

**AGENDA**  
**SPECIAL PLANNING, BUILDING AND ZONING COMMITTEE**  
**Village of Hoffman Estates**  
**June 7, 2010**

**7:45 P.M. - Board Room**

<b>Members:</b>	<b>Gary Pilafas, Chairperson</b>	<b>Karen Mills, Trustee</b>
	<b>Cary Collins, Vice Chairperson</b>	<b>Jacquelyn Green, Trustee</b>
	<b>Ray Kincaid, Trustee</b>	<b>Anna Newell, Trustee</b>
		<b>William McLeod, Mayor</b>

**I. Roll Call**

**NEW BUSINESS**

1. Request approval of an application by Barrington Lakes Apartments, 2200 Hassell Road, to hold a fireworks display on June 19, 2010, subject to meeting the Village code and National Fire Prevention Association (NFPA) requirements.
2. Request approval of a Management Agreement for the Sears Centre Arena with Global Spectrum, LP, Philadelphia, PA.
3. Request approval of an extension to the interim agreement with Levy Premium Foodservice Limited Partnership, Chicago, IL, to provide food and beverage service at the Sears Centre Arena through July 31, 2010.
4. Discussion regarding options for provision of electrical power and potential sponsorships at the Sears Centre Arena.
5. Request authorization of a contract extension with Venue Advisory, LLC (Joseph Briglia) for consulting services related to the Sears Centre Arena in an amount not to exceed \$10,000.

**II. Adjournment**

# COMMITTEE AGENDA ITEM

## VILLAGE OF HOFFMAN ESTATES

**SUBJECT:** Request approval of an application by Barrington Lakes Apartments to hold a fireworks display on June 19, subject to meeting the Village Code and National Fire Protection Association (NFPA) requirements.

**MEETING DATE:** June 7, 2010

**COMMITTEE:** Planning, Building & Zoning Committee

**FROM:** Becky Suhajda, Administrative Intern  
Russ Gotha, Fire Prevention Bureau Manager

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**PURPOSE:** Request approval of an application by Barrington Lakes Apartments to hold a fireworks display on June 19, subject to meeting the Village Code and NFPA requirements.

**BACKGROUND:** Barrington Lakes Apartments has requested approval of a fireworks display on June 19 at 9pm via a special event's application request (attached).

Village Ordinance 7-5-4 states, "The firing or shooting off of any fireworks by the Village of Hoffman Estates or any other governmental body or by the Sears Centre shall be permitted upon issuance of a permit by the Fire Prevention Bureau. Any other authorization shall have been granted and permitted by the Village Board prior to issuance of a permit."

**DISCUSSION:** Should the Village Board grant approval, the fireworks display will meet all NFPA 1123, Outdoor Fireworks requirements, including:

All Fireworks displays shall be electronically fire.

Barrington Lakes must provide Security during setup to keep unauthorized individuals a minimum of 100 ft from the setup area.

The mortar size allowed will be determined by the site plan in accordance with NFPA 1123 requirements.

Barrington Lakes shall send out notification to surrounding Businesses and Residents to notify them of the date and time of

**the fireworks display, no later than one week prior to the event.**

**Approved Fireworks Company to be escorted into the Village and to the Barrington Lakes display site.**

**Barrington Lakes Apartments will also be subject to the hireback costs for an Engine Company at the site on stand-by and a Fire Inspector to oversee the setup and shooting of the display.**

**FINANCIAL IMPACT: Barrington Lakes Apartments will be required to pay the special events license fee, the inspection fees, as well as the firefighter and Fire Inspector hireback costs. The Village will incur none of the costs for this event.**

**RECOMMENDATION: Staff recommends approval of Barrington Lakes Apartment's request for a fireworks display, subject to their meeting all NFPA and financial requirements listed above.**

**ATTACHMENTS: Special Events Application**



# VILLAGE OF HOFFMAN ESTATES

## Special Event Application

Village of Hoffman Estates  
1900 Hassell Road  
Hoffman Estates, IL 60169  
Phone: (847) 882-9100

This application is required for any event or activity taking place on public property (including street closures), public areas of private property (such as parking lots) that are open to the public, or for any event which will require Village services, including annual special events such as carnivals, festivals, shows, run/walks, etc.

**Completed applications are due at least eight (8) weeks prior to the event date and should be submitted to the Village Manager's Office in person, by mail or fax (847-781-2624).**

### Section 1: Organization & Contact Information

Name of event:

Sponsoring organization: BARRINGTON Lakes Apts

Address: 2200 HASSELL Rd

Phone: 847-882-7888

Fax: 847-882-7896

Is this organization a certified non-profit organization?  
If yes, please provide verification of non-profit status.

Contact Person: Cookie Garrett

Address: 2200 HASSELL Rd

Daytime phone: 847-882-7888

Evening phone:

E-mail address: cgarrett@groupfox.com

On-site Contact: Cookie Garrett

Address: 2200 Hassell Rd

Daytime phone: 847-882-7888

Evening phone:

E-mail address: cgarrett@groupfox.com

## Section 2: General Information

Event date(s): Sat. June 19, 2010 10:00 am set-up  
Event time (please list for each date): Event Starts @ 7:00pm, Fireworks @ 9:00pm  
Set up date and time: Sat. June 19, 2010  
Dismantling/clean up date and time:  
*Clean up includes removal of all waste, dumpsters, equipment, dismantling of tents, filling tent holes, removal of port-o-johns, etc.* Sun. June 20, 2010  
Estimated number of attendees (including participants and staff):

## Section 3: Event Location

*Please check all that apply*

- Public parking lot — Address:
- Private parking lot — Address:  
*Please attach letter of approval from property owner*
- Virginia Mary Hayter Village Green in Prairie Stone — *Please attach Village Green use application*
- Park — *Please list park:*  
*Please contact the Hoffman Estates Park District (847-885-7500) for approval*
- Public streets — *Please list street(s):*

## Section 4: Type of Special Event

*Please check all that apply*

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Arts & crafts sale | <input type="checkbox"/> Corporate function/gathering | <input type="checkbox"/> Outdoor business event       |
| <input type="checkbox"/> Bicycle ride       | <input type="checkbox"/> Fundraising event            | <input type="checkbox"/> Run/Walk (Distance: _____ )  |
| <input type="checkbox"/> Car show           | <input type="checkbox"/> Parade                       | <input type="checkbox"/> Sidewalk sale/business event |
| <input type="checkbox"/> Carnival/Circus    | <input type="checkbox"/> Petting zoo                  | <input type="checkbox"/> Other:                       |

**Purpose of the event:**

**General description of the event:**

**Admission fee for event: \$ \_\_\_\_\_**

**List organizations receiving proceeds from admissions:**

## Section 5: Services for Special Event

Please check all that apply. \*Services requiring permits/inspections are noted with an asterisk.

- Amplifier
- Car show
- Carnival\* — General Amusement License is required. Contact Village Clerk's Office (847-781-2625)
- Circus\* — General Amusement License is required. Contact Village Clerk's Office (847-781-2625)
- Electrical wiring and/or generator\* — Electrical permit is required; contact Code Enforcement (847-781-2631)
- Fireworks\* — Contact Fire Department Administration (847-843-4825)
- Food service/vendor(s)\* — Health inspections may be required; contact Code Enforcement (847-781-2631).  
— Vendors not holding a Hoffman Estates license must obtain a Temporary Food Service License; contact Village Clerk's Office (847-781-2625)
- Inflatable equipment\* (e.g. "bounce house," etc.) — Contact the Fire Inspector (847-843-4825)
- Liquor\* — Liquor license required. Only non-profit organizations may apply for a Temporary Liquor License; contact Village Clerk's Office (847-781-2625).
- Merchandise vendor(s)\* — Vendors must have a Hoffman Estates business license; contact Village Clerk's Office (847-781-2625).
- Petting zoo\* — Contact Code Enforcement (847-781-2631)
- Raffle\* — Raffle license required; contact Village Clerk's Office (847-781-2625)
- Signs/banners\* — Permit may be required; contact Code Enforcement (847-781-2631).
- Tent\* — Permit and inspection required; contact Code Enforcement (847-781-2631)
- Water (hydrant) usage\* — Permit required; contact Public Works (847-490-6800)
- Other services not listed above:

## Section 6: Event Operation

Please check all that apply:

- Portable Restroom Facilities — Required if no restroom facilities or inadequate number of restroom facilities available on-site. The Village recommends two port-o-johns per 100 people, one handicapped stall per 200 people, and two hand-washing stations per 100 people.
- Type(s) of publicity used to promote event:
- Notification to residents (if disruption to roadways, noise, parking, etc.):
- WASTE REMOVAL IS THE RESPONSIBILITY OF THE EVENT ORGANIZER.**
- Waste removal will be provided by the host site.
- Waste will be removed by the event organizer OR by the contracted waste hauler named below:
- Waste Hauler:
- Hauler Address:
- Hauler Phone Number:

**Section 6: Traffic, Security, Medical Services & Fees**

Please check services that will be required for traffic, security and medical needs:

POLICE	FIRE	PUBLIC WORKS
<input type="checkbox"/> Traffic control	<input type="checkbox"/> Ambulance	<input type="checkbox"/> Barricades
<input type="checkbox"/> Crowd control	<input type="checkbox"/> Fire suppression	<input type="checkbox"/> Cones
<input type="checkbox"/> Event security	<input type="checkbox"/> Fire inspections	<input type="checkbox"/> Orange snow fencing
<input type="checkbox"/> Money escorts	<input type="checkbox"/> ESDA	

The number of Police officers required for adequate traffic control and/or security shall be determined by the Police Department.

**FEES:** It is the responsibility of the applicant to pay all out-of-pocket expenses related to the special event. This includes, but is not limited to: all permit fees; inspection fees; Police, Fire and Public Works personnel hireback fees; equipment rentals and water usage.

For some fees, non-profit organization applicants may request a waiver from the Village Board. Please note that the waiver request is a formal process that must be presented to the Village Board and requires at least six weeks. Fees associated with personnel costs (Police, Fire and Public Works hireback, after-hours inspections, etc.) are not eligible for waiver.

Please indicate if any fee waivers are requested:

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**TRAFFIC CONTROL:** Please indicate on the table below all streets requiring road closure and/or removal of on-street parking restrictions.

		STREET NAME	CLOSE TIME	OPEN TIME
<input type="checkbox"/> Closure	<input type="checkbox"/> Parking			
<input type="checkbox"/> Closure	<input type="checkbox"/> Parking			
<input type="checkbox"/> Closure	<input type="checkbox"/> Parking			
<input type="checkbox"/> Closure	<input type="checkbox"/> Parking			
<input type="checkbox"/> Closure	<input type="checkbox"/> Parking			

If your event utilizes the Prairie Stone business park, the Sears Centre Arena management must be contacted to ensure that events are not conflicting. Please contact Pamela Lintern at [Pamela.lintern@searscentre.com](mailto:Pamela.lintern@searscentre.com).

Sears Centre event occurring the same date? Yes \_\_\_\_\_ No \_\_\_\_\_ Not in Prairie Stone (DNA) \_\_\_\_\_

## Section 7: Required Documents, Insurance & Hold Harmless Agreement

### CERTIFICATE OF INSURANCE:

All events require a certificate of insurance and a policy endorsement listing the Village of Hoffman Estates as an additional insured. The minimum coverage is \$1,000,000 per occurrence and \$3,000,000 aggregate. **All insurance requirements listed on page 6 of this application must be included on the certificate of insurance**

### AUTOMOBILE INSURANCE:

Does this event include use of vehicles?

- YES — Number of vehicles: \_\_\_\_\_  
 NO

Proof of auto insurance is required for all vehicles/drivers used in the event.

### SITE PLAN:

A detailed site plan depicting event set up and equipment is required for all events.

### HOLD HARMLESS:

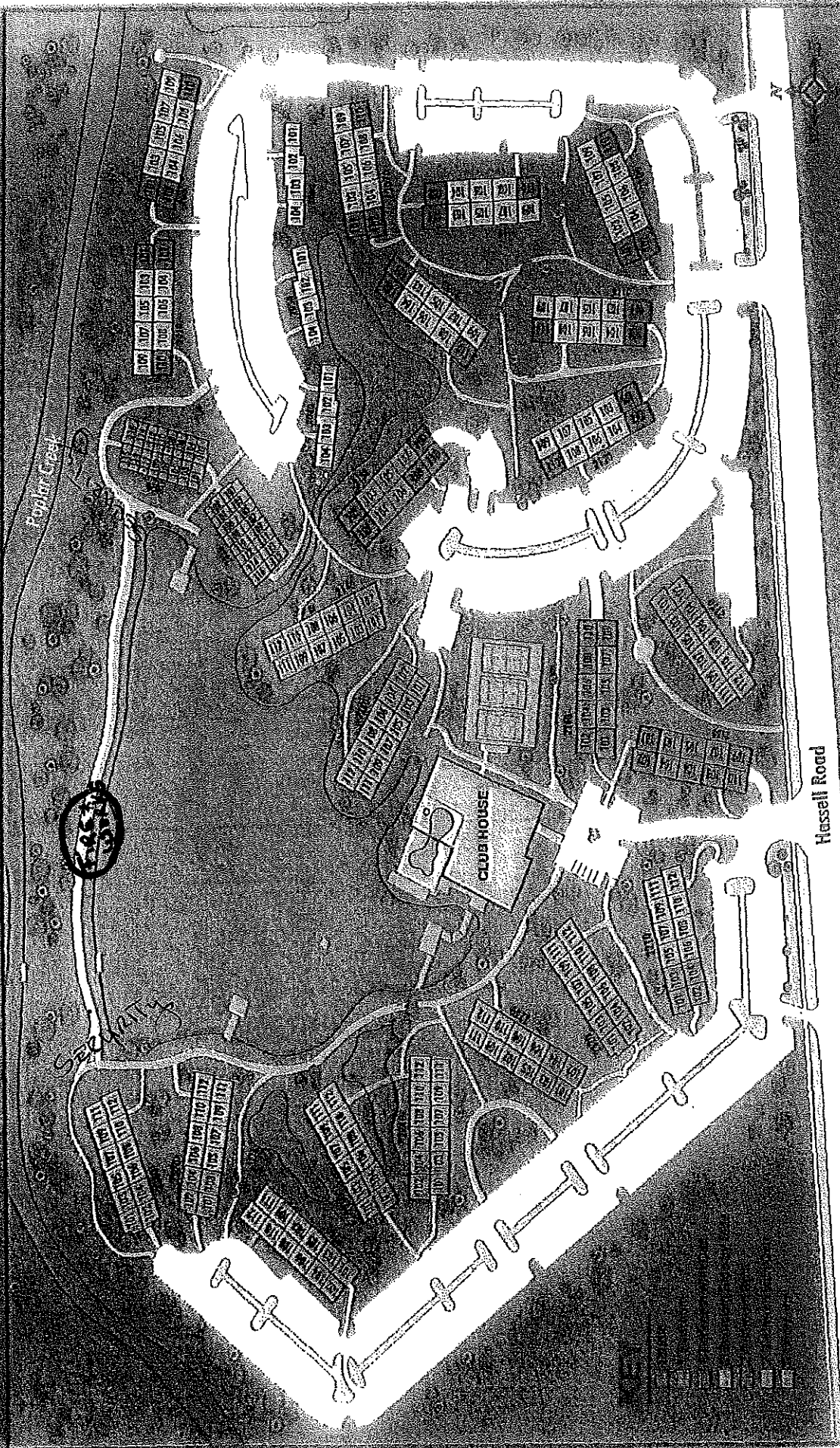
The sponsoring organization hereby agrees to indemnify and hold harmless the Village of Hoffman Estates, its corporate authorities, officers, agents and employees from and against any and all claims for injury or damage to persons or property sustained from the event of May 28, 2010 (date), sponsored by Barrington Lakes Apt (organization) and further agrees to indemnify and hold said Village of Hoffman Estates from any such claims and all expenses arising therefrom.

Cookie Garrett, Agent SOI 5-28-10  
Signature Barrington Lakes Apt. Date  
Group FOX  
COOKIE GARRETT  
Print name and title

Barrington Lakes Apt.  
Organization 847-882-7886



# PROPERTY OVERVIEW



# ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID DW DATE (MM/DD/YYYY)  
 GROUP-2 06/01/10

**PRODUCER**  
 Rosenthal Bros., Inc.  
 740 Waukegan Road  
 P.O. Box 700  
 Deerfield IL 60015-0700  
 Phone: 847-940-4300 Fax: 847-940-4315

**INSURED**  
 Group Fox, Inc., etal  
 2600 W Montrose  
 Chicago IL 60618

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	Greater New York Mutual Ins	22187
INSURER B:	American International	
INSURER C:	Utica National Insurance	
INSURER D:		
INSURER E:		

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	8112M92745	07/01/09	07/01/10	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000
A		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	8112M92745	07/01/09	07/01/10	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
B		<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$	4943726	07/01/09	07/01/10	EACH OCCURRENCE \$ 15,000,000 AGGREGATE \$ \$ \$
C		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	1612015472	07/01/09	07/01/10	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
		OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
 Additional Insured:  
 Village of Hoffman Estates

CERTIFICATE HOLDER	CANCELLATION
VILLA13  Village of Hoffman Estates 1900 Hassel Road Hoffman Estates IL 60195-2302	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. <i>Bernard J. Rosenthal, CPCU</i>

## **IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## **DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

**COMMITTEE AGENDA ITEM  
VILLAGE OF HOFFMAN ESTATES**

NB2

**SUBJECT:** Request approval of a Management Agreement for the Sears Centre Arena with Global Spectrum, LP, Philadelphia, PA

**MEETING DATE:** June 7, 2010

**COMMITTEE:** Special Planning, Building and Zoning

**FROM:** Arthur L. Janura/Mark Koplín/James Norris/Michael DuCharme

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**REQUEST:** Request approval of a Management Agreement for the Sears Centre Arena with Global Spectrum, LP, Philadelphia, PA.

**BACKGROUND:** In May 2009, MadKatStep (MKS) informed the Village of their intent to walk away from the Sears Centre Arena and the millions of dollars they invested in the arena. MKS lost money (revenues minus costs, not including debt service) each year, from \$8.0 million in 2007 to \$3.1 million in 2009 (less without property taxes).

MKS did fulfill one of the terms of the Financing Agreement by hiring an independent party to look at the factors causing the Sears Centre Arena to not be profitable. MKS hired IFG Group to examine operating, event booking, budgets, etc. IFG's report cited five major factors.

- ◆ First, operating costs (including three separate loans for equipment with a capital value of \$6.8 million, which added \$1.46 million to annual operating costs) were too high compared to similar arenas. Personnel costs were a prime factor (salaries and number of employees). In addition, the vast majorities of arenas are owned by municipalities or authorities and universities and do not pay property taxes as does MKS as a private owner. Only some of the largest arenas and stadiums are held privately (usually by the major league team owner).
- ◆ Second, the entertainment industry changed in the time since the Sears Centre Arena was conceived. Artists now demand and receive the vast majority of concert revenues to make up for record and CD revenues they used to receive. Entertainers used to tour just to promote album and CD sales, and now they tour to generate direct income to the artist (the primary source of income). Touring acts demand, and receive, portions of ancillary revenues, as well as the ticketing revenues.

**BACKGROUND: (Continued)**

- ◆ Third, as an independent, the Sears Centre Arena could not compete for national touring shows on equal ground with arenas operated by the two or three major arena operators. Having an operator with a national presence acting as an advocate would help to book events. The owners also underestimated the competitive climate for booking shows.
- ◆ Fourth, the low number of events did not provide revenues to sustain private ownership and operation.
- ◆ Fifth, the downturn in the economy has hurt shows as there is less disposable income to be spent on these events and fewer acts are touring. The report did mention some optimism with the large Chicagoland area, a good facility, and potential for success under public ownership and a national operator.

When confronted with the impending transition of the Sears Centre Arena, the Village Board formed the Ad Hoc Sears Centre Advisory Committee, hired legal and arena management consultants, and evaluated the pluses and minuses of keeping the Sears Centre Arena open and hosting events versus a long and costly foreclosure process. "Keeping the lights" on would avoid a "cold start" after a dark period whenever the Village acquired title and hired a new operator. We also avoided losing annual recurring events to other venues, thus preserving revenue opportunities. Also, Village businesses (hotels, restaurants, retailers) will continue to reap the ancillary benefits, while the Village receives sales, food and beverage, and hotel taxes. Keeping the lights on also avoided losing \$6 million from Sears for their naming rights contract (\$1 million/year through 2015).

The Village negotiated a favorable Deed in Lieu of Foreclosure Agreement to acquire title to the property and all of the furniture, fixtures, and equipment (FF&E) in the Sears Centre Arena. This preserved the Sears \$1 million/year naming rights and retained the events penciled in on the Sears Centre Arena calendar for early 2010. MKS/CCO agreed in the Deed in Lieu process to continue to operate the Sears Centre Arena at their cost through the end of 2009, and agreed to pay off one loan, contribute funds towards another loan, and agreed to a smoother transition. In December 2009, the Village acquired title to the Sears Centre Arena from MKS via a Deed in Lieu of Foreclosure process and agreement.

Earlier in 2009, the Village issued a Request For Proposals for arena management companies to submit proposals to manage the Sears Centre Arena on behalf of the Village. The Village received many inquiries, and two comprehensive proposals. The Village's Ad Hoc Sears Centre Advisory Committee conducted interviews with the arena management companies and recommended Global Spectrum, LP to the Village Board on November 2, 2009. Global Spectrum is an industry leader and manages 33 arenas around the country, many of them of similar size and in similar suburban markets with competition. Global Spectrum also manages a number of convention centers and other venues across the U.S. and Canada.

With the impending need for an entity to operate the arena as of January 1, and with the knowledge that working out a long term agreement would take some time, the Village and Global Spectrum agreed (December 16, 2009) to an Interim Agreement whereby Global Spectrum would operate the Sears Centre Arena for the Village on a month-to-month basis. The Village provided \$780,000 in "working capital" for 2010 from the rainy day fund and entertainment taxes collected. Current projections show that this should carry the Sears Centre Arena/Global Spectrum through the fall. Global Spectrum provides monthly reports.

**BACKGROUND:** (Continued)

By hiring Global Spectrum, a company operating 33 arenas (many of similar size, in suburban markets, with competing venues in the metro area), the Village gains an advocate for the Sears Centre Arena with relationships with national promoters, entertainers, family shows, the sports industry, and others. We also can benefit from the synergies of a national firm experienced in arena management. The Village and Global Spectrum have a goal of immediately decreasing the Village's subsidy for operating costs and to hopefully break even in a few years with revenues increasing to cover operating costs (which will be controlled), but not including debt service. The Sears Centre Arena will continue to be an asset to the community and northwest suburbs, and more varied events will provide entertainment opportunities for all. A more successful Sears Centre Arena will increase and enhance the community benefits, including economic development, direct and indirect revenues, and increased business for restaurants, hotels, and stores.

In the five months Global Spectrum has operated the Sears Centre Arena under the interim contract, they have managed expenses, brought in new personnel, including a General Manager, and attracted national touring shows (Elton John, Hillsong United - largest attendance ever at Sears Centre Arena, Daughtry, and A.R. Rahman). They were also able to bring back USA Volleyball. They now have the attention of the two largest concert promoters in Live Nation and AEG Live, and renewed interest by Jam (a local promoter and the largest independent promoter in the U.S.).

**DISCUSSION:**

The Management Agreement provides the structure whereby Global Spectrum books events for the Sears Centre Arena and operates the Sears Centre Arena on a day-to-day basis. The agreement is structured similar to other management agreements and includes a compilation of ideas extracted from at least a dozen arena management agreements from across the country fit into the standard Global Spectrum Agreement. The draft Agreement attached to this agenda item was the result of an iterative process whereby language was both added and subtracted, and then modified many times. The team working on this Agreement for the Village believes that the Agreement serves the best interest of the Village and provides the controls that meet the Village's goals for managing the Sears Centre Arena. A brief description of each section of the Agreement follows:

1. **Definitions.** The Agreement includes several pages of definitions, with your attention drawn to Affiliate, Capital Expenditures, Centralized Services, Event Expenses, Maintenance, Operating Expenses, Profit Transactions, and Quality Operating Standard.
2. **Scope of Services.** Global Spectrum (the facility manager) will operate the Sears Centre Arena as the Village's agent, and such operation shall meet the definition of a First Class Condition. Section 2.1(a) states the Owner's objectives, including increasing revenues, competing for shows/events, improving profitability, retaining financial control of the Sears Centre Arena, and most importantly reducing the annual operating deficit.

**DISCUSSION: (Continued)**

3. **Compensation.** The compensation to Global Spectrum is structured to provide greater compensation for significant reductions in the annual deficit. The Sears Centre Arena was projected to lose \$1.2 million in 2010 based on the information available last December. Through the mutual efforts of the Village and Global Spectrum, we think that deficit can be reduced by a couple hundred thousand dollars. Thus, Global Spectrum will receive a base fee plus a variable fee linked to financial performance. The base fee will be \$11,000 per month (\$132,000 annually) increased yearly on January 1, by the 12 month CPI increase for the Chicago area.

In 2010, the variable fee is directly linked to Global Spectrum's ability to bring up to eight Qualifying Events or similar concert type events with a profitability of at least \$45,000 each. These events and the increased revenue would result in an additional \$6,000 each (total of \$48,000) to Global Spectrum. If Global Spectrum can book an 11th and 12th events, they would each earn another \$6,000. The increased revenues from these events will far exceed these additional fees to Global Spectrum.

In 2011 and going forward, Global Spectrum will earn the base fee plus a variable fee of 10% (with 90% going towards reducing the annual deficit) for the financial improvement from a loss of \$950,000, to a loss of \$750,000. For further improvement, Global Spectrum earns 20% from a loss of \$750,000 down to break even (net - operating costs, including Global Spectrum's compensation equal revenues for that particular year). If there is a net profit in a particular year, Global Spectrum earns 30% of such profit (with the building/Village getting 70%) up to a plus \$500,000 of profit, and if profit exceeds \$500,000, they are split 80% Village/20% Global Spectrum.

Global Spectrum receives their base fee monthly, and their variable fee after the annual audit when all the numbers are available and verified.

4. **Term; Termination.** This agreement runs (retroactively) from January 2010 to the end of December 2012. At the Owner's sole discretion, the Village may extend that term by two years. Termination would occur under a breach of this Agreement or a failure by owner to provide funding for the continued operation. If the Manager is terminated, the Agreement provides for their cooperation and assistance during the transition to avoid the situation when MadKatStep and CCO left the Sears Centre Arena.
5. **Ownership.** The Village owns virtually everything at or in the Sears Centre Arena and the Manager is allowed on premises to conduct the business of the Sears Centre Arena. The Owner can use the Sears Centre Arena, subject to availability. The Village retains the ability to use a portion of the electrical ads on the marquee sign.
6. **Personnel.** All employees are employees of the Manager (Global Spectrum) and hired by the Manager. The Owner approves the General Manager (including Ben Gibbs, the current General Manager), and if not satisfied, can request discussion regarding improvement or replacement. If the Manager relocates the General Manager, the Owner must be notified and there is mutual cooperation to find a suitable replacement.



**DISCUSSION: (Continued)**

7. ***Operating Budget.*** The 2010 Operating Budget is attached to the Agreement. Annually, Manager shall submit a budget by September 1, to coincide with the Village's overall budget process. The Village reserves the right to approve each budget. The Manager is required to adhere to the overall budget amount, but provides flexibility within each department sub-budget within 10%, so long as the total budget amount is not exceeded. Under adverse budget conditions, the Owner can request Manager for line item reductions so as to lower the overall budget total.
8. ***Procedures for Handling Income.*** Manager will deposit revenues in the operating account (Village's account) and conduct the business of the Sears Centre Arena under the Village's oversight. The Village signs off on every check, and there are procedures for event settlements that provide a little more latitude for the Manager. All funds are the Owner's and the Manager holds funds in the Owner's account. Additional detail is provided in Exhibit K.
9. ***Funding.*** The Owner funds the operating account on a quarterly basis, based on the Operating Budget and projected cash flow. Manager will provide a rolling 12 month cash flow projection based on actual revenues and expenses, which is updated monthly. The Village agrees to pay transition costs not to exceed \$75,000, as detailed in Exhibit J.
10. ***Fiscal Responsibility; Reporting.*** Manager is required to provide detailed monthly financial reports, an annual report, and cooperate in providing an annual audit. The Village has approval rights of the company auditing the Manager and has the right to audit the books at any time.
11. ***Capital Improvements.*** With the submittal of the 2011 proposed budget, Manager will also provide a five year list of capital improvements. Capital improvements in excess of \$25,000 will be funded separately by the Village. Improvements less than \$25,000 are funded through the Operating Budget.
12. ***Facility Contracts.*** The Agreement includes a list of existing contracts, and any service contracts need to follow the purchasing policy (Exhibit K). Contracting with Manager's Affiliates is okay so long as such contract is the best available pricing. No "Profit Transactions" are allowed Owner's approval.
13. ***Qualified Management Agreement.*** The IRS has created a distinction between a Qualified Management Agreement (QMA) and Non-Qualified Management Agreement. Under a QMA, the governmental entity is allowed tax exempt financing (in the Village's case, a tax exempt Refinancing of the existing bonds). Such financing would offer a lower rate on borrowing money for capital improvements. At some point, the Village may want to package several capital improvements at the Sears Centre Arena with other governmental purposes to a single bond issue. We believe the current agreement is a QMA and will allow for tax exempt financing in the future.
14. ***Agreement Monitoring.*** Both the Owner and Manager appoint a representative and the Manager's Representative is the General Manager of the facility. The Village's representative is the Owner's Representative.



**DISCUSSION:** (Continued)

15. **Indemnification.** Standard provisions.
16. **Insurance.** Global Spectrum is required to provide typical insurance coverage for commercial general liability, automobile, umbrella/excess liability, workers compensation, and professional liability. The Village will provide the property insurance, and Global Spectrum will require all third parties at the Sears Centre Arena to obtain and provide copies of their insurance.
17. **Representations.** Standard provisions.
18. **Miscellaneous.** These are several miscellaneous legal provisions.

**Exhibits.** While all of the exhibits are necessary and important to this Agreement, we direct your attention to Exhibit G (Manager's Duties), Exhibit H (2010 Annual Operating Budget), and Exhibit K (Purchasing Policy).

Corporation Counsel and Village staff will be available at the meeting to answer any questions.

**RECOMMENDATION:**

Request approval of a three year Management Agreement for the Sears Centre Arena with Global Spectrum, LP, Philadelphia, PA.

Attachment

cc: Ben Gibbs (Global Spectrum)  
Frank Russo (Global Spectrum)  
Brian Rothenberg (Global Spectrum)  
Mike Scanlon (Global Spectrum)  
Joe Briglia (Venue Advisory, LLC)

6/2/10

**MANAGEMENT AGREEMENT**

**between**

**VILLAGE OF HOFFMAN ESTATES**

**and**

**GLOBAL SPECTRUM, L.P.**

**Effective as of January 1, 2010**

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## MANAGEMENT AGREEMENT

This Management Agreement is entered into as of the \_\_\_ day of \_\_\_\_\_, 2010 and made effective as of January 1, 2010 (“**Effective Date**”), by and between Village of Hoffman Estates, an Illinois Home Rule municipal corporation (“**Owner**”), and Global Spectrum, LP, a Delaware limited partnership (“**Manager**”).

### RECITALS

WHEREAS, Owner owns a multi-purpose sports and entertainment arena, consisting of approximately 11,800 seats, located in Village of Hoffman Estates, Illinois, currently known as the Sears Centre Arena (the “**Facility**”); and

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

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

### ARTICLE 1 DEFINITIONS

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

**Affiliate:** A person or company that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person or company. The parties acknowledge that Manager’s Affiliates include, but are not limited to, Front Row Marketing Services, L.P., Patron Solutions, L.P., d/b/a New Era, Ovation Food Services, L.P., Comcast Corporation, and Comcast Spectacor, L.P.

**Agreement:** The “Agreement” shall mean this Management Agreement, together with all exhibits attached hereto (each of which are incorporated herein as an integral part of this Agreement).

**Capital Expenditures:** All expenditures for building additions, alterations, repairs or improvements and for purchases of additional or replacement furniture, machinery, or equipment, where the cost of such expenditure is greater than \$25,000 and the depreciable life of the applicable item is, according to generally accepted accounting principals, is a minimum of three (3) years. All Capital Expenditures will be subject to Owner approval and funding and undertaken in accordance with Owner’s procurement and construction policies and procedures.

**Centralized Services:** Services provided for the benefit of the Facility by Manager's corporate office to the extent such services are charged to the Facility as an Operating Expense. The parties acknowledge such services may include insurance and computer network and information technology services. Any such services shall be furnished and charged to the Facility on a comparable basis to similar services furnished to other facilities in the Manager's system of facilities it operates. The Manager must demonstrate (i) the cost and the methodologies for allocating these Centralized Services pursuant to above, and (ii) that these services can be performed more efficiently and economically for the Owner as compared to comparable services available to Owner from other sources, or that such service is from a sole source, except that this clause (ii) shall not apply to Manager's preventative maintenance system, payroll system and financial reporting system. Additionally, the Manager and its Affiliates shall make no profit from the Facility with respect to Centralized Services. Any costs and expenses incurred in providing Centralized Services if charged as an Operating Expense shall be allocated by Manager to the Facility on a fair and consistent basis.

**Commercial Rights:** Naming rights, interior and exterior sub-naming rights, pouring rights, advertising signage (including any outdoor marquee subject to Department of Transportation [IDOT] regulations or other outdoor signage on the Facility property), sponsorships, the branding of food and beverage products for resale, premium seating (including suites, club seats, loge boxes, lounges, and party suites) and memorial gifts at or with respect to the Facility and owned or controlled by the Owner. Commercial Rights expressly excludes any rights, and is subject to the restrictions provided under, the Sears Naming Rights Agreement.

**Comparable Facilities:** The Comcast Arena, Everett, WA; Sun National Bank Center, Trenton, NJ; and Budweiser Events Center, Larimer County, CO. In the event that any of the arenas above-referenced shall be closed or cease to be maintained or operated in accordance with the standards of service and quality generally accepted within the arena industry for first class arenas, or otherwise are renovated or acquire newer technology than that possessed by the Facility, then (a) such arena or arenas shall be deleted from the list set forth in the foregoing sentence, and (b) the Owner and the Manager shall negotiate in good faith to agree upon the substitution of another arena or arenas to replace the deleted arena or arenas, with appropriate adjustments to reflect newer buildings and technology than that possessed by the Facility.

**Consumer Price Index:** The "Consumer Price Index" (CPI-U) for Chicago-Kenosha-Gary-All Items, as published by the United States Department of Labor, Bureau of Labor Statistics or such other successor or similar index. The Consumer Price Index for any particular year is capped at three and one-half percent (3.5%)

**Effective Date:** "Effective Date" shall have the meaning ascribed to such term in the opening paragraph of this Agreement.

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



**Event:** Shall mean an entertainment or theatrical production, leisure, cultural, community or educational activity, concert, motion picture, sporting event, family show, trade show, banquet, conference, permanent or temporary exhibit, or other similar activity held or occurring at the Facility.

**Event Expenses:** The incremental increase in variable costs (whether a direct building or house related cost, shared co-promotion expense, reimbursed, or non-reimbursed as the case may be) in operating the Facility that are directly related to the advancement, production or occurrence of a specific Event and which would not otherwise have been incurred but for the occurrence of the particular Event, which include expenses related to cleaning, security, utilities, Facility staffing, ushers, advertising, advancements to promoters, music and entertainment services, set up and take down, parking, traffic and public safety services, and expenses expressly designated as Event Expenses in this Agreement. Event Expenses shall include the cost of labor and materials incurred in set up or changing the Facility from its prior use to use for that event, including placing and installing any furnishings or equipment required for the event, as well as costs for take down or conversion following an event. Routine Maintenance not directly associated with an Event and overhead of the Owner and similar non-variable expenses shall not be considered to be Event Expenses, nor shall any prorated portion of such costs be allocated as Event Expenses.

**Event of Force Majeure:** An act of God, fire, earthquake, hurricane, flood, riot, civil commotion, blockades, terrorist act, terrorist threat, storm, washout, wind, lightning, landslide, explosion, epidemic, any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities or war, breakage of major equipment or machinery, threats of bombs or similar interruptions, confiscation or seizure by a governmental authority, contamination, or a labor dispute which results in a strike or work stoppage affecting the Facility or services described in this Agreement.

**Event Income:** Income from ticket sales and Facility rental or license fees.

**Event License Agreement:** Shall be substantially in the form attached as Exhibit A or as subsequently amended by mutual consent of Manager and Owner.

**Existing Contracts:** Service Contracts, Revenue Agreements, licenses, and other agreements relating to the day-to-day operation of the Facility existing as of the Effective Date, as set forth on Exhibit B attached hereto.

**Facility:** The "Facility" shall have the meaning ascribed to such term in the Recitals to this Agreement, and shall be deemed to include the entire arena complex, including but not limited to the arena, premium seating areas, locker rooms, meeting rooms, box office, common areas, lobby areas, executive and other offices, storage and utility facilities, and entrances, and the ground, sidewalks and parking areas (approximately 3,180 spots) immediately surrounding the Facility and adjacent thereto as depicted in Exhibit C.

**First Class Condition:** The condition satisfying each of the following: (a) being in compliance with applicable Law, (b) being in good condition and repair, and (c) meeting the Quality Operating Standard. For purposes of determining the Manager's obligations under this Agreement with respect to operation, management and Maintenance, the Facility shall be deemed to be in a First

Class Condition as of the Effective Date. The Manager will utilize the maintenance component of its annual Operating Budget, and the Capital Expenditure budget as funded by Owner per Article 11, for the purpose of continuously maintaining the facility in First Class Condition and will notify the Owner immediately in writing if such condition is at risk or jeopardized. Such notification will detail the situation and contain Manager's recommendations for remedy.

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

**FF&E:** Fixed and loose furniture, fixtures and equipment existing for use at the Facility (a list of which existing as of the Effective Date is set forth in Exhibit D). This list will be annually updated and reconciled pursuant to Exhibit G.

**General Manager:** The employee of Manager acting as the full-time on-site general manager of the Facility as set forth in Section 6.3.

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

**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 Effective 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, the parking areas, and the landscaped areas outside the Facility) shall be in at least the same condition and repair as of the Effective Date (subject to reasonable wear and tear), in compliance with the Quality Operating Standard and 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-Level Employees:** The General Manager, Assistant General Manager, Finance Director, Director of Operations and Director of Sales and Marketing (referred to herein as the "Tier 1" management-level employees or employees with different titles performing similar functions), and any other department head employed by Manager to perform services at the Facility (including employees performing the functions of the Director of Security and Event Manager).

**Manager:** The term "Manager" shall mean Global Spectrum, L.P.

**Marketing Plan:** A plan submitted for the advertising and promotion of the Facility and Facility events, which shall contain but not be limited to the following elements: (i) market research, (ii) market position, (iii) marketing objectives, (iv) marketing strategies, (v) booking priorities, (vi) targeted events and promoters - local, regional, national and international, (vii) targeted meetings, conventions and trade shows, (viii) industry advertising campaign, (ix) internal and external support staff, (x) advertising opportunities at the local, regional and national level, (xi) attendance at various trade shows, conventions and seminars, (xii) incentive formulas for multiple event presenters, (xiii) suite, loge, and club seat sales, (xiv) merchandising and retail, (xv) food and beverage, (xvi) a plan for the sale of Commercial Rights except as contained in the Sears Naming Rights Agreement. The plan shall set forth how the plan will be implemented. The first Marketing Plan shall be submitted to the Village not later than ninety (90) days after the date this Agreement is executed and delivered by the parties, and such plan shall be updated annually on or around the anniversary of such date.

**Minor Repairs:** A repair or replacement of any item in the Facility, or a repair or improvement of any area of the Facility, the cost of which is below \$25,000. Such repairs will be performed by Manager subject to Owner's procurement policies and funded within the current Operating Budget.

**Net Operating Loss:** shall mean Operating Revenue less Operating Expenses, to the extent the resulting figure is a negative number.

**Net Operating Profit:** shall mean Operating Revenue less Operating Expenses, to the extent the resulting figure is a positive number.

**Operating Account:** A separate interest-bearing account in the name of the Owner and under the Owner's Federal ID number in a local qualified public depository, to be designated by the Owner, where Operating Revenue is deposited and from which Operating Expenses are paid.

**Operating Budget:** A line item budget for the Facility approved by Owner that includes a projection of Operating Revenues and Operating Expenses, presented on a monthly and annual basis.

**Operating Expenses:** All expenses, including but not limited to Event Expenses, incurred by Manager or Owner in connection with the operation, promotion, Maintenance and management of the Facility, including but not limited to the following: (i) employee compensation (including salary, commissions, other income or ancillary salaries, and severance), payroll costs and related expenses, employee benefits (as contained in Manager's employee manual, which may be modified by Manager from time to time), relocation costs and temporary living expenses, and other related Owner

pre-approved costs pursuant to Manager's relocation policy (a current copy of which is contained in Exhibit E), (ii) cost of operating supplies, including general office supplies, (iii) advertising, marketing, group sales, and public relations costs, (iv) cleaning expenses, (v) data processing costs, Master Card, VISA, and other credit and debit facilities and telecheck fees and expenses, (vi) dues, subscriptions and membership costs, (vii) the Fixed Management Fee, (viii) printing and stationary costs, (ix) postage and freight costs, (x) equipment rental costs, (xi) minor repairs, maintenance, and equipment servicing, not including expenses relating to performing capital improvements or repairs, (xii) security expenses, (xiii) telephone and communication charges, (xiv) travel and entertainment expenses of Manager employees, (xv) cost of employee uniforms and identification, (xvi) exterminator, snow and trash removal costs, if applicable (xvii) computer, software, hardware and training costs, (xviii) parking lot expenses, including Maintenance (xix) utility expenses, (xx) office expenses, (xxi) audit, professional services, and accounting fees, (xxii) legal fees incurred subsequent to the execution of this Agreement, related to the operation of the Facility (xxiii) all bond and insurance costs, including but not limited to personal property, dram shop, liability, and worker's compensation insurance, (xxiv) draws, commissions and all other fees payable to third parties, (xxiv) cost of governmental fees, (xxv) costs to settle or defend any claims arising out of the operation of the Facility to the extent not covered by insurance proceeds actually received; (xxvi) costs incurred under Service Contracts and other agreements relating to Facility operations, and (xxvii) Taxes exclusive of income taxes. The term "Operating Expenses" does not include (a) any debt service (principal or interest), (b) any "buyout" or repayment of funds invested, advanced or otherwise loaned by any party with respect to the Facility or its operations (such as, for example, any monies repaid to a food and beverage concessionaire upon termination of its contract), (c) property taxes, (d) any expenses related to Manager personnel based in Manager's corporate headquarters in Philadelphia, Pennsylvania or its regional field locations (other than the reasonable costs of travel by such corporate or regional personnel in connection with Manager's management of the Facility), (e) property insurance, (f) Capital Expenditures, and (g) Transition Costs, all of which shall be borne solely by Owner and not as an Operating Expense. Notwithstanding anything to the contrary in this Agreement, Operating Expenses does not include Manager's expenses incurred in defending claims or responding to governmental compliance actions arising out of Manager's actions (except for compliance audits not precipitated by a wrongful act of Manager), or a violation by Manager of Illinois Attorney General public access determinations or the Illinois Freedom of Information Act.

**Operating Revenue:** Operating Revenue includes all gross or net revenues generated by Manager's management and operation of the Facility, as depicted in the Manager's summary income statement within its Facility financial statements, including without limitation: 1) all rental income, including equipment rental income; 2) all Event Income, including ticket income, suite ticket income, facility fee income, ticket convenience fee income, ticket order income and ticket fulfillment fee income, and all other box office income; 3) all net revenues from sale of Commercial Rights, including but not limited to (a) advertising and sponsorships; (b) ticketing system naming rights; and (c) club seats, suites and loge boxes; 4) interest income from funds held; 5) net parking income; 6) net concessions, catering, merchandise and novelties income; 7) income from receipt of Event Expenses; and 8) miscellaneous operating income. For the sake of clarity, the parties acknowledge that revenues from the sale of tickets for events at the Facility, to the extent they are held in trust for a promoter and/or performer and are required to be paid to such promoter and/or performer, are not Operating Revenues, but are instead revenues of such promoter and/or performer. To the extent that Manager collects such ticket sale revenue on behalf of such promoter and/or performer, such ticket

sale revenue shall be a source of funds from which Manager collects the rental charges and other event reimbursements due by such promoter and/or performer for use of the Facility, which such charges and reimbursements are Operating Revenues hereunder.

**Operating Year:** Each twelve (12) month period during the Term commencing on January 1 and ending on December 31.

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

**Owner:** The term "Owner" shall be the Village of Hoffman Estates.

**Owner's Representative:** Person or entity designated by Owner to oversee contract provisions. Owner's Representative may be compensated from the Operating Budget as a "below-the-line" expense, will serve at the pleasure of Owner's corporate authorities, and will be an Owner employee in all respects. To the extent the cost of such Owner's Representative is not currently included in the 2010 Operating Budget, such Operating Budget shall be amended to include such cost.

**Profit Transactions:** A Profit Transaction shall mean any transaction entered into or implemented by Manager or its Affiliate involving the purchase, sale, lease or other procurement or provision of goods or services for or to the Facility from another third party, which is structured for Manager or its Affiliate to receive a direct or indirect economic benefit (including receipt of an equity interest) as a result of such transaction, other than through the Fixed Management Fee or Variable Fee, that is in excess of the cost to Manager or its Affiliates of such transaction, other than (i) as expressly contemplated under any other agreement between the Owner and such party, or (ii) a volume rebate resulting from Manager's purchase of such goods or services for the Facility and other facilities within the system of facilities it manages, provided that the cost to the Facility for such goods or services is at or below market-rate, and provided further that Manager must disclose to the Owner any such volume rebates.

**Qualifying Event:** shall have the meaning given to such term in Section 3.2(a) below.

**Quality Operating Standard:** The standard of quality or performance with respect to the ongoing maintenance, operation and management provided in the Comparable Facilities (regardless of responsibility for the costs of such operations in Comparable Facilities and, in any event, in a manner to provide a first class user, patron, fan and commercial rights holder experience for all events at the venue).

As long as Owner funds the Facility at least to the amount budgeted in the 2010 Operating Budget, Manager's Quality Operating Standards shall include (i) sufficient parking cashiers and attendants to assure reasonable ingress and egress, (ii) sufficient on-site, uniformed security to assure a safe, secure environment for all events, (iii) a trained ushering staff that provides cordial ushering services as necessary to accommodate efficient patron seating and other ushering services, (iv) high standards of cleanliness in all arena facilities and grounds open to patrons, (v) management and

administration of the third-party food and beverage agreement to ensure a clean, efficient and well staffed concessions operations appropriate to provide first class and efficient services to patrons and otherwise meeting the requirements of such third-party food and beverage agreement, and (vi) provide adequately trained janitorial, maintenance and support staff to perform Manager's maintenance obligations.

The parties will work together on defining ways to annually measure service performance as part of the budget and variable fee/reward processes. Generally the parties agree that service levels provided shall be of the highest quality so as to promote and enhance the reputation of the Facility and maintain at a level of quality and consistency to the above standard as the current year's Operating Budget allows. Actual event staffing will be based on Manager's attendance projections and determination of staffing necessary to (a) create a standard of quality that is first class and substantially consistent with that of the Comparable Facilities; and (b) ensure safe and first-class presentation of all events, including reasonable flow of people entering and exiting the Facility and parking areas and reasonable service time for servicing the club and all premium seating areas and, subject to the terms of the third-party food and beverage agreement, for concession sales. Further, the Manager shall establish reasonable grooming, dressing and cleanliness standards for its staff and subcontractors and other part-time employees of Manager who have contact with ticket holders, patrons and guests during all events. Additionally, the Manager shall implement its customer service programs within 90 days of the execution of this agreement to facilitate the transition of the Facility from previous operator and to enhance overall service quality. If at any time the Owner notifies the Manager that management of the Facility does not meet the quality standards as contained herein, the Manager will promptly meet with the Owner to discuss and exercise good faith efforts to correct any deficiencies in management and/or Facility operations or maintenance.

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

**Sears Naming Rights Agreement:** The naming rights agreement with Sears, Roebuck and Co., a true, correct and complete copy of which is attached as Exhibit F.

**Sears Naming Rights Revenue:** Shall mean all revenue received from Sears, Roebuck and Co. pursuant to the Sears Naming Rights Agreement.

**Service Contracts:** Agreements for services to be provided in connection with the operation of the Facility, including without limitation agreements for ticketing, web development and maintenance, computer support services, engineering services, general Maintenance, HVAC maintenance, telephone, staffing personnel including guards, ushers and ticket-takers, extermination, elevators, stage equipment, fire control panel and other safety equipment, landscaping, parking, cleaning, security, snow removal, and other services which are deemed by Manager to be either necessary or useful in operating the Facility.

**Shared Parking Spaces:** Those parking spaces on adjacent and nearby properties for which a shared parking agreement was executed by the previous owner of the Facility and assigned to the Owner.

**Taxes:** Any and all governmental assessments, franchise fees, excises, license and permit fees, levies, charges and taxes, of every kind and nature whatsoever, which at any time during the Term may be assessed, levied, or imposed on, or become due and payable out of or in respect of, (i) activities conducted by Manager on behalf of the Owner at the Facility, including without limitation the sale of concessions, the sale of tickets, and the performance of events (such as any applicable sales and/or entertainment taxes, use taxes, excise taxes, occupancy taxes, employment taxes, and withholding taxes), or (ii) any payments received from any holders of a leasehold interest or license in or to the Facility, from any guests, or from any others using or occupying all or any part of the Facility. Notwithstanding the foregoing, Taxes shall not include any of Manager's income taxes.

**Term:** "Term" shall have the meaning ascribed in Section 4.1 of this Agreement.

**Ticket Account:** A separate interest-bearing bank account in the name of the Owner and under the Owner's Federal ID number in a local qualified public depository, to be designated by the Owner, where advance ticket sale proceeds are deposited by Manager.

**Transition Costs:** Shall have the meaning given to such term in Section 9.4 of this Agreement.

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

## ARTICLE 2 SCOPE OF SERVICES

### Section 2.1 Engagement.

(a) Owner's Objectives. Manager acknowledges that Owner's objectives with respect to the Facility include: (i) improve net profitability through increased events, new sports tenants and improved third party, ancillary revenues, (ii) maximize Facility's ability to compete for touring shows while limiting "show buy" risk/exposure (i.e., the financial risk associated with an in-house or co-promoted event) and improve Facility's regional and national awareness with promoters, (iii) demonstrate efficient and cost effective budget management and operational cost accountability so as to maximize the profitability of events, (iv) implementation of clear and comprehensive financial reporting procedures and strict accounting controls, (v) to fund ongoing operations and future capital expenses with as little impact as reasonably possible to Owner's annual municipal budget, (vi) to enhance the quality of life for Hoffman Estates residents, businesses and visitors to the area by providing quality family-oriented live entertainment, sports, culture and community gatherings, and (vii) retention of ultimate control of the Facility's financial, operational and capital needs matters with respect to the recent foreclosure proceedings, transition from previous owner/operator and its current and future operations (together "Owner's Objectives"). Additionally, Manager shall use best efforts to aggressively reduce the annual Owner subsidy for the Facility. Without limiting the express obligations of Manager and Owner under this Agreement, Manager and Owner agree to make reasonable, good faith efforts in the performance of their duties under and pursuant to this Agreement to measure and achieve such objectives to the maximum practicable

extent, provided that the provisions of this subsection shall not form the basis of any separate claim of breach or default by Manager or Owner or create any additional liability of either party to the other. Additionally Manager acknowledges that maximizing the number of quality events available to current and potential purchasers of corporate rights holders is critical to the overarching financial success of the Facility.

(b) Owner hereby engages Manager during the Term to act as the exclusive manager of the Facility, subject to and as more fully described in this Agreement, and, in connection therewith, to perform the services described in Exhibit G attached hereto as an agent for the Owner in a manner consistent with Owner's Objectives as described herein and guidelines, which will be communicated from time to time, by the Village Board or Owner's Representative (provided such guidelines are not inconsistent with the terms of this Agreement and current Operating Budget) and Manager's policies and procedures manuals and the operating of Manager's other similar facilities. In providing services under this Agreement, and subject to Owner making the necessary funding available to Manager, Manager shall maintain the Facility in a First Class Condition and demonstrate a Quality Operating Standard of care, diligence, and professional competency as is customary in the industry. Manager shall contractually require all of its consultants or contractors to provide services at the same standard of care, skill, diligence, and professional competence required of Manager. Manager shall exercise all reasonable and customary precaution to prevent any harm or loss to all persons or property related to this Agreement.

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

(d) Manager shall book all of the Events at the Facility and shall oversee all aspects of the Facility for such Events.

Section 2.2 Limitations on Manager's Duties. Manager's obligations under this Agreement are contingent upon and subject to the Owner making available, in a timely fashion, the funds budgeted for and/or reasonably required by Manager to carry out such obligations during the Term. The Manager shall not be considered to be in breach or default of this Agreement, and shall have no liability to the Owner or any other party, in the event Manager does not perform any of its obligations hereunder, including not performing up to the Quality Operating Standard or maintaining the Facility in a First Class Condition, due to failure by the Owner to timely provide such funds. Notwithstanding the foregoing, Manager's obligation to perform up to the Quality Operating Standard and to maintain the Facility in a First Class Conditions in any Operating Year shall not be relieved if Owner provides in such Operating Year at least the amount of funds budgeted (as opposed to actually funded) for the 2010 Operating Year, as adjusted by the CPI-U. If any lien is placed against the Facility (other than as permitted by Owner), Manager shall promptly take all reasonable steps to have such lien removed.

### **ARTICLE 3 COMPENSATION**



Section 3.1 Fixed Management Fee. In consideration of Manager's performance of its services hereunder, Owner shall pay Manager a Fixed Management Fee. For the first (1<sup>st</sup>) Operating Year (January to December 2010), the Fixed Management Fee shall be Eleven Thousand Dollars (\$11,000) per month. The Fixed Management Fee for each subsequent Operating Year shall be equal to the Fixed Management Fee from the preceding Operating Year plus an additional amount equal to the percentage increase in the Consumer Price Index over the previous twelve (12) month period (i.e., the difference, expressed as a percentage, between the value of the Consumer Price Index published most recently prior to the commencement of the preceding Operating Year and the value of the Consumer Price Index published most recently prior to the commencement of the Operating Year for which the Consumer Price Index adjustment will apply). In the event the Consumer Price Index decreases in any year, the Fixed Management Fee for such year shall remain unchanged. The Fixed Management Fee shall be payable to Manager in advance, beginning on the Effective Date, and payable on the first (1<sup>st</sup>) day of each month thereafter (prorated as necessary for any partial months). Manager shall be entitled to pay itself such amount from the Operating Account.

Section 3.2 Variable Fee.

(a) With respect to the 1<sup>st</sup> Operating Year (January to December 2010), Manager is eligible to earn a Variable Fee of up to Sixty Thousand Dollars (\$60,000) as follows: Manager shall be paid \$6,000 per each of the first (1<sup>st</sup>) eight (8) Qualifying Events booked by Manager in such Operating Year (for a total of up to \$48,000). Manager shall earn an additional \$6,000 if it books an eleventh (11<sup>th</sup>) Qualifying Event and an additional \$6,000 if it books a twelfth (12<sup>th</sup>) Qualifying Event in such Operating Year (for a total of \$60,000). A "Qualifying Event" shall mean a new concert, sporting event or industry touring attraction that Manager books for the Facility, rather than was booked by the previous owner, and generates for the Facility at least \$45,000 of net operating income from all sources.

(b) With respect to each subsequent Operating Year after the 1<sup>st</sup> Operating Year, the Variable Fee shall equal a percentage of improvement in Net Operating Loss over a Net Operating Loss benchmark, as identified hereafter, as follows:

- (i) Ten Percent (10%) of improvement in Net Operating Loss over a Net Operating Loss benchmark of \$950,000, up to Net Operating Loss of \$750,000; plus
- (ii) Twenty Percent (20%) of improvement in Net Operating Loss over a Net Operating Loss benchmark of \$750,000, up to Net Operating Loss of \$0; plus
- (iii) Thirty Percent (30%) of any Net Operating Profit up to Net Operating Profit of \$500,000; plus
- (iv) Twenty Percent (20%) of Net Operating Profit above \$500,000.

Each of the \$950,000, \$750,000 and \$500,000 Net Operating Profit/Loss benchmarks set forth above shall be increased each Operating Year, beginning with the third (3<sup>rd</sup>) Operating Year (2012), by CPI. The Variable Fee Manager is eligible to earn under Section 3.2(b) above shall not be capped. Notwithstanding anything else to the contrary contained herein, the parties agree that for purposes of calculating Net Operating Profits or Net Operating Losses hereunder, expenditures for building

additions, alterations, repairs or improvements and for purchases of furniture, machinery or equipment costing over \$5,000 will not be deemed to be Operating Expenses and thus will not factor into the calculation of Net Operating Profit or Net Operating Loss.

(c) The Variable Fee, to the extent earned by Manager, shall be paid to Manager no later than thirty (30) days following receipt by Owner of the annual audited financial statements for the Facility for the preceding Operating Year and a written computation of the Variable Fee due pursuant to this Agreement prepared by the Manager in a form reasonably satisfactory to Owner.

#### **ARTICLE 4 TERM; TERMINATION**

Section 4.1 Term. The initial Term of this Agreement shall begin on the Effective Date, and, unless sooner terminated pursuant to the provisions of Section 4.2 below, shall expire on December 31, 2012, provided that Owner shall have the unilateral right, but not the obligation, to renew this Agreement for an additional two (2) year term effective as of December 31, 2012 and expiring on December 31, 2014 by providing written notice of renewal to Manager no later than September 1, 2012. The initial term, plus any such renewal period, is referred to herein as the “**Term**”.

Section 4.2 Termination. This Agreement may be terminated:

(a) subject to Section 4.3(a) below, by Owner upon ninety (90) days written notice to Manager in the event of a permanent closure of the Facility, the fact of which is certified by the Owner in writing to Manager;

(b) by either party upon thirty (30) days written notice, if the other party fails to perform or comply with any of the material terms, covenants, agreements or conditions hereof, and such failure is not cured during such thirty (30) day notification period; or

(c) by either party immediately by written notice upon the other party being judged bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of the other party shall be appointed, or if either party shall make an assignment of its property for the benefit of creditors or shall file a voluntary petition in bankruptcy or insolvency, or shall apply for bankruptcy under the bankruptcy or insolvency Laws now in force or hereinafter enacted, Federal, State or otherwise, or if such petition is filed against either party and is not dismissed within one hundred twenty (120) days after such filing.

(d) by the Owner upon commission of any criminal act by the management of Manager related to its management of the Facility.

Section 4.3 Failure to Appropriate Funds. Notwithstanding any provisions of this Agreement to the contrary, all financial obligations of Owner hereunder beyond the then current Operating Year are subject to annual budget approvals and annual appropriations and all obligations of the Owner hereunder are controlled by the Illinois Municipal Code and Illinois Constitution. In the event sufficient funds for any Operating Years of this Agreement are not budgeted and

appropriated in order for Owner to meet its financial obligations hereunder, Owner may terminate this Agreement upon no less than ninety (90) days written notice to Manager, provided that in such case Owner shall be prohibited from engaging any third party (other than Manager) to manage, operate, promote, maintain and/or market the Facility prior to what would have been the natural expiration date (had this Agreement not been terminated early) of the then-current Term. Owner shall indemnify, defend and hold Manager and its employees and agents harmless from any third party claims and Losses related to such third party claims arising out of Owner's failure to appropriate funds pursuant to this Section 4.3.

Section 4.4 Effect of Early Termination. In the event this Agreement is terminated prior to December 31, 2012 for any reason other than due to a termination by Owner pursuant to Section 4.2(b) (due to an uncured breach or default by Manager) or 4.2(c) (due to a bankruptcy or insolvency event affecting Manager), the Owner shall reimburse Manager for any actual ordinary and necessary expenses incurred by Manager in withdrawing from the provision of services hereunder following such termination. These reimbursable de-mobilization expenses will be capped at an amount not to exceed \$150,000, in addition to COBRA cost reimbursement that includes, without limitation, costs associated with COBRA expense incurred by Manager as mandated by applicable Law. The Owner's payment of such expenses will occur only after Manager has provided reasonable evidence of the incurrence of such necessary expenses and Owner will not pay any severance or relocation expenses for employees that are retained by Manager or its Affiliates.

Section 4.5 Actions to be Taken Upon Termination or Expiration. Upon a termination or expiration of this Agreement, the following shall be applicable:

(a) Payment of Fees. Within sixty (60) days of termination or expiration of this Agreement, Owner shall pay Manager all fees and other amounts due Manager through the date of termination or expiration, including without limitation the Variable Fee for the Operating Year in which this Agreement terminates or expires, pro-rated based on the number of days elapsed in such year. Notwithstanding, the payment and amount of Variable Fee applicable must be as set forth in this Agreement.

(b) Final Accounting. Manager shall, within thirty (30) days after termination or expiration, deliver to Owner a final annual unaudited financial statement for the year (or partial year) ending on the date of termination or expiration. Manager shall make its employees available to Owner within such 30 day period and the 30 day period following its provision of such financial statement to answer questions Owner (or its auditors) may have concerning such financial statement.

(c) Transfer of Funds. Manager shall on the day of termination or expiration of this Agreement, immediately release and transfer to Owner or as Owner may direct, any of Owner's funds which are held or controlled by Manager with respect to the Facility.

(d) Books and Records. Manager shall assign, transfer and deliver to Owner, or as Owner may direct, a copy of all financial, computer data, electronic files, documents, reports, estimates, summaries, and other such information and materials in Manager's possession for the then current Operating Year, and all books and records accumulated or in Manager's possession with respect to the Facility within thirty (30) days of termination.

(e) Transfer of Permits; Assignment of Agreements. Manager shall (to the extent permitted by law) assign to Owner or as Owner may direct, all permits for the Facility which have been issued in Manager's name (including liquor and restaurant licenses, if any); provided that if Manager has expended any of its own funds in the acquisition of any of such licenses or permits, Owner shall reimburse Manager therefore if it has not done so already. To the extent any such agreements are in Manager's name, provided they have been entered into by Manager in accordance with the terms hereof, Manager shall assign such agreements to Owner (or at Owner's request, to the successor manager of the Facility) and Owner shall, or shall cause such successor Facility manager, to accept such assignment and assume performance under such agreements.

(f) Software. The parties recognize that Manager may utilize software at the Facility in connection with its operations thereat (including without limitation accounting software), and that such software may be licensed to Manager and not to Owner. Upon termination of this Agreement, Manager shall cooperate with Owner to minimize any operational disruption caused by the removal of its software, and shall facilitate the orderly transfer of Owner's records and data and information contained in the software. Owner shall, upon termination of this Agreement, have the ability to independently purchase or license third party software programs and Manager will waive any objection to such transaction. Further, if requested by Owner, Manager shall assist Owner, at Owner's sole expense, in obtaining Owner's own software license from the licensor of such software programs.

(g) Cooperation. In addition to the actions set forth in this Agreement which are to be taken by Manager and Owner upon expiration or termination, Owner and Manager shall cooperate with each other and act in a commercially reasonable manner to effect an orderly transition of management functions from Manager to Owner, any transferee of Owner or to any managing agent designated by Owner or any transferee of Owner for a period of up to sixty (60) days from the date of notice of termination or expiration, provided that following the date of expiration or termination, Manager shall not be obligated to travel to the Facility or to retain any employees on-site at the Facility, and its assistance shall be limited to reasonable assistance Manager is able to provide from its corporate or other offices. Manager shall be reimbursed for all reasonable, actual and direct costs (which shall be reasonably detailed in writing to Owner) associated with providing such assistance after the effective date of termination or expiration.

(h) Receivables and Bookings. All receivables of the Facility outstanding as of the effective date of termination or expiration shall continue to be the property of Owner. Manager shall cooperate with Owner in all reasonable respects, but at Owner's sole cost and expense, in the collection of any receivables, and will transfer to or at the direction of Owner any receivables collected directly by Manager after the effective date of termination or expiration which relate to business conducted during the Term of this Agreement. Manager shall, on the effective date of termination or expiration or as soon thereafter as reasonably practicable, provide Owner with a complete list of (1) all pending bookings, holds or inquiries which may have been accepted, recorded or entered into by Manager on or at any time prior to termination or expiration, (2) the terms applicable thereto, and (3) the amount of advance deposits (if any) received with respect to each such booking. Manager agrees that it shall continue to book Events through the expiration or termination of this Agreement, in a manner and on terms consistent with the Marketing Plan and prior practice,

and in accordance with the terms of this Agreement, or otherwise with Owner's consent.

(i) Peaceable Surrender. Manager shall peacefully vacate and surrender the Facility to the Owner and cooperate with Owner and/or successor operator.

(j) Survival. The provisions of this Article 4 shall survive and continue in full force and effect subsequent to and notwithstanding termination or expiration of this Agreement.

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

Section 5.1 Ownership of Facility, Data, Equipment and Materials. The Owner will at all times retain ownership of the Facility, including but not limited to real estate, technical equipment, furniture, displays, fixtures and similar property, including improvements made during the Term, at the Facility. Any data, equipment or materials furnished by the Owner to Manager or acquired by Manager as an Operating Expense shall remain the property of the Owner, and shall be returned to the Owner upon termination or expiration of this Agreement. Furthermore, the Manager recognizes that any Operations Manual developed and used by Manager hereunder is proprietary to and owned by Manager, but Manager hereby grants to Owner, effective at the end of the Term, a perpetual, royalty-free, non-transferrable license to utilize such Operations Manual solely in connection with the operation of the Facility.

Section 5.2 Right of Use by Manager. The Manager is allowed use of the Facility, and Manager accepts such right of use, for the purpose of performing the services herein specified, including the operation and Maintenance of all physical and mechanical facilities necessary for, and related to, the operation, Maintenance and management of the Facility. The Owner shall provide Manager with a sufficient amount of suitable office space in the Facility and with such office equipment as is reasonably necessary to enable Manager to perform its obligations under this Agreement. In addition, the Owner shall make available to Manager, at no cost, parking spaces adjacent to the Facility or in Shared Parking Spaces for all of Manager's full-time employees and for the Facility's event staff.

Section 5.3 Observance of Agreements. The Owner shall observe and perform all payments, terms, covenants, conditions and obligations under any leases, bonds, debentures, loans and other financing and security agreements to which the Owner is bound in connection with its ownership of the Facility.

Section 5.4 Use by the Owner. Subject to availability, and notwithstanding any other provision hereof to the contrary, Owner shall have the right to use the Facility or any part thereof rent-free for meetings, seminars, training classes or other Village uses (as opposed to uses by third party promoters or licensees), provided that the Owner shall promptly reimburse Manager, for deposit into the Operating Account, for any direct out-of-pocket expenses incurred by Manager (such as, by way of example and not limitation, the cost of ushers, ticket-takers, set-up and take-down personnel, and security expenses) in connection with such use and not otherwise reimbursed by any other party. Such Village use of the Facility by the Owner shall (i) not compete with or conflict with the dates previously booked by Manager for paying events, (ii) not consist of normally touring

attractions (such as concerts and family shows), and (iii) be booked in advance upon reasonable notice to Manager pursuant to the Facilities' approved booking policies. Upon request of the Owner, Manager shall provide to the Owner a list of non-available dates for Owner 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 Owner, Owner shall use best efforts to reschedule its event to allow Manager to book the revenue-producing event. If despite such best efforts, Owner's event cannot be rescheduled and as a result Manager has to forego a revenue-producing event for Owner's event, then for purposes of calculating the Variable Fee, Manager shall receive a "paper" credit for an amount equal to the difference between the published Facility rate and the rate (if any) charged to the Owner.

In addition to the other rights of the Owner in this Agreement, the Owner shall have the right to use one loge box or premium suite in the Arena for economic development, tourism, hospitality, and government purposes, without license charge, but only to the extent such loge box or premium suite is available for use. Owner shall not be required to pay for tickets in such loge box or suite to the applicable Event, except to the extent such tickets are on the ticket manifest for such event (i.e., to the extent there is a charge for such tickets), in which case Owner shall be required to purchase the tickets at the applicable charge. Nothing herein shall be construed as requiring the Manager to make such loge box or premium suite available to the Owner if the Manager has the opportunity to license said loge box or premium suite to a paying customer, or if it is otherwise required to be reserved under the terms of the applicable Event license; provided, however, if said loge box or premium suite is not made available to the Owner for such reasons, the Owner shall be entitled to share on a 50/50 basis use of any suites reserved for the Manager's use (subject to Owner purchasing its tickets if there is a charge for such tickets).

Section 5.5 Right of Access by Owner. 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 but not limited to inspect same, to observe the performance of Manager 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 Manager for security purposes and for purposes of coordinating with Manager so as to minimize any interference with or disruption of Manager's work under this Agreement. Nothing contained in this Section: (i) is intended or shall be construed to limit any other right 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.

Section 5.6 Agreement Not a Lease. It is expressly understood and agreed by Owner and Manager that this Agreement is not a lease. This is an agreement pursuant to which Manager has been engaged to provide management services to Owner as provided herein and does not constitute a lease of real property and the rights provided to Manager hereunder do not grant any real property rights to Manager.

Section 5.7 Continuous Use Operation, Marketing and Promotion. Manager shall

continuously and diligently use, operate, market and promote the Facility as provided in this Agreement. During the entire Term, the Manager shall use all commercially reasonable efforts to cause the Facility to be occupied and used for sporting events, family shows, exhibitions, concerts, special attractions and other Events to the maximum feasible extent and so as to maximize the public use of the Arena. Subject to the further terms and provisions of this Agreement and to the relevant terms, if any, of the existing agreements, the Manager shall have complete discretion, responsibility and control over the booking of sporting events, concerts, shows and other events at the Facility and the negotiation of economic terms in connection therewith, provided however, that the Owner may from time to time recommend to the Manager various events and other uses of the Facility which maximize the economic or community benefit to the Owner, and the Manager will duly consider such recommendations, including but not limited to, reasonably working with the Owner to accommodate the use of the Facility in connection with events to be held at the Facility or any part thereof. The Manager shall coordinate the booking of the events at the Facility in a manner to maximize the Facility's Operating Revenues. In connection with such coordination, the General Manager shall meet with the Owner's Representative on a regular basis, but no less than weekly, to review planned bookings or booking opportunities for the coming months, taking into account the type of events involved, expected attendance levels, existing scheduling commitments, and other factors deemed important by the Parties, to determine how the Facility should best accommodate such events.

Section 5.8 Use of Signage. Owner shall have the right to utilize a mutually-agreed percentage of the Facility's electronic or fixed advertising inventory for non-commercial purposes upon advance notice to the Manager. Use of fixed advertising inventory shall be subject to availability and contractual commitments to third parties.

## **ARTICLE 6 PERSONNEL**

Section 6.1 Generally. All staff and other personnel engaged by Manager to perform hereunder shall be employees, agents or independent contractors of Manager, and not of the Owner. Manager shall select, in its discretion but subject to Owner's right to approve the organizational chart and employee compensation in the Operating Budget, the number, function, qualifications, and compensation, including salary and benefits, of its on-site employees and shall control the terms and conditions of employment (including without limitation termination thereof) relating to such employees. Manager agrees to use reasonable and prudent judgment in the selection and supervision of such personnel. The Owner specifically agrees that Manager shall be entitled to pay its employees, as an Operating Expense, benefits in accordance with Manager's then current employee manual (which may be modified by Manager from time to time), but only as approved in the Operating Budget. A copy of Manager's current employee manual shall be provided to the Owner.

Section 6.2 Personnel. At commencement of the Term, and as applicable during the Term, Manager shall select, train, and employ at the Facility such number of employees as Manager deems necessary or appropriate to satisfy its responsibilities hereunder, subject to the limitations of the Operating Budget, and Manager shall have authority to hire, terminate, and discipline any and all Manager personnel working at the Facility. Manager agrees to use its best efforts to recruit employees who will be proficient, productive, and courteous to patrons, and to use its reasonable and

prudent judgment in the supervision of such personnel. Notwithstanding the foregoing, in the event the Owner notifies Manager that it desires the removal from the Facility of any Manager employee (other than the General Manager, which is addressed separately below) and sets forth in such notice the specific reasons for such request, Manager agrees to meet with representatives of the Owner to discuss the matter. Any decision to remove the individual shall be made by Manager, but in making such decision Manager agrees to act reasonably and take into account the views expressed by the Owner.

Section 6.3 General Manager. Manager shall assign to the Facility a competent General Manager and prior to Manager selection of such General Manager, Manager shall consult with the Owner with respect to the qualifications of the General Manager proposed by Manager. Owner hereby approves the current General Manager; hiring of any successor General Manager by Manager shall require the prior approval of the Owner. Manager specifically acknowledges the importance placed by the Owner on the high caliber and continuity of the agreed upon General Manager and therefore Manager agrees not to reassign the selected General Manager to another facility managed by Manager or its Affiliates, or to another position within Manager or its Affiliates' corporate organizations, during the first twenty-four (24) months after such General Manager commences employment at the Facility, unless such reassignment or change in position is pre-approved in writing by the Owner.

In the event the Owner is dissatisfied with the General Manager for any reason, the Owner will notify Manager that it desires the removal of the General Manager and set forth in such notice the specific reasons for such request, which shall be consistent with applicable law. Manager will meet with representatives of the Owner as soon as possible to discuss such matter, and thereafter Manager shall take those steps discussed by the parties and agreed to by the Owner to address the Owner's concerns with the General Manager, provided, that if such concerns are not remedied within thirty (30) days to the reasonable satisfaction of the Owner, Manager shall, subject to applicable law, take legally appropriate and prudent steps to remove the General Manager from the Facility and commence the process for selecting and hiring a new General Manager, who will be subject to the approval of the Owner. Owner shall indemnify, defend and hold harmless Manager and its employees and agents from and against any Losses sustained by such parties in connection with the removal of the General Manager at the Owner's request as contemplated herein.

In the event that Manager desires to remove the General Manager for any reason, Manager shall first notify and discuss with the Owner the reasons for the desired action and the steps Manager will take to find and recruit a qualified successor General Manager. Further, in the event Manager requests that the General Manager provide assistance to its business pursuits elsewhere, requiring the General Manager to travel offsite, Manager will reimburse the Owner for the daily salary and benefit rate of the General Manager, provided that such travel is more than three (3) full days per month or materially interferes with the General Manager's duties at the Facility. Additionally, if such offsite activities have a material negative affect on Facility operations, as determined by the Owner in its sole discretion, Manager acknowledges that upon notice by Owner, the General Manager shall terminate such assistance. The General Manager shall update the Owner with respect to any assistance that he is providing to non-Facility projects.



Section 6.4 Employees of Manager. Manager's employees at the Facility shall not for any purpose be considered to be employees of Owner, and Manager shall be solely responsible for their supervision and daily direction and control and for setting, and paying as an Operating Expense as contained in the Operating Budget, their compensation (including federal, state and local income tax withholding) and any employee benefits. Any full time person(s) retained by Manager, or part-time employees upon request by Owner, shall be subject to a background check, including FBI Fingerprint check, before being allowed access to certain secure areas, the cost of which shall be an Operating Expense. The current Operating Budget may be revised accordingly for this purpose. If either check is unfavorable, the Owner reserves the right to determine whether the person(s) may continue to work at the Facility.

Section 6.5 Non-Solicitation/Non-Hiring. During the period commencing on the date hereof and ending one (1) year after the expiration or termination of this Agreement, except with Manager's prior written consent, Owner shall not hire or solicit for employment the Management-Level Employees. In addition to any other remedies which each party may have, specific performance in the form of injunctive relief shall be available for the enforcement of this provision. Notwithstanding the foregoing, any individual who was engaged at the Facility prior to Manager's assumption of operations and who transitions to become a Manager employee will be exempt from the restrictions contained in this paragraph. Additionally, following termination of this Agreement, the Owner shall not be restricted from soliciting or hiring any of Manager's Management-Level Employees who Manager elects not to engage in connection with other Manager employment opportunities.

## **ARTICLE 7 OPERATING BUDGET**

### Section 7.1 Establishment of Operating Budget.

(a) Attached hereto as Exhibit H is the Operating Budget for the 2010 Operating Year. Manager agrees that at least one hundred twenty (120) days (by September 1) prior to the commencement of each subsequent Operating Year, it will prepare and submit to the Owner Manager's proposed Operating Budget for such year with the input of the Owner. Each proposed annual Operating Budget shall include Manager's good faith projection of Operating Revenues and Operating Expenses, presented on a monthly and annual basis, for the upcoming Operating Year. The Owner agrees to provide Manager with all relevant information in its possession necessary to enable Manager to prepare each Operating Budget. The Owner acknowledges that notwithstanding the Manager's experience and expertise in relation to the operation of facilities similar to the Facility, the projections contained in each proposed Operating Budget are subject to and may be affected by changes in financial, economic and other conditions and circumstances beyond the Manager's control.

Section 7.2 Approval and Modifications of Operating Budget. Each annual proposed Operating Budget shall be subject to the review, amendment, and approval of the Owner (which approval shall not be unreasonably withheld or delayed). In order for the Owner to fully evaluate and analyze such budgets or any other request by Manager relating to income and expenses, Manager agrees to provide to the Owner financial information relating to the Facility as may be requested by

the Owner from time to time. If extraordinary events occur during any Operating Year that could not reasonably be contemplated at the time the corresponding Operating Budget was prepared, Manager shall notify Owner in writing, and if necessary, may submit an amendment to such proposed budget for review and approval by the Owner (which approval shall not be unreasonably withheld or delayed). If the Owner fails to approve any annual or modified Operating Budget (or any proposed amendment thereto), the Owner shall promptly provide Manager the specific reasons therefore and its suggested modifications to Manager's proposed Operating Budget or amendment in order to make it acceptable. The parties shall then engage in good faith discussions and use reasonable commercial efforts to attempt to resolve the matter to the mutual satisfaction of the parties.

Section 7.3 Adherence to Operating Budget. Pursuant to this Section, Manager shall manage and operate the Facility in accordance with the expense totals in the Operating Budget. Without the prior consent of the Owner, Manager shall not exceed, commit or contract to expend any sums in excess of the aggregate expense amounts allowed in the Operating Budget or otherwise approved by Owner, except for (i) additional expenditures necessary to perform an Emergency Repair, in which event Manager shall notify Owner prior to making such repair, (ii) increased costs resulting from the scheduling by Manager of additional revenue producing events or activities at the Facility not contemplated by the Operating Budget in effect for such Operating Year, provided that Manager had a reasonable expectation at the time of booking such events that they would generate a net profit for the Facility; (iii) expenses for services or utilities provided to the Facility by unaffiliated third parties, the cost of which is not within the reasonable control of Manager, such as the costs of utilities and insurance; and (iv) increased costs resulting from events scheduled pursuant to Section 5.4. Subject to the foregoing, Manager has the latitude to exceed individual line items in the Operating Budget without limitation provided that the actual aggregate expense for any department (such as Executive, Finance, Marketing, Operations, Overhead, Box Office, Event Production, Technical Services, Group Sales, Corporate Sales, Food and Beverage and any others identified in the approved Operating Budget) does not exceed the budgeted amount for such department by more than 10% provided that the total Facility Operating Budget is not exceeded. Manager agrees to notify the Owner as soon as possible of any increase of 10% or greater in any aggregate department expense total in the Operating Budget, and any increase in total Facility expenses, as provided for in the Operating Budget. Further, Manager will advise Owner and obtain its consent for the expenditure of funds where the expense was not contained within the Operating Budget when approved by Owner or is otherwise not authorized under this Section 7.3. Notwithstanding the foregoing, if Owner provides any goods or services to, or for the benefit of, the Facility, during any Operating Year which are contemplated in the Operating Budget, then the corresponding items in the Operating Budget for such Operating Year shall be debited for the fair cost of such goods or services. The Operating Account can be used to reimburse the Village Corporate Fund for work performed at the Facility by the Village Staff to the extent such costs were contemplated in the Operating Budget.

Section 7.4 Substantial Adverse Budget Conditions. In the event that, if any year, there appears to be adverse departure from budget and/or Owner reasonably believes it will not receive sufficient funding from other sources to cover any budget deficit, then, in such event, Owner shall request from Manager a plan for reduction of expenditures to a level consistent with and within the funding resources available of the Owner.

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

Section 8.1 Ticket Account.

(a) Manager shall cause the deposit, in the Ticket Account, of all proceeds received from ticket sales and similar Event related revenues which Manager receives in contemplation of, or arising from, an Event, pending completion of the Event. Such monies will be held in escrow for the protection of ticket purchasers, the Owner and the Manager until settlement. At settlement of a given Event, those ticket proceeds will be transferred to the Operating Account, to provide a source of funds as required for payments to performers and for payments of direct incidental expenses in connection with the presentation of Events that must be paid at settlement or were paid prior to such Event. Promptly following settlement of any event, Manager shall transfer all remaining Event-related revenues into the Operating Account. At the end of each month, Manager shall transfer any accrued interest in the Ticket Account that belongs to the Facility into the Operating Account net of any bank service charges on the Ticket Account.

(b) Owner represents that it is a party to a ticketing contract with Ticketmaster ("Ticketmaster Agreement"), pursuant to which Ticketmaster is required to sell and service tickets to Events that went on sale prior to March 20, 2010 ("Ticketmaster Events"), following which the Ticketmaster Agreement will terminate. Owner is also a party to a ticketing contract with New Era Tickets ("New Era Contract"), pursuant to which New Era Tickets will serve as the Facility's ticketing provider for any events going on-sale after March 20, 2010 ("New Era Events"). Manager will operate under the Ticketmaster Agreement for the Ticketmaster Events, and the New Era Agreement for New Era Events. Under the Ticketmaster Agreement, Ticketmaster is obligated to hold ticket proceeds in trust until final settlement occurs on a per Event basis. At each Event settlement, the Facility's share of ticket proceeds held by Ticketmaster and collected by the box office and held in the Ticket Account will be deposited in the Facility's Operating Account.

Section 8.2 Operating Account.

(a) The Owner will open an Operating Account in a mutually selected bank. Except as provided in Section 8.1 above, all Operating Revenue derived from operation of the Facility shall be deposited by Manager into the Operating Account as soon as practicable upon receipt (but not less often than once each business day). The specific procedures (and authorized individuals) for making deposits to and withdrawals from such account shall be agreed to by the parties and set forth in the Operations Manual, but the parties specifically agree that Manager shall have authority to sign checks and make withdrawals from such account, subject to the limitations contained in this Agreement, including the need to obtain the co-signature of an Owner employee or representative on certain payments as set forth on Exhibit K. The Parties agree to revisit these procedures in December, 2010 to determine if they should be revised.

Section 8.3 Revenues Held in Trust by Manager. All revenues collected by Manager arising from the operation of the Facility, including revenues from box office sales, facility or equipment rentals, rental agreements, leases, use licenses, food and beverage concession, catering and parking revenues, sponsorship and premium seat licenses or any other source, are the sole

property of the Owner. Any funds held by Manager are held in trust for the Owner for application as provided herein. Manager, as provided in Article 4 hereof, shall promptly pay any such funds to Owner upon termination of this Agreement for any reason.

## **ARTICLE 9 FUNDING**

Section 9.1 Source of Funding. Manager shall pay all items of expense for the operation, Maintenance, supervision and management of the Facility from the funds in the Operating Account, which Manager may access as needed and as provided in this Agreement. The parties will agree on a rolling twelve (12) month cash flow budget for each Operating Year and the Operating Account shall be funded quarterly with amounts generated by operation of the Facility (as described in Article 8 above), or otherwise made available by the Owner. To ensure sufficient funds are available in the Operating Account, Owner will deposit in the Operating Account, on or before the Effective Date, the budgeted or otherwise approved expenses for the quarter beginning on the Effective Date. The Owner shall thereafter, on or before the 1<sup>st</sup> day of each succeeding quarter following the Effective Date, deposit (or allow to remain) in the Operating Account the budgeted or otherwise approved expenses for each such quarter. The Manager will provide the Owner with a rolling twelve (12) month cash flow forecast (as defined in Exhibit I) no less than ten (10) days prior to the end of each quarter, to be used to reconcile and as necessary by the Owner, replenish the Operating Account. For clarity, the amount used by Owner to initially fund the Operating Account on December 28, 2009, an amount equal to the aggregate of the projected Operating Expenses for three (3) months of the annual Operating Budget, will be considered Owner's working capital and any unused or uncommitted funds shall be subject to eventual repayment as delineated in Exhibit I or as otherwise determined by the parties. Manager will make reasonable efforts each quarter to reduce the amount of working capital needed by the Facility. Manager shall utilize all funds so advanced for working capital pursuant to cash management policies established by the parties.

Section 9.2 Advancement of Funds by Manager. The Manager shall not be required to, and shall not, pay for or advance any of its own funds to pay for any Operating Expenses, except the Manager may in its discretion advance its own funds for the payment of any approved and budgeted Operating Expense (such as approved and budgeted Centralized Services expenses or marketing expenses or media buys related to the Facility). In such case, Manager shall be promptly reimbursed for such advances.

Section 9.3 Non-Funding. Subject to Section 2.2, the Owner shall have no obligation to provide funds for the payment of Operating Expenses incurred or committed for in excess of the aggregate expenses that have been annually budgeted and appropriated for such purpose for the Facility, except as otherwise provided in Section 7.3, which expenses Owner shall be obligated to fund.

Section 9.4 Transition Costs. The Village shall reimburse Manager for Manager's actual and reasonable costs incurred in connection with transitioning the management services for the Facility to Manager (the "Transition Costs"), not to exceed \$75,000, as set forth in Exhibit J. It is agreed that the costs identified in Exhibit J are the total Transition Costs subject to reimbursement and the Manager is not entitled to be paid any other Transition Costs irrespective of any other prior

agreements, except as agreed upon by the Owner or as contained in the Operating Budget and identified as transition expenses. The Transition Costs shall be reimbursed to Manager by Owner within sixty (60) days of Manager's provision of an invoice and sufficient supporting information for such costs. The parties acknowledge that a significant portion of the Transition Costs have not yet been incurred by Manager as of execution of this Agreement, and that such Transition Costs may be incurred following the execution hereof.

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

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

Section 10.2 Monthly Financial Reports. Manager agrees to provide to the Owner, within thirty (30) days after the end of each month during the Term, financial reports for the Facility including a balance sheet, aging report on accounts receivable, and statement of Operating Revenue and Operating Expenses (budget to actual) for such month and year to date in accordance with generally accepted accounting principles. In addition, Manager agrees to provide to the Owner a summary of bookings for each such month, and separate cash receipts and disbursements reports for each Event held at the Facility during such month. Additionally, Manager shall submit to the Owner, or shall cause the applicable public depository utilized by Manager to submit to the Owner, on a monthly basis, copies of all bank statements concerning the Ticket Account and the Operating Account. The form of such reports has been provided to Owner by Manager and is approved by Owner, however, the Owner reserves the right, acting reasonably, to require additional information to be included with such reports.

Section 10.3 Annual Report. As soon as practicable, the Manager shall provide annually, for public distribution, an Annual Report, consisting of a summary of financial results, a section on accomplishments and challenges, and other annual highlights of facility's operations. A draft will be submitted to the Owner for its review and input prior to release of the report.

Section 10.4 Audit. Owner will arrange for a certified financial audit report (and, if Owner desires, an audit of internal financial controls) to be obtained on the accounts and records as kept by Manager for the Facility with respect to each Operating Year. Costs associated with obtaining such certified audit report(s) shall be an Operating Expense of the Facility. Such audit shall be performed by an external auditor approved by the Owner, and shall be conducted in accordance with generally accepted auditing standards. Owner and Manager shall use reasonable commercial efforts to cooperate with the auditors to have such audit completed within ninety (90) days of the end of each Operating Year. Additionally, Owner reserves the right to hire its previous consultants or retain professional services from other individuals or firms (but not including facility management

competitors of Manager or any employees associated with a competitor of Manager) to conduct other reviews of annual operating and financial matters, as well as Manager's performance with this Agreement at any time during the term of this Agreement.

## **ARTICLE 11 CAPITAL IMPROVEMENTS**

Section 11.1 Capital Expenditures. Manager shall at the time of submission of the 2011 Operating Budget to the Owner, provide to the Owner a schedule of proposed Capital Expenditures to be made at the Facility, for the purpose of allowing the Owner to consider such projects. Additionally, Manager will prepare and annually update 1) a five (5) year Capital Expenditure budget and 2) the FF&E reconciliation per Exhibit G, to coincide with its annual Operating Budget submittal. Manager shall also provide a one-time Facility Audit, as defined in Manager's proposal, to be completed by September 1, 2010.

### Section 11.2 Responsibility for Minor Repairs and Capital Expenditures.

(a) In each Operating Year, the Manager shall be responsible to make all Minor Repairs and shall perform all Minor Repairs necessary with reasonable diligence and in timely manner to maintain the Facility in a First Class Condition. The cost of all Minor Repairs shall be an Operating Expense. Manager shall promptly notify the Owner in the event of any repair situation or deficiency which would cause the Facility to not be in First-Class Condition. Any Minor Repair replacement or improvement item shall be of a quality and functionality consistent with the item being replaced.

(b) The parties will confer annually on the depth and priority of Capital Expenditures proposed or deemed necessary by Manager in the upcoming Operating Year. Owner shall be solely responsible for all Capital Expenditures at the Facility; provided, however, the Owner shall be under no obligation to make any Capital Expenditures proposed by Manager, and provided further that Manager shall have no liability for any claims, costs or damages arising out of a failure by the Owner to make any Capital Expenditures. Notwithstanding the foregoing, Manager shall have the right (but not the obligation), upon notice to the Owner, to make any Capital Expenditures at the Facility for Emergency Repairs from the Operating Account, subject to Exhibit K, in which case Owner shall reimburse the Operating Account for such amounts.

## **ARTICLE 12 FACILITY CONTRACTS; RIGHT TO ENGAGE CERTAIN AFFILIATES**

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

Section 12.2 Contracts. Except as set out in this Agreement, the Manager shall have no authority, without the prior written consent of Owner, to enter into any Facility contracts other than as provided in Exhibit K or as otherwise set forth in this Agreement. Notwithstanding the foregoing, Manager, without prior approval from Owner, may enter into, as agent for Owner (i) standard rental and co-promotional contracts with third parties for Events (including Event License Agreements),

provided such co-promotional agreements do not take any undue economic risk (defined as risking Facility rent and expenses, as opposed to just rent) on behalf of the Owner, and (ii) contracts for goods and services constituting Event Expenses. However, at all times, terms for non-family/sports co-promotional agreements and sole-sourced Event Expenses over \$5,000 must be initially reviewed with either Owner's Representative or Director of Finance. The Manager shall abide by the Purchasing Policy attached hereto as Exhibit K. All contracts entered into by Manager hereunder shall be entered into in the name of Owner, to be signed by Manager acting as agent on behalf of Owner. Additionally, contracts for the purchase and sale of Commercial Rights (pursuant to the terms of the Commercial Rights Agreement between Owner and Manager's Affiliate) shall be entered into by the purchaser of such Commercial Rights and the Owner. The parties acknowledge that the Owner may authorize the Facility's General Manager to sign Commercial Rights Agreements, on behalf of the Owner, following the Owner's review of its terms.

In executing Event License Agreements and co-promotional agreements, Manager acknowledges Owner's over-arching event profitability goal of having net Event revenues equal to or exceeding its Event Expenses, yet both parties are mindful of the nature of the entertainment industry and associated risks. Manager 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 Manager's good faith judgment generate enough of a positive economic, cultural, or other benefit to the Owner, or otherwise serve the public interest, to make the Event worthwhile; provided that no use of the Facility shall be permitted, without Owner's approval, that is either a self (i.e. Manager) promoted Event, or an in-house (i.e. Facility) promoted Event where rent and expenses (as opposed to just rent) are at risk.

### Section 12.3 Right to Engage Certain Affiliates.

(a) The parties acknowledge that Owner has entered into a contract with Patron Solutions, L.P, d/b/a New Era Tickets, to provide ticketing services for the Facility. Manager shall keep Owner advised of the quality and manner by which Patron Solutions, L.P. d/b/a New Era Tickets performs.

The parties acknowledge that Owner has entered into a contract with Front Row Marketing Services, L.P. to market and sell the Commercial Rights at the Facility. Manager shall keep Owner advised of the quality and manner by which Front Row Marketing Services, L.P. performs.

The parties acknowledge that Owner has an interim agreement with Levy Premium Food Service Limited Partnership to provide food and beverage services at the Facility which expires July 31, 2010. Owner intends to enter into a long term food and beverage service agreement before this date, and will entertain negotiations with at least Levy Premium Food Service Limited Partnership and Ovations Food Services, L.P. to provide such services. Regardless of the food service provider, the Manager shall use best efforts to administer and assure compliance with all aspects of the food service agreement. Manager shall keep Owner advised of the quality and manner by which the food and beverage operator performs.

(b) Manager shall not enter into any contract with its Affiliates for goods or services at the Facility without the Owner's prior written approval. To the extent that Owner does permit

Manager to contract with companies that are its Affiliates, with Owner's prior written approval, to provide goods and/or services to the Facility, such contract or arrangement, including all amendments or modifications thereto, shall be submitted to Owner in advance so that Owner can confirm it will not violate Revenue Procedure 97-13 or otherwise result in private business use of any portion of the Facility for purposes of Section 141 of the Code.

(c) Owner acknowledges and agrees that, with respect to any purchases of goods or services from an Affiliate, the Manager shall obtain the best commercially available prices and/or terms.

(d) Profit Transaction. Manager shall not enter into any Profit Transaction without the written permission of the Owner. The Manager shall notify the Owner if it intends on entering into an Agreement either for itself or on behalf of the Owner of any Profit Transaction along with any itemized report of any profit and/or gain.

### **ARTICLE 13 INTENTIONALLY OMITTED**

### **ARTICLE 14 AGREEMENT MONITORING AND GENERAL MANAGER**

Section 14.1 Contract Compliance. Each party shall designate a representative. Village shall designate an Owner's Representative who shall monitor such party's compliance with the terms of this Agreement. Manager's representative shall be its General Manager at the Facility, unless Manager notifies Owner of a substitute representative in writing. Owner shall notify Manager of the name of its Owner's Representative or designee within thirty (30) days of execution hereof. Any and all references in this Agreement requiring Manager or Owner participation or approval shall mean the participation or approval of such party's representative. The Owner's Representative may be paid from Operating Budget.

### **ARTICLE 15 INDEMNIFICATION**

Section 15.1 Indemnification by Manager. Manager agrees to defend, indemnify and hold harmless the Owner and its officials, directors, officers, employees, and agents against any claims, causes of action, costs, expenses (including reasonable attorneys' fees) liabilities, or damages (collectively, "**Losses**") suffered by such parties, arising out of or in connection with any (a) negligent act or omission, or intentional misconduct, on the part of Manager or any of its employees or agents in the performance of its obligations under this Agreement to the extent not covered by insurance, or (b) breach by Manager of any of its representations, covenants or agreements made herein.

Section 15.2 Indemnification by the Owner. Owner agrees to defend, indemnify and hold harmless Manager and each of its respective directors, officers, employees, and agents against any Losses suffered by such parties, arising out of or in connection with (a) any negligent act or omission, or intentional misconduct, on the part of Owner or any of its employees or agents in the



performance of its obligations under this Agreement to the extent allowed by law and not covered by insurance, (b) a breach by Owner of any of its representations, covenants or agreements made herein, (c) failure by Owner to fulfill obligations either during or after the term due under any Facility contracts, licenses or agreements executed by the Manager as agent for the Owner; and (d) any claim asserted by any third party claiming rights in the Facility or to operate at the Facility (including without limitation Levy Premium Foodservice Limited Partnership and Ticketmaster), that Manager or any of the other indemnitees set forth above have violated such rights by negotiating for the rights set forth in this Agreement, entering into this Agreement or performing services at the Facility.

Section 15.3 Conditions to Indemnification. With respect to each separate matter brought by any third party against which a party hereto ("Indemnitee") is indemnified by the other party ("Indemnitor") under this Article 15, the Indemnitor shall be responsible, at its sole cost and expense, for controlling, litigating, defending and/or otherwise attempting to resolve any proceeding, claim, or cause of action underlying such matter, except that (a) the Indemnitee may, at its option, participate in such defense or resolution at its expense and through counsel of its choice; (b) the Indemnitee may, at its option, assume control of such defense or resolution if the Indemnitor does not promptly and diligently pursue such defense or resolution, provided that the Indemnitor shall continue to be obligated to indemnify the Indemnitee hereunder in connection therewith; and (c) neither Indemnitor nor Indemnitee shall agree to any settlement without the other's prior written consent (which shall not be unreasonably withheld or delayed). In any event, Indemnitor and Indemnitee shall in good faith cooperate with each other and their respective counsel with respect to all such actions or proceedings, at the Indemnitor's expense. With respect to each and every matter with respect to which any indemnification may be sought hereunder, upon receiving notice pertaining to such matter, Indemnitee shall promptly (and in no event more than twenty (20) days after any third party litigation is commenced asserting such claim) give reasonably detailed written notice to the Indemnitor of the nature of such matter and the amount demanded or claimed in connection therewith.

Section 15.4 Survival. The obligations of the parties contained in this Article 15 shall survive the termination or expiration of this Agreement.

## **ARTICLE 16 INSURANCE; PERFORMANCE BOND**

Section 16.1 Types and Amount of Coverage. Manager agrees to obtain insurance coverage in the manner and amounts as set forth in Exhibit L, attached hereto as approved in advance by the Owner, and shall provide to the Owner promptly following the Effective Date a redacted policy of insurance with endorsements evidencing such coverage. Manager shall maintain such referenced insurance coverage at all times during the Term, and will not make any material modification or change from these specifications without the prior written approval of the Owner. Manager shall require each insurance policy to include a requirement that the insurer provide Manager and the Owner at least thirty (30) days written notice of cancellation or material change in the terms and provisions of the applicable policy. The cost of all such insurance shall be an Operating Expense. Owner may, at its option and its expense, obtain property insurance on the Facility, in which case the expense of such insurance shall not be an Operating Expense, or otherwise may be a "below-the-line" Operating Expense provided that the Operating Budget is amended to include such expense.

Section 16.2 Rating; Named Insureds; Additional Insureds. All insurance policies shall be issued by insurance companies rated no less than A VIII in the most recent "Bests" insurance guide, and licensed in the State of Illinois or as otherwise agreed by the parties. All such policies shall be in such form and contain such provisions as are generally considered standard for the type of insurance involved. Owner shall be a named insured on the Manager's commercial general liability policy. Owner shall be listed as an additional insured on the automobile liability insurance policy, dram shop, business interruption, discrimination and harassment liability and umbrella or excess liability policies to be obtained by Manager. The parties agree that the certificate evidencing the commercial general liability insurance shall include the following statement: "The Village of Hoffman Estates as owner of the Sears Centre Arena is added as a named insured by Global Spectrum, L.P. with respect to liability arising out of or related to the contract for management and operation of the Sears Centre Arena. Coverage shall be primary and non-contributory to any coverage of The Village of Hoffman Estates, and include a waiver of subrogation."

Section 16.3 Third Party Users. Manager shall require that all third party licensees of the Facility provide certificates of insurance evidencing insurance appropriate for the types of activities in which such user is engaged and naming Owner and Manager as additional insureds, provide that coverage is primary and non-contributory to any coverage of Owner or Manager, and include a waiver against subrogation. Manager shall require that all third-party subcontractors of the Facility, including without limitation ushers, parking, security personnel and concessionaires, provide certificates of insurance and policy endorsements evidencing insurance appropriate for the types of activities in which such subcontractor is engaged and naming Owner and Manager as additional insureds, provide that coverage is primary and non-contributory to any coverage of Owner or Manager, and include a waiver against subrogation.

If Manager subcontracts any of its obligations under this Agreement, Manager shall require each subcontractor to secure insurance that will protect against applicable hazards or risks of loss as and in the amounts appropriate for the work contemplated, and name Manager and the Owner as additional insureds. Manager shall use best efforts to obtain from such subcontractors either binding certificates of insurance (as opposed to informational) or policy endorsements evidencing insurance appropriate for the types of activities, but at a minimum Manager shall obtain informational certificates of insurance.

Section 16.4 Performance Bond. Manager shall supply to the Owner, in a form reasonably acceptable to the Owner, a performance bond in the amount of One Hundred Fifty Thousand Dollars (\$150,000) to protect against loss due to the failure of Manager to perform under this Agreement. Manager shall maintain such bond at all times during the Term. Manager shall provide evidence to the Owner of its having obtained such bond within fifteen (15) days from the Effective Date. The premiums for such bond shall be an Operating Expense of the Facility (provided the applicable Operating Budget is amended as necessary to include such cost) or otherwise be paid for by Owner outside of the Operating Budget.

## **ARTICLE 17**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 17.1 Manager Representations and Warranties. Manager hereby represents, warrants and covenants to Owner as follows:

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

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

(c) that Manager will comply with all applicable Laws in the course of its performance of the services described herein.

Section 17.2 Owner Representations, Warranties and Covenants. Owner represents, warrants and covenants to Manager as follows:

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

(b) that this Agreement has been duly executed and delivered by Owner and constitutes a valid and binding obligation of Owner, 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.

(c) that the Facility is, as of the Effective Date, in compliance in all respects with all applicable Laws relating to the construction, use and operation of the Facility (including, without limitation, Title III of the American with Disabilities Act).

## **ARTICLE 18 MISCELLANEOUS**

Section 18.1 Parties' Obligations with respect to Confidential Information. The Parties agree that issues governing the use and disclosure of "Confidential Information", as defined below, made available to Owner by Manager will be governed by the following provisions:

(a) Definition of Confidential Information. As used in this Agreement, the term "Confidential Information" means all information of any nature and in any form, regardless of when given, that (i) contains confidential business, financial, or marketing information and is disclosed or provided by or through Manager to Owner pursuant to performance of this Agreement; and (ii) has been clearly marked or indicated in writing as being confidential by Manager. Information falling within this definition shall be treated by Owner as the confidential financial or proprietary information of Manager pursuant to the provisions of the Illinois Freedom of Information Act ("Illinois FOIA").

(b) Use of Confidential Information. Except as expressly provided in this Agreement or as otherwise mandated by the Illinois FOIA or other applicable law, Owner will not disclose Confidential Information to anyone without the prior written consent of Manager. Owner will not use, or permit others to use, Confidential Information for any purpose other than actions incidental to the performance and enforcement of this Agreement between Owner and Manager. Owner will take all reasonable measures to avoid disclosure, dissemination, or unauthorized use of Confidential Information, including, at a minimum, those measures that it takes to protect its own Confidential Information of a similar nature.

(c) Open Records Requests. In the event that Owner is served with a Freedom of Information Act (FOIA) request, discovery request in litigation, or subpoena from any third party requesting all or part of any Confidential Information as defined herein, Owner shall give timely notice to Manager of such request or subpoena as soon as possible and within the time parameters required for response pursuant to the Illinois FOIA or any applicable law. In the event the Manager receives an Illinois FOIA request, Manager shall immediately contact Owner and provide such request to the Owner forthwith.

Section 18.2 No Discrimination. Manager agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, religion, color, sex, disability, national origin, ancestry, physical handicap, or age, and will take affirmative steps to ensure that applicants are employed, and employees are treated during employment, without regard to race, religion, color, sex, disability, national origin, ancestry, physical handicap, or age.

Section 18.3 Use of Facility Names and Logos. Manager shall have the right to use throughout the Term (and permit others to use in furtherance of Manager's obligations hereunder), for no charge, the name and all logos of the Facility, on Manager's stationary, in its advertising of the Facility, and whenever conducting business of the Facility; provided, that Manager shall take all prudent and appropriate measures to protect the intellectual property rights of the Owner or owner of the intellectual property relating to such logos. All intellectual property rights in any Facility logos developed by the Manager or the Owner shall be and at all times remain the sole and exclusive property of the Owner or its designee. Manager agrees to execute any documentation requested by the Owner from time to time to establish, protect or convey any such intellectual property rights. Manager will at all times comply with the terms and conditions of the Sears Naming Rights Agreement, attached as Exhibit F.

Section 18.4 Litigation.

(a) Manager shall not settle any claim, action, counterclaim or employment claim (provided such claim, action, counterclaim or employment claim would constitute an Operating Expense, an obligation of the Owner, or be payable from any funds or accounts established under this Agreement) without Owner's consent.

(b) Manager shall provide Owner at such times as Owner may reasonably request, a litigation report summarizing the status of all pending litigation with respect to the Facility.

Section 18.5 Force Majeure; Casualty Loss.

(a) Neither party shall be liable or responsible to the other party for any delay, loss, damage, failure or inability to perform under this Agreement due to an Event of Force Majeure, provided that the party claiming failure or inability to perform provides written notice to the other party within thirty (30) days of the date on which such party gains actual knowledge of such Event of Force Majeure. Notwithstanding the foregoing, in no event shall a party's failure to make payments due hereunder be excusable due to an Event of Force Majeure.

(b) In the event of damage or destruction to a material portion of the Facility by reason of fire, storm or other casualty loss that renders the Facility (or a material portion thereof) untenable, the Owner shall use reasonable efforts to remedy such situation. If notwithstanding such efforts, such damage or destruction is expected to render the Facility (or a material portion thereof) untenable for a period estimated by an architect selected by the Owner at Manager's request, of at least one hundred eighty (180) days from the date of such fire, storm or other casualty loss, either party may terminate this Agreement upon written notice to the other, provided that the Owner shall pay to Manager its costs of withdrawing from services hereunder, as described in Section 4.4(a) above.

Section 18.6 Assignment. Neither party may assign this Agreement without the prior written consent of the other. This Agreement shall be binding on the parties' successors and permitted assigns

Section 18.7 Notices. All notices required or permitted to be given pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, or by generally recognized, prepaid, overnight air courier services, to the address and individual set forth below. All such notices to either party shall be deemed to have been provided when delivered, if delivered personally, three (3) days after mailed, if sent by registered or certified mail, or the next business day, if sent by generally recognized, prepaid, overnight air courier services.

If to the Owner:

William D. McLeod  
Village President  
Village of Hoffman Estates  
1900 Hassell Road  
Hoffman Estates, IL 60169

If to Manager:

Global Spectrum, L.P.  
3601 S. Broad Street  
Philadelphia, PA 19148  
Attn: Chief Operating Officer

With copies to:

James H. Norris  
Village Manager  
Village of Hoffman Estates  
1900 Hassell Road  
Hoffman Estates, IL 60169

With a copy to:

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

Arthur L. Janura  
Corporation Counsel  
c/o Arnstein & Lehr LLP  
2800 Higgins Road, Suite 425  
Hoffman Estates, IL 60169

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

Section 18.8 Severability. If a court of competent jurisdiction or an arbitrator determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement (and the application of this Agreement to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

Section 18.9 Entire Agreement. This Agreement (including the schedule and exhibits attached hereto and the Letter Agreement) contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior negotiations, correspondence, conversations, agreements, and understandings concerning the subject matter hereof, including that certain Interim Agreement dated December 30, 2009 and the related side letter dated the same date between Owner and Manager (each of which are deemed terminated upon execution and delivery of this Agreement). Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations, agreements or understandings, whether oral or written.

Section 18.10 Governing Law. The Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Illinois, without regard to its conflict of laws principles.

Section 18.11 Amendments. Neither this Agreement nor any of its terms may be changed or modified, waived, or terminated (unless as otherwise provided hereunder) except by an instrument in writing signed by an authorized representative of the party against whom the enforcement of the change, waiver, or termination is sought.

Section 18.12 Waiver; Remedies. No failure or delay by a party hereto to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent to a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder shall affect or alter the remaining terms of this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity.

Section 18.13 Relationship of Parties. Manager and Owner acknowledge and agree that they are not joint venturers, partners, or joint owners with respect to the Facility, and nothing contained in this Agreement shall be construed as creating a partnership, joint venture or similar relationship

between Owner and Manager. In operating the Facility, entering into contracts, accepting reservations for use of the Facility, and conducting financial transactions for the Facility, Manager acts on behalf of and as agent for Owner (but subject to the limitations on Manager's authority as set out in this Agreement), with the fiduciary duties required by law of a party acting in such capacity.

Section 18.14 Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document. This Agreement may be executed by the parties and transmitted by facsimile or electronic mail, and if so executed and transmitted, shall be effective as if the parties had delivered an executed original of this Agreement.

Section 18.15 No Third Party Beneficiaries. Nothing in this Agreement is intended nor will be deemed to confer rights or remedies upon any person or legal entity not a party to this Agreement, except for the indemnitees described in Section 15.1 and 15.2 above, who shall be third party beneficiaries of the terms of Article 15.

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

VILLAGE OF HOFFMAN ESTATES

GLOBAL SPECTRUM, L.P.

By: Global Spectrum, Inc., its general partner

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**EVENT LICENSE AGREEMENT**



**EXHIBIT B  
EXISTING CONTRACTS**

**[TO BE ATTACHED FROM DEED IN LIEU AGREEMENT]**

**EXHIBIT C**  
**FACILITY AERIAL, SITE PLAN, BUILDING PLANS, LEGAL DESCRIPTION**

**EXHIBIT D  
EXISTING FF&E**

**EXHIBIT E**  
**MANAGER'S RELOCATION POLICY**  
**As of the Effective Date**

**EXHIBIT F**  
**SEARS NAMING RIGHTS AGREEMENT**

## **EXHIBIT G MANAGER DUTIES**

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

(a) Manage all aspects of the Facility in accordance with the Operations Manual (which Operations Manual shall be subject to the approval of Owner, not to be unreasonably withheld) and the terms of this Agreement, including but not limited to managing purchasing, payroll, fire prevention, security, crowd control, routine repairs, Maintenance, janitorial services, promotions, advertising, energy conservation, security, box office, admission procedures, parking (with respect to approximately 3,180 spots adjacent to the Facility), snow and ice removal services, landscaping, food and beverage services, ticketing services and general user and admission services. Such services shall either be performed by Manager itself, or through third party contractors engaged by Manager hereunder on behalf of the Facility, or as mutually agreed upon, by the Owner.

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

(c) Procure, negotiate, execute, administer and assure compliance with Service Contracts, Concession Agreements, and other contracts related to the operation of the Facility.

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

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

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

(g) Arrange for and otherwise book events at the Facility in accordance with a booking schedule to be developed by Manager and approved by Owner.

(h) Hire or otherwise engage, pay, supervise, and direct all personnel Manager deems necessary for the operation of the Facility in accordance with the approved Operating Budget, and conduct staff planning, retention and training programs as determined to be necessary by Manager.

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

(j) Submit to the Owner in a timely manner financial and other reports detailing Manager's activities in connection with the Facility, as set forth in Sections 10.2 and 10.3 of the Agreement.

(k) Prepare a proposed annual Operating Budget and submit such proposed budget to the Owner.

(l) Pay all Operating Expenses in a timely manner and other expenses incurred in connection with the operation, Maintenance, supervision and management of the Facility from the Operating Account or with funds otherwise made available by the Owner.

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

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

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

(p) Subject to the Owner making available sufficient funds in a timely manner, pay all Taxes related to the management and operation of the Facility.

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

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

(s) Manage and oversee the sale of Commercial Rights at or in connection with the Facility. Owner agrees to provide reasonable assistance to Manager and Front Row Marketing Services in connection with their efforts to market and sell the Commercial Rights. Such reasonable assistance of Owner shall include Owner providing leads and arranging for meetings and

introductions with businesses in and its surrounding areas.

(t) On an annual basis, update the written inventory to be taken of all FF&E as shown in Exhibit D, supplies, tools and vehicles at the Facility, and deliver a written report of the foregoing to Owner. Manager shall document all major damage to, or loss in, such inventory during the Term as soon as such damage or loss is discovered by Manager, and Manager shall promptly notify Owner of any such damage or loss.

(u) Purchase, on behalf of the Owner, with Owner funds (subject to the Operating Budget), and maintain during the Term, all materials, tools, machinery, equipment and supplies necessary for the operation of the Facility.

(v) In coordination with the Owner, manage risk management and Facility insurance needs, as more fully described in Article 16 of the Agreement.

(w) Make or cause to be made all routine and minor repairs, Maintenance, and equipment servicing. Subject to the limitations of the Operating Budgets, Manager shall ensure that all repairs, replacements, and Maintenance shall be of a quality and class at least equal to that of the item being repaired, replaced or maintained.

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



**EXHIBIT H  
OPERATING BUDGET (2010 TRANSITION YEAR)**

**[TO BE ATTACHED]**

**EXHIBIT I**  
**CASH FLOW FORECASTS**

1. Fiscal Quarter

a. At the same time that Manager is required to submit the Annual Operating Budget to Owner, Manager shall deliver Manager's reasonable forecast of the Facility's cash position as of the close of each operating quarter in the forthcoming operating year (the "Cash Flow Forecast") to Owner. In preparing the Cash Flow Forecast, Manager shall take into account any and all relevant factors including, but not limited to, (i) the Annual Operating Budget for the forthcoming Operating Year, (ii) the Facility's current and past cash positions, (iii) seasonality of demand at the Facility, (iv) arena industry and general economic cycles and trends, whether of local, regional or national character, and (v) the particular cash needs of the Facility's operations. No later than 10 days prior to the end of each operational quarter in the first (1<sup>st</sup>), second (2<sup>nd</sup>) and third (3<sup>rd</sup>) quarters of each Operating Year, Manager shall prepare and deliver a revised Cash Flow Forecast to Owner that states the Facility's actual cash position as of the close of preceding period in the Operating Year and provides Manager's reasonable forecast of the Facility's cash position as of the close of the remaining quarterly accounting periods in the Operating Year, taking into account any and all relevant factors including, but not limited to, the aforesaid factors and the Facility's actual financial performance year-to-date, any advances by Owner of additional working capital funds hereunder year-to-date.

b. Within twenty (20) days after the close of the final quarter in each Operating Year, Manager shall remit to Owner any surplus for the final quarter; provided, however, that Manager shall not be obligated to remit such funds: to the extent making such advance would, based upon Manager's reasonable projections, result in there being, on any day during the current quarter, insufficient cash on hand to pay all liabilities then currently due and payable (a "Negative Cash Position"), in which case Manager shall remit the maximum amount of funds that would not have such a result or to the extent making such an advance would, based upon Manager's reasonable projections, result in a Negative Cash Position for the facility on any day in the immediately succeeding quarter.

c. If a Negative Cash Position occurs at the facility during a particular quarter, Owner shall advance funds to the amount by which the liabilities then currently due and payable exceeded the cash on hand within five (5) business days of Manager's request therefore.

d. Manager and Owner shall work together in good faith to resolve any disagreement over the reasonableness of any of the Cash Flow Forecasts or any of the projections of Manager under this Section.

2. Accruals. Commencing as of the Effective Date of this Agreement, Manager shall use a cash accounting method, as opposed to an accrual accounting method, for purposes of calculating the Cash Flow Forecasts relative to its forecast of revenues and expenses.

**EXHIBIT J  
TRANSITION COSTS**

Relocation Expenses

	Amount
General Manager	\$40,000
Marketing Director	\$15,000
Total Relocation	\$55,000

Corporate Travel Expenses

	No. Trips	Amount
Regional VP	6	\$ 6,000
HR	2	\$ 2,000
Finance	1	\$ 1,000
Marketing	2	\$ 2,000
IT	1	\$ 1,000
Ops	1	\$ 1,000
Mentor	2	\$ 2,000
Candidate Interviews	3	\$ 3,000
Miscellaneous	2	\$ 2,000
Total Corporate Travel	20	\$20,000

**Total Estimated Global Spectrum Expenses      \$75,000**

The parties acknowledge that the above line items in the budget are estimates only, and Manager shall be entitled to be reimbursed for up to \$75,000 of its Transition Costs, regardless of the number of trips, amounts per trip/position, or whether other amounts set forth next to each line item above are exceeded (provided that the \$75,000 total is not exceeded).

**EXHIBIT K  
PURCHASING POLICY**

The following constitutes policy for the Manager to follow in its administration of the Management Agreement. Consistent with Section 12.2 of the Management Agreement, as agent of Owner, the Manager has the right to execute certain contracts and agreements. Note that Event licenses and tenant leases are not covered within these policies.

A. General Policy for Non-Event Purchases Not Exceeding \$18,000

Arena employees are responsible for obtaining quotes for goods and service purchases in the instances outlined below. Requisitions submitted and purchase orders must be processed with the required quotes or a satisfactory explanation of the pricing accepted and approval circumstances (ie. sole source, emergency, standardized vendors, vendors with prior and/or qualified experience/proven service levels, etc.) for the Facility General Manager's approval and payment process. The General Manager has authority to sign contracts on behalf of the Owner for a term less than one (1) year involving appropriated and budgeted funds in accordance with this paragraph.

Up to \$2,000	Competitive quotes not required if General Manager deems single source pricing reasonable
\$2,000 - \$6,000	Two quote minimum, three quotes preferred. Faxes are acceptable. Must take lowest qualified quote.
\$6,001 - \$18,000	Three written quotes. Faxes are acceptable. Must take lowest qualified quote.

B. General Policy for Non-Event Purchases above \$18,000

The Facility General Manager shall prepare an estimate of value of service or goods, the purpose of the purchase, statement as to whether the funds have been appropriated and budgeted, provide a minimum of three written quotes and a recommendation of approval. This information shall be forwarded to the Village Manager for processing and approval.

Items purchased more than once during a fiscal year (e.g. forms, copier supplies, etc.) do not need quotes every time a purchase is made. However, competitive quotes for these items shall be sought at least once each year or at least three months prior to expiration to ensure that vendors are competitive.

C. General Policy for Event Expenses

Village Board approval is required for all event-related service contracts involving ticketing, parking, food and beverage, cleaning and event security. The Facility General Manager may, as agent for Owner, contract for all other Event Expenses that are necessary to host events and the costs are paid from show proceeds or third parties. When entering into contracts for Event Expenses, the General

Manager shall use reasonable efforts to comply with the following “sole source” purchasing procedures which procurements may arise from, but are not limited to, the following circumstances:

1. Specialized equipment or supplies, such as dirt for motor shows, for which there is no comparable competitive product or is available only from one qualified supplier.
2. A component or replacement part for which there is no commercially available substitute and which can be obtained only from the manufacturer.
3. An item where compatibility is the overriding consideration, such as computer software.
4. Media buys, such as newspaper, trade journal and/or radio advertising.

Event Expenses are specialized services and subject to the review guidelines in Section 12.2. Cash disbursements of any amount to promoters of events are processed by way of check with payee endorsing the check to the Facility for cash. Multi copy purchase orders should be used to allow one copy to be held in the department, a copy to be forwarded to accounting, and a copy to be provided to the Owner at the time of payment.

#### D. Emergency Purchases Policy

Emergencies are defined as events that could not have been foreseen where immediate action is necessary to safeguard the public’s health and safety and prevent delays in work, contracts, and/or transportation. In the event of an emergency, upon verbal approval by the Owner’s Representative, the General Manager may authorize a vendor to perform work necessary to resolve such emergency without formal bid solicitation. Documentation of the emergency and the need for immediate action shall be presented to the Village Board in a reasonable period of time following resolution of the crisis. If despite a good faith attempt by Manager, the Owner’s Representative cannot be reached, Manager may without the Owner’s Representative authorize a vendor to perform the work so as to resolve such emergency. A requisition with a delivery ticket or packing slip should be attached and sent to the Village’s Finance Director within five days after the emergency, so that the proper paperwork is initiated and approved retro-actively.

An emergency purchase order can be issued authorizing a vendor to perform any and all work necessary. If the emergency and the need for immediate action exceed \$20,000, documentation shall be presented to the Owner’s Representative prior to such authorization.

#### E. General Purchase Procedures

1. Purchase orders and proper documentation are required for all Operating Expenses.
2. All invoices are to be received by the Facility Finance Department. Upon receipt, Accounting Department’s copy of the purchase order is attached to invoice, sent to department head for review and approval, and promptly returned to the Accounting Department.

3. A copy of the purchase order original invoice and supporting documentation should be copied and signed off by General Manager prior to check being issued for payment. A copy of all documentation related to every purchase shall be provided to the Director of Finance, Village of Hoffman Estates at the time a check is presented to the Owner for co-signature.
4. All invoices are to be entered into the Facility's accounting system as soon as possible with checks generated mid-month and at the end of each month, or more frequently as the need may arise.

All Facility cash disbursements will be made by checks written through the Manager's accounts payable system, by manual check, through Manager's procedures to access the Facility petty cash fund, by wire transfer, or by approved debit card transaction, all pursuant to this Exhibit K. At the time the invoice is being processed for entry into the Manager's accounts payable system, and prior to submitting a check for Owner's counter-signature, Manager shall verify (i) a copy of the approval to purchase, if applicable, (ii) receipt of goods or services, if applicable, (iii) accuracy of charges, and (iv) booking of the expenditure. Only original invoices are acceptable. Accounts payable checks are drawn on the Facility Operating Account. Check requests may be used only in certain circumstances and never in lieu of an available invoice. The check request must have the business purpose of the expense, why an invoice is not available, the proper approvals and all pertinent documentation for Manager's approval and Owner's counter-signature.

F. Check Signing/Wire Transfers/Transfers Between Accounts

1. All checks require two signatures, one by General Manager or Finance Director of the Facility and a counter signature by authorized representative of the Village of Hoffman Estates.
2. All wire transfers will be initiated by Manager using on-line bank access and must be authorized and released by an authorized representative of the Village.
3. Transfers between the Ticketing and Operating Account will be initiated by Manager using on-line bank access and must be authorized and released by an authorized representative of the Village.

The foregoing requirements in E(1), (2) and (3) shall not apply with respect to payroll and other approved regularly occurring payments of Operating Expenses included within the approved Operating Budget. Whenever approval of the Owner's Representative is required hereunder, Owner's Representative shall provide his or her approval (or rejection) within (2) days of the request for approval or sooner if possible.

**EXHIBIT L  
INSURANCE**

1. At all times during this Agreement, Manager shall, as an Operating Expense:
  - (a) maintain commercial general liability insurance, including products and completed operations, bodily injury and property damage liability, contractual liability, independent contractors' liability and personal and advertising injury liability against claims occurring on, in, or about the Facility, or otherwise arising under this Agreement;
  - (b) maintain umbrella or excess liability insurance;
  - (c) maintain commercial automobile liability insurance, including coverage for the operation of owned, leased, hired and non-owned vehicles;
  - (d) maintain appropriate workers compensation and employer's liability insurance as shall be required by and be in conformance with the laws of the State of Illinois; and
  - (e) maintain professional liability insurance and self-insured employment practices liability coverage;
2. At all times, with all insurances coverages the Manager obtains through the Operating Budget, the Village and Manager's Affiliates will be named as additional insureds, except that the Village shall be a named insured with respect to the commercial general liability policy with the endorsement language set forth in Section 16.2.
3. The Village shall procure and maintain Property/Bodily Injury insurance and the associated premium cost will be borne by the Village (not as an Operating Expense).
4. Such insurance shall be maintained in the following minimum amounts throughout the Term:
  - Commercial General Liability**  
\$1,000,000 per occurrence  
  
\$1,000,000 personal and advertising injury  
  
\$1,000,000 products-completed operations aggregate
  - Automobile Liability**  
\$1,000,000 per accident (Personal Injury and Property Damage combined single limit)  
  
\$1,000,000 uninsured/underinsured motorist
  - Umbrella or Excess Liability**  
\$25,000,000 per occurrence and aggregate

**Workers Compensation**

Workers Compensation: Statutory

Employer's Liability: \$100,000 each accident-bodily injury by accident  
\$500,000 policy limit-bodily injury by disease  
\$100,000 each employee-bodily injury by disease

**Professional Liability/Errors & Omissions (Claims Made)**

\$1,000,000 each occurrence/aggregate

Policy shall include Entity Coverage

**Crime Insurance**

Coverage on all on-site Manager employees. Limit: \$500,000



**COMMITTEE AGENDA ITEM  
VILLAGE OF HOFFMAN ESTATES**

NB3

**SUBJECT:** Request approval of an extension to the interim agreement with Levy Food Service, Chicago, IL, to provide food and beverage service at the Sears Centre Arena through July 31, 2010

**MEETING DATE:** June 7, 2010

**COMMITTEE:** Special Planning, Building & Zoning

**FROM:** Arthur Janura, Corporation Counsel

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**REQUEST:** Request approval of an extension to the interim agreement with Levy Food Service, Chicago, IL, to provide food and beverage service at the Sears Centre Arena through July 31, 2010.

**BACKGROUND:** The Village entered into an interim agreement with Levy Food Service to continue food service at the Sears Centre Arena. That contract expires on June 3, 2010.

**DISCUSSION:** The attached amendment to the agreement with Levy provides for continuation of service to provide food and beverage at the Sears Centre Arena until July 31, 2010 at the same terms as the interim agreement. The Village continues to pursue a long term agreement with Levy. However, in the interim, food and beverage service is necessary under an extension to the interim agreement.

**RECOMMENDATION:** Request approval of an extension to the interim agreement with Levy Food Service, Chicago, IL, to provide food and beverage service at the Sears Centre Arena through July 31, 2010.

Attachments

~~December 23, 2009~~ May, 2010

Mr. Andrew J. Lansing  
President and Chief Executive Officer  
Levy Premium Foodservice Limited Partnership  
980 North Michigan Avenue  
Suite 400  
Chicago, Illinois 60611

Re: Exclusive Food and Beverages Services at Sears Centre Arena

Dear Mr. Lansing:

This binding letter agreement (“Agreement”) sets forth the terms and conditions to which we have agreed regarding the temporary operations at the Sears Centre Arena (the “Arena”) between the Village of Hoffman Estates (“Owner”) and Levy Premium Food Service Limited Partnership (“Concessionaire”), whereby Concessionaire will have the exclusive right to operate and manage the entire food and beverage operations (the “Operations”) of the Arena.

As you know, the Village of Hoffman Estates took title to the Sears Centre Arena on December 18, 2009. The parties dispute their respective rights and obligations under a Management Agreement between Concessionaire and CCO Entertainment (on behalf of itself and on behalf of Madkatstep Entertainment LLC as Madkatstep’s exclusive agent) dated April 24, 2006 (the “Management Agreement”). Concessionaire takes the position that the Management Agreement continues in full force and effect. Owner takes the position that it has no agreement with Concessionaire. Notwithstanding their disagreement which shall be decided pursuant to the Pending Litigation (as hereafter defined), and without waiving any rights or defenses, or compromising their respective positions, the parties have agreed to enter into this Agreement to allow for the continued operation of the Sears Centre.

1. Management of Sears Centre Arena. Owner hereby retains Concessionaire to operate and manage, on an exclusive basis, the Operations for all events held or conducted in the Arena during the Term (as that term is defined below), including but not limited to, all catering throughout the Arena. The events from ~~January~~June 1, 2010 through ~~March~~July 31, 2010, for which this Agreement is based upon, are listed on Exhibit A. In order to provide the Operations, Concessionaire shall also have the exclusive right and license to use all food preparation facilities located at the Arena, including without limitation, the kitchens, pantry areas and other areas of the Arena necessary to provide the Operations. The Operations shall be conducted in accordance with “management fee” type of arrangements, and more specifically, in accordance with the past practice at the Arena, including, without limitation, delivery by Owner of a “turnkey” Arena to Concessionaire, replacement of all items paid for by Owner, same pricing, and same hours of operation.

2. Term. Concessionaire shall manage and operate, on an exclusive basis, the Operations of the Arena, from ~~January~~June 1, 2010, through ~~March~~July 31, 2010 (the "Term"). Both parties may extend this Agreement for an additional periods by written mutual agreement.

3. Management Fee. As consideration to Concessionaire for providing the food and beverage service operations at the Arena, Concessionaire shall be reimbursed for all of its expenses in connection with the Operations, and Concessionaire shall also retain Five Percent (5%) of all Gross Receipts (the "Management Fee") generated in the Arena during each calendar month. The term "Gross Receipts" shall mean the total gross revenues actually collected from patrons of the Arena in respect of food and beverage sales and services by Concessionaire at the Arena including the net amount received by Concessionaire from subcontractors; provided, however, Gross Receipts shall not include any (i) service charges, discounted sales or gratuities, (ii) any service or discount charges on credit card sales, or (iii) any city, county, state or federal use, excise or similar tax imposed on the sale or use of the food and beverage Items collected and paid to applicable taxing authorities by Concessionaire. Notwithstanding the above, Concessionaire shall not be entitled to its Management Fee for the Term if the Net Receipts are not positive for the Term.

4. Net Receipts. "Net Receipts" shall mean the Gross Receipts, less all direct or indirect expenses (including the Management Fee, if any) Concessionaire incurs related to the Operations. Owner shall retain One Hundred Percent (100%) of the Net Receipts. Expenses are of the type listed on Exhibit B.

5. Operating Deficits/Expenses. It is expressly understood and agreed that (i) Concessionaire is only providing management services to and for Owner and, accordingly, Concessionaire shall not be obligated to fund any portion of any negative Net Receipts from the Operations, except Concessionaire shall be obligated to fund the amount any cumulative negative Net Receipts for the Term exceeds \$20,000.00 (Owner shall be required to pay the first \$20,000.00 in negative Net Receipts for the Term), and (ii) Owner shall be responsible for paying for all expenses related to the Operations within fourteen (14) days of receipt of an invoice. Notwithstanding the above, Owner shall not be responsible for negative Net Receipts in excess of \$20,000.00 for the Term. Owner shall comply with the requirement of the Illinois Prompt Payment Act.

6. Reservation of Rights. The parties expressly reserve any and all rights available to them at law or in equity against each other or any entity in connection with the Management Agreement between Concessionaire and CCO Entertainment (on behalf of itself and on behalf of Madkatstep Entertainment LLC as Madkatstep's exclusive agent) dated April 24, 2006. This Agreement is without prejudice to the claims and defenses asserted, or which may be asserted, by Concessionaire or Owner in the lawsuit pending in the Circuit Court of Cook County, Chancery Division, Case No. 09-CH-34392 (the "Pending Litigation"). Neither the existence nor the terms of this Agreement shall be used as evidence in the Pending Litigation.



7. Conduct of Operations. Owner acknowledges that Concessionaire shall operate the Operations in a manner such that it will be on-site at the Arena only for events (set up and wind down), and shall not be required to be on-site during non-event days. Concessionaire shall operate generally in accordance with the estimated budget attached hereto as Exhibit C, assuming the events on Exhibit A all occur.

8. Future Negotiations. The parties will continue to negotiate a binding and definitive long term agreement for the exclusive Operations and the parties understand Owner is conducting dual negotiations with Concessionaire and Ovations/Global Spectrum. The parties will negotiate in good faith in ~~January~~June, 2010. Any subsequent agreement is subject to the approval of each party. Owner shall use best efforts to prevent Ovations, or any other foodservice provider, from being in the Arena during the Operations for any event. Provisions will be made by Owner to secure Concessionaire's property at the Arena.

9. Publicity. No party to this letter shall issue any press release or other publicity concerning the proposed transaction without the prior approval of the other party, except as otherwise required by law.

10. Counterparts. This Letter Agreement may be executed by facsimile and in one or more counterparts.

11. Governing Law. This letter agreement shall be governed in accordance with the internal laws of the State of Illinois.

12. Authority. Each party hereto represents and warrants to the other parties that it has the power and authority to enter into this Agreement and perform its obligations hereunder. Neither this Agreement nor any of the rights, duties or obligations hereunder shall be assignable in whole or in part without the prior written consent of other two parties. No consent from any third party is necessary for the effectiveness of this Agreement.

13. Indemnification. Owner and Concessionaire ("Indemnifying Party," as applicable) shall, to the extent legally permitted, each defend, indemnify and hold the other party and its affiliates and representatives (the "Indemnitees") harmless from (a) any third party claims, losses, damages and expenses (collectively, "Claims") arising out of or related to (i) the negligence or willful misconduct of the Indemnifying Party and/or such Indemnifying Party's affiliates, representatives, and employees, or (ii) a breach of any of the Indemnifying Party's obligations hereunder; provided, however, the Indemnifying Party shall have no such obligation in connection with Claims to the extent they (A) arise out of any such respective Indemnitee's breach of any of its obligations under this Agreement, or (B) the gross negligence or willful misconduct of any such Indemnitee. Owner shall defend, indemnify, and hold Concessionaire harmless from Claims by Ovations or Global Spectrum against Concessionaire.

14. Insurance. Insurance will be provided by Concessionaire as identified in Exhibit D.

15. Licenses and Permits. Concessionaire shall maintain all licenses and permits as identified in Exhibit E.

16. Employees. Owner hereby expressly agrees that, during the Term (including any extensions thereof) and for a period of twelve (12) months following either the expiration or earlier termination of this Agreement, none of Owner, any other food or beverage service operator or concessionaire providing food and beverages in, to or for any areas of the Arena, nor any of their respective affiliates, related entities or individuals shall directly or indirectly solicit, hire, offer to hire or employ an former or the any current salaried, management-level employee of Concessionaire (including, but not limited to, Concessionaire's current or former director of operations, chefs, sous chefs and the salaried managers of the various areas of the Foodservice Facilities) to work in or in connection with the Arena or the Foodservice Facilities as a consultant, employee, independent contractor or otherwise in any other capacity, without Concessionaire 's prior written approval, which approval can be granted or denied in Concessionaire's sole and absolute discretion. The provisions of this Paragraph 16 shall survive the termination of this Agreement for any reason.

17. Confidentiality. All of the intellectual property, information systems, proprietary information, work product, and service solution tools conducted in the Operations shall be exclusively owned by Concessionaire.

18. Attorney's Fees. In the event of a breach of this Agreement, the breaching party to this Agreement shall pay for the non-breaching party's attorney's fees and costs to enforce this Agreement.

If the above is acceptable, please confirm your acceptance by signing the enclosed duplicate copy of this letter and returning it to the Village of Hoffman Estates.

Very truly yours,

VILLAGE OF HOFFMAN ESTATES

By: \_\_\_\_\_

Its: \_\_\_\_\_

ACCEPTED AND AGREED TO  
as of the date first above written.

LEVY PREMIUM FOODSERVICE LIMITED PARTNERSHIP,  
An Illinois limited partnership

Levy Premium Foodservice Limited Partnership

~~December 23, 2009~~

May, 2010

Page -5-

By: \_\_\_\_\_

Its: \_\_\_\_\_

S:\LAW\Restaurants - Sports & Entertainment\Current Locations\Sears Centre\Village of Hoffman Estates Agreement v3-4.doc



## EXHIBIT A

~~January 2-3: Notre Dame Shillelagh Hockey Tournament~~

~~January 15-16: Bad Boys Arenaeross~~

~~January 23: 13th Annual High School Hoops Showdown~~

~~January 28-31: Curious George Live!~~

~~February 5-6: Bull Riding~~

~~February 27: Chicago Slaughter game~~

~~March 3-7: Cirque du Soleil—Alegria~~

~~March 12-13: Monster Trucks~~

~~March 14: Cheerleading~~

~~March 16: IHSA Basketball~~

~~March 19-20: Dare 2 Share~~

~~March 21: Chicago Slaughter game~~

~~March 27: Chicago Slaughter game~~

June 12: Chicago Slaughter vs. La Crosse

June 13: Sears Centre Arena Outdoor Market

June 18: A.R. Rahman Jai Ho Concert

June 20: Sears Centre Arena Outdoor Market

June 25-26: FIVB World League: USA Men's Volleyball vs. Finland

June 27: Sears Centre Arena Outdoor Market

## **EXHIBIT B**

### **EXPENSES**

“Expenses” means any reasonable expense Concessionaire incurs in furtherance of the Operations (but unless such (other) expenses are mutually approved by the parties in writing) shall be limited to the following:

The actual cost to prepare and serve all Food and Beverage Items sold in the Foodservice Facilities, together with the actual cost of all serving dishes, serving pieces, containers, plates, silverware, glassware, cooking utensils, napkins, table linens and other similar items relating to the sale of Food and Beverage Items (hereinafter collectively referred to as the "Ancillary Items"). All product, labor and operating costs must include any credits the Concessionaire receives, such as product rebates, solely attributable to sales or sales volume produced at the Arena;

Office and administration expenses including, but not limited to, the cost of office supplies, postage, computer software, telephone service, accounting and reporting, together with all payroll costs, including reasonable fringe benefits, payroll taxes, employee benefits, payroll administration expenses, workmen's compensation, severance payments, recruiting and relocation costs and related costs and expenses pertaining to all of Concessionaire's employees engaged in the performance of the Operations;

Costs of repairs and maintenance but not including costs incurred for additions to, or replacements or modifications of any element of the Foodservice Facilities;

Costs incurred for pest control, trash removal, janitorial service, cleaning expenses, including, but not limited to, the cost of supplies;

Insurance costs incurred by Concessionaire in connection with providing the insurance required pursuant to this Agreement, which is currently approximately 1% of Gross Receipts, not including workmen's compensation;

Any amounts paid by Concessionaire in respect of claims relating to the Operations ("Deductibles Payments"), which claims would have been covered under the insurance policies approved by Owner but for the deductibles under such policies, whether such Deductibles Payments occur during or after the Term;

Personal property taxes imposed on the Operations other than taxes on the real property in which the Foodservice Facilities are located;

Cost of uniforms for all of Concessionaire's employees and the costs of laundering all such uniforms;



The cost of governmental charges such as the cost of obtaining and maintaining all necessary or required licenses;

All pre-opening expenses generated in connection with the opening of the Food and Beverage Areas, including, but not limited to, all of the costs, expenses and fees incurred (i) in the case of Concessionaire, reimbursement of all third-party expenses incurred in providing design and construction consultation services relating to the design and construction of the Food and Beverage Areas, (ii) to procure all required licenses and permits to conduct the Operations, (iii) to establish and document the relationship between Owner and Concessionaire, (iv) if applicable, to establish and document the relationship between Concessionaire and any union(s) representing the employees that will work in the Foodservice Facilities, (v) to recruit, hire, relocate and train employees prior to opening, (vi) to market and promote the Food and Beverage Areas prior to the actual opening of the Arena, it being understood and agreed that marketing and promotional expenses include, but shall not necessarily be limited to, pre-opening promotional or training events or parties, and (vii) all Owner-approved travel and other reasonable out of pocket expenses to prepare the Operations for opening; however Concessionaire must prepare a Pre-Opening budget for Owner's review and approval. Any material adjustments to the Operating Budgets must be mutually approved in writing, following which approved expenses shall be deemed an "Expense".

Reasonable reserves to cover anticipated funding or cash requirements established by Manager and approved by Owner, in Owner's reasonable discretion;

Payment of installments of the Management Fee pursuant to Paragraph 3 above;

Any uncollectible amounts from the Operations, including, without limitation, uncollectibles from credit/debit card activity, provided that Owner has exercised reasonable and diligent efforts to minimize such uncollectible amounts; and

Any other costs actually and reasonably incurred by Concessionaire in connection with the Operations. It is expressly understood and agreed that the term "Expenses" shall not include any payments of principal or interest which Owner is required to pay on indebtedness relating to the construction, renovation, modification or management of the Arena or any portion thereof. Expenses shall not include any expenses not actually incurred at the Arena, including without limitation, corporate or area supervision, accounting or support services.

**EXHIBIT C**

**BUDGET**

**LEVY RESTAURANTS  
SEARS CENTRE  
JANUARY/FEBRUARY/MARCH 2010**

	<u>2010 JAN</u>	<u>% of Sales</u>	<u>2010 FEB</u>	<u>% of Sales</u>	<u>2010 MAR</u>	<u>% of Sales</u>
TOTAL SALES	90,250	100.0%	95,000	100.0%	156,000	100.0%
TOTAL COST OF SALES	24,000	26.6%	25,300	26.6%	40,000	25.6%
<b>GROSS PROFIT</b>	<b>66,250</b>	<b>73.4%</b>	<b>69,700</b>	<b>73.4%</b>	<b>116,000</b>	<b>74.4%</b>
TOTAL PAYROLL EXPENSE	48,967	54.3%	49,000	51.6%	68,000	43.6%
TOTAL DIRECT OPERATING EXPENSES	3,318	3.7%	3,500	3.7%	4,500	2.9%
OCCUPANCY (excluding rent)	1,354	1.5%	1,425	1.5%	2,340	1.5%
TOTAL MARKETING	1,000	1.1%	1,000	1.1%	1,000	0.6%
TOTAL INDIRECT EXPENSES	3,500	3.9%	3,500	3.7%	3,500	2.2%
MANAGEMENT FEE	4,513	5.0%	4,750	5.0%	7,800	5.0%
<b>NET INCOME</b>	<b>3,599</b>	<b>4.0%</b>	<b>6,525</b>	<b>6.9%</b>	<b>28,860</b>	<b>18.5%</b>

**LEVY RESTAURANTS  
SEARS CENTRE  
JUNE 2010**

**[Need to attach]**

## **EXHIBIT D**

### **INSURANCE**

Required Insurance Coverage. As an Expense, Concessionaire shall be required to purchase the following insurance coverage and maintain same in force throughout the Term:

Workers' Compensation as required by law. Concessionaire shall save Owner harmless from any and all liability arising from its failure to comply with the workers' compensation laws of the State of Illinois. The workers' compensation policy shall be endorsed to include a waiver of subrogation against Owner, its employees, officers and legal representatives.

Liquor Liability and/or Dram Shop Liability - \$5,000,000 per occurrence.

Commercial General Liability coverage including premises operation, products and completed operations, advertising injury, independent contractors, bodily injury, liquor liability, personal injury, broad form property damage and contractual liability – Per Occurrence of not less than \$1,000,000 and a general occurrence limit not less than \$5,000,000 with a products/completed operations aggregate of not less than \$5,000,000. Concessionaire shall name Owner and all applicable entities as additional insured. The insurance shall protect the Concessionaire and Owner from claims which may arise from the performance of the Concessionaire's services hereunder or from or out of any negligent act or omission of Concessionaire, its officers, directors, partners, members, agents, affiliates or employees.

Comprehensive Automobile Liability Insurance - \$5,000,000 Combined Single Limit;

Fire/Legal Liability on Arena site - \$1,000,000 – minimum.

Umbrella or Excess Liability – Additional \$20,000,000.

Personal Property Insurance – Providing all-risk coverage on a replacement cost basis for appropriate limit of insurance equal to replacement cost to cover all Concessionaire's personal property including furniture, fixtures, equipment, inventory and all other personal property.

Blanket Employee Dishonesty - \$500,000 minimum limit/occurrence. This coverage shall be extended to provide coverage to funds and/or property held by the Concessionaire on behalf of Owner.

Employment Practices Liability Coverage: \$1,000,000 limit (our deductible is \$1,000,000);

## **EXHIBIT E**

### LICENSES AND PERMITS

Concessionaire shall obtain and maintain in force during the Term, all required food, alcohol and other licenses and permits and renewals thereof and shall cause to be paid in accordance with the Operating Budget all fees and taxes which may be due and owing from time to time to federal, state or municipal authorities incidental to the Operations. Concessionaire shall be the named licensee under all such licenses and permits, and Owner shall do all acts or things reasonably within its control that are necessary in order for Concessionaire to obtain all such licenses and permits. Throughout the Term, Owner shall, at its sole cost and expense, maintain all other licenses and permits which may be required for the operation of the Arena. Neither party shall do any act which unnecessarily prohibits the other party from obtaining all such licenses or permits. At all times, the parties shall comply with, and cause the other party to comply with, the restrictions, rules and conditions of all such licenses and permits. Concessionaire shall also offer regular alcohol awareness and training programs and updates to all relevant employees.

**COMMITTEE AGENDA ITEM  
VILLAGE OF HOFFMAN ESTATES**

NB4

**SUBJECT:** Discussion regarding options for provision of electrical power and potential sponsorships at the Sears Centre Arena

**MEETING DATE:** June 7, 2010

**COMMITTEE:** Special Planning, Building & Zoning

**FROM:** Mark Koplín/Michael DuCharme

---

**REQUEST:** Discussion regarding options for provision of electrical power and potential sponsorships at the Sears Centre Arena.

**BACKGROUND:** In 2008, the Village Board directed staff to use Energy Choices as a consultant to obtain quotes for provision of electrical power to Village facilities from a pool of providers (November 2008 agenda item attached).

Under CCO, the Sears Centre Arena (SCA) obtained their electrical power for Constellation (which happens to be the same provider the Village had used prior to 2008). With a need to “keep the lights on” and no time to conduct an analysis of rates, providers, and sponsorship opportunities, the Village/SCA switched to Commonwealth Edison as of January 1, 2010, with an hourly index. An hourly index is probably the least advantageous index. The average index rate in the first four months of 2010 is \$0.0366/kWh. As with all electric bills, capacity and transmission charges ( $\pm 15\%$ ) plus the ComEd charges and taxes on top of the base rate that amounts to about  $\pm 45\%$  of the total bill. These are the same independent of which company provides electric power and would be the same if a fixed rate or index is used. In 2009, the SCA paid about \$230,000 in electric bills, with about \$290,000 in 2008 and \$330,000 in 2007. The difference is explained by increased usage of the SCA in 2007 and 2008 (more events and higher electrical usage) and slightly higher rates. The 2010 budget includes \$516,000 (including \$395,000 for electric and for cooling). This number was based on another Global Spectrum facility and is over budgeted by at least \$100,000.

The previous SCA rate under Constellation was tied to an index and varied month-to-month. Unfortunately, we do not have access to these bills/invoices as CCO retained the files. As a comparison, the Village’s rate is fixed with Integrys based on a bid process in spring 2008. The Village currently pays a base fixed rate of \$0.04575, plus the additional charges (adds up to \$0.06875). The Park District also has a fixed rate with Integrys, but at a higher rate (due to the timing of the contract).

**BACKGROUND:** (Continued)

It is not uncommon for arenas to obtain a sponsorship from the electrical provider which could be in the range of \$10,000 per year. Front Row indicates that such sponsorships are present in about half of the arenas they contract with. Front Row has contacted one provider who is willing to provide a \$10,000 sponsorship. While sponsorship money is a nice addition to the bottom line of the SCA, given the magnitude of the annual electric bill (the SCA will use an estimated 3.1 million kWh per year), obtaining the best rate is financially more important.

**DISCUSSION:**

For comparable sized facilities, we obtained information on provision of electric energy at two such facilities. Both obtained more favorable rates either through the municipality or through "bunching" several municipal facilities. One locked into a fixed rate while the other has a blended rate (60% fixed, 40% index). Neither has a sponsor, although one had a three year/\$35,000 sponsorship that has expired and they are currently trying to renew the previous sponsorship. Electricity is obtained from Ameren at one facility and Simpra Energy Solutions at the other.

Staff obtained information regarding sponsorship at other venues across the country. There are at least five naming rights deals for professional/major league stadiums or arenas, ranging from \$2 to \$10 million per year. These are the primary sponsorship for these venues, and the high dollar values reflect that, as well as the national exposure for those major league teams.

Given the past practice for Village facilities, the interest in a sponsorship by an energy provider, and recent research, there are several courses of action that could be pursued.

**Options**

1. Based on the analysis and favorable result by using an energy consultant in recent years for Village facilities, one option would be to move forward with Energy Choices (our consultant who was one of two consultants recommended by the Metropolitan Mayor's Caucus in 2008) to obtain quotes from electrical suppliers and lock in our price. Energy Choices recommends sending a bid proposal to a pool of energy providers (around 15-16) and see who comes up with the best price. Given the current rates, it is likely that we would be able to meet or possibly even better the Village's current fixed rate. Energy Choices indicated that current fixed rates are in the \$0.04-\$0.045 range, with indexed rates typically lower than fixed rates. We could request quotes for both fixed and indexed rates for comparison purposes. For fixed, we could request rates for 2, 3, and 4 years. For indexed, we would request the specific index and the margins. Energy Choices also recommends that we lock in a contract for a minimum of two and possibly up to four years.
2. The Village could talk to Integrys to see if they would add the Sears Centre Arena to the current contract for all other Village facilities, and also gauge their interest in a sponsorship. We may be able to get, and at the current rate, a better rate by bidding (#1 above).
3. Staff could also contact Constellation (previous provider at the SCA) with the same request.

**DISCUSSION: (Continued)**

4. Another option is to accept Glacial's proposal that includes a currently favorable indexed rate plus a sponsorship. We could agree to a 12 month contract and reevaluate "fixed" versus "indexed" after 12 months to see what is more favorable at that time.
5. We could also stay on the current ComEd indexed rate for the short term (up to fall 2012). At that time, we could extend until December 2012 and rebid all Village facilities and include the SCA at that time.

The indexes are expected to remain about the same for the next year (per the email from Glacial). But if the indexes floated upwards a bit, savings would be less as compared to the fixed rate. Since the current index is about 20% less than the Village's fixed rate that is the margin of difference before the fixed rate is more advantageous. Based on the input of the Planning, Building and Zoning Committee, staff will proceed as directed.

The information provided by Glacial and Energy Choices is difficult to compare "apples to apples". Staff cannot verify if the rates quoted by Glacial are all inclusive (all costs, fees, and taxes). When compared to a recent SCA ComEd bill, it does not appear to be all inclusive. Thus, a bid process may be the best course of action to obtain directly comparable quotes, with and without a sponsorship.

The Village also has a choice of going with an indexed rate (similar to the structure in place at the SCA under CCO and currently with ComEd) or locking in a fixed rate (which the Village opted for in 2008 for Village facilities). Our energy consultant advises that rates are very low right now, with fixed rates slightly higher than the indexed rates. But indexed rates could increase in the future. The Village decided to go with a fixed rate in 2008 and 2009, and lock into a multi-year contract. Our consultant recommends a fixed rate contract locked in for two to four years. Again, with the input from the Planning, Building and Zoning Committee, staff will proceed as directed.

At the recommendation of Trustee Pilafas, staff contacted the Northwest Municipal Conference (NWMC) to request a survey of how other municipalities approach selecting an electrical provider. The NWMC survey included 16 responses, with 10 using an energy broker or consultant (2 use Energy Choices). Nine communities obtain electric and 1 obtains electric and gas. Nine indicated they have a fixed price contract and 1 uses an index. Companies providing electrical power vary with 4 using ComEd, 3 with Exelon, 3 with Constellation, 2 with Integrys, and a couple others. A copy is attached.

**RECOMMENDATION:**

For discussion purposes. If the Committee decides to proceed with the energy broker to solicit bids, the Committee should authorize the Village Manager for direction and SCA owner's representative to enter into a contract with the provider with the most favorable net cost (including a sponsorship). The Committee could provide direction on the options outlined and whether a fixed or indexed rate is preferred and what timeframe.

Attachments

cc: Ben Gibbs (Global Spectrum)

Municipality	Does your municipality use a broker/consultant to purchase energy?	Which type of energy do you purchase for, electricity, gas, etc?	Are you currently under a fixed fee for electricity or an indexed fee?	Who do you buy electricity from?
Arlington Heights	Arlington Heights uses a broker by the name of Energy Choices to find the best pricing for electrical energy.	At this time, Arlington Heights is currently purchasing electricity from Constellation Energy. Arlington Heights is not looking into the purchase of gas from another source at this time.	Arlington Heights is currently under contract with a fixed per Kilowatt hour (kWh) price for our electricity.	At the present time the Village of Arlington Heights is supplied with electricity from Constellation Energy until December 2010. Presently the village is in the process of pricing for the next 2-year contract.
Barrington	Yes – Northern Illinois Municipal Electric Co-Op.	Electricity.	Fixed Fee.	Constellation New Energy.
Buffalo Grove	Yes.	Electricity.	Fixed fee.	Until the end of 2010, electricity supplier is Constellation New Energy. The Village recently established a contract for electricity supply with MidAmerican Energy Company during 2011 and 2012.
Deerfield	Yes, through NIMEC.	Electricity.	For certain high use accounts.	Exelon for the brokered accounts, straight ComEd for all others.
Des Plaines	Municipal Energy Collaborative – Energy Choices.	Electricity (currently only 3 of our 54 accounts. Going out to bid shortly for 15 accounts).	Fixed fee.	Currently Direct Energy (expires May 1, 2010).
Hawthorn Woods	Not presently, but looking into this option.	None presently.		
Highland Park	No.		The City of Highland Park has a franchise agreement with ComEd to receive free electricity in our municipal facilities.	ComEd.
Lincolnshire	Broker.	Electric.	Fixed fee.	Energy Choices, P.C.
Morton Grove	Yes.	Electricity.	Fixed.	Integrus - Broker is Energy Choices via Metropolitan Mayors Caucus initiative.
Mount Prospect	No.	Electricity.	Fixed fee, all-in.	Exelon as of May 2010, previously Sempra Energy Solutions.



Municipality	Does your municipality use a broker/consultant to purchase energy?	Which type of energy do you purchase for, electricity, gas, etc?	Are you currently under a fixed fee for electricity or an indexed fee?	Who do you buy electricity from?
Northfield	We are in the process now of choosing one.	Looking at electricity.		
Roselle	Energy Choices for all waste water and water pumping station electricity needs.	All municipal buildings, wastewater treatment plants, water pumping stations, street lights.	Fixed fee.	Integrays, Mid-American.
Skokie	No.	None.	Neither - we are floating for electricity.	ComEd.
Streamwood	No.	N/A.	N/A.	ComEd.
Wheeling	Yes.	Electricity.	Indexed fee.	ComEd.
Wilmette	The Village of Wilmette uses Constellation Energy to purchase our Natural Gas and NIMEC to broker our Electricity purchases which are made through Exelon.	I am a little unclear as to the meaning of this question, but we use electricity and natural gas to power our facilities.	We have a fixed two year contract with Exelon that runs through June of 2011.	Exelon.

# COMMITTEE AGENDA ITEM

## VILLAGE OF HOFFMAN ESTATES

**SUBJECT:** Request approval to allow Energy Choices, the Village's consultant, to obtain price quotes from electricity providers for the Village's non-franchise accounts and recommend a third party supplier.

**MEETING DATE:** March 24, 2008

**COMMITTEE:** Finance

**FROM:** Michael DuCharme, Director of Finance

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**PURPOSE:** To obtain price quotes from at least three alternate electricity suppliers in an attempt to control the Village's electrical energy supply costs.

**BACKGROUND:** The Village's current contract with Constellation Energy runs through our May 2008 meter reading and billing. This contract was originally awarded in the fall of 2006, generating savings in excess of \$13,000 when compared to ComEd's rates over the seventeen month life of the contract.

**DISCUSSION:** Currently, the Village has two alternatives available for selecting an energy provider. The first is utilizing our existing consultant, obtaining pricing from at least three qualified suppliers using the same methodology that we used back in 2006. Because the pricing is time sensitive once we go to market, receive pricing, and receive a recommendation from our consultant, we will need to approve the contract the same day to avoid further fluctuations in market pricing.

The only other option available to us at this time is to participate in the state sponsored Electricity Program. We have looked into this program but we do not recommend this option for the following reasons.

1. The awarding of the State program did not compete on the price the municipality would pay for electricity. It

was awarded on a cost-plus basis which means there is no incentive for the vendor to scour the market to secure competitive pricing. Using Energy Choices, we solicit prices on a specific day and select the lowest price offered which is the final price we pay other than the distribution charge.

2. The State program has a hidden charge of .5% for the Energy Resource Center, as well as the additional carrying cost of their program which pays the supplier 75 days out. This by itself could add as much as 2% to the final cost.
3. Under the State program there is not a single billing option. We would pay multiple bills to ComEd, as well as the supplier which is an administrative nightmare based on the number of accounts we have. This is magnified if you have a problem and are not sure if it is ComEd's or your supplier's problem. We currently have a single bill option from our current supplier and will be seeking that option from our new supplier.

Based on our analysis to date, we would like to move forward with our existing consultant who, as you will recall was one of two consultants recommended by the Metropolitan Mayor's Caucus. With your concurrence and the advice of our consultant we would like to obtain quotes from suppliers as quickly as possible and lock in our price. Our consultant is also recommending that any contract we enter should come due in December and we should be locking in a contract for a minimum of two or three years. This is based on the current cost of oil and the steady increase in electricity rates since deregulation. Based on current rates, we are looking at an increase of approximately 15% which does not include the increase in distribution charges expected from ComEd.

**RECOMMENDATION:**

Request approval to move forward and obtain pricing and select a vendor based on the recommendation of Energy Choices with authorization to allow the Village Manager to enter into a contract with the third party to lock in pricing.

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# ENERGY CHOICES. ETC.

HELPING OUR CUSTOMERS DO THEIR JOBS.


TUESDAY, MARCH 11, 2008

## Long Term Prices Are Less Expensive

In the past year, longer term contracts have been more expensive than shorter term contracts. However, this trend has shifted and longer term contracts are now less expensive than shorter term contracts.

For this reason, I am recommending all of my customers sign long term contracts. For example, let's consider a 500 kW demand account renewing in May 2008. The price for a 6 month contract would be around \$0.0800/kWh, but a 3 year contract would be around \$0.06900/kWh. This is an extremely large difference. Even a two year contract would be significantly cheaper, at around \$0.0700/kWh.

I have been in the Illinois deregulated market for over 7 years. During this time, it is consistently my customers who go long term who win. In this market, this is even more the case. Unless you are a commercial property, I recommend a long term contract for May 2008 renewals.

POSTED BY MOLLIE ENERGY AT 11:08 AM 0 COMMENTS 

FRIDAY, MARCH 7, 2008

## Energy Market Unrest

Energy markets across the board have been faring badly lately. First, oil prices have continued to increase, despite solid market fundamentals. OPEC voted this week against raising production because they believe the market is being driven up by traders. In other words, the fundamentals of supply and demand are in check, but speculators are likely causing a rise in prices. U.S. gasoline production actually dropped for the first time in 17 years this month, so hopefully there will be a corresponding drop in those prices sometime soon. However, with the summer driving season looming,

BLOG ARCHIVE

▼ 2008 (7)

▼ March (2)

Long Term Prices Are Less  
Expensive

Energy Market Unrest

► February (2)

► January (3)

► 2007 (3)

ABOUT ME


MOLLIE ENERGY

VIEW MY COMPLETE PROFILE

this could also go the opposite way.

Natural gas prices are at highs, but this is more understandable considering that storage levels are lower than last year. April prices and the summer strip are 25-30% higher than this time last year. On Thursday, gas prices closed at \$10.17 for the 12 month strip.

Electric prices have also increased over the past month, which comes at a poor time for ComEd customers whose contracts are up in May. For those customers with budgets to make, it's best to lock in a fixed price sooner rather than later. However, customers should also consider block products and other managed programs if they make sense for their size and budget considerations.


POSTED BY MOLLIE ENERGY AT 10:01 AM 0 COMMENTS 

MONDAY, FEBRUARY 11, 2008

## Peoples' Gas new rate structure

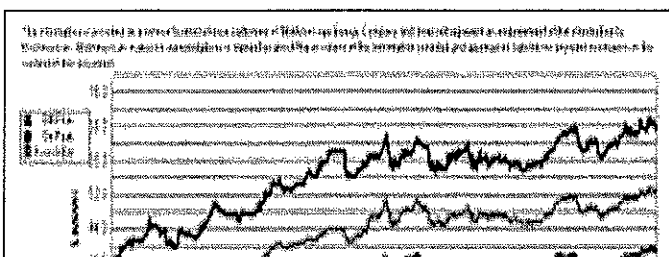
Peoples' Gas has gotten approval from the Illinois Commerce Commission to change the way they bill residences for natural gas. Instead of billing you at home for actual amounts of power used, you will be billed a new, pre-set fee regardless of the gas you use. This would benefit you in colder months, but work against you if temperatures were above normal.

The change isn't permanent, but rather it has been approved as a four-year pilot program. The program is being promoted as a better way to match rates with underlying cost drivers. Plus, its supposed to encourage Peoples' to conserve gas in colder months. This is expected to increase residential bills by an average of \$7/month.

POSTED BY MOLLIE ENERGY AT 3:11 PM 0 COMMENTS 

MONDAY, FEBRUARY 4, 2008


## Market Prices



This is a graph I received this morning from MidAmer

ican

Energy, a competitive power supply company. You can see the trend of increased prices over time. It is for this reason that I am recommending longer term contracts for many of my customers at this time. Please contact me if you would like this emailed to you for better viewing.

POSTED BY MOLLIE ENERGY AT 1:39 PM 0 COMMENTS 

TUESDAY, JANUARY 22, 2008

## New Products to Consider

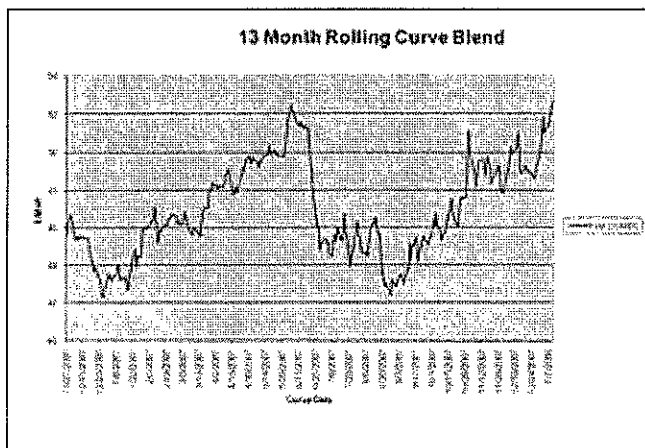
I'm working on reducing costs for one of my customers and noticed that there is a large disparity between forward off peak prices vs. floating off peak prices. Forward prices means prices that are locked in for a period of time. Floating prices means those that float on an index and vary from month to month. This customer has about 1 MW of demand and, if off peak floating prices stay where they are, they will save over \$30,000 on an annual basis by floating these prices rather than locking them in.

However, any customers choosing this alternative must agree to the increased risk that results from floating your costs. As the market matures, it becomes more important to evaluate your business's needs and the different products that may be appropriate. Contact me with more questions about your contract.

POSTED BY MOLLIE ENERGY AT 12:49 PM 0 COMMENTS 

WEDNESDAY, JANUARY 16, 2008

## Prices Volatile Lately



Prices have been volatile lately, and largely up. However, the last two days prices have moderated and come down. Let me know if you would

like any of  
your accounts priced.

POSTED BY MOLLIE ENERGY AT 12:23 PM 0 COMMENTS 

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THURSDAY, JANUARY 3, 2008

## Oil Prices Surge

Oil prices hit \$100 for the first time in intraday trading yesterday. This is still short of the inflation adjusted price of \$102.81 in April, 1980 but still represents a startling price run-up. Check out the following link which shows a graphic of political developments, along with resultant oil prices:

[http://online.wsj.com/public/resources/documents/info-launch.html?project=oil100\\_0711&w=980&h=530](http://online.wsj.com/public/resources/documents/info-launch.html?project=oil100_0711&w=980&h=530).

Despite the increase in oil prices, the U.S. economy has continued to perform well. Along with increasing oil prices, electric and natural gas prices have pushed up in the past week. You can click on this post for a link to another article on this subject.

POSTED BY MOLLIE ENERGY AT 1:27 PM 0 COMMENTS 

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# *Energy News Flash*

## News for Subscribers of **Energy Choices**

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### **State-Sponsored Electricity Program**

*A Subscriber Asks,  
“What’s the deal here?”*

#### **Sometimes Things Aren’t What They Seem**

In this difficult economy, all end users are working diligently to reduce expenses. And with the high cost of electricity and natural gas, energy is right in the cross-hairs of every facility and energy manager. The challenge these days is to make an intelligent decision with fewer resources, as supplemental funding for assistance has all but dried up. Municipalities are getting hit from all sides. Municipalities in Illinois have the option of participating in the State of Illinois Joint Purchasing program for retail electricity supply. A subscriber asked this past week if they should consider this and what is the underlying story.

The State of Illinois periodically goes out to market to secure agreements for purchasing items used by the state. The state has its own unique RFP process which results in an agreement with the vendor that best suits its needs and requirements. Among those requirements are price and laundry list business processes and practices to which the vendor must adhere in order to do business with the state. In late 2006, the state did this for retail electricity supply for state-owned buildings. Other legislation passed by the state allows the final agreement to be extended to municipalities state-wide. The concept is that the state has buying power that translates into lower prices for all plus all the paperwork is taken care of for you. Why wouldn’t anyone do this?

In investigating our response to our subscriber, we went to the University of Illinois’ Energy Resource Center’s website where all the documents can be found regarding the electricity purchasing program. The Energy Resource Center manages this program

for the state. On the website you can find the State of Illinois’ contract with its retail electricity vendor (which contains most of the terms, conditions and prices), the contract a municipality signs directly with the electricity vendor, the notification letter that must be signed (which includes additional fees for management) and an overview of the program. After reading all the documents we have the following to report:

**Objective of the Program** – The stated objective of the program is to reduce cost and price volatility. These are worthy goals. Unfortunately, these two goals are mutually exclusive. This is further complicated by the fact that the state intends to buy their electricity in the day-ahead (LMP) market (although it reserves the right to buy fixed price contracts at any time).

**Basis for Price Competitiveness** – The state has the extremely difficult task of ensuring it doesn’t get cheated by a vendor. The only effective way they’ve figured out to do this is to limit how much a vendor can make on the transaction rather than focus on the lowest delivered price of electricity. Since the vendor gets paid a commission on the volume of electricity that is purchased and not on developing new processes and ideas, the interests of the ultimate end user and the vendor are not co-aligned. Since the end user is concerned with the delivered price of electricity, establishing a competitive process focusing on the delivered price of electricity (rather than vendor margins) would be more meaningful and could result in lower prices for municipalities.

**Time to Pay the Invoice** – The end user has 60 days to pay upon issuance of the invoice. The invoice is issued by the Energy Resource Center. This invoice is issued within five days of the ERC receiving the invoice from the vendor. The ven-

(continued on page 2, column 1)



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**SOI Electricity Program** (cont'd from page 1)  
dor must issue an invoice to ERC within seven days of receive the meter reading. I was unable to find out how long the ERC has to pay the vendor for the electricity. However, when you add up all the time lag from when the meter is read until the time the vendor actually gets paid, it is approximately 75 days. This is 45 to 60 days longer than most billing cycles. Someone is paying for this courtesy. And that someone is the end user. As far as I can tell, the additional cost for this "courtesy" is outside the quantification of the state in its RFP process and it is imbedded in the price the end user ultimately pays. Even though the additional cost isn't broken out, the cost is added to the price the end user ultimately pays. Based upon the cost of capital for those involved in the process, this "courtesy" can add 1% to 2.5% to the cost of your electricity expense.

**Management Fee** – As stated above, the Energy Resource Center manages this program for the state. But they don't do it for free. They add 0.5% to the

cost of commodity energy and transmission above and beyond what the state contract states. As far as I can tell, the state doesn't pay this fee – but municipalities do.

**Dual Billing** – The program does not allow for the end user to receive a single bill from the vendor. That means that you will receive one bill from ComEd and one bill from the ERC. This may add complexity to your accounts payable process. Also, if there is a mistake on the ComEd side of the bill, does ERC help you with resolving it? And if your municipality has several accounts, you will now have the additional task of matching up the two bills for each account to ensure proper invoicing by both ComEd and ERC.

**Renewable Energy** – During the last legislative session many bills were passed regarding electricity. One had pretty lofty goals for renewable energy for the state. The state's contract allows for the state to determine what level of renewable energy to purchase. What happens if your municipality wants to invest in some other form of renewables or other energy measures that you determine is better for your community?

**Expansion of the Program** – The program can be expanded to municipalities where "... transportation of electricity provides an economic benefit over local tariff rates." Make sure you get an analysis from ERC or the vendor before you sign on the dotted line to ensure you stand a chance of paying less than "the do-nothing alternative" of staying with the utility. Based upon current market prices, over the next two years, it is almost impossible for a third party provider of electricity to deliver electricity cheaper than ComEd's fixed prices to small users.

*The above is our assessment of the SOI contract. Implied along the way are areas in which we believe you can reduce expenses and uncover more cost-effective alternatives to the SOI. On the surface the SOI contract looks like the best deal around. If you add up all the embedded fees that you don't see (but do pay), you may come to a very different conclusion. Read the documents before you sign on the dotted line.*

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**COMMITTEE AGENDA ITEM  
VILLAGE OF HOFFMAN ESTATES**

NB5

**SUBJECT:** Request authorization of a contract extension with Venue Advisory, LLC (Joseph Briglia) for consulting services related to the Sears Centre Arena in an amount not to exceed \$10,000.

**MEETING DATE:** June 7, 2010

**COMMITTEE:** Special Planning, Building and Zoning

**FROM:** *M.K.* Mark Koplin

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**REQUEST:** Request authorization of a contract extension with Venue Advisory, LLC (Joseph Briglia) for consulting services related to the Sears Centre Arena in an amount not to exceed \$10,000.

**BACKGROUND:** Mr. Briglia's previous contract (approved in March 2010) included two distinct scopes of work, (1) consulting/arena advisor, and (2) acting as Owner's Representative. Mr. Briglia has provided consultation services and advised the Village on matters related to the Sears Centre Arena since late summer 2009 (then with IFG) and most recently on the Global Spectrum Management Agreement. Mr. Briglia has demonstrated his in-depth knowledge and skills as he has advocated for the Village as Owner and for the Sears Centre Arena.

A contract with Mr. Briglia was approved on March 15, 2010, in an amount not to exceed \$70,000 (400 hours). That contract anticipated completion of the Global Spectrum Agreement in April, closely followed by approval of a food service agreement. A total of around 270 of the 400 hours were allocated for March and April towards this effort. We anticipated the consulting portion would slow down and more limited work as Owner's Representative would continue into May and June with the scheduled Sears Centre Arena events. However, many hours were spent in March through May on negotiating the permanent Global Spectrum Management Agreement, as well as work as the Owner's Representative, attending Sears Centre Arena events, and on general Sears Centre Arena items. Mr. Briglia reached the \$70,000 cap on that contract in mid-May. It is noted that the reimbursables are under the amount allocated in the contract. No hours remain for negotiation of the food service agreement, nor for attendance at events at the Sears Centre Arena in his role as interim Owner's Representative. Direction is needed on the terms of a new contract, number of hours, hourly fee, scope, and a focus on the food service agreement.

**DISCUSSION:**

Discussions with the Co-Chairs of the Ad Hoc Sears Centre Advisory Committee suggest consideration of a new limited scope contract with Mr. Briglia to focus only on the food service agreement. Mr. Briglia has been involved in discussions with Levy, Corporation Counsel, and Sears Centre Arena staff regarding a food service agreement. Corporation Counsel is currently drafting that agreement, which has not yet been submitted to Levy, and those discussions will take time to bring that agreement to conclusion. Mr. Briglia will provide continuity, as well as valuable input and discussion of the issues.

However, to better focus the efforts of Mr. Briglia, several alternatives for a new contract are offered for consideration:

- A cap on the amount, a not to exceed contract of \$10,000.
- At Mr. Briglia's previous rate of \$175/hour, this would provide 57 hours. If the Committee wishes to reduce the hourly rate, for example, \$150/hour would yield 66 hours.
- Mr. Briglia should report to a single person to avoid Mr. Briglia going "off task" without authorization.
- Mr. Briglia's hours would not commence until the Village receives Levy's comments/response to Corporation Counsel's draft to be finalized and transmitted to Levy in the next week. However, Mr. Briglia should prepare a list of the pros and cons of "commission" and "management fee" structured food service agreements. This tool will help provide background to the Village Board when the food service agreement is presented to the Village Board. No hours would be charged until after approval of a contract extension.
- Mr. Briglia will not conduct any research efforts without advising the Village contact person of the need, time required, and benefit of such information.
- All consulting will occur without travel to Hoffman Estates to save costs. The "not to exceed" contract is for hours only, no expenses.
- All communications will be funneled to the Village designee.
- No tasks beyond the scope (negotiation of Levy agreement) will be compensated unless there are hours remaining after Levy agreement approval.
- To better manage time, Mr. Briglia will submit hours incurred against the contract on a daily basis (via email or phone call).
- Mr. Briglia should provide weekly updates on hours spent on the Levy contract, along with a brief description of activities and tasks during the week.

**RECOMMENDATION:**

Request authorization of a contract extension with Venue Advisory, LLC (Joseph Briglia) for consulting services related to the Sears Centre Arena in an amount not to exceed \$10,000, subject to the conditions listed above.

cc: J. Briglia (Venue Advisory, LLC)