

AGREEMENT FOR MANAGEMENT SERVICES

Between

The Evansville Redevelopment Commission

AND

VenuWorks of Evansville, LLC

Dated as of May 1, 2021

THIS AGREEMENT FOR MANAGEMENT SERVICES ("Agreement") dated as of the 1st day of May, 2021, is entered into by and among **THE CITY OF EVANSVILLE, THROUGH ITS EVANSVILLE REDEVELOPMENT COMMISSION** ("ERC", "CITY" or "Owner" as the case may be), an Indiana municipal corporation, **VENUWORKS OF EVANSVILLE, LLC**, an Iowa limited liability company with offices at 4611 Mortensen Road, Suite 111, Ames IA 50014 ("VENUWORKS" or "Manager"), and **VW SPORTS OF EVANSVILLE, LLC**, an Indiana limited liability company ("VW SPORTS"), joins for purposes of affirming the rights and obligations of the parties relating to the SPHL Franchise (defined below).

WITNESS,

WHEREAS, the CITY owns and operates an arena located at 1 S.E. Martin Luther King, Jr. Boulevard, Evansville, Indiana which is known as the Ford Center and a historic theater located at 600 Main Street, Evansville, Indiana, which is known as the Victory Theatre (collectively, the "Facility"); and

WHEREAS, VENUWORKS is engaged in the business of providing management services, including operations and marketing services for public assembly facilities and has done so in connection with the Facility since 2011; and

WHEREAS, VW SPORTS is an affiliate of VENUWORKS and joins this Agreement in connection with any rights and obligations relating to its Southern Professional Hockey League franchise ("SPHL Franchise") which VENUWORKS has operated through such affiliate as part of its management of the Facility; and

WHEREAS, VENUWORKS is wholly-owned by VenuWorks, Inc., (the "Parent Company"), and the Parent Company has consented to provide a Guaranty of Performance regarding the financial obligations of VENUWORKS under this agreement, which Guaranty is attached here as Exhibit A, and

WHEREAS, the CITY desires to engage VENUWORKS under this Agreement, in collaboration with the Evansville Vanderburgh County Building Authority, and VENUWORKS desires to accept such engagement, to continue providing management services for the Facility on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements herein contained the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions

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

- "**ADA**" - the Americans with Disabilities Act, 42 U.S.C. Sections 12101- 1221 3 as amended by the Civil Rights Act of 1991 (42 U.S.C. Section 1981(a)), as it now exists and as it may be amended in the future by statute or judicial interpretation.
- "**Affiliate**" - a Person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified Person. For purposes of this definition, "control" means ownership of equity securities or other ownership interests which represent more than 50% of the voting power in the controlled Person.
- "**Approved Budget**" - any budget submitted by VENUWORKS, as approved in writing by the CITY pursuant to Section 5 hereof.
- "**Capital Equipment**" - any and all furniture, fixtures, machinery or equipment, either additional or replacement, having a per item original cost of \$5,000 or more and an expected useful life of more than three year.
- "**Capital Improvements**" - any and all building additions, alterations, renovations, repairs or improvements that have an initial dollar cost in excess of \$5,000 per project, and a life expectancy of at least three years. Capital Improvements shall not include routine maintenance and repair projects which in the aggregate exceed \$5,000. Additionally, Capital Improvements are a non-operating expense, borne and funded solely by the Facility Owner.
- "**Change in Control**" (i) a sale or transfer of ownership of VENUWORKS and/or VenuWorks, Inc. representing 50% or more of the combined voting power for either entity; (ii) the sale or transfer of substantially all of the Company's assets; or (iii) any merger or consolidation of the Company with another entity, where less than 51% of the outstanding voting interests of the surviving or resulting entity are owned in the aggregate by the Company's former members or stockholders.
- "**Commercial Rights**" - the Facility's naming rights, interior sub-naming rights, pouring/product rights, premium seating (such as suites, club seats, loge seats), advertising signage, sponsorships and other revenue generating opportunities as agreed by the CITY and VENUWORKS.
- "**Company**" - collectively VENUWORKS and its parent VenuWorks, Inc.
- "**Contract Administrator**" - the Executive Director of the Department of Metropolitan Development or designated senior administrative official as from time to time appointed by the CITY's Mayor, or such individual person as may from time to time be authorized in

writing by such administrative official to act for him/her with respect to any or all matters pertaining to this Agreement.

- "**Contract Term**" - as defined in Section 3.1 hereof.
- "**CITY**" - as defined in this first paragraph of this Agreement.
- "**Deferred Major Maintenance Reserve Fund**" – the reserve fund established by the CITY to be disbursed upon the approval of the ERC for significant capital expenditures and repairs for the Arena.
- "**Evansville Vanderburgh County Building Authority**" or "**Building Authority**" - the public agency which provides management of building systems and maintenance of the Facility under a separate contractual arrangement with the ERC; includes employees of the Building Authority will be responsible for and provide building maintenance services and will operate the Facility's various building systems to be mutually determined, including but not limited to setting up chairs, floor coverings, and the stage structure per use, providing security guard and housekeeping services for the Facility itself, as envisioned, but are not expected to provide event cleanup, event security or operation of event audio or lighting. All of the Building Authority employees are organized and work under the terms of collective bargaining agreements and VENUWORKS will coordinate its operations with 1) the jurisdictional statements set forth in those agreements and 2) schedule work assignments so VENUWORKS and the Building Authority can utilize its employees most effectively. The Parties may enter into a sub-contract agreement for these services. Additionally, the CITY information technology department may be responsible for the operation and maintenance of the computer network under a separate sub-contract agreement. In the event that the ERC should terminate its current arrangement with the Building Authority and enter into a similar contractual arrangement with another company, public agency or entity/individual, then all the rights and responsibilities ascribed to the Building Authority in this Agreement shall transfer to the successor entity contracted by ERC to provide such services to the Facility.
- "**Event Expenses**" - any and all direct, shared, reimbursed or non-reimbursed expenses incurred or payments made by VENUWORKS in connection with the advancement, production or occurrence of specific events at the Facility, including but not limited to costs for event staffing including ushers, ticket takers, security, public safety and traffic services, advertising, advancements or reimbursements to promoters for shared co-promotions and other event staff and costs relating to conversion, setup and clean up.
- "**Facility**" - the arena and the historic theater as defined in the first paragraph of the recitals section of this Agreement.
- "**Facility Agreement**" - each contract, license, agreement, option, lease and commitment existing as of the date of the commencement of the Contract Term (i) for the Facility that grants any Person any right (A) to license, use, occupy or rent all or any portion of the Facility, or (B) to provide services to be used in the management, operation, use,

possession, occupation, maintenance, promotion or marketing of all or any portion of the Facility.

- **"Facility Fees"** - any and all fees assessed to the cost of tickets for events occurring at the Facility and which are specifically identified under the name "Facility Fees", the value of which shall not be included in the gross ticket price on event ticketing manifests. Service charges imposed by a third party ticketing company such as Ticketmaster, including any royalties paid to the Facility from those service charges, shall specifically not be considered "Facility Fees."
- **"Fiscal Year"** - a one year period beginning January 1 and ending December 31.
- **"Ford Center"** the arena located at 1 S.E. Martin Luther King Jr. Boulevard, Evansville, Indiana.
- **"Laws"** - all federal, state, local and municipal regulations, ordinances, statutes, rules, laws and constitutional provisions.
- **"Losses"** - any and all losses, liabilities, claims, damages and expenses (including reasonable attorneys' fees).
- **"Maintenance"** - all work (including all labor, supplies, materials, and equipment) at the Facility which is of a routine, regular, and predictable nature and reasonably necessary for the cleaning and routine upkeep of the Facility, including any property, structures, surfaces, FF&E (including, but not limited to, media plug-ins and cable and all wiring attendant thereto) furnishings, or any other component of the Facility in order to properly preserve such items in the condition they were in as of the Commencement Date, subject to reasonable wear and tear. Maintenance shall include, but not be limited to, the following: (i) preventative or routine Maintenance that is stipulated in the operating manuals for the components as regular, periodic Maintenance procedures; (ii) periodic testing of building systems, such as mechanical, card-key security, fire alarm, fire suppression system, lighting, and sound systems; (iii) ongoing trash removal; (iv) regular maintenance procedures for HVAC, plumbing, and electrical and structural systems such as periodic cleaning, lubrication, and changing air filters; (v) scheduled regular painting and touch up painting, (vi) cleaning prior to, during, and following all Events, (vii) changing of standard, isolated light bulbs, fuses, and circuit breakers, as they burn out; (viii) any repairs not constituting or requiring a Capital Expenditure necessary to keep the Facility in a first class condition, and (ix) any repairs constituting or requiring a Capital Expenditure necessary to keep the Facility in a first class condition, provided that such repairs are funded by the Owner from a source other than the Operating Budget and are mutually agreed to by the Owner and Manager in advance. None of the furnishings or equipment at the Facility shall be discarded or eliminated without the Owner's prior written consent, other than in replacing FF&E, which are damaged, outdated or obsolete. In performance of its Maintenance duties, Manager shall make such replacements, repairs and renovations (other than those constituting or requiring a Capital Expenditure) of the Facility and its equipment such that the Facility (including inside the Facility and the landscaped areas outside the

Facility) shall be in at least the same condition and repair as of the Commencement Date (subject to reasonable wear and tear), in compliance with applicable Law. The parties shall annually agree on the performance responsibilities of scheduled Maintenance. Such scheduled Maintenance shall include, but is not limited to, the fall protection system and rigging certification.

- **"Management Term"** - for the Facility, the period beginning January 1, 2022 and ending December 31, 2026.
- **"Manager"** - VenuWorks of Evansville, LLC; also "VENUWORKS".
- **"Net Operating Loss/Profit"** - with respect to a Fiscal Year, the excess, if any, of Operating Expenses for such Fiscal Year over Operating Revenues for such Fiscal Year, in the case of a loss, and the excess, if any, of Operating Revenues for such Fiscal Year over Operating Expenses for such Fiscal Year, in the case of a profit.
- **"Operating Expenses"** - any and all expenses and expenditures of whatever kind or nature incurred by VENUWORKS in promoting, operating, maintaining and managing the Facility, including, but not limited to: employee compensation and related expenses (e.g., base salaries, bonuses, severance and car allowances), employee benefits and related costs (e.g., relocation and other related expenses pursuant to VENUWORKS's relocation policy, a copy of which will be provided upon request), employee parking and other fringe benefits), supplies, material and parts costs, costs of any interns and independent contractors, venue/event advertising and marketing costs, advertising/sponsorship sales, commissions and fulfilment costs, public relations costs, janitorial and cleaning expenses as budgeted by VENUWORKS, utility expenses, data processing costs, dues, subscriptions and membership costs, the costs to VENUWORKS for procuring, administering and maintaining the insurance referred to in Section 8 below (excluding Property Insurance which shall be procured by CITY), amounts expended to procure and maintain permits and licenses, charges, taxes, excises, penalties (excluding penalties incurred solely as a result of VENUWORKS' actions or inactions and/or any breach by VENUWORKS of this Agreement) and fees, professional fees, printing and stationery costs, Event Expenses excluding the cost of labor provided by the Building Authority for conversions, set-ups and tear-downs when those expenses cannot be charged to an event sponsor, postage and freight costs, bank services charges, equipment rental costs, computer equipment leases and line charges, copier/printer/facsimile equipment lease charges, routine repairs and maintenance costs (e.g., elevators, HVAC and plumbing costs), security expenses, cell phone charges, travel and entertainment expenses in accordance with VENUWORKS' policies, the cost of employee uniforms, safety and medical expenses, exterminator and waste disposal costs, costs relating to the installation and annual maintenance of signage inventory and systems, the fixed management fees and commissions payable to VENUWORKS pursuant to Sections 4.2 and 4.3 below, and the amortized cost of VENUWORKS' capital contribution, the cost of annual independent audits of the Facility, the cost of compliance with Laws and regulations, costs incurred under agreements, commitments, licenses and contracts executed in VENUWORKS's own name as provided in Section 2.3(c) hereof, and reasonable attorneys' incurred by VENUWORKS in enforcing such agreements,

commitments, licenses and contracts as provided in Section 2.3(h) hereof, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis; provided that Operating Expenses shall not include (i) expenses or expenditures in connection with Capital Improvements and Capital Equipment purchases, (ii) the cost of existing or future taxes for the Facility, the cost of insurance premiums incurred by the CITY to purchase its insurance coverage's relating to the Facility, including property and business interruption insurance and expenses with regard to the demobilization and transition of Roberts Stadium, (iii) any Variable Fees paid to VENUWORKS and (iv) any expenses relating to VENUWORKS personnel based in VENUWORKS's corporate headquarters in Ames, IA, or its regional field locations (other than the reasonable costs of travel and entertainment by such corporate or regional personnel in connection with VENUWORKS's management of the Facility, which costs shall be Operating Expenses). In addition, for purposes of (A) calculating Net Operating Loss/Profit and (B) identifying Operating Expenses which will be budgeted in the Approved Budget, Operating Expenses shall exclude: any and all expenses incurred by the Building Authority in providing energy (in the form of gas and electric power and water), insurance, parking and personnel for the operation of the Facility; any and all payments to VENUWORKS in repayment for the capital investment provided for equipment acquisition for the Facility operations; any and all Variable Fees, including incentive fees and commissions paid to VENUWORKS; all extraordinary expenses; any payments for leased equipment unless approved by both parties and all interest; income tax, depreciation and amortization expenses. Expenses incurred by the Building Authority in regard to the Facility will be the expense of the Building Authority, and not the Facility, to be offset by revenues the Building Authority will realize from Facility Ticket Fees and Parking, as defined herein. Building Authority expenses specifically excluded from Facility Operating Expenses shall include expenses for the following: Building Authority personnel working in the Facility; labor expenses and all other expenses related to operation of Building Authority parking structures; water, gas and electrical power for the Facility; Property Insurance and Business Interruption Insurance for the Facility.

Operating expenses shall be subject to the following conditions:

(i) Expenses for VENUWORKS' fulltime employees charged to the Facility are limited to the individuals stationed in Evansville and assigned full time to perform work for the direct benefit of the Facility. The compensation expense for VENUWORKS employees not stationed in Evansville shall be borne by VENUWORKS.\

(ii) General and administrative expenses of VenuWorks, Inc., parent company of VENUWORKS, shall not be considered operating expenses of the Facility, and shall be borne by VenuWorks, Inc. However, legal fees incurred for the resolution of disputes arising out of the operation of the Evansville Facility, other than a dispute with the CITY or a CITY entity, shall be payable separately as incurred. VENUWORKS' legal fees for negotiations or dispute resolution with the CITY or a CITY entity are not separately payable as an operating expense.

(iii) Fines or penalties imposed by state or local agencies, or any court of law holding

jurisdiction in Evansville, shall not be considered allowable Operating Expenses for the Facility.

(iv) Income tax liabilities incurred by VENUWORKS will not be an Operating Expense of the Facility.

(v) The Facility operation shall be subject to a third party audit each year with such level of detail as CITY may determine appropriate, the expense of which shall be an Operating Expense of the Facility. In the event the audit uncovers misstatements resulting in a payment owing to the CITY of more than \$50,000 for the year, then VENUWORKS shall reimburse the CITY for an amount equal to fifty percent (50%) of the cost of the audit, along with restitution for funds owing to the CITY.

(vi) Any and all discounts or rebates resulting from VENUWORKS vendor contracts made on behalf of the Facility and in the name of the Facility, for products and services specifically for the Facility, shall be considered a Revenue of the Facility, and shall accrue to the benefit of the Facility and the CITY.

• **"Operating Revenues"** - any and all revenues of every kind or nature derived from owning, operating, managing or promoting the Facility, including, but not limited to: license, lease and concession fees and rentals, revenues from merchandise sales, advertising and sponsorship sales and renewals, naming rights revenues, event sponsorship revenues, equipment rentals, utility revenues, box office revenues, ticket surcharges (if any), ticket service fees, food service and concession revenues (however, if such revenues are collected in the first instance by and retained by the concessionaire, just the amount of such revenues owed by the concessionaire to the Facility shall be included as Operating Revenues), commissions or other revenues from decoration and set-up, security and other subcontractors (however, if such revenues are collected in the first instance by and retained by such subcontractors, just the amount of such revenues owed by such contractors to the Facility shall be included as Operating Revenues), miscellaneous operating revenues, revenues generated from separate agreements with VENUWORKS Affiliates pertaining to the Facility, and interest revenues, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis. For the sake of clarity, the parties acknowledge that revenues from the sale of tickets for events at the Facility are not Operating Revenues, but are instead revenues of the promoter and/or performer of each such event. To the extent that VENUWORKS collects such ticket sale revenue on behalf of such promoter and/or performer, such ticket sale revenue shall be the source of funds from which VENUWORKS collects the rental charges and other event reimbursements due from such promoter and/or performer for use of the Facility, which such charges and reimbursements are Operating Revenues hereunder. However, Facility Fees collected by VENUWORKS for events at the Facility, shall accrue to the Building Authority.

• **"Parking Revenues"** - funds collected on an event-by-event basis by either VENUWORKS, the Building Authority or an approved subcontractor, on a stand-alone basis or 'bundled' with the ticket cost, and other convenience fees and surcharges. Such revenues will be revenue of the Building Authority.

- **"Person"** - any individual, general partnership, limited partnership, limited liability partnership, partnership, corporation, joint venture, trust, business trust, limited liability company, cooperative, or association, and the successors and assigns of any of the foregoing and, unless the context otherwise requires, the singular shall include the plural, and the masculine gender shall include the feminine and the neuter, and vice versa.
- **"Prime Tenants"** – University of Evansville men’s basketball team and any other tenants as the CITY may indicate from time to time.
- **"Renewal Term"** - the additional period for which this Agreement may be renewed in accordance with Section 3.2 hereof beyond the Management Term.
- **"Variable Fees"** -the commissions earned by VENUWORKS on the sale of food and beverage and the sale of Commercial Rights at the Facility, along with Incentive Fees earned by VENUWORKS for meeting benchmarks for attendance and expense containment.
- **"VENUWORKS"** - as defined in the first paragraph of this Agreement.
- **"Victory Theatre"** – the historic theatre located at 600 Main Street, Evansville, Indiana.

2. Engagement of VENUWORKS; Scope of Services.

2.1 Engagement.

(a) General Scope. The CITY hereby engages VENUWORKS to exclusively manage the use of the Facility according to the terms of this Agreement, which shall serve as a master usage license under which VENUWORKS shall have exclusive rights to offer and administer sub-licenses for the contracting of events to occur in the Facility or on Facility grounds. VENUWORKS shall have exclusive license to operate, promote, program, market and manage the use of the Facility during the Term and any Renewal Term, under the terms and conditions hereinafter set forth, and VENUWORKS hereby accepts such engagement.

(b) Manager of the Facility. Subject to the terms of this Agreement, VENUWORKS shall be the sole and exclusive Manager of the Facility responsible for managing, operating and promoting the Facility during the Contract Term and the Renewal Term, if any. In such capacity, VENUWORKS shall have exclusive authority over the day-to-day operation of the Facility and all activities therein, including the administration of usage licenses and/or lease contracts with Prime Tenants, including, but not limited to, the University of Evansville men’s basketball program; provided that VENUWORKS shall follow all policies and guidelines of the CITY hereafter established or modified by the CITY that the CITY notifies VENUWORKS in writing are applicable to the Facility (including without limitation any methodology pertaining to the allocation of any costs and expenses by the CITY to the Facility as permitted herein).

(c) Independent Contractor. VENUWORKS's engagement hereunder is of a contractual nature. Both parties assert and believe that VENUWORKS is acting as an independent contractor in providing the services and performing the duties hereunder. VENUWORKS is at all times acting as an independent contractor and not as an agent of the CITY. As an independent contractor, VENUWORKS and employees of VENUWORKS will not be within the protection or coverage of the CITY's worker compensation insurance, nor shall VENUWORKS, and employees of VENUWORKS, be entitled to any current or future benefits provided to employees of the CITY. Further, the CITY shall not be responsible for withholding social security, federal, and/or state income tax, or unemployment compensation from payments made by the CITY to VENUWORKS. VENUWORKS's performance of those services required hereunder shall be in VENUWORKS' own name and subject to the limitations of this Agreement.

(d) Approval of the CITY. To the extent that the approval of the CITY is required under the terms of this Agreement, the written approval of the Contract Administrator shall constitute the approval of the CITY, except to the extent the approval of another party is expressly required by the terms of this Agreement.

(e) Sales Tax Exemption. VENUWORKS shall be deemed an agent of the CITY for purposes of an exemption of all state sales tax, use tax or other tax ("Sales Tax Exemption") applicable to or collectible in connection with its operations and management of the Facility, but only as permitted by applicable law, including, but not limited to, the purchase of supplies, materials, furniture, fixtures and equipment in any way related to the management and operation of the Facility as described herein. The CITY agrees to make all reasonable efforts to obtain all necessary approvals to authorize the Sales Tax Exemption to the extent permitted by applicable law.

2.2 Scope of Services - Standard of Care; Cooperation

(a) VENUWORKS shall perform and furnish such management services and systems as are appropriate or necessary to maintain, operate, manage and promote the Facility during the Contract Term and the Renewal Term, if any, in a manner consistent with VENUWORKS's policies and procedures and the operations of other similar first-class facilities. In providing services under this Agreement, VENUWORKS shall maintain the standard of care, diligence and professional competency as is customary in the industry. VENUWORKS shall contractually require all of its consultants or contractors as well as direct the Building Authority laborers to provide services at the same standard of care, skill, diligence and professional competence required of VENUWORKS. VENUWORKS shall exercise all reasonable and customary precaution to prevent any harm or loss to all persons or property related to this Agreement.

(b) VENUWORKS will fully cooperate and collaborate with the management of The Centre (a convention and theater complex owned by Vanderburgh County), the Convention and Visitors Bureau and the management of the attached downtown hotel, to bring large conventions, conferences, gathering and multi-purpose events to downtown Evansville with the common goal of maximizing economic impact; entertainment and cultural opportunities for the citizens of Evansville and Vanderburgh County and the region.

2.3 Specific Services.

Without limiting the generality of the foregoing, VENUWORKS shall perform the following services, which VENUWORKS has the sole right and authority to perform without (except as otherwise expressly noted in this Agreement) any prior approval by the CITY:

(a) Employ (subject to Section 7), supervise and direct employees and personnel consistent with the provisions of this Agreement.

(b) Administer relationships with all subcontractors, concessionaires and all other contracting parties to Facility Agreements, assume responsibility for any and all negotiations, renewals and extensions (to the extent VENUWORKS deems any of the foregoing to be necessary or desirable), and enforce the Facility Agreements.

(c) Negotiate, execute in VENUWORKS 's own name, deliver and administer any and all licenses, occupancy agreements, except any agreements for Prime Tenants which shall be negotiated in coordination with the CITY, rental agreements, booking commitments, advertising agreements, concession agreements, supplier agreements, service contracts (including, without limitation, contracts for cleaning, decorating and set-up, snow removal, general maintenance and maintenance and inspection of HVAC systems, elevators, stage equipment, fire control panel and other safety equipment, staffing and personnel needs, including guards and ushers, and other services which are necessary or appropriate) and all other contracts and agreements in connection with the maintenance, management, promotion and operation of the Facility provided that (i) if any such license, agreement, commitment or contract other than those involving the license, lease or rental of the Facility in the ordinary course has a term that extends beyond the remaining Contract Term or, if this Agreement has been renewed, the Renewal Term, such license, agreement, commitment or contract must prior thereto be approved in writing by the CITY (which approval shall be at the CITY's sole discretion, not to be unreasonably withheld), and (ii) VENUWORKS and the CITY will have joint approval rights (which approval right shall be at each party's sole discretion, not to be unreasonably withheld) for all major revenue streams that can impact the profitability of the Facility, including parking, ticketing, sponsorships and naming rights, food and beverage, and tenant leases with terms of one year or greater. In connection with any licenses, agreements, commitments or contracts for the Facility, VENUWORKS will use best efforts to include in such documents (i) the right of VENUWORKS to assign all of its rights and obligations under such licenses, agreements, commitments and contracts to the CITY or to any successor management company retained by the CITY upon the expiration or termination of this Agreement, and (ii) the right of the CITY to assign its rights and obligations under such documents to any successor management company retained by the CITY thereafter. Upon the expiration or termination of this Agreement, an assignment and assumption by and between VENUWORKS and the CITY or a successor management company retained by the CITY shall occur as provided in Section 12.3 and 12.4 hereof.

(d) In collaboration with Building Authority, maintain the Facility in the condition received, reasonable wear and tear excepted, and in a clean, safe and sanitary manner; provided that the CITY shall be responsible for funding all Capital Improvements, Capital Equipment purchases and reasonable expenses related thereto as provided in Section 5.8.

(e) Rent, lease or purchase all equipment and maintenance supplies necessary or appropriate for the operation and maintenance of the Facility.

(f) Establish and adjust prices, rates and rate schedules for the aforesaid licenses, agreements and contracts and any other commitments relating to the Facility to be negotiated by VENUWORKS in the course of its maintenance, management, operation and promotion of the Facility, including without limitation the establishment of Facility Fees on the sales of tickets, for events at the Facility without restriction by the CITY. In determining such prices and rate schedules, VENUWORKS shall evaluate comparable charges for similar goods and services at similar and/or competing facilities and shall consult with the Contract Administrator about any adjustments to the rate schedules at the Facility to be made by VENUWORKS.

(g) Pay, when due, all Operating Expenses from accounts established pursuant to Sections 5.6 and 5.7 of this Agreement.

(h) After consultation with the CITY Attorney or his or her designee, institute, at the reasonable expense of VENUWORKS and with counsel mutually agreed upon by VENUWORKS and the CITY Attorney, such legal actions or proceedings as VENUWORKS shall deem necessary or appropriate in connection with the operation of the Facility, including, without limitation, to collect charges, rents or other revenues due or to cancel, terminate or sue for damages under, any license, use, advertisement or concession agreement for the breach thereof or default thereunder by any licensee, user, advertiser, or concessionaire at the Facility, with the litigation costs and expenses therefor, including reasonable attorneys' fees, to be considered Operating Expenses.

(i) Maintain a master set of all booking records and schedules for each Facility. VENUWORKS will use its best efforts to schedule events that have a broad appeal to all segments of the Evansville population, which events will be planned so as to maximize attendance and drive traffic to downtown Evansville.

(j) Provide day-to-day administrative services in support of its management activities pursuant to the Approved Budget and annual plans described herein, including, but not limited to, the acquisition of services, equipment, supplies and facilities; internal budgeting and accounting; maintenance and property management; personnel management; record-keeping; collections and billing; and similar services. VENUWORKS shall keep separate records, budgets and accounts for each Facility.

(k) Engage in such advertising, solicitation, and promotional activities as VENUWORKS deems necessary or appropriate to develop the potential of the Facility and the cultivation of broad community support (including without limitation selling advertising inventory and securing product rights for the Facility). VENUWORKS shall work with the Evansville Convention & Visitors Bureau to market the Facility.

(l) Maintain, manage and operate the Facility and its premises in compliance with all Laws, including, but not limited to, the ADA, as provided in Section 11.2 hereof.

(m) Exclusively provide food and beverage and catering services and merchandising services for the Facility.

(n) VENUWORKS shall have the right to engage its own employees or affiliate companies or third-party services contractors, to perform, respectively, the food/beverage concession and catering services, commercial rights marketing and sales services, and the ticketing service, at the Facility, and pay such companies a fee and/or commissions for such services and (which fee and or commissions shall be an Operating Expense of the Facility), provided that such engagements are on arms-length, market rate terms, and are approved by the CITY (such approval not to be unreasonably withheld).

(o) VENUWORKS shall utilize Facility staff and resources to manage and operate the SPHL Franchise until such time as the CITY determines that it wants to cease operation of the SPHL Franchise or transfer ownership to a third party. During such periods in which VENUWORKS operates the SPHL Franchise, all expenses of the SPHL Franchise shall be deemed an Operating Expense of the Facility and all revenues of the SPHL Franchise shall be deemed Operating Revenue of the Facility. Upon the direction of the CITY and upon reimbursement of any franchise fees paid by VENUWORKS for the SPHL Franchise, VENUWORKS shall assign and transfer the SPHL Franchise and all related intellectual property and other related assets to a third party at the direction of the CITY.

2.4 Access to the Facility.

Representatives of the Owner shall have the right to enter all portions of the Facility at any time and for any proper purpose whatsoever, including to inspect same, to observe the performance of VENUWORKS of its obligations under this Agreement, to install, remove, adjust, repair, replace or otherwise handle any equipment, utility lines, or other matters in, on, or about the premises, or to do any act or thing which the Owner may be obligated or have the right to do under this Agreement or otherwise. In connection with the exercise of such rights, the Owner will endeavor to provide (but is not obligated to provide) advance notice to VENUWORKS for security purposes and to minimize any interference with or disruption of VENUWORKS's work under this Agreement. Nothing contained in this Section (i) is intended or shall be construed to limit any other rights of the Owner under this Agreement nor (ii) shall impose or be construed to impose upon the Owner any independent obligation to construct or maintain or make repairs, replacements, alterations, additions or improvements or create any independent liability for any failure to do so.

2.5 Confidentiality/Nondisclosure.

(a) To the extent permitted under state of Indiana law, the parties hereto agree that they shall keep secret and confidential any and all proprietary information of the other party conspicuously marked as confidential or proprietary or otherwise indicating in writing as such, and each shall only use such information of the other party for the performance of its respective obligations under this Agreement. A party will make such designation only as to that information that it in good faith believes is confidential and/or proprietary. Neither party shall divulge any such information, in whole or in part, to any third party without the prior written consent of the other

party; provided, however, such information may be disclosed to the party's attorneys on a need to know basis or as may be required by applicable law, including the Indiana Open Records Act, (the "Public Records Act"), or as directed by order of a court of competent jurisdiction. The parties shall provide notice to the other party of any known violations of this Section 2.5. Further, the parties shall endeavor in good faith to provide notice to the other party prior to any disclosure required by applicable law or order of a court of competent jurisdiction (it being understood such notice may not be possible before disclosure is required). The restrictions upon confidentiality and use of the confidential information of each party set forth in this Section 2.5 do not apply to information which the other party can demonstrate was publicly available or lawfully in its possession at the time of its disclosure to it by the other party.

(b) To the extent that VENUWORKS has any confidential or proprietary information that it reasonably believes is a privileged trade secret and/or should not be disclosed to a third party to protect the privileged, confidential and/or proprietary nature of such information, and upon the approval of the Contract Administrator, which shall not be unreasonably withheld, VENUWORKS shall not be required hereunder to deliver such information to the CITY, but instead will afford the CITY an opportunity to review such information at the Facility during reasonable business hours and upon reasonable advance notice, or on terms mutually agreed upon by the parties in order to protect the privileged, confidential and/or proprietary nature of such information.

(c) Each party agrees that the provisions of this Section 2.5 are reasonable and necessary to protect the interests of the other non-disclosing party and that the disclosing party's remedies of law for a breach of any of the provisions of this Section 2.5 will be inadequate and that, in connection with any such breach, the non-disclosing party will be entitled, in addition to any other remedies (whether at law or in equity), to temporary and permanent injunctive relief without the necessity of proving actual damage or immediate or irreparable harm, or of the posting of a bond. Notwithstanding the foregoing, if a court of competent jurisdiction shall determine any of the provisions of this Section 2.5 to be unreasonable, the non-disclosing party agrees to a reaffirmation of such provisions by such court to any limits which such court finds to be reasonable and the other party will not assert that such provision shall be eliminated in its entirety by such court.

3. Contract Term and Renewal Term.

3.1 Contract Term

The Contract Term shall begin on January 1, 2022 and shall end on December 31, 2026, unless earlier terminated pursuant to the provisions of this Agreement.

3.2 Renewal Term

The parties may, in their sole discretion, mutually agree, in writing, to extend the term of this Agreement for an additional five-year period commencing at the end of the Contract Term.

4. VENUWORKS' Compensation.

4.1 Fees With Respect to the Facility.

As compensation to VENUWORKS for providing the services herein specified for the Facility during the Contract Term and any Renewal Term, VENUWORKS shall be entitled to receive the following Fixed Fee. VENUWORKS shall also receive Variable Fees as defined herein provided there is sufficient Operating Revenue from which to pay the Variable Fees in any given year.

(a) Fixed Management Fee:

As base compensation to VENUWORKS for providing the services herein specified during the Management Term and any Renewal Term, the CITY shall pay VENUWORKS during the Management Term and the Renewal Term, if any, a monthly fixed fee of Thirteen Thousand Dollars (\$13,000.00) for the Ford Center and Three Thousand Dollars (\$3,000.00) for the Victory Theatre, which amount shall be adjusted upward on the first day of each Fiscal Year, beginning January 1, 2023 and continuing on each subsequent operating/fiscal year, by the greater of a) the percentage increase in the Consumer Price Index -All Urban Consumers (CPI-U), Class B/C-Midwest Region -- All Items or b)Three Percent (3%).

(b) Variable Fees from Commercial Rights and Food and Beverage Commissions:

VENUWORKS shall earn commissions equal to:

- (i) A percentage of all contract revenues realized from the sale of Commercial Rights as defined, net of expenses for the purchase of prime tenant hockey and basketball tickets and entertainment tickets for suite and club seat buyers, and net of the cost of signage changes for new or lapsed sponsors after the initial installation of signage in the Facility, said commissions to be paid as defined in the schedule below, and paid monthly as revenues are received. "Contract Revenue" shall mean (1) gross revenue from cash Commercial Rights sales (prior to any deduction for fulfillment costs, signage requirements, ticket costs, or agreed upon amounts owed to the Facility Owner or its Manager); and (2) 75% of the fair market value of any in-kind contributions (i.e. trade) received in exchange for rights granted by the Facility and

a. All combined Commercial Rights Revenues:

Annual Revenues of: \$0 to \$500,000	10% Commission
Annual Revenues of: \$500,000 to \$1,000,000	12.5 Commission
Annual Revenues over \$1,000,000	15% Commission

- (ii) A Food and Beverage Fee equal to a percentage of gross food and beverage sales, less applicable taxes, paid monthly, for performing the food and beverage concession and catering services at the Facility, according to the following schedule:

<u>Annual Concessions Sales</u>	<u>Commission</u>
---------------------------------	-------------------

\$0 to \$500,000	5%
\$500,001 to \$1,000,000	10%
Over \$1,000,000	15%

For Food and Beverage Sales in the Suites and Club spaces, the Commission payable to VENUWORKS will be 5% of Gross Sales in those spaces.

(c) Attendance Incentive Fee

VENUWORKS shall earn an incentive fee equal to \$1.00 per ticketed attendee in excess of 100,000 attendees annually at all events other than hockey games and University of Evansville basketball games. However, attendance figures from events that cause the Facility to lose money, meaning that Event Expenses exceeded event revenues, will not be counted in the calculation of the incentive fee. In addition, VENUWORKS shall earn an incentive fee equal to \$.50 per ticketed attendee in excess of 100,000 from the combined annual attendance at hockey games, University of Evansville basketball games, and any other prime sports tenant, if any. Attendance for non-ticketed events, such as graduation ceremonies, conventions, conferences, seminars, educational events, social functions, community festivals, CITY or County events, and any other contracted event will be included in the calculation of the attendance incentive fee at the rate of \$1.00 per attendee but not to exceed 25,000 attendees. Complimentary and paid Ticketed attendance figures will be included in the attendance incentive fee calculation.

(d) Reduction of VENUWORKS Variable Fees

The Variable Fees earned by VENUWORKS, as described in Sections 4.3(b) and 4.3(c) herein, shall be subject to reductions as follows:

- (i) To the extent that VENUWORKS' annual expenses for full time VENUWORKS employee wages, excluding the costs of benefits, taxes, 401-K contributions and unemployment insurance, but including bonuses and employee commissions paid to full time employees, exceed the amount allocated in the Approved Budget, then the VENUWORKS' Variable Fee will be reduced by the amount that the actual expense exceeds the amount in the Approved Budget.
- (ii) In the event VENUWORKS' annual product costs for its food and beverage concessions operation, excluding catering, club food service and suite food services, is greater than 40% of the gross concession sales, then the VENUWORKS Variable Fee will be reduced by an amount equal to the overage in annual product expenses.
- (iii) In the event that the actual total annual Operating Expenses, exclusive of event and energy expenses, exceed 110% of the expenses included in the Approved Annual Budget, the VENUWORKS Variable Fee will be reduced by 50% of the amount by which actual total expenses exceed 110% of budgeted expenses for that fiscal year.
- (iv) The total reduction to VENUWORKS' Variable Fee shall not exceed the total

amount of Variable Fees payable to VENUWORKS in any given fiscal year.

(e) **Total Variable Fees Capped**

Total annual Variable Fees paid to VENUWORKS for FY 2022 shall not exceed \$240,000. In subsequent years the maximum amount of Variable Fees payable to VENUWORKS will be increased by 3% per year.

The foregoing annual fixed compensation and Variable Fees shall be payable in monthly installments due on or before the last day of each month during such Fiscal Year, and VENUWORKS shall be entitled to draw such amounts from the account described in Section 5.6, subject to the funding provisions in section 4.4 and the payment provisions in the event of a Net Operating Loss in Section 5.4 below.

4.2 Net Operating Profit Order of Distribution

The Net Operating Profit in each such Fiscal Year (or portion thereof) shall be distributed to the parties in the following order of priority:

- (i) First, to the extent that VENUWORKS has funded any Net Operating Losses at the Facility in any prior Fiscal Years as provided herein, Net Operating Profits shall be distributed to VENUWORKS until VENUWORKS has fully recouped such funded losses.
- (ii) Second, the next \$100,000 of Net Operating Profit to the Deferred Major Maintenance Reserve Fund.
- (iii) The balance of Net Operating Profit to the CITY.

4.3 Calculating Facility Profit and Loss. All revenues, including Facility Fees, will accrue to the Facility and be deposited in the Operating Account, from which VENUWORKS shall pay Event Expenses; VENUWORKS' personnel expenses; VENUWORKS fees; and expenses for materials, supplies and services.

4.4 VENUWORKS' Capital Investment.

VENUWORKS will make a capital investment in an amount of not less than Five Hundred Thousand Dollars (\$500,000), for the purchase of a new production camera system for the Facility. Specific items to be purchased with funds from VENUWORKS will be determined to the mutual satisfaction of both parties.

- (i) CITY will repay VENUWORKS for the actual investment amount over the course of the five year term, in the form of sixty equal monthly payments.

- (ii) The amortized repayment shall be an operating expense to the Facility. In the event that the management and food/beverage contracts would be terminated for any reason prior to the end of the initial five year term, the unpaid amount of the interest free loan would become immediately due.
- (iii) The parties recognize the equipment procured through the interest-free loan will serve as collateral towards the loan; the parties will execute a separate promissory note for the loan which will become part of this agreement.
- (iv) VENUWORKS may, in its sole discretion, assign the CITY's obligation to repay the capital investment loan to the financial institution selected by VENUWORKS to finance the investment.

5. Budget; Funding; Bank Accounts.

5.1 Annual Budget.

(a) As part of the annual plan described in Section 6.2 herein, on or before ninety (90) days prior to the end of each Fiscal Year during the Contract Term and Renewal Term, if any, VENUWORKS will prepare separate proposed annual operating budgets for the 2022 and subsequent Fiscal Years with respect to the Facility to meet the scope of services and objectives under this Agreement. The proposed annual operating budgets shall be delivered to the CITY a minimum of ninety (90) days prior to the start of the Fiscal Year. Each such budget shall contain appropriate line items for revenues and expenses and the projected Net Operating Profit or Loss.

(b) The Parties recognize that operating plans, budgets and financial forecasts reflect the Manager's industry experience, expertise and its knowledge of similar facilities as well as current conditions and practices relative to the sports, entertainment and convention industries. While the Parties seek an over-arching event profitability goal of having the net event revenues equal to or exceeding facility operating expenses, the Parties recognize that arena, theater and convention events are seasonal and dynamic in nature and there are associated financial risks as events and their resultant deal points, key assumptions and circumstances frequently do not materialize as expected, and those differences in financial budgets and forecasts may be material. Furthermore, the CITY acknowledges that VENUWORKS may schedule not only those events that generate substantial direct event revenue to the Facility, but also those events that produce less direct revenue, but in VENUWORKS' good faith judgment generate enough of a significant economic, cultural, or other benefit to the CITY, or otherwise serve the public interest; provided that no use of the Facility shall be permitted without a reasonable charge for said event or event services.

(c) The CITY shall have the right, in connection with the annual budget development process, to review the Manager's past year's results and the upcoming year's activities relating to: (i) the kind and quality of such past events and those events scheduled for the coming fiscal year; (ii) the food and beverage service, and the items provided for sale at the Facilities; (iii) the rental and fee structure, and all charges for use of the Facilities, including recommendations on the pricing of food and beverage; (iv) patron services relating to the operation of the Facility.

5.2 Budget Modifications Initiated by VENUWORKS.

VENUWORKS may submit to the Contract Administrator at any time prior to the close of a Fiscal Year a supplemental or revised annual operating budget for such Fiscal Year with respect to the Facility. Upon the written approval of the CITY of such supplemental or revised budget, the Approved Budget for such Fiscal Year shall be deemed amended to incorporate such supplemental or revised budget. The Approved Budget for the Facility may only be amended as set forth in Section 5.3 below or in the preceding sentence.

5.3 Budget Modifications Initiated by the CITY for the Facility.

In the event that it appears reasonably likely, in any year during the Contract Term and Renewal Term, if any, that the actual Net Operating Loss/Profit for such Fiscal Year with respect to the Facility will be, respectively, larger or smaller than projected in the annual operating budget for such Fiscal Year, VENUWORKS shall notify the CITY in writing of such likelihood as soon as it becomes evident and thereafter submit to the CITY for approval a plan for reduction of Operating Expenses to a level consistent with the budgeted Net Operating Loss/Profit amount for such Facility. VENUWORKS shall forthwith comply with any such expense reduction approved by the CITY (as may be adjusted by the CITY) and the approved budget for such Fiscal Year for such Facility shall be modified accordingly, provided that if the annual operating budget is modified in a manner which, in VENUWORKS's judgment, could materially interfere, impede or impair the ability of VENUWORKS to manage, operate or promote the Facility, VENUWORKS shall have the right, with one hundred eighty (180) days prior written notice to the CITY, to terminate this Agreement pursuant to Section 12.2 (with the effect set forth in Section 12.3) and provided further that VENUWORKS shall not be construed to have breached its obligations under this Agreement with respect to the Facility if such alleged breach has been caused by the limitations in the Fiscal Year's budget.

5.4 Operating Funds.

(a) **Source of Funding and Cash Flow.** Subject to Section 5.1, the CITY shall provide or advance the necessary operating funds or working capital, on a mutually agreeable cash flow basis, to operate the Facility. The Parties will agree on an annual cash flow budget for the fiscal year of operations and the Operating Account as discussed in Section 5.6 below, shall be funded quarterly with amounts generated by operation of the Facility, or otherwise made available by the CITY.

(b) **Advancement of Funds by Manager.** Under no circumstances shall VENUWORKS 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, VENUWORKS agrees to advance its own funds to pay any Operating Expenses, CITY shall promptly reimburse VENUWORKS for the full amount of such advanced funds, plus interest at a rate to be agreed by the parties at the time of such advancement.

(c) Cash Flow Shortfall for the Facility.

- (i) Following the approval of the annual operating budget for a Fiscal Year for the Facility (including, without limitation, any annual operating budget applicable to the first Fiscal Year during the term hereof), to the extent that Operating Revenues for the Facility during a calendar quarter period are insufficient, or expected to be insufficient, to cover operating- expenses for the Facility ("Cash Flow Shortfall") the CITY shall advance funds to VENUWORKS as follows: Thirty (30) days prior to the beginning of each quarter during the Contract Term and any Renewal Term, VENUWORKS, will submit to the CITY an invoice for the projected Cash Flow Shortfall for such quarter (which is offset by any cash flow surplus estimated by VENUWORKS for the then current calendar quarter, which estimate takes into account any such surplus for the first two months of such quarter and VENUWORKS' reasonable estimate of any cash flow surplus for-the last month of such quarter), and the CITY will transfer such funds to VENUWORKS within five (5) business days after the start of such calendar quarter. Such funds shall be deposited by VENUWORKS in the operating or payroll account(s) established pursuant to Section 5.6 and used to pay Operating Expenses.
- (ii) In the event of a forecasted Net Operating Loss for the Facility, in any Fiscal Year, the Variable Fees due VENUWORKS monthly will be suspended until such time as either the likelihood of a Net Operating Loss is negated by improved financial activity, the budget is revised by mutual consent of both Parties, or the fiscal year comes to an end.

5.5 Non-Funding.

The CITY shall have no obligation to provide funds for the payment of Operating Expenses incurred or committed for in excess of the funds that have been budgeted and appropriated for such purpose for the Facility in the approved Annual Budget. However, the Parties agree that unforeseen circumstances could require that the approved Annual Budget be amended, in which case both Parties will work in good faith the revise the Annual Budget based on realistic financial projections.

5.6 Receipts and Disbursements.

With respect to the Facility, VENUWORKS shall establish and maintain separate bank accounts in one or more depositories designated by VENUWORKS and approved by the CITY for the promotion, operation and management of the Facility. The bank accounts shall be in the name of VENUWORKS and with signature authority on each bank account in those employees of VENUWORKS as VENUWORKS shall determine. All revenues collected by VENUWORKS from the operation of the Facility shall be deposited into such bank account(s) for the Facility and Operating Expenses for the Facility shall be paid by VENUWORKS from the bank account(s) for the Facility. All revenues collected by VENUWORKS arising from operation of the Facility,

including revenues from box office sales (subject to distribution per Section 5.7), facility or equipment rentals, utility rental agreements, food and beverage concessions, or any other source, are the sole property of the CITY, held in trust by VENUWORKS for the CITY for application as provided herein. Any amounts remaining in such bank accounts upon termination of this Agreement for any reason, after payment of all outstanding Operating Expenses and in the case of the Facility, also after payment of all amounts as provided in Section 4.3 hereof, shall be promptly paid by VENUWORKS to the CITY.

5.7 Ticket Sales Revenues.

VENUWORKS shall hold in a separate account in a banking institution depository in the locale in which the Facility is located for any ticket sale revenues which it receives with respect to an event to be held at the Facility pending the completion of the event. Such monies are to be held for the protection of ticket purchasers, the CITY and VENUWORKS, and to provide a source of funds, as required for such payments to performers and promoters and for such payments of Event Expenses and other Operating Expenses for the Facility in connection with the presentation of events as may be required to be paid contemporaneously with the event. Within ten (10) business days following the satisfactory completion of an event, VENUWORKS shall pay from the ticket account all amounts due to performers and promoters and Event Expenses, and thereafter deposit into the operating account established pursuant to Section 5.6 above for the Facility the amount in such ticket account and shall pay from the operating account for the Facility Operating Expenses and such other amounts that are due. Interest which accrues on amounts deposited in the operating accounts referred to in Section 5.6 and the ticket accounts referred to above shall be considered Operating Revenues for the Facility.

5.8 Capital Improvements; Capital Equipment.

The obligation to pay for Capital Improvements and Capital Equipment purchases shall remain with the CITY and will not be considered Operating Expenses. The annual plan submitted pursuant to Section 6.2 for the Facility shall include VENUWORKS' recommendation for Capital Improvements and Capital Equipment purchases to be accomplished during the year and shall be accompanied by an estimate of the cost of all such items and projects and a request that the CITY budget funds for those items. The CITY shall retain the discretion to determine whether and to what level to fund Capital Improvements and Capital Equipment purchases to the Facility. If requested by the CITY, VENUWORKS, or others engaged on its behalf, shall perform, direct and supervise Capital Improvements and Capital Equipment purchases which are authorized in writing by the CITY or included in any annual plan approved by the CITY pursuant to Section 6.2. Any reasonable expenses incurred by VENUWORKS in performing, directing and supervising Capital Improvements and Capital Equipment purchases shall be billed by VENUWORKS to the CITY and paid by the CITY within thirty (30) days thereafter.

5.9 Limitation of VENUWORKS Liability.

VENUWORKS shall have no obligation to fund any cost, expense, or liability with respect to the performance of Services hereunder or the maintenance, operation, management or promotion of the Facility except for VENUWORKS':

- (i) Express indemnification undertakings in Section 8.1 (a);
- (ii) Express reimbursement undertakings in Section 6.1 (b);
- (iii) Obligation to fund Capital Investment undertakings in Section 4.5.

Notwithstanding anything to the contrary set forth in this Agreement, the CITY recognizes and agrees that performance by VENUWORKS of its responsibilities under this Agreement with respect to the Facility is in all respects subject to and conditioned upon the CITY making available in a timely fashion, the provision of funds budgeted for and/or reasonably required by VENUWORKS for such purposes as hereinafter provided.

5.10 Funds for Emergency Repairs.

VENUWORKS shall have the right to act, with the written consent of the CITY, in situations which VENUWORKS reasonably determines to be an emergency with respect to the safety, welfare and protection of the general public, including spending and committing funds held in the operating account of the Facility even if such expenses are not budgeted; provided, however, if such emergency expenses are for Capital Equipment and/or Capital Improvements, VENUWORKS shall have no obligation under any circumstance to spend or commit funds other than funds then available in the Facility account(s) for any such purpose. If possible, VENUWORKS will inform the CITY prior to taking any action requiring an expenditure of funds. In those cases in which advance notice is not possible in the opinion of VENUWORKS, then immediately following such action, VENUWORKS shall inform the CITY of the situation and the action(s) taken, and the CITY shall pay into the appropriate account(s) the amount of funds, if any, spent or committed by VENUWORKS pursuant to this Section 5.10 in excess of budgeted amounts for Capital Equipment and/or Capital Improvements for the Facility.

5.11 Use of Facility by CITY.

(a) The CITY, as the owner of the Facility, shall maintain the right to use any of the Facility rent-free for meetings, seminars, training classes or other municipal uses (as opposed to uses by third party promoters or licensees), provided that the CITY shall promptly pay Manager for any direct out-of-pocket event related expenses incurred by Manager, including, but not limited to the cost of ushers, ticket-takers, set-up and take-down personnel, custodial services and security expenses, in connection with such use and not otherwise reimbursed by any other party. Such CITY use of the Facility 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 Facility's approved booking policies. Upon request of the CITY, Manager shall provide a list of

non-available dates for CITY use of the Facility. To the extent that Manager has an opportunity to book a revenue-producing event on a date which has previously been reserved for use by CITY, the CITY shall use best efforts to reschedule its event to allow Manager to book the revenue-producing event.

(b) In addition to the other rights of the CITY in this Agreement, the CITY shall have the right to use one eight-seat Suite in the Facility for economic development, tourism, hospitality, and government purposes, without license charge, but only to the extent such suite is available for use. CITY shall be required to pay for all event tickets used in the suite for events for which there is a charge for such tickets.

5.12 Facility Equipment and Enhancements.

To the extent that the annual Variable Fee calculated without regard to the Variable Fee Cap, as adjusted from time to time, exceeds the Variable Fee Cap, but not more than Twenty Five Thousand Dollars (\$25,000.00), such amount shall be retained by VENUWORKS and held in an account for expenditures on equipment or other enhancements to or for the benefit of the Facility (the "Facility Enhancements Account"). Funds from the Facility Enhancements Account shall be spent at VENUWORKS' reasonable discretion, and VENUWORKS shall provide an annual accounting to the CITY of amounts accumulated in the Facility Enhancements Account and how such amounts have been spent, if at all, during the prior fiscal year.

6. Records, Audits and Reports.

6.1 Records and Audits.

(a) VENUWORKS shall keep separate, full and accurate accounting records relating to its activities at each the Facility in accordance with generally accepted United States accounting principles. VENUWORKS shall maintain a system of bookkeeping adequate for its operations hereunder and for the use of auditors. VENUWORKS shall give the CITY's authorized representatives access to such books and records maintained at the Facility during reasonable business hours and upon reasonable advance notice. VENUWORKS shall keep and preserve for at least three (3) years following the completion and/or termination of this Agreement files of all attendance records, sales slips, rental agreements, purchase orders, sales books, credit card invoices, bank books or duplicate deposit slips, and other evidence of Operating Revenues and Operating Expenses for such period for the Facility, except that if after three (3) years following any Fiscal Year VENUWORKS desires to destroy any such records, VENUWORKS shall first notify the CITY in writing of such desire and give the CITY thirty (30) days to elect to take such records from VENUWORKS. In addition, on or before ninety (90) days following each Fiscal Year for which VENUWORKS is managing the Facility hereunder, VENUWORKS shall furnish to the CITY a balance sheet, a statement of profit or loss and a statement of cash flows for each of the Facility for the preceding Fiscal Year, prepared in accordance with generally accepted United States accounting principles and accompanied by an independent auditor's report of a qualified, independent certified public accountant. The audit shall contain an opinion expressed by the independent auditor of the accuracy of financial records kept by VENUWORKS and of amounts due to the CITY. Each such audit shall also provide a certification of Operating Revenues

and Operating Expenses (as defined in this Agreement) for such Fiscal Year. The audit shall be conducted by a reputable firm selected by VENUWORKS with CITY approval. The CITY shall not withhold or delay such consent or approval unreasonably. Notwithstanding anything to the contrary herein, the costs of such audit shall be deemed Operating Expenses. If an audit, litigation or other action involving such records begins before the end of the three year period, the records shall be maintained for three years from the date that all issues arising out of the action are resolved or until the end of the three year retention period, whichever is later, unless prior to the end of such period of time, VENUWORKS notifies the CITY in writing of its desire to destroy such records and gives the CITY thirty (30) days to elect to take such records from VENUWORKS. The provisions of this subsection shall survive termination of this Agreement.

(b) The CITY shall have the right at any time, and from time to time, to audit and/or cause competent, certified independent auditors to audit all of the books of VENUWORKS relating to Operating Revenues and Operating Expenses for the Facility, including, without limitation, cash register tapes, credit card invoices, duplicate deposit tapes, and invoices. No costs incurred by the CITY in conducting such audit shall be considered an Operating Expense. If any such audit demonstrates that the Operating Revenues or Operating Expenses reflected in any financial statements prepared by VENUWORKS and audited as specified in the foregoing subsection (a) are erroneous, VENUWORKS shall promptly remit to the CITY any portion of the fee paid to VENUWORKS for such Fiscal Year which is attributable to the error(s). The CITY's right to have such an audit made with respect to any Fiscal Year and VENUWORKS's obligation to retain the above records shall expire three (3) years after termination of this Agreement. If an audit, litigation or other action involving such records begins before the end of the three year period, the records shall be maintained for three years from the date that all issues arising out of the action are resolved or until the end of the three year retention period, whichever is later, unless prior to the end of such period of time, VENUWORKS notifies the CITY in writing of its desire to destroy such records and gives the City thirty (30) days to elect to take such records from VENUWORKS. The retention provisions of this subsection shall survive termination of this Agreement.

6.2 Annual Plan.

VENUWORKS shall provide to the CITY during the first quarter of each Fiscal Year, an annual management plan, which shall include a review of the Fiscal Year's the annual operating budget described in Section 5.1 for the current Fiscal Year. The annual plan for the Facility shall include information regarding VENUWORKS' anticipated operations for such Fiscal Year at the Facility, including planned operating maintenance activities by VENUWORKS and the Building Authority, requested Capital Improvements and Capital Equipment purchases and an anticipated budget therefor, anticipated events at such Facility, anticipated marketing, advertising and promotional activities, and planned equipment and furnishings purchases. CITY's approval of such plan will be required with respect to the proposed budget for Capital Improvements and Capital Equipment purchases. Following review and revision by the CITY, VENUWORKS shall have thirty (30) days to incorporate the CITY's revisions into the plan.

6.3 Monthly Reports.

By the twenty-fifth day of each month, VENUWORKS shall provide to the CITY a written monthly report in a form approved by the CITY and similar to that used in other VENUWORKS-managed facilities setting out the Facility's anticipated activities for the upcoming month and reporting on the prior month's activities and finances including a rolling forecast. VENUWORKS shall include in such report a balance sheet, income statement, (such as a departmental expense report, and rolling year end forecast updated monthly beginning in the second quarter of each Fiscal Year). Additionally, VENUWORKS shall on a monthly basis make available to the Contract Administrator for inspection the flash settlement reports for events at the Facility, of which this information will be deemed confidential property of VENUWORKS.

7. Employees.

7.1 VENUWORKS Employees.

(a) Subject to Section 7.2, VENUWORKS shall select, train and employ at the Facility such number of employees as VENUWORKS deems necessary or appropriate to satisfy its responsibilities hereunder. VENUWORKS shall use its best efforts to recruit employees who will be proficient, productive, and courteous to patrons, and, subject to Section 7.2, VENUWORKS shall have authority to hire, terminate and discipline any and all personnel working at each Facility.

(b) VENUWORKS shall assign to the Facility a competent, full-time Executive Director who shall have an office at the Facility for the duration of the Contract Term and Renewal Term if any. Such Executive Director shall have no other duties other than the day-to-day operation and management of the Facility, unless approved in writing by the Contract Administrator. From time to time, subject to prior written approval by the Contract Administrator, the Executive Director may provide assistance in connection with the consulting and/or management services provided by VENUWORKS or any of its Affiliates at other facilities managed, owned or leased by VENUWORKS or any of its Affiliates, provided that (i) such assistance does not affect in any material respect the responsibilities and duties of the Executive Director to the Facility and (ii) the cost of the salary, benefits, travel and other expenses of the Executive Director for the time spent in connection with providing such assistance shall be reimbursed by VENUWORKS to the appropriate operating account(s) of the Facility. Prior to VENUWORKS' appointment of an Executive Director, VENUWORKS shall consult with the Contract Administrator with respect to the qualifications of the Executive Director proposed by VENUWORKS.

(c) VENUWORKS shall deliver to the CITY the names and resumes of the senior management personnel VENUWORKS proposes to employ at the Facility (e.g., the Executive Director, assistant executive director and director-level employees), upon the request of the City.

(d) The CITY hereby approves VENUWORKS' current Executive Director, Scott Schoenike. Hiring of any successor Executive Director by VENUWORKS shall require the prior approval of the CITY. VENUWORKS shall submit names and resumes, and if requested, conduct candidate interviews until the CITY reasonably accepts an employee for assignment to the Executive Director position.

(e) At any time during the Contract Term or the Renewal Term, if any, the CITY may

notify VENUWORKS if it believes that there is a performance problem with the Executive Director or any other senior management personnel. Within fifteen (15) days of receipt of such notice, VENUWORKS's corporate will meet with the Contract Administrator to discuss the problem and to propose steps that may be appropriate to address such problem.

(f) VENUWORKS employees at the Facility shall not for any purpose be considered to be employees of the CITY, and VENUWORKS shall be solely responsible for all personnel-related matters, including their supervision and daily direction and control and for setting, and paying as an Operating Expense, their compensation (and federal and state income tax withholding) and any employee benefits. All costs related to their employment shall be an Operating Expense.

(g) CITY shall indemnify, defend and hold harmless VENUWORKS from and against any and all claims from the CITY employees assigned to work at the Facilities, arising out of their work at the Facilities under the management of Manager. Both Parties acknowledge that the CITY workers working as assigned at the Facilities, are the employees of the CITY, and not of VENUWORKS, and as such, agree that VENUWORKS shall have no liability for workers' compensation claims filed by CITY employees for injuries sustained while working in or for the Facilities.

7.2 No Solicitation or Employment.

During the period commencing on the date hereof and ending one (1) year after the termination of this Agreement, except with VENUWORKS' prior written consent, the CITY will not, for any reason, solicit for employment, or hire, the Executive Director, assistant executive director, director-level employees and department heads employed at the Facility. Provided, however, this provision shall not apply to VENUWORKS Employees who were previously employed by the CITY. In addition to any other remedies which VENUWORKS may have, specific performance in the form of injunctive relief shall be available for the enforcement of this provision. The obligation of the CITY under this Section 7.2 shall survive the termination of this Agreement.

8. Indemnification and Insurance.

8.1 Indemnification.

(a) VENUWORKS shall indemnify, defend and hold harmless the CITY, its officers, agents and employees from and against any and all Losses arising from the negligent acts, willful misconduct, fraud or activities outside of the scope of authority granted hereunder of VENUWORKS and/or its officers, employees, representatives, contractors, subcontractors or agents, or any material default or breach by VENUWORKS of its obligations specified herein; provided, however, that the foregoing indemnification shall not extend to Losses to the extent such Losses (i) arise from any breach or default by the CITY of its obligations under Section 8.1(b) below, (ii) are of the type that are or would normally be covered by commercial insurance covering (A) the Facility and its premises for physical damage, and (B) business interruption and extra expenses, irrespective of the decision of the CITY to carry or not to carry such insurance, or (iii) are caused by or arise out of the services provided by the architects, engineers and other agents retained by the CITY in connection with Capital Improvements or Capital Equipment purchases at the Facility.

(b) The CITY shall indemnify, defend and hold harmless VENUWORKS, its partners, officers, agents and employees from and against any and all Losses arising from (i) any material default or breach by the CITY of its obligations specified herein, (ii) the fact that at any time prior to, as of, or after the commencement of the Contract Term hereunder the Facility, any improvements related thereto and its premises are not or have not been, in compliance with all Laws, including, but not limited to, the ADA, (iii) the fact that prior to, as of, or after the commencement of the Contract Term hereunder there is any condition on, above, beneath or arising from the premises occupied by the Facility which might, under any Law, give rise to liability or which would or may require any response, removal or remedial action, (iv) any structural defect or unsound operating condition with respect to the Facility or the premises occupied by the Facility prior to, as of or after the commencement of the Contract Term hereunder, (v) any obligation or liability under or in respect of any contract, (vi) any obligation or liability for physical damage to any real property and personal property assets located at the Facility or intended to be incorporated therein, whether such assets are insured by the CITY or whether the CITY decides not to insure for such damage and Losses (including without limitation damages or Losses falling within any insurance deductible), or (vii) any act or omission carried out by VENUWORKS at or pursuant to the written direction or instruction of the CITY, its agents or employees; provided, however, that the foregoing indemnification under clauses (i), (ii), (iii), (iv), (v), (vi) or (vii) above shall not extend to Losses to the extent such Losses arise from (A) the negligent acts, willful misconduct, fraud or activities outside of the scope of authority granted hereunder of VENUWORKS and/or its officers, employees, representatives, contractors, subcontractors or agents as set forth in Section 8.1(a) hereof, or (B) any material default or breach by VENUWORKS of its obligations specified herein.

(c) The provisions set forth in subsections (a) and (b) above shall survive termination of this Agreement; provided, however, that except for indemnification based upon Section 8.1(b) (ii), (iii), (iv), or (v) above, a claim for indemnification pursuant to Section 8.1 shall be valid only

if the party entitled to such indemnification provides written notice thereof the other party prior to five (5) years following the date of termination of this Agreement.

(d) The foregoing indemnification rights shall be the exclusive remedies of each party hereto (other than any right to terminate this Agreement pursuant to Section 12 arising from any breach of, default under or performance pursuant to this Agreement).

(e) In no event shall either party be liable or responsible for any punitive damages, whether based upon breach of contract or warranty, negligence, strict tort liability or otherwise.

(f) Notwithstanding the foregoing, the indemnity of the CITY shall be limited by limitations on liability available to the CITY as a political subdivision of the State of Indiana, including, but not limited to, the Indiana Tort Claims Act.

8.2 Liability Insurance during Contract Term

(a) VENUWORKS shall secure and shall keep in force at all times during the term of this Agreement, sufficient commercial liability insurance, including public liability and property damage, covering premises liability, and VENUWORKS operations hereunder and as long as VENUWORKS is providing food and beverage concession and catering services hereunder, liquor liability, which insurance shall, at a minimum, be in the amount of Two Million Dollars (\$2,000,000) for bodily injury and Two Million Dollars (\$2,000,000) for property damage, including products and completed operations, and independent contractors.

(b) VENUWORKS shall also maintain Comprehensive Automotive Bodily Injury and Property Damage Insurance for business use covering all vehicles operated by VENUWORKS officers, agents and employees in connection with the Facility, whether owned by VENUWORKS, the CITY, or otherwise, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence (including an extension of hired and non-owned coverage).

(c) VENUWORKS shall also maintain:

(i) Professional liability insurance with coverage of at least One Million Dollars (\$1,000,000) for claims of negligent errors, acts or omissions by VENUWORKS; and

(ii) Employment practices liability insurance with coverage of at least One Million Dollars (\$1,000,000) for claims relating to the employment practices of VENUWORKS at the Facility pertaining to its employees.

(d) During the Contract Term and any Renewal Term, VENUWORKS shall also maintain sufficient Umbrella liability insurance in the amount of at least Five Million Dollars (\$5,000,000) in excess of coverage provided by automobile and commercial liability policies required in Sections 8.2(a) and 8.1(b).

(e) VENUWORKS shall be the named insured under all insurance required herein.

The CITY shall be an additional insured under the insurance described in Sections 8.2(a) and (b), as its interests may appear, and such insurance in Sections 8.2(a) and (b) shall include the broadest form of contractual liability coverage available. All insurance shall be from insurance companies licensed to do business in the State of Indiana with a minimum financial rating of "A" and shall be written in accordance with standard forms of insurance policies approved by the Indiana Department of Insurance.

(f) Certificates evidencing the existence of the above insurance, required under Sections 8.2 and 8.3, shall be delivered to the Contract Administrator no later than thirty (30) business days prior to the commencement of the Contract Term. Each such policy of insurance and certificate shall contain a valid provision or endorsement that the insurer cannot cancel or terminate coverage without the insurer first giving thirty (30) days written notice to the CITY of such cancellation or termination. Except as otherwise agreed herein, the parties hereto acknowledge that the above insurance may contain exclusions from coverage which are reasonable and customary for insurance of such type.

(g) With respect to insurance procured by it, VENUWORKS shall deliver to the Contract Administrator satisfactory evidence of such renewal of such insurance within ten (10) days after such insurance's expiration date except for any insurance expiring on the termination date of this Agreement or thereafter.

(h) Except as provided in Section 8.4, all insurance procured by VENUWORKS in accordance with the requirements of this Agreement shall be primary over any valid and collectible insurance carried by the CITY and not require contribution by the CITY.

8.3 Workers Compensation Insurance.

VENUWORKS shall at all times maintain worker's compensation insurance (including occupational disease hazards) with an authorized insurance company or through the Indiana State Compensation Insurance Fund or through an authorized self-insurance plan approved by the State of Indiana, insuring its employees at the Facility in amounts equal to or greater than required under applicable Laws. However, the parties acknowledge that the employees of the CITY and or the Building Authority are not employees of VENUWORKS, and VENUWORKS shall have not employer liability for these employees, in spite of the fact that they will do work in the Facility.

8.4 Fidelity Insurance.

VENUWORKS shall maintain during the term of this Agreement Fidelity Insurance covering all of VENUWORKS' personnel under this Agreement in the amount of Five Hundred Thousand Dollars (\$500,000.00) for each loss, to reimburse the CITY for losses experienced due to the dishonest acts of VENUWORKS' employees.

8.5 Certain Other Insurance.

If VENUWORKS enters into any agreements during the Contract Term and any Renewal Term

with any independent contractors for the provision of services hereunder, VENUWORKS shall have the right to require such contractors to name VENUWORKS as an additional insured under any insurance required by VENUWORKS thereunder.

9. Ownership of Assets.

9.1 Ownership.

The ownership of buildings, improvements, and real estate, technical and office equipment and facilities, furniture, displays, fixtures, vehicles and similar tangible property located at the Facility shall remain with the CITY. The CITY shall further retain exclusive ownership of all intangible property related to the Facility and the tangible property located at the Facility, including unexpired warranties and guaranties, keys, plans, and specifications. Ownership of and title to all intellectual property rights of whatsoever value, held in the CITY's name shall remain in the name of the CITY. The ownership of consumable assets such as office supplies and cleaning materials purchased with Operating Revenues or CITY funds shall remain with the CITY, but such assets may be utilized and consumed by VENUWORKS in the performance of services under this Agreement. The ownership of data processing programs and software owned by the CITY, including programs and software purchased by VENUWORKS with funds provided by the CITY and for Operating Revenues for the Facility, shall remain with the CITY, and the ownership of data processing programs and software owned by VENUWORKS shall remain with VENUWORKS. VENUWORKS shall not take or use, for its own purposes, customer or exhibitor lists or similar materials developed by the CITY for the use of the Facility, unless written consent is granted by the CITY. Ownership of equipment, furnishings, materials, or fixtures not considered to be real property and other personal property purchased by VENUWORKS with CITY funds for use at and for the Facility shall vest solely in the CITY automatically and immediately upon purchase or acquisition. Except as otherwise provided in this Agreement, the assets of the CITY as described herein shall not be pledged, made liable to a lien, encumbered or otherwise alienated or assigned by VENUWORKS without the prior written approval of the CITY.

9.2 CITY Obligations.

Except as herein otherwise set forth, throughout the term of this Agreement, the CITY will maintain full beneficial use and ownership of the Facility and will pay, keep, observe and perform all payments, terms, covenants, conditions and obligations under any bonds, debentures or other security agreements or contracts relating to the Facility to which the CITY may be bound.

10. Assignment; Affiliates.

10.1 Assignment.

Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either party hereto without the prior written consent of the other party hereto. For purposes of this Agreement, a Change in Control shall be deemed an assignment. Notwithstanding the foregoing, VENUWORKS may assign all or any part of its rights hereunder to an Affiliate, provided that (i) such Affiliate possesses substantially the same degree of expertise, quality of personnel and credit worthiness as originally provided under this Agreement, and (ii) such assignment shall be at no increased cost to the CITY. For sake of clarity, the parties acknowledge that the foregoing does not preclude the assignment by VENUWORKS of its rights to receive its management and incentive fees hereunder to its lender(s) as collateral security for VENUWORKS' obligations under any credit facilities provided to it by such lender(s), provided that such collateral assignment shall not in any event cover VENUWORKS' rights to manage, promote or operate the Facility hereunder.

10.2 VENUWORKS Transactions with Affiliates.

(a) In connection with its management responsibilities hereunder relating to the purchase and for procurement of equipment, materials, supplies, inventories, and services for the Facility, VENUWORKS shall have the right, but not the obligation, to purchase and/or procure from, or otherwise transact business with, an Affiliate of VENUWORKS. In the event VENUWORKS purchases and/or procures from, or otherwise transacts business with, an Affiliate of VENUWORKS as contemplated by the foregoing sentence, the prices charged and services rendered shall be competitive with those obtainable from others rendering comparable goods and for services of like kind. With the exception of these services described in section 2.2 (n) above, VENUWORKS agrees to obtain at least two (2) other competitive bids from Persons other than VENUWORKS' Affiliates whenever VENUWORKS proposes to transact business with an Affiliate for the provision of such goods or services hereunder. In addition, VENUWORKS may license the use of the Facility or any part thereof to itself in connection with any event in the promotion of which VENUWORKS is involved, so long as the license fee charged is on prevailing rates and terms or such other rates and terms as the CITY approves in writing prior to such event.

(b) The CITY acknowledges that VENUWORKS manages other public assembly facilities which may, from time to time, be in competition with the Facility. The management of competing facilities will not, in and of itself, be deemed a conflict of interest or breach of VENUWORKS' duties hereunder; provided, however, in all instances in which the Facility is in competition with other public assembly facilities managed by VENUWORKS for the solicitation of certain events, VENUWORKS shall not involve its principal office (currently in Ames, Iowa) on behalf of any such other facility in an attempt to influence the decision-making process regarding the selection of a site by such events.

11. Laws and Permits.

11.1 Permits, Licenses, Taxes and Liens.

VENUWORKS shall procure any permits and licenses required for the business to be conducted by it hereunder. The CITY shall cooperate with VENUWORKS in applying for such permits and licenses. VENUWORKS shall deliver copies of all such permits and licenses to the Contract Administrator. VENUWORKS shall pay promptly, out of the accounts specified in Section 5.6, all taxes, excises, license fees and permit fees of whatever nature arising from its operation, promotion and management of the Facility. VENUWORKS shall acquire and maintain in good standing a liquor license for the Facility. However, upon termination of this Agreement for any reason, the liquor license shall be transferred to the CITY, or an agency of the CITY to be determined by the CITY, immediately upon the request of the CITY, without charge or precondition. No lien of any kind shall exist against the Facility or any property of the CITY related thereto unless such lien is approved in writing by the CITY. Additionally, VENUWORKS covenants that it shall not permit any lien to be placed upon the Facility or any property of the CITY located thereon in connection with any work or labor performed or materials furnished by any mechanic or material man at the Facility, except to the extent that VENUWORKS is in good faith disputing the placement of such lien and diligently pursuing the resolution of such dispute.

11.2 Governmental Compliance.

VENUWORKS, its officers, agents and employees shall comply with all Laws applicable to VENUWORKS' management of the Facility hereunder, and the performance of its services hereunder. Without limiting the foregoing, with respect to the ADA, VENUWORKS will comply with Title II I of the ADA and the provision of such auxiliary aids or alternate services as may be required by the ADA. Nothing in this Section 11.2 or elsewhere in this Agreement shall, however, require VENUWORKS to undertake any of the foregoing compliance activity, nor shall VENUWORKS have any liability under this Agreement therefor, if such activity requires any Capital Improvements or Capital Equipment purchases, unless the CITY provides funds for such Capital Improvements and Capital Equipment purchases pursuant to Section 5.8 hereof. Furthermore, VENUWORKS shall require every licensee, lessee, tenant, promoter or user of any portion of the Facility to comply, and to be financially responsible for compliance, with Title II I of the ADA in connection with any activities of such licensee, lessee, tenant, promoter or user at the Facility.

11.3 Discrimination Prohibited.

VENUWORKS shall observe the provisions of the Indiana Civil Rights Law, which requires employers, employment agencies, labor organizations and joint labor-management committees to provide equal employment opportunities for qualified individuals with disabilities. VENUWORKS shall not discriminate against any person in the performance of work under this contract because of race, religion, color, sex, sexual preference, disability, national origin, ancestry, or age. Furthermore, VENUWORKS will be inclusive with respect to increasing opportunities for Minority-owned Business Enterprises and for Women-owned Business Enterprises to do business with the Facility for amounts spent for goods, supplies and professional

services.

12. Termination.

12.1 Termination Upon Default.

Either party may terminate this Agreement upon a default by the other party hereunder. A party shall be in default hereunder if (i) such party fails to pay any sum payable hereunder within sixty (60) days after same is due and payable, or (ii) such party fails in any material respect to perform or comply with any of the other terms, covenants, agreements or conditions hereof and such failure continues for more than thirty (30) days after written notice thereof from the other party. In the event that a default (other than a default in the payment of money) is not reasonably susceptible to being cured within the thirty (30) day period, the defaulting party shall not be considered in default if it shall within such thirty (30) day period have commenced with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default.

12.2 Termination Other than Upon Default.

(a) VENUWORKS shall have the right to terminate this Agreement (i) under the circumstances and with prior notice to the CITY as described in Sections 5.3 or 5.4 hereof, or (ii) upon one hundred eighty (180) days written notice to the CITY, if the CITY elects not to make Capital Improvements or Capital Equipment purchases at the applicable Facility to the extent that such election materially interferes with, impedes or impairs the ability of VENUWORKS to manage the applicable Facility effectively.

(b) The CITY shall have the right to terminate this Agreement (i) under Sections 12.1 or 12.2 hereof, or (ii) upon the occurrence of (A) VENUWORKS filing or having filed against it a voluntary or involuntary petition in bankruptcy or a voluntary or involuntary petition or an answer seeking reorganization, an arrangement, or readjustment of its debts, or for any other relief under the United States Bankruptcy Code, as amended, or under any other state or federal insolvency act or law, or any action by VENUWORKS indicating its consent to, approval of, or acquiescence to the appointment of a receiver or trustee for all or a substantial part of its property, (B) the liquidation, dissolution or termination of the existence of VENUWORKS, or (C) upon 180 days prior written notice in the event of a Change in Control.

(c) VENUWORKS shall have the right to terminate this Agreement under the circumstances and with prior notice to the CITY as described in Section 5.1(b) and 5.3 hereof.

(d) The CITY may, upon not less than sixty (60) days' prior written notice to VENUWORKS, terminate this Agreement solely with respect to the Victory Theatre and the CITY shall no longer pay the fees relating to management of the Victory Theatre contemplated by Section 4.1 of this Agreement. To the extent applicable, upon the termination of this Agreement with respect to the Victory Theatre, Section 12.3 shall apply.

12.3 Effect of Termination.

In the event this Agreement expires or is terminated (or the services hereunder are terminated under Section 12.2 with respect to only one Facility), all Operating Expenses incurred or committed for prior to the date of expiration or termination for the applicable Facility shall be paid using funds on deposit in the accounts described in Sections 5.6 and 5.7 and to the extent such funds are not sufficient, the CITY shall pay all such Operating Expenses for the applicable Facility, subject, however, to VENUWORKS's obligations to fund any costs, expenses or liabilities set forth in Section 5.9. Further, the CITY shall pay VENUWORKS all fees earned to the date of expiration or termination (the fees described in Section 4 hereof being subject to proration, as appropriate), provided that the CITY shall be entitled to offset against such unpaid fees any Losses incurred by the CITY in remedying any default by VENUWORKS hereunder which resulted in such termination (other than the fees or expenses of any replacement Manager for the Facility). Additionally, in the event this Agreement expires or is terminated without any further action on the part of VENUWORKS or the CITY, the CITY shall, or shall cause another management company retained by it, to accept the assignment of VENUWORKS's rights, and assume and perform all of VENUWORKS's obligations, arising after the date of expiration or termination of this Agreement, under any licenses, occupancy agreements, rental agreements, booking commitments, advertising agreements, concession agreements, and any other contracts relating to the applicable Facility which have been executed by VENUWORKS hereunder, except (i) to the extent that any such license, agreement, commitment or contract was executed by VENUWORKS in violation of any of the restrictions applicable to VENUWORKS's right to execute such licenses, agreements, commitments or contracts contained in this Agreement and (ii) for any such license, agreement, commitment or contract to which the consent of the other party thereto is required for such assignment and assumption unless such consent is obtained. In the case of any such consent, VENUWORKS will use commercially reasonable efforts to obtain such consent and the CITY will cooperate in any reasonable manner with VENUWORKS to obtain such consent. Upon the expiration of this Agreement or a termination pursuant to Section 12.1 or 12.2, all further obligations of the parties hereunder shall terminate except for the obligations in this Section 12.3 and such other provisions that expressly survive termination of this Agreement.

12.4 Surrender of premises:

Upon termination of this Agreement (termination shall, for all purposes in this Agreement, include termination pursuant to the terms of this Section 12 and any expiration of the term hereof), VENUWORKS shall immediately surrender and vacate the applicable Facility upon the effective date of such termination. The Facility and all equipment and furnishings shall be returned to the CITY in good repair, reasonable wear and tear excepted, to the extent funds were made available therefor by the CITY. All reports, records, including financial records, and documents maintained by VENUWORKS at the Facility relating to this Agreement other than materials containing VENUWORKS's proprietary information shall be immediately surrendered to the CITY by VENUWORKS upon termination.

13.1 No Partnership or Joint Venture.

Nothing herein contained is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture between the CITY and VENUWORKS. None of the officers, agents or employees of VENUWORKS shall be or be deemed to be employees of the CITY for any purpose whatsoever.

13.2 Entire Agreement.

This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect, thereto. No other agreements, representations, warranties or other matters, whether oral or written, will be deemed to bind the parties hereto with respect to the subject matter hereof.

13.3 Written Amendments.

This Agreement shall not be altered, modified or amended in whole or in part, except in a writing executed by each of the parties hereto.

13.4 Force Majeure.

(a) No party will be liable or responsible to the other party for any delay or failure or inability to perform caused by "Force Majeure" if notice is provided to the other party within ten (10) days of date on which such party gains actual knowledge of the event of "Force Majeure" that such party is unable to perform. The term "Force Majeure" as used in this Agreement means the following: an act of God, strike, war, public rioting, lightning, fire not caused by either party's gross negligence or willful misconduct, storms, floods, explosions not caused by either party's gross negligence or willful misconduct, inability to obtain materials or supplies due to widespread scarcity, epidemics, landslides, earthquakes, washouts, civil disturbances, freezing of equipment, terrorist acts, and any other cause of the kind or type specifically enumerated above which is not reasonably within the control of the party whose performance is to be excused and which by the exercise of due diligence could not be reasonably prevented or overcome.

(b) Neither party hereto shall be under any obligation to supply any service or services if and to the extent and during any period that the supplying of any such service or services or the provision of any component necessary therefor shall be prohibited or rationed by any Law.

(c) In the event of damage to or destruction of any Facility by reason of fire, storm or other casualty or occurrence of any nature or any regulatory action or requirements that, in either case, is expected to render such Facility materially untenable, notwithstanding the CITY's reasonable efforts to remedy such situation, for a period estimated by an Architect selected by the CITY at the request of VENUWORKS of at least one hundred eighty (180) days from the happening of the fire, other casualty or any other such event, either party may terminate this Agreement upon ninety (90) days written notice to the other.

13.5 Binding Upon Successors and Assigns; No Third-Party Beneficiaries.

(a) This Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon, the parties hereto and each of their respective successors and permitted assigns.

(b) This Agreement shall not be construed as giving any Person, other than the parties hereto and their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any of the provisions herein contained, this Agreement and all provisions and conditions hereof being intended to be, and being, for the sole and exclusive benefit of such parties and their successors and permitted assigns and for the benefit of no other Person.

13.6 Notices.

Any notice, consent or other communication given pursuant to this Agreement will be in writing and will be effective either (a) when delivered personally to the party for whom intended, (b) on the second business day following mailing by an overnight courier service that is generally recognized as reliable, (c) on the fifth day following mailing by certified or registered mail, return receipt requested, postage prepaid, or (d) on the date transmitted by telecopy as shown on the telecopy confirmation therefor as long as such telecopy transmission is followed by mailing of such notice by certified or registered mail, return receipt requested, postage prepaid, in any case addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith.

To the CITY:

Evansville Redevelopment Commission
c/o Department of Metropolitan Development
Attention: Executive Director
I N. W. Martin Luther King Jr. Blvd., Room 306
Evansville, IN 47708-1869

To VENUWORKS:

VENUWORKS
4611 Mortensen Road
Suite 111
Ames, IA 50014
Attention: President Steven L. Peters
Telecopy: (515-663-2022)

13.8 Section Headings and Defined Terms.

The section headings contained herein are for reference purposes only and shall not in any way affect the meaning and interpretation of this Agreement. The use of masculine pronouns shall include the feminine and neuter. Except as otherwise indicated, all agreements defined herein refer to the same as from time to time amended or supplemented or the terms thereof waived or modified

in accordance herewith and therewith.

13.9 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute but one and the same agreement.

13.10 Severability.

The invalidity or unenforceability of any particular provision, or part of any provision, of this Agreement shall not affect the other provisions or parts hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions or parts were omitted.

13.11 Non- Waiver.

A failure by either party to take any action with respect to any default or violation by the other of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of such party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default. This non-waiver provision may only be waived by a party hereto by a written acknowledgement of such waiver by such party.

13.12 Consent.

Wherever the consent or approval of a party is required under the terms of this Agreement, the party whose consent or approval is required shall not unreasonably withhold or delay such consent or approval.

13.13 Certain Representations and Warranties.

(a) The CITY represents and warrants to VENUWORKS the following: (i) all required approvals have been obtained, and the CITY has full legal right, power and authority to enter into and perform its obligations hereunder, and (ii) this Agreement has been duly executed and delivered by the CITY and constitutes a valid and binding obligation of the 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.

(b) VENUWORKS represents and warrants to the CITY the following: (i) all required approvals have been obtained, and VENUWORKS has full legal right, power and authority to enter into and perform its obligations hereunder, and (ii) this Agreement has been duly executed and delivered by VENUWORKS and constitutes a valid and binding obligation of VENUWORKS, 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.

13.14 Governing Law.

This Agreement will be governed by and construed in accordance with the internal laws of the State of Indiana, without giving effect to otherwise applicable principles of conflicts of law.

13.15 Forum Selection.

Any dispute, controversy, or claim arising out of or relating to this Agreement shall be exclusively and finally resolved in either the District Court of the State of Indiana or the United States District Court sitting in Evansville, Indiana. VENUWORKS hereby irrevocably submits to the jurisdiction and venue of such Courts and expressly waives any right to file in or remove to any other venue or jurisdiction any dispute, controversy, or claim arising out of or relating to this Agreement.

13.16 No Tenancy Created.

The only relationship created by this Agreement is that of independent contractor. This Agreement is not intended to create a landlord-tenant relationship, and no such relationship shall be inferred from any provision hereof.

13.17 No Inferences Regarding Drafting.

The parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the parties and their attorneys, and this Agreement reflects their mutual agreement regarding the same. Because of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement, and therefore no presumption for or against validity as to any interpretation hereto, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

13.18 Cooperation.

The parties desire to cooperate with each other in the management and operation of the Facility pursuant to the terms hereof. In keeping with this cooperative spirit and intent, any dispute arising hereunder will first be referred to the parties' respective agents or representatives prior to either party initiating a legal suit, which will endeavor in good faith to resolve any such disputes within the limits of their authority and within twenty (20) days after the commencement of such discussions. If and only if any dispute remains unresolved after the parties have followed the dispute resolution procedure set forth above, either party may initiate suit as provided herein.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first above written

**CITY OF EVANSVILLE, THROUGH ITS
REDEVELOPMENT COMMISSION**

BY: Randy Olsen

NAME: RANDY ALSMAN

ITS: PRESIDENT

VENUWORKS OF EVANSVILLE, LLC

BY: Steven L Peters

NAME: Steven L Peters

ITS: Member/Owner

VW SPORTS OF EVANSVILLE, LLC

BY: Steven L Peters

NAME: Steven L Peters

ITS: Member/Owner