumstances beyond the Manager's control, and that Manager shall have no liability if the numbers within the Operating Budget are not achieved. Manager agrees to notify the City within 30 days of any significant change or variance in the bottom line number in the Operating Budget, and any material increase in total Facilities' expenses from that provided for in the Operating Budgets. In either such case and if requested by City, Manager agrees to work with City to develop and implement a plan (or changes to the then current plan) to limit Operating Expenses to be incurred in the remaining months of such Operating Year with the goal of achieving the Operating Budgets.

## **ARTICLE 8 PROCEDURE FOR HANDLING INCOME**

Section 8.1 Event Account. Manager shall deposit as soon as practicable following receipt, in the Event Account for the Event Center, all revenue received from ticket sales and similar event-related revenues which Manager receives in contemplation of, or arising from, an event at the Event Center, pending completion of the event. Manager shall deposit as soon as practicable following receipt, in the Event Account for the Theatre, all revenue received from ticket sales and similar event-related revenues which Manager receives in contemplation of, or arising from, an event at the Theatre, pending completion of the event. Such monies will be held in escrow for the protection of ticket purchasers, the City and Manager, to provide a source of funds as required for payments to performers and for payments of direct incidental expenses in connection with the presentation of events that must be paid prior to or contemporaneously with such events. Promptly following completion of such events, City shall transfer all funds remaining in each Event Account, including any interest accrued thereon, into the Operating Account for the applicable Facility.

Section 8.2 Operating Account. Except as provided in Section 8.1, (a) all Revenue derived from operation of the Event Center shall be deposited by Manager into the Operating Account for the Event Center as soon as practicable upon receipt (but not less often than once each business day), and (b) all Revenue derived from operation of the Theatre shall be deposited by Manager into the Operating Account for the Theatre as soon as practicable upon receipt (but not less often than once each business day). The specific procedures (and authorized individuals) for making deposits to and withdrawals from such account shall be set forth in the Operations Manual, but the parties specifically agree that Manager shall have authority to sign checks and make withdrawals from such accounts, subject to the limitations of this Agreement, without needing to obtain the co-signature of a City employee or representative.

## **ARTICLE 9 FUNDING**

Section 9.1 Source of Funding. Manager shall pay all items of expense for the operation, maintenance, supervision and management of the Facilities from the funds in the Operating Accounts for the Facilities. The Operating Accounts shall be funded with amounts generated by operation of the Facilities (as described in Article 8 above), or otherwise made available by the City. To ensure sufficient funds are available in the Operating Accounts, City will deposit in the Operating Accounts,



on or before the Effective Date, the budgeted or otherwise approved expenses for each of the Facilities for the three (3) month period beginning on the Effective Date. The City shall thereafter, on or before the 1<sup>st</sup> day of each succeeding month following the Effective Date, deposit (or allow to remain) in the Operating Accounts the budgeted or otherwise approved expenses for each such month, retaining at all times in the accounts funding for the upcoming 3-month period. Manager shall have no liability to the City or any third party in the event Manager is unable to perform its obligations hereunder, or under any third party contract entered into pursuant to the terms hereof, due to the fact that sufficient funds are not made available to Manager to pay such expenses in a timely manner.

Section 9.2 Advancement of Funds. Under no circumstances shall Manager be required to pay for or advance any of its own funds to pay for any Operating Expenses. In the event that, notwithstanding the foregoing, Manager agrees to advance its own funds to pay Operating Expenses, City shall promptly reimburse Manager for the full amount of such advanced funds, plus interest at a rate to be mutually agreed.

## **ARTICLE 10 FISCAL RESPONSIBILITY; REPORTING**

Section 10.1 Records. Manager agrees to keep and maintain, at its office in the Facilities, separate and independent records, in accordance with generally accepted accounting principles, devoted exclusively to its operations in connection with its management of each of the Facilities. Such records (including books, ledgers, journals, and accounts) shall be separate for the Event Center and the Theatre, and shall contain all entries reflecting the business operations of Manager under this Agreement. The City or its authorized agent shall have the right to audit and inspect such records from time to time during the Term, upon reasonable notice to Manager and during Manager's ordinary business hours.

Section 10.2 Monthly Financial Reports. Manager agrees to provide to the City, within thirty (30) days after the end of each month during the Term, separate financial reports for each of the Facilities including a balance sheet, aging report on accounts receivable, and statement of revenues and expenditures (budget to actual) for such month and year to date in accordance with generally accepted accounting principles. In addition, Manager agrees to provide to the City a summary of bookings for each such month, and separate cash receipts and disbursements reports for each event held at the Facilities during such month. Additionally, Manager shall submit to the City, or shall cause the applicable public depository utilized by Manager to submit to the City, on a monthly basis, copies of all bank statements concerning the Event Accounts and the Operating Accounts.

Section 10.3 Audit. Manager agrees to provide to the City, within one hundred twenty (120) days following the end of each Operating Year, a certified audit report on the accounts and records as kept by Manager for the Facilities. Costs associated with obtaining such certified audit report shall be an Operating Expense of the Facilities. Such audit shall be performed by an external auditor approved by the City, and shall be conducted in accordance with generally accepted auditing standards.

**ARTICLE 11**  
**CAPITAL IMPROVEMENTS; MANAGER CONTRIBUTION**

Section 11.1 Schedule of Capital Expenditures. Manager shall annually, at the time of submission of the annual Operating Budgets to the City, provide to the City a schedule of proposed capital improvements to be made at the Facilities, for the purpose of allowing the City to consider such projects and to prepare and update its long-range Capital Expenditure budgets.

Section 11.2 Responsibility for Capital Expenditures. The City shall be solely responsible for all Capital Expenditures at the Facilities; provided, however, the City shall be under no obligation to make any Capital Expenditures proposed by Manager, and provided further that Manager shall have no liability for any claims, costs or damages arising out of a failure by the City to make any Capital Expenditures. Notwithstanding the foregoing, Manager shall have the right (but not the obligation), upon notice to the City, to make Capital Expenditures at the Facilities for Emergency Repairs. In such event, the City shall promptly reimburse Manager for the cost of such Capital Expenditure.

Section 11.3 Manager Contribution(s).

(a) Manager hereby agrees to make a contribution of Two Hundred Thousand Dollars (\$200,000) to the City (the “**Contribution**”). The Contribution shall be paid to the City no later than February 1, 2018, and shall be used for mutually agreed upon improvements to the Facilities and/or to pay Manager’s Transition Costs. All equipment and improvements purchased with the Contribution shall be owned by the City upon installation thereof. The Contribution shall be amortized on a straight line basis over a sixty-six (66) month period (at the rate of 1/66 per month), beginning on the Effective Date and ending on June 30, 2023. Upon the expiration or termination (for any reason whatsoever, including without limitation if due to a breach, default or bankruptcy event by or affecting Manager) of this Agreement, the City shall immediately pay to Manager the unamortized amount of the Contribution.

(b) In the event the City renews the term pursuant to Section 4.1 for an additional five (5) years, to end June 30, 2028, Manager shall make an additional contribution to the City of Fifty Thousand Dollars (\$50,000) (the “**Second Contribution**”). The Second Contribution shall be paid to the City no later than August 1, 2023 (provided this Agreement has been renewed), and shall be used for mutually agreed upon improvements to the Facilities. All equipment and improvements purchased with the Second Contribution shall be owned by the City upon installation thereof. The Second Contribution shall be amortized on a straight line basis over a sixty (60) month period (at the rate of 1/60 per month), beginning on the July 1, 2023 and ending on June 30, 2028. Upon the expiration or termination (for any reason whatsoever, including without limitation if due to a breach, default or bankruptcy event by or affecting Manager) of this Agreement, the City shall immediately pay to Manager the unamortized amount of the Second Contribution.

**ARTICLE 12**  
**FACILITIES CONTRACTS; TRANSACTIONS WITH AFFILIATES**

Section 12.1 Existing Contracts. The City shall provide to Manager, on or before the Effective Date, copies of all Existing Contracts. Manager shall administer and assure compliance with such Existing Contracts.

Section 12.2 Execution of Contracts. Manager shall have the right to enter into Service Contracts, Revenue Generating Contracts and other contracts related to the operation of the Facilities, as agent on behalf of the City. Any such material agreements shall contain standard indemnification and insurance obligations on the part of each vendor, licensee or service provider, as is customary for the type of services or obligations being provided or performed by such parties. Manager shall obtain the prior approval of the City (which approval shall not be unreasonably withheld or delayed) before entering into any such contract with a term that expires after the Term of this Agreement, unless such contract, by its express terms, can be terminated by Manager or City following expiration of the Term without any penalty.

Section 12.3 Transactions with Affiliates. In connection with its obligations hereunder relating to the purchase or procurement of services for the Facilities, Manager may purchase or procure such services, or otherwise transact business with, an Affiliate of Manager, provided that the prices charged and services rendered by such Affiliate are competitive with those obtainable from any unrelated parties rendering comparable services. Manager shall, at the request of the City, provide reasonable evidence establishing the competitive nature of such prices and services, including, if appropriate, competitive bids from other persons seeking to render such services at the Facilities.

**ARTICLE 13**  
**AGREEMENT MONITORING AND GENERAL MANAGER**

Section 13.1 Contract Administrator. Each party shall appoint a contract administrator who shall monitor such party's compliance with the terms of this Agreement. Manager's contract administrator shall be its General Manager at the Facilities, unless Manager notifies City of a substitute contract administrator in writing. The City's contract administrator shall be the City Manager or his designee. If the City Manager appoints a designee, Manager shall be notified of the same in writing. Any and all references in this Agreement requiring Manager or City participation or approval shall mean the participation or approval of such party's contract administrator.

**ARTICLE 14**  
**INDEMNIFICATION**

Section 14.1 Indemnification by Manager. Manager agrees to defend, indemnify and hold harmless the City and its officials, directors, officers, employees, agents, successors and assigns against any claims, causes of action, costs, expenses (including reasonable attorneys' fees) liabilities, or damages (collectively, "**Losses**") suffered by such parties and caused by any (a) negligent act or

omission, or intentional misconduct, on the part of Manager or any of its employees or agents in the performance of its obligations under this Agreement, or (b) breach by Manager of any of its representations, covenants or agreements made herein.

Section 14.2 Indemnification by the City. City agrees to defend, indemnify and hold harmless Manager, its parent, subsidiary and affiliate companies, and each of their respective directors, officers, employees, agents, successors and assigns, against any Losses suffered by such parties, arising out of or in connection with (a) any negligent act or omission, or intentional misconduct, or failure to comply with Laws, on the part of City or any of its employees or agents in the performance of its obligations under this Agreement, (b) a breach by City of any of its representations, covenants or agreements made herein, including without limitation City's obligation to pay any budgeted or otherwise approved expenses in a timely manner, (c) failure by City to pay any amounts due by City or to otherwise perform any obligations of City under any third party contracts, licenses or agreements entered into by Manager in furtherance of its duties hereunder as authorized hereby; (d) any environmental condition at either or both of the Facilities or on or under the premises on which the Facilities are located not caused by Manager, its employees or agents, (e) any structural defect with respect to either of the Facilities, (f) the fact that any time prior to, as of, or after the date hereof the Facilities are not or have not been in compliance with all Laws, including, but not limited to, the Americans With Disabilities Act as it now exists and as it may be amended in the future by statute or judicial interpretation, (g) any act or omission carried out by Manager at or pursuant to the direction or instruction of City, its agents or employees, (h) any claims relating to the Facilities or their operations accruing or caused by occurrences prior to the Effective Date or following termination or expiration of this Agreement, and (i) any withdrawal liability for a share of unfunded vested benefits under multiemployer plans (as that term is defined in 4001(a)(3) of the Employee Retirement Income Security Act of 1974, as amended).

Section 14.3 Conditions to Indemnification. With respect to each separate matter brought by any third party against which a party hereto ("Indemnitee") is indemnified by the other party ("Indemnitor") under this Article 14, the Indemnitor shall be responsible, at its sole cost and expense, for controlling, litigating, defending and/or otherwise attempting to resolve, through counsel of its choice, any proceeding, claim, or cause of action underlying such matter, except that (a) the Indemnitee may, at its option, participate in such defense or resolution at its expense and through counsel of its choice; (b) the Indemnitee may, at its option, assume control of such defense or resolution if the Indemnitor does not promptly and diligently pursue such defense or resolution, provided that the Indemnitor shall continue to be obligated to indemnify the Indemnitee hereunder in connection therewith; and (c) neither Indemnitor nor Indemnitee shall agree to any settlement without the other's prior written consent (which shall not be unreasonably withheld or delayed). In any event, Indemnitor and Indemnitee shall in good faith cooperate with each other and their respective counsel with respect to all such actions or proceedings, at the Indemnitor's expense. With respect to each and every matter with respect to which any indemnification may be sought hereunder, upon receiving notice pertaining to such matter, Indemnitee shall promptly give reasonably detailed written notice to the Indemnitor of the nature of such matter and the amount demanded or claimed in connection therewith.

Section 14.4 Survival. The obligations of the parties contained in this Article 14 shall survive the termination or expiration of this Agreement.

Section 14.5 Legal Costs. Notwithstanding the other provisions of this Agreement, if legal costs are being incurred by the Manager or the City for a third party claim in respect of which the City is claiming indemnity from the Manager, such legal costs will be considered an Operating Expense unless and until liability of the Manager pursuant to this Agreement is conclusively established by a court of competent jurisdiction with respect to the underlying claim on which the Manager's obligation to indemnify is based. In the event that the liability of the Manager is so conclusively determined, then such legal costs shall be considered as costs of the Manager (and not Operating Expenses) and covered by the indemnity given by the Manager to the City hereunder and the parties shall adjust between them in respect of such legal costs.

## **ARTICLE 15 INSURANCE**

Section 15.1 Types and Amount of Coverage. Manager agrees to obtain insurance coverage in the manner and amounts as set forth in Exhibit C, attached hereto, and shall provide to the City promptly following the Effective Date a certificate or certificates of insurance evidencing such coverage. Manager shall maintain such referenced insurance coverage at all times during the Term, and will not make any material modification or change from these specifications without the prior approval of the City. Each insurance policy shall include a requirement that the insurer provide Manager and the City at least thirty (30) days written notice of cancellation or material change in the terms and provisions of the applicable policy. The cost of all such insurance shall be an Operating Expense.

Section 15.2 Rating; Additional Insureds. All insurance policies shall be issued by insurance companies rated no less than A VIII in the most recent "Bests" insurance guide, and licensed in the State of Iowa or as otherwise agreed by the parties. All such policies shall be in such form and contain such provisions as are generally considered standard for the type of insurance involved. The commercial general liability policy, automobile liability insurance policy and umbrella or excess liability policy to be obtained by Manager hereunder shall name City as an additional insured. The workers compensation policy to be obtained by Manager hereunder shall contain a waiver of all rights of subrogation against the City. Manager shall require that all third-party users of the Facilities, including without limitation third-party licensees, ushers, security personnel and concessionaires, provide certificates of insurance evidencing insurance appropriate for the types of activities in which such user is engaged. If Manager subcontracts any of its obligations under this Agreement, Manager shall require each such subcontractor to secure insurance that will protect against applicable hazards or risks of loss as and in the minimum amounts designated herein, and name Manager and the City as additional insureds.

**ARTICLE 16**  
**REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 16.1 Manager Representations, Warranties and Covenants. Manager hereby represents, warrants and covenants to City as follows:

(a) that it has the full legal right, power and authority to enter into this Agreement and to grant the rights and perform the obligations of Manager herein, and that no third party consent or approval is required to grant such rights or perform such obligations hereunder; and

(b) that this Agreement has been duly executed and delivered by Manager and constitutes a valid and binding obligation of Manager, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar Laws affecting creditors' rights generally or by general equitable principles; and

(c) that Manager will comply with all Laws applicable to its management of the Facilities, provided that Manager shall not be required to undertake any compliance activity, nor shall Manager have any liability under this Agreement therefor, if such activity requires any Capital Expenditure.

Section 16.2 City Representations, Warranties and Covenants. City represents, warrants and covenants to Manager as follows:

(a) that it has the full legal right, power and authority to enter into this Agreement and to grant the rights and perform the obligations of City herein, and that no other third-party consent or approval is required to grant such rights or perform such obligations hereunder; and

(b) without limiting Section 16.1(a) above, the City has sought and received from the Theatre Owner all necessary approvals to enter into this Agreement and to perform according to the terms hereof, and nothing in the management contract between the City and the Theatre Owner is inconsistent with or otherwise interferes with the terms of this Agreement and City's obligations or Manager's rights hereunder. The City shall at all times during the Term comply with and do all things necessary to keep and maintain in full force and effect the management contract between the Theatre Owner and the City, so as to allow full performance of this Agreement by the City and Manager according to its terms; and

(c) that this Agreement has been duly executed and delivered by City and constitutes a valid and binding obligation of City, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles; and

(d) that the Facilities are, as of the Effective Date, in compliance in all respects with all applicable Laws relating to the construction, use and operation of the Facilities (including, without limitation, Title III of the Americans with Disabilities Act), and that there exist no structural defects or unsound operating conditions at the Facilities.

## **ARTICLE 17 MISCELLANEOUS**

Section 17.1 PCI Compliance. Manager agrees to comply with all current Payment Card Industry Data Security Standards (“PCI Standards”) and guidelines that may be published from time to time by Visa, MasterCard or other associations as they relate to the physical storage of credit card data. For PCI Standards compliance purposes, City will provide on a segmented network, an appropriate number of wired data connections to the Internet for point of sale devices to be used by Manager and any contractors at the Facilities. City shall be responsible for the security of its network, including, without limitation, applicable PCI-DSS compliance, and for procuring and installing point of sale (POS) payment systems that are compliant with the latest PCI-DSS requirements. If at any time either party determines that card account number or other information has been compromised, such party will notify the other immediately and assist in providing notification to the proper parties as deemed necessary.

Section 17.2 No Discrimination. Manager agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, religion, color, sex, disability, national origin, ancestry, physical handicap, sexual orientation or age, and will take affirmative steps to ensure that applicants are employed, and employees are treated during employment, without regard to race, religion, color, sex, disability, national origin, ancestry, physical handicap, or age.

Section 17.3 Use of Facilities Names and Logos. Manager shall have the right to use throughout the Term (and permit others to use in furtherance of Manager’s obligations hereunder), for no charge, the name and all logos of the Facilities, on Manager’s stationery, in its advertising of the Facilities, and whenever conducting business of the Facilities; provided, that Manager shall take all prudent and appropriate measures to protect the intellectual property rights of the City relating to such logos. All intellectual property rights in any Facilities logos developed by the Manager or the City shall be and at all times remain the sole and exclusive property of the City. Manager agrees to execute any documentation requested by the City from time to time to establish, protect or convey any such intellectual property rights.

Section 17.4 Facilities Advertisements. The City agrees that in all advertisements placed by the City for the Facilities or events at the Facilities, whether such advertisements are in print, on radio, television, the internet or otherwise, it shall include a designation that the Facilities are “Managed by Spectra”.

Section 17.5 Force Majeure; Casualty Loss.

(a) Neither party shall be liable or responsible to the other party for any delay, loss, damage, failure or inability to perform under this Agreement due to an Event of Force Majeure, provided that the party claiming failure or inability to perform provides written notice to the other party within thirty (30) days of the date on which such party gains actual knowledge of such Event of

Force Majeure. Notwithstanding the foregoing, in no event shall a party's failure to make payments due hereunder be excusable due to an Event of Force Majeure.

(b) In the event of damage or destruction to a material portion of one of the Facilities by reason of fire, storm or other casualty loss that renders such Facility (or a material portion thereof) uninhabitable, the City shall use reasonable efforts to remedy such situation. If notwithstanding such efforts, such damage or destruction is expected to render such Facility (or a material portion thereof) untenable for a period estimated by an architect selected by the City at Manager's request, of at least one hundred eighty (180) days from the date of such fire, storm or other casualty loss, either party may terminate this Agreement solely as it relates to such Facility upon written notice to the other (and this Agreement shall remain in full force and effect in respect of the other Facility), provided that (i) the City shall pay to Manager its costs of withdrawing from services at the affected Facility hereunder, as described in Section 4.3(a) above, and (ii) the parties shall negotiate appropriate adjustments to the compensation terms herein to account for the reduction in duties of Manager hereunder (and any such changes shall be mutually agreed).

Section 17.6 Assignment; Binding on Successors and Assigns. Neither party may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed, except that either party may, without the prior written consent of the other party but upon at least 30 days' written notice to the other party, assign this Agreement in connection with a sale, merger or other business combination involving all or substantially all of its assets or equity interests, and Manager may further assign this Agreement to an Affiliate where such assignment is intended to accomplish an internal corporate purpose of Manager as opposed to materially and substantially altering the method of delivery of services to City. Any purported assignment in contravention of this Section shall be void. This Agreement is binding on successors and permitted assigns of the parties.

Section 17.7 Notices. All notices required or permitted to be given pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, or by generally recognized, prepaid, overnight air courier services, to the address and individual set forth below. All such notices to either party shall be deemed to have been provided when delivered, if delivered personally, three (3) days after mailed, if sent by registered or certified mail, or the next business day, if sent by generally recognized, prepaid, overnight air courier services.

If to the City:

City of Sioux City  
405 6<sup>th</sup> Street  
P.O Box 447  
Sioux City, IA 51102  
Attn: City Clerk

With a copy to:

If to Manager:

Spectra Venue Management  
3601 S. Broad Street  
Philadelphia, PA 19148  
Attn: Chief Operating Officer

With a copy to:



405 6<sup>th</sup> St.  
P.O. Box 447  
Sioux City, IA 51102  
Attn: City Attorney

Comcast Spectacor, L.P.  
3601 South Broad Street  
Philadelphia, Pennsylvania 19148-5290  
Attn: General Counsel

The designation of the individuals to be so notified and the addresses of such parties set forth above may be changed from time to time by written notice to the other party in the manner set forth above.

Section 17.8 Severability. If a court of competent jurisdiction determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement (and the application of this Agreement to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

Section 17.9 Entire Agreement. This Agreement (including the exhibits attached hereto) contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior negotiations, correspondence, conversations, agreements, and understandings concerning the subject matter hereof. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations, agreements or understandings, whether oral or written.

Section 17.10 Governing Law and Venue. The Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Iowa, without regard to its conflict of laws principles. The parties agree that if any dispute arises as a result of this Agreement, such dispute shall be brought exclusively in the Woodbury County District Court located in Sioux City, Iowa.

Section 17.11 Amendments. Neither this Agreement nor any of its terms may be changed or modified, waived, or terminated (unless as otherwise provided hereunder) except by an instrument in writing signed by an authorized representative of the party against whom the enforcement of the change, waiver, or termination is sought.

Section 17.12 Waiver; Remedies. No failure or delay by a party hereto to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent to a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder shall affect or alter the remaining terms of this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity.

Section 17.13 Relationship of Parties. Manager and City acknowledge and agree that they are not joint venturers, partners, or joint owners with respect to the Facilities, and nothing contained in this Agreement shall be construed as creating a partnership, joint venture or similar relationship between City and Manager. In operating the Facilities, entering into contracts, accepting reservations for use of the Facilities, and conducting financial transactions for the Facilities, Manager acts on

behalf of and as agent for City (but subject to the limitations on Manager's authority as set out in this Agreement), with the fiduciary duties required by law of a party acting in such capacity.

Section 17.14 No Third Party Beneficiaries. Other than the indemnitees listed in Sections 14.1 and 14.2 hereof (who are third party beneficiaries solely with respect to the indemnification provisions in such sections), and Ovations with respect to the termination right described in Section 4.2(d), there are no intended third party beneficiaries under this Agreement, and no third party shall have any rights or make any claims hereunder, it being intended that solely the parties hereto (and the aforementioned indemnitees with respect to the indemnification provisions hereof) shall have rights and may make claims hereunder.

Section 17.15 Attorneys Fees. If any suit or action is instituted by either party hereunder, including all appeals, each party shall be responsible for its own attorney fees and expenses.

Section 17.16 Limitation on Damages. In no event shall either party be liable or responsible for any consequential, indirect, incidental, punitive, or special damages (including, without limitation, lost profits) whether based upon breach of contract or warranty, negligence, strict tort liability or otherwise, and each party's liability for damages or losses hereunder shall be strictly limited to direct damages that are actually incurred by the other party, provided that the foregoing shall not limit or restrict any claim by Manager for the management fees described herein upon a breach or default of this Agreement by City.

Section 17.17 Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document. This Agreement may be executed by the parties and transmitted by facsimile or electronic transmission, and if so executed and transmitted, shall be effective as if the parties had delivered an executed original of this Agreement.

IN WITNESS WHEREOF, each party hereto has caused this Management Agreement to be executed on behalf of such party by an authorized representative as of the date first set forth above.

CITY OF SIOUX CITY, IOWA

GLOBAL SPECTRUM, L.P.,  
d/b/a Spectra Venue Management

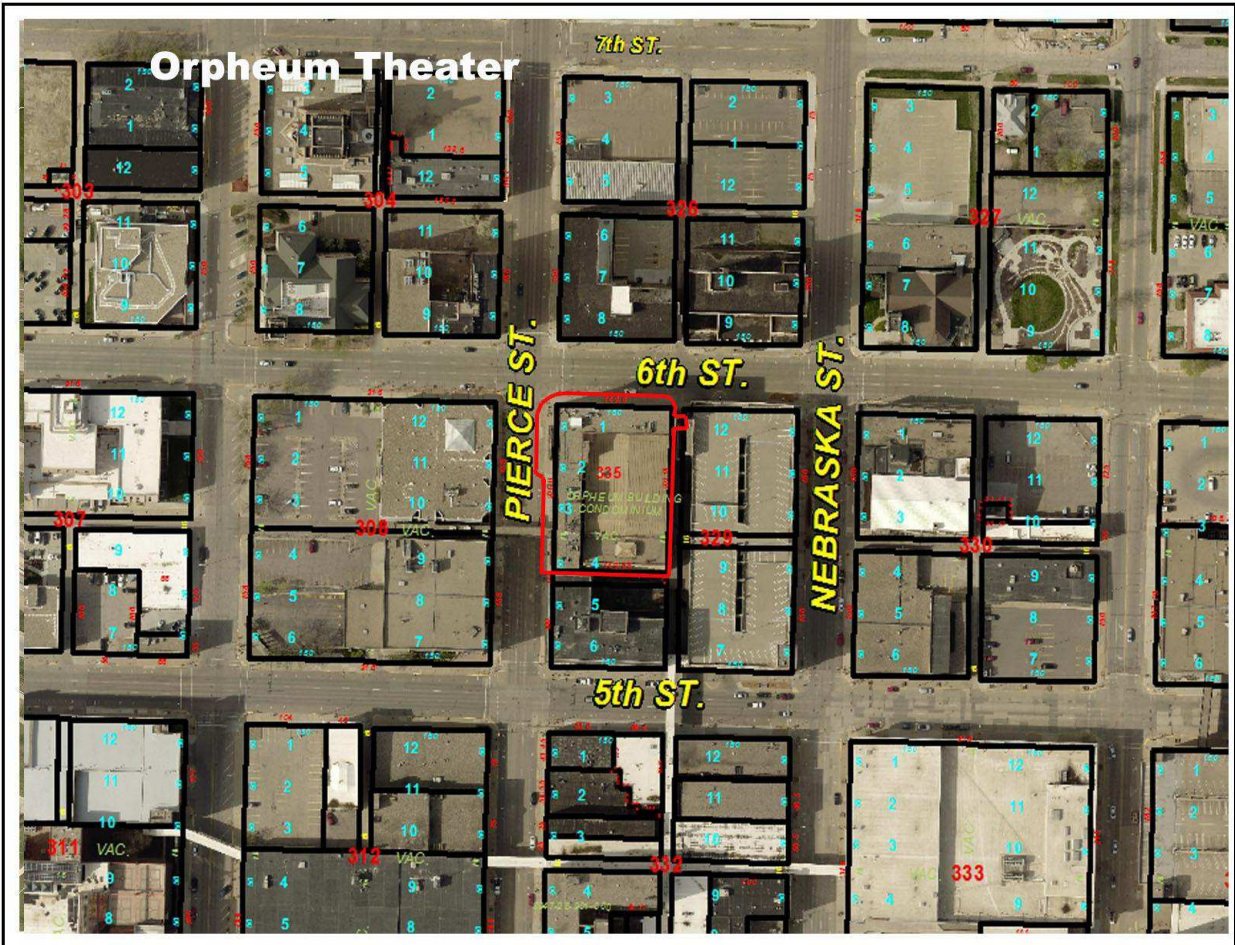
By: Global Spectrum, LLC, its general  
partner

By: \_\_\_\_\_  
Name: Robert E. Scott  
Its: Mayor

By: \_\_\_\_\_  
Name:  
Its:

**SCHEDULE 1**  
**MAP DEFINING OUTDOOR AREAS UNDER MANAGER'S MANAGEMENT**





## **EXHIBIT A MANAGER DUTIES**

Manager's obligations under the Agreement shall consist of the following obligations, all of which are subject to the terms hereof and the controls and restrictions in the Operations Manual:

(a) Manage all aspects of the Facilities in accordance with the Operations Manual and the terms of this Agreement, including but not limited to managing purchasing, payroll, fire prevention, security, crowd control, routine repairs, preventative maintenance, janitorial services, promotions, advertising, energy conservation, security, box office, admission procedures, parking (if applicable), and general user services.

(b) Establish and adjust prices, rates and rate schedules for user, license, concessions, occupancy, and advertising agreements, and booking commitments. Manager may deviate from the established rate schedule when entering into any such agreements if determined by Manager, using its reasonable business judgment, to be necessary or appropriate with respect to the specific situation.

(c) Procure, negotiate, execute, administer and assure compliance with Service Contracts, Revenue Generating Contracts, and other contracts related to the operation of the Facilities.

(d) Require that all material vendors and licensees of the Facilities execute vendor/license agreements containing standard indemnification and insurance obligations on the part of each such vendor/licensee.

(e) Provide standard form advertising and sponsorship contracts and user/rental agreements for use at or with respect to the Facilities. Manager shall submit such form agreements to the City for review and comment, and the parties shall work together to finalize such forms. Once finalized, Manager shall use such forms in furtherance of its duties hereunder, and shall not materially deviate from the terms contained in such forms without obtaining the prior approval of the City (which shall not be unreasonably withheld). Manager's sole responsibility with regard to providing legal advice or assistance hereunder shall be to provide such standard form contracts.

(f) Operate and maintain the Facilities, including the equipment utilized in connection with its operation and any improvements made during the term of this Agreement, in the condition received, normal wear and tear excepted.

(g) Arrange for and otherwise book events at the Facilities in accordance with booking schedules to be developed by Manager.

(h) Hire or otherwise engage, pay, supervise, and direct all personnel Manager deems necessary for the operation of the Facilities in accordance with Article 6 of the Agreement, and conduct staff planning, retention and training programs as determined to be necessary by Manager in its sole discretion.

(i) Maintain detailed, accurate and complete financial and other records of all its activities under this Agreement in accordance with generally accepted accounting principles, which records shall be made available to the City upon request, in accordance with Section 10.1 of the Agreement.

(j) Submit to the City in a timely manner financial and other reports detailing Manager's activities in connection with the Facilities, as set forth in Section 10.2 of the Agreement.

(k) Prepare proposed annual Operating Budgets and submit such proposed budget to the City, both in accordance with Article 7 of the Agreement.

(l) Pay all Operating Expenses and other expenses incurred in connection with the operation, maintenance, supervision and management of the Facilities from the applicable Operating Account or with funds otherwise made available by the City.

(m) Apply for (or any other third party, as applicable, to apply for) all licenses and permits necessary for the operation and use of the Facilities for the specific events to be held therein, and for the general occupancy of the Facilities, including without limitation all necessary food and liquor licenses, and renewals thereof. The City shall cooperate in this process to the extent reasonably required. All costs associated with this process shall be Operating Expenses.

(n) Collect, deposit and hold in escrow in the Event Accounts any ticket sale revenues which it receives in the contemplation of or arising from an event pending the completion of the event, as more fully described in Section 8.1 of the Agreement.

(o) Collect in a timely manner and deposit in the Operating Accounts all Revenue, as more fully described in Section 8.2 of the Agreement.

(p) Subject to the City making available sufficient funds in a timely manner, pay all Taxes.

(q) Plan, prepare, implement, coordinate and supervise all public relations and other promotional programs for the Facilities.

(r) Prepare, maintain and implement on a regular basis, subject to the City's approval, a Marketing Plan for the Facilities.

(s) Market and sell Commercial Rights at or in connection with the Facilities. Manager intends to employ one (1) individual at the Facilities to be responsible for marketing and selling Commercial Rights. The cost of such individual (salary, commission and benefits) shall be an Operating Expense.

(t) On an annual basis, cause a written inventory to be taken of all furniture, fixtures, office equipment, supplies, tools and vehicles at the Facilities, and deliver a written report of the foregoing to City. Manager shall document all major damage to, or loss in, such inventory during the

Term as soon as such damage or loss is discovered by Manager, and Manager shall promptly notify City of any such damage or loss.

(u) Purchase, on behalf of the City and with City funds, and maintain during the Term, all materials, tools, machinery, equipment and supplies necessary for the operation of the Facilities.

(v) As agent for the City, manage risk management and Facility insurance needs, as more fully described in Article 15 of the Agreement.

(w) Make and be responsible for all routine and minor repairs, maintenance, preventative maintenance, and equipment servicing. Manager shall be responsible for ensuring that all repairs, replacements, and maintenance shall be of a quality and class at least equal to that of the item being repaired, replaced or maintained. Any replacement of an item in inventory, or any new item added to the inventory, which is paid for by the City, shall be deemed the property of the City.

(x) Cause such other acts and things to be done with respect to the Facilities, as determined by Manager in its reasonable discretion to be necessary for the management and operation of the Facilities following the Effective Date.

**EXHIBIT B**  
**OPERATING BUDGET**  
**OPERATING YEAR – July 1, 2017 to June 30, 2018**

<b>Administration</b>	<b>Tyson Events</b>	<b>Tyson Maintenance</b>	<b>Box Office</b>	<b>Tourism</b>	<b>Total</b>	
<b>Revenues:</b>						
Charges for Services	-	287,625	-	29,250	-	316,875
Revenue from Use of Property	-	2,456,485	-	-	1,600	2,458,085
Miscellaneous	-	755,015	-	10,390	7,000	772,405
Refunds	63,000	-	-	-	-	63,000
Contributions	-	-	-	-	9,800	9,800
Reimbursements	150	-	5,000	-	1,850	7,000
<b>Total Revenue</b>	<b>63,150</b>	<b>3,499,125</b>	<b>5,000</b>	<b>39,640</b>	<b>20,250</b>	<b>3,627,165</b>
<b>Expenses:</b>						
Employee Compensation	86,470	1,189,115	355,595	261,989	38,963	1,932,132
General Services	54,982	1,280,743	8,789	1,757	64,824	1,411,095
Services Related to Property	10,925	92,600	178,850	1,500	400	284,275
General Supplies	11,890	85,250	47,000	-	16,095	160,235
Utilities	35	2,364	255,400	-	-	257,799
Inventory	-	401,500	-	-	-	401,500
Miscellaneous	-	-	-	-	-	-
Taxes	-	119,650	-	-	-	119,650
Settlements	-	433,025	-	-	-	433,025
<b>Total Expenses</b>	<b>164,302</b>	<b>3,604,247</b>	<b>845,634</b>	<b>265,246</b>	<b>120,282</b>	<b>4,999,711</b>
<b>Excess of Revenues over Expenses</b>	<b>(101,152)</b>	<b>(105,122)</b>	<b>(840,634)</b>	<b>(225,606)</b>	<b>(100,032)</b>	<b>(1,372,546)</b>



## **EXHIBIT C INSURANCE**

At all times during this Agreement, Manager shall maintain the following insurance coverage:

- (a) commercial general liability insurance, including products and completed operations, bodily injury and property damage liability, contractual liability, independent contractors' liability and personal and advertising injury liability against claims occurring on, in, or about the Facilities, or otherwise arising under this Agreement;
- (b) umbrella or excess liability insurance;
- (c) commercial automobile liability insurance, including coverage for the operation of owned, leased, hired and non-owned vehicles;
- (d) workers compensation and employer's liability insurance as shall be required by and be in conformance with the laws of the State of Iowa;
- (e) professional liability insurance and self-insured employment practices liability coverage;
- (f) employment practices liability insurance;
- (g) pollution liability; and
- (h) crime coverage.

Such liability insurance shall be maintained in the following minimum amounts throughout the Term:

Commercial General Liability

\$1,000,000 per occurrence

\$1,000,000 personal and advertising injury

\$1,000,000 products-completed operations aggregate

Umbrella or Excess Liability

\$5,000,000 per occurrence and aggregate, which shall be primary to the City's coverage

Automobile Liability

\$1,000,000 per accident (PI and PD combined single limit)

\$1,000,000 uninsured/underinsured motorist

Workers Compensation

Workers Compensation: Statutory

Employer's Liability: \$100,000 each accident-bodily injury by accident

\$500,000 policy limit-bodily injury by disease

\$100,000 each employee-bodily injury by disease

Professional Liability/Errors & Omissions (Claims Made basis)

\$1,000,000 each occurrence/aggregate

Employment Practices Liability Insurance (Claims Made basis)

\$1,000,000

Pollution Liability (Claims Made basis)

\$1,000,000

Crime Insurance

Coverage on all on-site Manager employees. Limit: \$500,000.00

**EXHIBIT D  
TRANSITION COSTS**

**Spectra  
Tyson Events Center & Orpheum Theatre  
Estimated Management Transition Expenses**

**Personnel Related Expenses**

<b>Relocation</b>	.....	<b>\$15,000</b>
Assistant General Manager	\$15,000	
<b>Travel</b>	.....	<b>\$2,350</b>
AGM/Director Candidates Interview Trips	2	
Cost Per Trip (2 days/1 night)	\$1,175	
<b>Recruitment Cost</b>	.....	<b>\$16,500</b>
Cost per Background Check	\$50	
Number of Checks	300	
Recruitment Ad Placements	\$1,500	
<b>Timeclocks</b>		
3 @ \$4,350 each	<b>\$17,400</b>	
<b>Total Personnel Related Expenses</b>	<b>\$51,250</b>	

**Corporate/Regional Travel Expenses**

**Corporate Travel Expenses per Trip (based upon 2 nights/3 days):**

	Air		Car
Airfare	\$550		\$0
Transportation (\$50 per day)	\$150		\$150
Hotel (\$125 per night)	\$250		\$250
Expenses (\$75 per day)	\$225		\$225
		<b>\$1,175</b>	<b>\$625</b>

<b>Estimated # of Trips</b>	<b>#</b>	<b>Air</b>	<b>#</b>	<b>Car</b>
Regional VP/Operations	4	\$4,700	2	\$1,250
Facility Accounting	2	\$2,350	1	\$625
Human Resources	2	\$2,350	1	\$625
Sales & Marketing	2	\$2,350	2	\$1,250
<b>Total Corporate Trips</b>	<b>10</b>	<b>\$11,750</b>	<b>6</b>	<b>\$3,750</b>

**Total Travel Expenses** **\$15,500**

**TOTAL TRANSITION  
EXPENSES.....** **\$66,750**