

**Burnsville Performing Arts Center
Management Agreement**

This MANAGEMENT AGREEMENT ("Agreement") made and entered into JAN 22 2008, by and between **THE CITY OF BURNSVILLE, MN**, with offices at Burnsville City Hall, 100 Civic Center Pkwy, Burnsville, MN 55337 ("**OWNER**") and **VENUWORKS OF BURNSVILLE, LLC**, an Iowa limited liability corporation, with offices at 103 E 6th St., P. O. Box 625, Ames, Iowa, 50010, formerly known as Compass of Burnsville, LLC ("**MANAGER**").

WHEREAS, **OWNER** is the Developer and Owner of a new performing arts center, hereinafter referred to as the "Facility"; and

WHEREAS, **MANAGER** is in the business of providing management, operations and marketing services to similar facilities, and possesses the knowledge and expertise to manage and market the Facility; and

WHEREAS, **MANAGER** is a wholly owned subsidiary of VenuWorks, Inc, (formerly known as Compass Facility Management, Inc.), and enjoys the benefits of a services contract with VenuWorks, Inc for on-going support, guidance and consultation to be provided to **MANAGER** by VenuWorks, Inc in the completion of **MANAGER'S** responsibilities as defined herein; and

WHEREAS, **OWNER** is desirous of having **MANAGER** provide said management, operation and marketing services, and **MANAGER** desires to accept such engagement on the terms and conditions set forth herein; and

WHEREAS, **OWNER** and **MANAGER** entered into an agreement for management, operations and marketing services for the Burnsville Performing Arts Center, that agreement dated April 1, 2007 (the "Prior Agreement"); and

WHEREAS, both **OWNER** and **MANAGER** desire to revise the Prior Agreement and have this Agreement supersede and replace the Prior Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other consideration the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
RETENTION OF MANAGER

- 1.1 **OWNER** hereby retains **MANAGER** as an independent contractor for the purpose of performing the services described in this Agreement. Subject to the terms and conditions set forth herein, **MANAGER** agrees to provide management services in accordance with this Agreement, and consistent with policies approved by **OWNER**. **MANAGER** agrees to use its best efforts to maximize revenues from use of the Facility, including, without limitation, marketing, sales, event production and promotion, and otherwise managing the Facility in accordance with this Agreement. In providing these services, **MANAGER** shall manage the Facility in accordance with sound business practices and industry standards.

- 1.2 The parties to this agreement acknowledge that the **OWNER** will retain title and ownership of the Facility and that **MANAGER** will not acquire title to, any security interest in, or any rights of any kind in or to the Facility. Neither the **OWNER** nor **MANAGER** will knowingly take any action which will cause the bonds issued to finance the improvements at the Facility to be "private activity bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended.

ARTICLE 2
TERM OF THE AGREEMENT

2.1 The Term of this Agreement shall begin on the date of its execution, and continue through December 31, 2013, with an optional extension for a total contract term not to exceed ten years, unless terminated earlier as set forth in Article 7, Section 7.12, and herein.

ARTICLE 3
MANAGEMENT AGREEMENT

3.1 Provision of Services and Definitions. During the term and any renewal term of this Agreement, **MANAGER** shall provide the services as set forth herein. For the purposes of this Agreement, the following definitions of words shall apply:

- 3.1.1 As used herein, "Revenue" is defined as the total amount received by **MANAGER** or any other person or entity operating on **MANAGER'S** behalf from third parties, directly or indirectly arising out of or connected with and on behalf of the Facility, including without limitation, transactions for cash, credit and credit card sales, less applicable taxes. However, receipts disbursed to event planners or promoters, or disbursed to third parties on behalf of event planners or promoters, from the Box Office Account, as described in Section 3.3.14, will not be included as Revenue.
- 3.1.2 As used herein, "Operating Expenses" is defined as all expenses relating to the operation of the Facility, as may be included in the annual Operating Budget approved by **OWNER**, and as listed in Exhibit A attached to this Agreement.
- 3.1.3 As used herein, "Merchandise" is defined as clothing, souvenirs, programs and other goods sold at the Facility before, during or after events.
- 3.1.4 As used herein, "Concessions" is defined as the offering for sale at events in the Facility, or on the grounds of the Facility, through manual service, vending machines and/or other methods, foods of all kinds, including: candies, cooked foods, prepared foods, ready to serve foods, desserts, ice cream; along with beverages of all kinds, including waters, soda pop, juices, wine, beer and other alcoholic beverages.
- 3.1.5 As used herein, "Catering" is defined as providing pre-arranged food service for attendees at events occurring in the Facility, or on the grounds of the Facility, for which a contract has been executed with a user of the Facility, specifying the price and number of portions to be served.

3.2 Grant to MANAGER. During the term of this Agreement, **OWNER** grants to **MANAGER** the right to manage, market, promote, operate and maintain the Facility, as described herein.

3.3 MANAGER Responsibilities. Beginning and continuing through the Term of the Agreement and any extensions, **MANAGER** will assume management responsibilities as set forth below. Where **MANAGER** is required to direct or arrange for services or material, **MANAGER** shall employ all persons performing such services or shall contract with a third party for the performance of such services.

3.3.1 Marketing and Promotion. **MANAGER** shall direct all marketing activities which shall be undertaken so as to maximize the use of the Facility by all persons, including independent promoters and Affiliates of **MANAGER** so as to provide maximum Revenue for the Facility, as defined in Section 3.3.14 of this Agreement, and accessibility for the community to the Facility. **MANAGER** shall be responsible for ensuring that appropriate programs are booked into the Facility and that suitable media coverage is obtained and shall coordinate such efforts with **OWNER**.

3.3.2 Scheduling. **MANAGER** shall develop and maintain all schedules for events held at the Facility and scheduling shall be accomplished in accordance with applicable law, and in a manner to maximize the use of the Facility so as to provide maximum Revenue for the Facility and accessibility for the community to the Facility. **MANAGER** shall use an event rental agreement acceptable in form to **OWNER** and **OWNER'S** bond counsel. **MANAGER** may deviate from standard rental rates when such negotiation is deemed by both **MANAGER** and **OWNER** to be in the best interests of the Facility. By a date no later than July 1, 2008, **MANAGER** shall prepare and present a policy statement for approval by **OWNER** stating the guidelines under which **MANAGER** may deviate from standard rental rates.

3.3.3 Operations. **MANAGER** shall operate the Facility in a manner consistent with the Annual Budget and Business Plan, as set forth in Article 4 of this Agreement. The goals of the Annual Budget and Business Plan shall be reflected in the operation of the Facility. **MANAGER** will cooperate and will work with **OWNER** to ensure that Facility operations meet the reasonable requirements and expectations of **OWNER**. **MANAGER** shall create operating manuals including maintenance and inventory schedules specific to the Facility.

- 3.3.4 Facility Maintenance. **MANAGER** shall be responsible for the performance of all facilities maintenance work. **MANAGER** will carry out work required of **OWNER** which shall be limited to ordinary maintenance and repairs which do not increase the value or extend the life of an asset at the Facility. Ordinary repairs will include those repairs costing up to \$10,000.00 having a life expectancy of three years or less.
- 3.3.5 Custodial and Cleaning Services. **MANAGER** shall provide or cause to be provided all routine cleaning and janitorial services at the Facility.
- 3.3.6 Food Service. **MANAGER** shall provide for top quality food and beverage service within the Facility, and on the grounds of the Facility, through Concessions and Catering.
- 3.3.6.1 Concessions. **MANAGER** will provide concessions services, and hold the liquor license for the Facility.
- 3.3.6.2 Catering. **MANAGER** will coordinate the services of third party caterers approved to do business in the Facility under criteria to be developed by **MANAGER**, subject to **OWNER** approval. Caterers doing business in the Facility may be required to pay a commission to the **OWNER**, consistent with operating policies and procedures to be developed by **MANAGER** and accepted by **OWNER** and **OWNER'S** bond counsel.
- 3.3.7 Pathways and Grounds. **MANAGER** shall direct all snow removal services, and maintain clear passage on the pathways and sidewalks adjacent to the Facility.
- 3.3.8 Trash Removal and Pest Control. **MANAGER** shall direct removal of all trash from the Facility and agrees that it shall not permit any employee, concessionaire, or caterer to place refuse outside the buildings on the Facility, except in designated trash containers, the location of which shall be approved by **OWNER**. **MANAGER** shall direct all necessary pest control services, whether performed by **MANAGER** or a pest control service engaged by **MANAGER**.
- 3.3.9 Operational Services. **MANAGER** shall direct all services required to stage (set up and tear down) the Facility for each event, including but not limited to, services involving the

stage area, sound system, lighting system, stage rigging, dressing area, stage equipment, loading in and loading out. **MANAGER** shall hire and manage all management staff, ticket sales personnel, ushers and other personnel required for the operation of the Facility, including but not limited to, ticket taking, novelty sales, program distributions, and assistance to patrons generally, including the handicapped.

3.3.10 Ticket Sales. **MANAGER** shall direct all aspects of ticket sales for events and activities including computerized tickets, utilizing its national contract with Ticketmaster to provide state of the art equipment and software to the Facility at no cost to the **OWNER**. Ticket sales services shall include ordering, selling and accounting for tickets, reporting ticket revenues for a given event for each user of the Facility, cash, check, and credit card processing, complete auditing and accounting for each event, and providing an accounting of the event income and expenses within ten days after each event is held. The amounts charged by the ticketing contractor for service charges, and the Facility's participation in revenues from these service charges, will be consistent with industry standards in the Twin Cities region.

3.3.11 Security. **MANAGER** shall arrange for proper security for events at the Facility and for general security when events are not in progress. Such security may be provided by **MANAGER** or by contract, in its discretion. **MANAGER** shall review and coordinate exterior crowd management and traffic control with appropriate local authorities.

3.3.12 Licenses and Permits. **MANAGER** shall obtain and maintain all licenses and permits necessary for management and operation of the Facility, subject to the local procedures for the granting of such licenses and permits.

3.3.13 Accounting. **MANAGER** agrees to abide by and follow all accounting requirements and practices as set forth in Article 7, Section 7.4 of this Agreement or as mutually agreed to by the parties.

3.3.14 Commercial Bank Accounts. **MANAGER**, in cooperation with **OWNER**, shall establish two commercial bank accounts to be known as the Box Office Account and the Concessions Account. The Box Office Account shall be in the name of **OWNER** and

utilize **OWNER'S** federal identification number. The Concessions Account shall be in the name of **MANAGER** and utilize **MANAGER'S** federal identification number. Both accounts shall be at a federally insured financial institution determined by the **MANAGER** and approved by the **OWNER**. **OWNER** shall have complete access to the records relating to the accounts at all times, including access to account statements. In the event that any deposit shall cause the balance in either account to exceed the limits of federal insurance, the uninsured excess amount may be collateralized or deposited in a separate institution in a manner acceptable to **OWNER** and **MANAGER**. **MANAGER** shall implement and adhere to such safeguards as are required by the applicable financial institution or by **OWNER**, including the provisions provided for in Article 3, Section 3.3.15 of this Agreement. The sole purpose of the Box Office Account shall be to serve as a holding, or escrow account for user advance payment deposits, and receipts from ticket sales to upcoming events. All monies deposited in the Box Office Account shall be held in escrow pending the completion of the event for which receipts were deposited. **MANAGER** shall make disbursements from the Box Office Account pursuant to the terms outlined herein and in accordance with the Accounting Policies and Procedures Manual as set forth in Article 7, Section 7.4.1 of this Agreement. Authorized disbursements from the Box Office Account shall include, though not be limited to: transfers to **OWNER** of all fees and reimbursements withheld from box office receipts for the use of the Facility; remittance of applicable sales taxes to appropriate government agencies; disbursements to the event planner or promoter of receipts remaining after fees and expenses for usage of the Facility have been withheld; payments to third party service providers, or performers, on behalf of, and with the authorization of, the event planner or promoter. Revenues realized and credited to the Box Office Account from ticketing service fees and other surcharges will be transferred to an account designated by **OWNER** for receipt of such revenues. Any and all interest earned on balances in the Box Office Account shall be transferred to the **OWNER'S** designated account on a semi-annual cycle acceptable to **OWNER**. Those receipts transferred from the Box Office Account to the **OWNER'S** designated account resulting from Facility use fees, expense reimbursements, interest and service fees will be considered "Revenue" as defined in Section 3.3.15 herein. Receipts disbursed to event planners or promoters, or disbursed to third parties on behalf of event planners or promoters, will not be included as Revenue. Signatories on the Box Office Account shall include those individuals as

deemed appropriate by **MANAGER**, and approved by **OWNER**. The sole purpose of the Concessions Account will be to receive receipts from the sale of food, beverage and merchandise conducted by **MANAGER** in the Facility. Authorized disbursements from the Concessions Account shall include, though not be limited to the following: remittance of applicable sales taxes to appropriate government agencies; disbursement to the event planner or promoter of certain portions of the sales receipts per specific event contracts; payments to third party product or service providers as authorized by **OWNER** or specified in the event contract; and transfers to the **OWNER'S** designated account. Transfers to the **OWNER'S** designated account from the Concessions Account will be done at the end of each calendar month. These transfers to the **OWNER'S** designated account will consist of sales receipts at events occurring in the prior month, less authorized disbursements. Any and all interest earned on balances in the Concessions Account shall be transferred to the **OWNER'S** designated account on a semi-annual cycle acceptable to **OWNER**. Gross receipts deposited in the Concessions Account from the sales of food, beverage and merchandise, less applicable sales taxes, will be considered "Revenue" as defined in Section 3.3.15 herein, even though some portions of that total gross sales amount may, from time to time, be disbursed to other third parties. Signatories on the Concessions Account shall include those individuals as deemed appropriate by **MANAGER**, and approved by **OWNER**.

- 3.3.15 Revenue and Operating Expenses. On behalf of **OWNER**, **MANAGER** shall arrange for receipts from the Facility to be sent directly to the office designated by **OWNER** where they will be deposited, and recorded as revenues of the Facility. Any and all Revenues collected through the Box Office Account and/or the Concessions Account shall be transferred by **MANAGER** to the **OWNER'S** designated account. The **OWNER** shall provide for the timely payment of Operating Expenses, as set forth in Exhibit A of this Agreement. All expenses incurred in maintaining the commercial bank accounts for the Facility shall be paid from funds in the accounts as an Operating Expense. **MANAGER** is authorized, with the limitations set forth in Article 3, Sections 3.3.14 and 3.3.17 of this Agreement, to make disbursements from the Commercial Bank Accounts.

3.3.16 Deposits Into and Transfer Between Commercial Bank Accounts. The **MANAGER** shall make deposits and allocate funds into the Commercial Bank Accounts as outlined herein and in the Accounting Policies and Procedures Manual set forth in Article 7, Section 7.4.1 of this Agreement. Revenues from the sale of tickets to events at the Facility shall be deposited by **MANAGER** into the Box Office Account. After payment from such event ticket sales Revenues of all event-related expenses, and within twenty-four hours after the end of the event, **MANAGER** shall transfer the remaining event ticket sales Revenues to the **OWNER'S** designated account. All other Revenues generated by use of the Facility and collected by **MANAGER** shall be deposited in the **OWNER'S** designated account. **OWNER** shall be authorized at any time, to obtain information and records from the bank concerning such accounts and to inspect the same. It shall be an Event of Default, as defined below, entitling **OWNER** to terminate this Agreement, if **MANAGER** withdraws any money from the Commercial Bank Accounts except in accordance with this Agreement. Interest accrued in these accounts shall be revenue to the Facility and belong to **OWNER**.

3.3.17 Check and Payment Authority. **MANAGER** shall have the authority to issue checks, pay expenses, transfer or withdraw funds from the Commercial Bank Accounts as set forth in Article 3, Sections 3.3.14, 3.3.15, and 3.3.16 of this Agreement.

3.3.18 Petty Cash and Change Funds. **MANAGER** and **OWNER** agree that any and all petty cash and change funds existing as of the effective date of this contract belong to the **OWNER**. These funds will be returned to the **OWNER** at the end of the contract term.

3.3.19 Cash Discrepancies. The nature of this business is such that it is inevitable that there will be variances in sales reported and cash deposited. In recognition of this, **OWNER** will allow a calculated percentage figure difference between reported sales and cash deposited. The variance will be classified as an Operating Expense. The accepted difference must be less than 0.50% of sales. Should cash deposited vary more than this calculated amount, the difference will not be an allowable Operating Expense and will be deducted from the management fee paid to **MANAGER**.

3.3.20 Staffing. **MANAGER** shall be responsible for supervision and direction of all personnel staffing at the Facility. All Facility staff will be in the employment of **MANAGER**. All expenses associated with the employment of staff shall be considered Operating Expenses of the Facility. Pre-employment and relocation expenses must be pre-approved by **OWNER**. **OWNER** has the right to participate in the recruitment, interviewing and hiring of the Executive Director of the Facility. Background checks will be required for all full time personnel and all part time staff members handling cash at the Facility as provided for in Article 7, Section 7.9.4 of this Agreement.

3.3.21 Additional Duties. **MANAGER** shall also be required to provide, on a timely basis, information, data, and solutions to project issues as may be reasonably requested by **OWNER**, together with such other services consistent herewith as **OWNER** may reasonably require.

3.3.22 Use of OWNER Equipment. **MANAGER** will use equipment at the Facility in performance of its obligations hereunder. Within thirty days of the opening of the Facility, **OWNER** and **MANAGER** will conduct an inventory of Facility equipment to be used by **MANAGER** during the term of this Agreement.

3.3.23 Written Powers Reserved to OWNER. **OWNER** shall have right of prior written approval in connection with the following:

- (a) The Annual Budget and Business Plan (Article 4, Sections 4.1 and 4.2); and
- (b) The hiring of the Executive Director (Article 3, Section 3.3.20); and
- (c) Any expenditure of any kind, including expenditures for personnel or equipment, in excess of the approved Annual Budget (Article 4, Section 4.1); and
- (d) Any booking of shows involving risk of **OWNER** funds (Article 3, Section 3.3.24)

OWNER may offer written approval in the form of electronic approval through the **OWNER'S** computerized accounting systems.

- 3.3.24 Booking of Events Involving Risk of OWNER'S Funds. **MANAGER** will prepare and present for **OWNER** approval by March 31, 2008, a policy statement and procedural guidelines regarding the **OWNER** taking risk in presenting events at the Facility.
- 3.4 Relationship of Parties. **MANAGER** is an independent contractor of **OWNER** and shall not be deemed to be an employee, joint venture participant, or partner of **OWNER**. **MANAGER** may act as an agent of the **OWNER** only in those matters which are specifically addressed in this Agreement.
- 3.5 Fulfilling OWNER Requirements. **MANAGER** shall provide all of its Management Services in a manner which shall ensure full compliance with all **OWNER** requirements.
- 3.6 Covenant Regarding Bonds.
- 3.6.1 **MANAGER** shall take no action, and will not fail to take an action, the effect of which will be to cause any bonds issued to finance the Facility to be determined to be "private activity bonds" (other than "qualified 501(c)(3) bonds" if the bonds are so designated) as such terms are defined in Sections 141 and 145 of the Internal Revenue Code of 1986, as amended (the "Code") and in applicable Treasury Regulations promulgated pursuant to applicable provisions of the Code (the "Regulations").
- 3.6.2 Without limiting the forgoing, **MANAGER** shall take no action, and shall not fail to take an action the effect of which will be to cause both the "private business use test" and the "private security or payment test" (as such terms are defined in Section 141 of the Code and in applicable Regulations) or the "private loan financing test (as such term is defined in Section 141 of the Code and in applicable Regulations) to be satisfied with respect to any bonds issued to finance the Facility; provided that if such bonds are qualified 501(c)(3) bonds, the reference to "private business use" excludes use by a qualified 501(c)(3) organization.
- 3.7 Annual Budget and Business Plan. **MANAGER** shall submit to **OWNER** an Annual Budget and Business Plan as set forth in Article 4 of this Agreement.

ARTICLE 4
ANNUAL BUDGET AND BUSINESS PLAN

- 4.1 Annual Budget. On a date to be determined by **OWNER** during each year commencing with the first year of operation, **MANAGER** shall submit to **OWNER** a proposed annual operating budget for the ensuing Fiscal Year of **OWNER**, listing all projected Revenues and Operating Expenses by category, broken down by month, with explanations and assumptions for each Revenue and Operating Expense line item. For the purposes of this Agreement, the term "Fiscal Year" means a year commencing January 1 and ending December 31. The proposed annual budget shall include a proposed rent structure for events proposed to take place in the Facility for the ensuing year. The proposed annual budget shall be reviewed by **OWNER** in accordance with **OWNER'S** budget development schedule. Upon approval by **OWNER**, which approval shall be granted or refused in **OWNER'S** sole discretion, the proposed annual budget shall become the final annual budget (the "Annual Budget") for the year. If **OWNER** objects to the proposed annual budget or any part thereof, **MANAGER** shall be obligated to promptly respond to each such objection and revise the proposed annual budget in connection therewith. **MANAGER** and **OWNER** may revise the Annual Budget at any time by mutual written agreement.
- 4.2 Business Plan. On a date to be determined by **OWNER** during each year commencing with the first year of operation, **MANAGER** shall submit to **OWNER** a complete Business Plan for the Facility to be adopted by **OWNER** and followed by **MANAGER**. The Business Plan shall be subject to the written approval of **OWNER**. The Business Plan shall include a Marketing Plan and an Operating Budget for the year and the four years following and shall include an analysis of the basis and assumptions underlying each line item of Revenues and Operating Expenses. **MANAGER** shall submit the Business Plan on an annual basis and shall deliver the same to **OWNER**. The Business Plan for the first year of operation shall be as set forth in Exhibit B, attached hereto and made a part hereof.

ARTICLE 5
THE MANAGEMENT FEES

5.1 Pre-Opening Management Fee. **OWNER** will pay **MANAGER** a monthly Pre-Opening Management Fee of \$7,500.00, commencing in the month of the date of this Agreement. Commencing in the first full calendar month after the Facility opens, the **OWNER** will then pay the **MANAGER** at the "Base Management Fee" rate described in Section 5.2 hereof. Pre-Opening Management Fees will be due to **MANAGER** by the 15th day of the month for which the management fee is earned. For the purposes of this Agreement, the Facility will be deemed "open" on the date of the first use of the Facility by a third party (not the Manager or Owner or related to either such party).

5.2 Base Management Fee. Commencing in the first month the Facility opens, as described in Section 5.1 hereof, **OWNER** will pay **MANAGER** a Base Management Fee of \$10,000.00 per month. Beginning January 1 of the Fiscal Year following the Fiscal Year in which the Facility opens, and in each subsequent Fiscal Year, the Base Management Fee amount shall be increased by three percent (3%). Payments for Base Management Fees will be due to **MANAGER** by the 15th day of the month for which the management fee is earned.

5.3 Variable Incentive Fee. Commencing with the Fiscal Year in which the Facility opens, **OWNER** shall pay **MANAGER** a Variable Incentive Fee equal to twenty percent (20%) of actual annual Revenues realized by the Facility in excess of the Revenues called for in the approved Annual Budget for that Fiscal Year (or portion thereof if the Fiscal Year in which the opening occurs is less than twelve months) as described in Section 4.1 herein. The total Variable Incentive Fee paid to **MANAGER** in any Fiscal Year shall not exceed \$30,000 (subject to pro rata reduction in the Fiscal Year in which the opening occurs, based on the number of full calendar months of operation in that Fiscal Year, such that the Variable Incentive Fee constitutes no more than 20 percent of the total compensation paid to Manager under this Agreement in that Fiscal Year). Payments for the Variable Incentive Fee will be due to **MANAGER** by the 15th day of February for the Fiscal Year ending the previous December 31st.

ARTICLE 6

DISPOSITION OF REVENUES, PAYMENT OF OPERATING EXPENSES AND MANAGEMENT FEES

- 6.1 Revenues. All Revenues that result from the management and operation of the Facility shall accrue to the **OWNER**, and be deposited into the **OWNER'S** designated account as provided for in Article 3, Section 3.3.14 of this Agreement. For the purpose of calculating revenues with regard to this agreement, 100% of all Revenues from naming sponsorships, pour rights, sale of advertising, premium seating, parking, catering, and concession sales will be included, along with Revenues described in Article 3, Sections 3.3.14 and Sections 3.3.15 of this Agreement.
- 6.2 Operating Expenses. **OWNER** shall bear full responsibility for the funding of Operating Expenses as provided for in this Agreement. Expenses that result from the management and operation of the Facility shall be invoiced to, and paid by **OWNER** in a timely fashion to prevent the necessity of **MANAGER** from having to incur expenses on behalf of **OWNER**. As regards payroll expenses, **OWNER** shall deposit into the **MANAGER'S** designated payroll account funds sufficient funds to cover bi-weekly payroll expenses, within forty eight (48) hours of receiving payroll expense information from **MANAGER**, and prior to the actual issuance of payroll checks by **MANAGER** to Facility employees.
- 6.3 Management Fees. **OWNER** shall pay to **MANAGER** in Ames, IA, on the 15th day of each month all management fees payable with respect to the current calendar month, except as otherwise provided in Section 5.3 regarding the Variable Incentive Fee.
- 6.4 Timely Payment of Operating Expenses. In the event that the **OWNER** fails for any reason to make timely payment for Operating Expenses of the Facility as invoiced, and **MANAGER** incurs additional expenses to cover Operating Expenses not paid by **OWNER**, then **OWNER** shall pay to **MANAGER** any and all expenses and costs incurred by **MANAGER** in covering said expenses.
- 6.5 Meetings. Representatives of **MANAGER'S** on-site management and the **OWNER** shall meet each month to review Revenues and Operating Expenses for the prior calendar month. Corporate

representatives from VenuWorks, Inc. shall meet regularly with the **OWNER** to monitor performance and discuss operations.

ARTICLE 7
GENERAL TERMS AND CONDITIONS

- 7.1 Representation of OWNER. OWNER hereby represents and warrants to MANAGER, as an inducement to MANAGER entering into this Agreement; (1) that it is OWNER'S intent that the Facility will be permitted to be open to the paying public on a daily basis in a manner consistent with industry practices, (2) that the OWNER has sufficient authority to enter into this Agreement; and (3) that OWNER possess the resources and financial capabilities to ensure the on-going financial support of the Facility operation.
- 7.2 Representation of MANAGER. MANAGER hereby represents and warrants to OWNER on its own behalf and on behalf of its shareholders, officers, directors and employees, that MANAGER is fully capable of providing services as outlined in this Agreement.
- 7.3 Standard of Operation. MANAGER represents and warrants to OWNER that it shall maintain an efficient and high quality operation at the Facility comparable to other similar facilities and containing facilities similar to those of the Facility.
- 7.4 Accounting Records, Reports, and Practices. On behalf of the OWNER, MANAGER will be managing Revenue and Expense transactions for the Facility. All transactions are in effect the OWNER'S transactions and will be reported in the OWNER'S financial statements as an Enterprise Fund. Therefore, all accounting policies and procedures must be consistent with the OWNER'S policies and procedures and the accounting records are the property of the OWNER and shall be maintained in accordance with the OWNER'S records retention policies.
- 7.4.1 Accounting Policies and Procedures. MANAGER shall establish a written Accounting Policies and Procedures Manual that shall be submitted to the OWNER for written approval. MANAGER is not authorized to make any amendments or changes to the Accounting Policies and Procedures Manual once approved by OWNER without written approval by OWNER. MANAGER shall review the Accounting Policies and Procedures Manual with the OWNER not less than on an annual basis.

- 7.4.2 Generally Accepted Governmental Accounting Standards. **MANAGER** shall maintain accounting records relating to the Facility using accounting practices in accordance with Generally Accepted Governmental Accounting Standards consistently applied.
- 7.4.3 Internal Financial Controls. **MANAGER** shall establish a system of internal controls that provides for the safekeeping of the **OWNER'S** assets through management approval procedures, segregation of duties, and supervision and review procedures. The internal controls shall be acceptable to the **OWNER'S** independent auditor.
- 7.4.4 Computerized Accounting Systems. **MANAGER** shall maintain financial records using the **MANAGER'S** "company wide" prescribed computerized accounting system, as approved by the **OWNER.** **MANAGER** shall work with **OWNER** to establish procedures for the efficient update of daily Revenue and Expense transaction detail onto the **OWNER'S** computerized accounting system and financial reports. All financial systems and computerized accounting systems shall provide adequate security controls to limit access to the systems to **MANAGER** employees responsible for entering or reviewing information in the systems. **OWNER** shall provide adequate security controls to limit access to the system to **MANAGER** employees responsible for specific financial application. **OWNER** shall allow **MANAGER** secure remote access for the purpose of financial management and auditing oversight.
- 7.4.5 Monthly and Annual Financial Reporting. **MANAGER** shall deliver to **OWNER,** within twenty (20) days after the end of each calendar month and within forty-five (45) days after the end of each Fiscal Year, a true and correct statement of all Revenues and Operating Expenses of the preceding calendar month and/or Fiscal Year, together with any reasonable supporting documentation requested by **OWNER.** Financial statements shall include balance sheets, income statements, rolling forward financial projections for the year, receivables report, and event summaries.
- 7.4.6 Records Retention. Records shall be maintained in accordance with the **OWNER'S** records retention policy preferably in an electronic format. The **MANAGER** may use

the **OWNER'S** Electronic Data Imaging System or a system of equal or better capabilities.

7.4.7 Staffing. All **MANAGER** staff responsible for maintaining accounting records and with access to **OWNER** funds will have a level of accounting knowledge and skills appropriate to perform financial duties and **MANAGER** will provide appropriate supervision and review of financial activities. A background check on all staff with financial responsibilities and access to **OWNER** funds must be completed before having access to records or funds.

7.4.8 Financial Audit. **MANAGER** shall provide for the completion of an annual audit. Cost of the annual audit will be an Operating Expense of the Facility. The **OWNER'S** auditor will perform annual audit of the Facility operations as part of the **OWNER'S** annual audit. **MANAGER** will prepare audit workpaper schedules as requested by **OWNER'S** auditor. The annual audit will include an evaluation of the system of internal controls and accounting procedures. If the **OWNER'S** auditor's annual management letter includes any issues with respect to the Facility accounting controls or systems, **MANAGER** will address the issues within a reasonable time period.

7.4.9 Signatures. Signature authorities and withdrawal authorities will be determined as accounting policies and procedures are approved by **OWNER** and **MANAGER**. Bank accounts will have fraud prevention and control features consistent with other **OWNER** accounts.

7.5 Default, Right to Cure. It shall be an event of default ("Event of Default") hereunder if either party hereto: (i) fails to pay or deposit sums due by one party to the other within seven (7) days after written notice by the other of such failure, or (ii) fails to perform or comply with any other obligation of such party hereunder within ten (10) days after written notice by the other of such failure (which notice shall specify, in sufficient detail, the specific circumstances so as to give the defaulting party adequate notice and the opportunity to cure the same); provided however, that if the default is of a nature that it cannot be cured within thirty (30) days, then the defaulting party shall not be deemed in default hereunder if it commences to cure the default within ten (10)

days after the effective date of the notice of such default and diligently proceeds to cure such default within ninety (90) days after the effective date of notice.

7.6 Insurance.

- 7.6.1 Employment Matters. In connection with the employment of its employees, **MANAGER** shall pay all applicable social security, re-employment, worker's compensation or other employment taxes or contributions of insurance, and shall comply with all federal and state laws and regulations relating to employment generally, minimum wages, social security, re-employment insurance and workers' compensation, which shall be considered Operating Expenses of the Facility.
- 7.6.2 Insurance Requirements. Beginning with the operation of the Facility, **MANAGER** will provide the insurance coverage described herein, the cost of which shall be an Operating Expense of the Facility.
- 7.6.3 Workers Compensation Insurance. It is responsibility of **MANAGER** to see that all persons carrying out the work involved in this contract are covered by workers compensation and employers liability insurance. **MANAGER** shall purchase and maintain during this contract, workers compensation insurance in accordance with Minnesota statutory requirements and employers liability insurance with limits of not less than \$500,000 per accident and per employee for bodily injury.
- 7.6.4 General Liability Insurance. **MANAGER** shall purchase and maintain commercial general liability insurance including liquor liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 per occurrence / \$2,000,000 in aggregate for Bodily Injury, Personal Injury, and Property Damage. Policy coverage shall include Premises and Operations, Products and Completed Operations, less inclusive and no more restrictive than the coverage provided by a standard Commercial General Liability Policy form (ISO CG 00 01 96) with standard Bodily Injury and Property Damage exclusions, and standard Personal and Advertising Injury exclusions. Any additional exclusions shall be clearly identified on the Certificate of Insurance and shall be subject to the approval of **OWNER** and **MANAGER**. The insurance required by this contract shall be written on non-assessable insurance companies licensed to do business as an admitted carrier in the State of Minnesota and currently rated "A" or better by the A.M. Best Company. **MANAGER**

shall list **OWNER** as an additional insured on its commercial general liability policy, with coverage provided to **OWNER** for claims arising out of **MANAGER'S** ongoing operations of the Facility for the **OWNER**.

7.6.5 Automobile Liability Insurance. **MANAGER** shall purchase and maintain automobile liability insurance on a per occurrence basis with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage. Coverage shall include any owned, all hired and non-owned motor vehicles used in the performance of this contract by **MANAGER** or its employees. The insurance required by this contract shall be written on non-assessable insurance companies licensed to do business as an admitted carrier in the State of Minnesota and currently rated "A" or better by the A.M. Best Company. **MANAGER** shall list **OWNER** as an additional insured on its commercial general liability policy, with coverage provided to **OWNER** for claims arising out of **MANAGER'S** ongoing operations of the Facility for the **OWNER**.

7.6.6 Umbrella and Excess Liability Insurance. **MANAGER** shall purchase and maintain an umbrella and excess insurance policy on a per occurrence basis with limits of liability of not less than \$5 million per occurrence / \$5 million in aggregate. Any umbrella and excess insurance shall be written on a per occurrence basis on a pay on behalf form providing the same coverage and endorsements required of the primary policies. **MANAGER** shall list **OWNER** as an additional insured on its commercial general liability policy, with coverage provided to **OWNER** for claims arising out of **MANAGER'S** ongoing operations of the Facility for the **OWNER**.

7.6.7 Property Insurance. **OWNER** will maintain property insurance coverage on the Facility itself which will be considered an Operating Expense and included in the operating budget. **MANAGER** shall assume all risks for loss of or damage to its own property at the Facility and **MANAGER** may maintain such insurance, at its sole expense, as it deems necessary to protect its own property.

7.6.8 Subcontractors. **MANAGER** shall require all its subcontractors who perform work and / or services under this contract to meet appropriate insurance requirements as reasonably

required by **OWNER**. Failure of **MANAGER** or its subcontractor to comply with these requirements shall not be construed as a waiver of these provisions and shall not relieve **MANAGER** of liability.

7.6.9 Deductibles and Self-Insured Retention. Any policy deductible or self-insured retention must be declared on the Certificate of Insurance and shall be subject to the approval of the **OWNER**.

7.6.10 Proof of Insurance. **MANAGER** shall furnish **OWNER** with Certificates of Insurance and a copy of the policies if requested by **OWNER**. The name of the project or contract shall be listed on the certificates of insurance along with any deductible or self-insured retention. Before commencing any performance under this Contract, **MANAGER** shall deliver all the Certificates of Insurance to **OWNER** certifying that the policies stipulated above are in full force and effect. All insurance shall remain in effect during the life of the contract.

7.6.11 Insurance Cancellation or Material Change Notice. The certificates of insurance shall state that the insurance company will provide thirty (30) days written notice prior to cancellations, non-renewal, or material change including reduction of insurance coverage or limits. The notice shall be sent to the **OWNER**, via certified mail.

7.6.12 Reserved.

7.6.13 Cooperation. Each party agrees to cooperate fully with the other in promptly providing such insurance underwriting and other information as may be necessary or appropriate to obtaining and maintaining the insurance described herein. The parties further agree to cooperate with the insurance companies and agents by responding promptly to their reasonable requests.

7.6.14 Releases. **MANAGER** and **OWNER** expressly waive all rights and claims they may have against the other, their subsidiaries and affiliates for loss or damage arising or resulting from the operation at the Facility caused by fire or other perils, but only to the extent covered by insurance. Each insurance policy procured by **MANAGER** and

OWNER shall affirmatively state that it will not be invalidated because the insured waived its rights of recovery against any party prior to the occurrence of a loss.

7.6.15 Crime Insurance. During the term of this Agreement **MANAGER** shall maintain Crime Insurance, with an insurer acceptable to **OWNER** (such acceptance by **OWNER** not to be unreasonably withheld or delayed), providing at least the following coverage in at least the amounts set forth below for each coverage:

- (a) Employee Dishonesty, \$500,000; and
- (b) Depositor's Forgery, \$500,000; and
- (c) Money & Securities, \$500,000 (each, "Inside" and "Outside")' and
- (d) Computer Theft, \$500,000; and
- (e) Wire Transfer Fraud, \$500,000

Provided, however, that if such coverage is provided on a "blanket" limit basis, a blanket limit of \$500,000 shall be considered to be sufficient to comply with this provision. The policy shall include an endorsement providing that any "employee" of **MANAGER** shall not be deemed to also be an "employee" of **OWNER** for purposes of the coverage afforded under the Employee Dishonesty coverage part. **OWNER** shall be both a Loss Payee (as its interests may appear) and an Additional Insured under such policy, which policy shall be written to apply to the Crime exposures arising under or in connection with this Agreement, and not to any other unrelated Crime exposures incurred by **MANAGER** or **OWNER** under any other similar agreements or otherwise.

7.6.18 Insurance Cost. The cost of providing insurance hereunder shall be an Operating Expense, regardless of which party procures the coverage.

7.6.19 Insurance Terms. Insurance terms not otherwise defined in this Agreement shall be interpreted consistent with insurance industry usage.

7.7 Hold Harmless. **MANAGER** shall defend, indemnify and hold harmless **OWNER** and its elected officials, officers, employees, agents, and representatives, from and against any and all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorneys' fees and other costs and expenses of litigation, which may be asserted against or incurred by **OWNER** or for which

OWNER may be liable in the performance of this Agreement, except those which arise solely from the negligence, willful misconduct, or other fault of **OWNER**.

7.8 Damage to and Destruction of the Facility. If all or part of the Facility is rendered unusable by damage from fire and other casualty which, but in the reasonable opinion of **OWNER**, the Facility can be substantially repaired under applicable laws and governmental regulations within 365 days from the date of such casualty (employing normal construction methods without overtime or other premium), then **OWNER** shall forthwith repair such damage. During the period during which the Facility or any part thereof remains unusable, and until such time as the Facility resumes full operation, (i) the Base Management Fee shall be reduced by the amount of \$2,000 per month, and **MANAGER** and **OWNER** shall jointly decide on an operating budget for the duration of the repair period and shall jointly determine whether to retain personnel during the repair period, and (ii) subject to applicable law, the term and any renewal term of this Agreement shall be extended by the amount of time in which the Facility is closed to the general public due to said damage. If, in the sole opinion of **OWNER** the Facility cannot be substantially repaired under applicable laws and governmental regulations within 180 days from the date of such casualty (employing normal construction methods without overtime or other premium), then **OWNER** shall notify **MANAGER** thereof. In such case, either **OWNER** or **MANAGER** may elect to terminate this Agreement as of the date of such casualty by written notice delivered to the other not more than 60 days after receipt by **MANAGER** of **OWNER'S** notice concerning the reconstruction.

7.9 Employees.

7.9.1 Employees of **MANAGER**. All persons engaged at the Facility in operating any of the services hereunder shall be the sole and exclusive employees of **MANAGER** and shall be paid by **MANAGER**, except for those individuals employed or utilized by subcontractors of **MANAGER**, as provided for in this Agreement but in no event deemed an employee of **OWNER**. In connection with the employment of its employees, **MANAGER** shall pay all applicable social security, reemployment insurance, worker's compensation or other employment taxes or contributions to insurance plans, and retirement benefits, and shall comply with all federal and state laws and regulations relating to employment generally, minimum wages, social security, reemployment

insurance and worker's compensation, and shall defend, indemnify and save **OWNER** harmless from any responsibility therefore. **MANAGER** shall comply with all applicable laws, ordinances and regulations including, without limitation, those pertaining to human rights and non-discrimination. Notwithstanding any provision of this Agreement to the contrary, this Agreement may be canceled or terminated by **OWNER** for a violation of this paragraph.

7.9.2 Employees of the MANAGER. All costs of employment of Facility employees incurred by **MANAGER** shall be an Operating Expense of the Facility, subject to Section 3.3.23. **OWNER** and **MANAGER** will work together to assure a positive working environment at the Facility.

7.9.3 Employee Standards. **MANAGER** will employ trained and neatly uniformed employees and said employees shall conduct themselves at all times in a proper and respectful manner. Any dismissal shall be in accordance with **MANAGER**' corporate policy and applicable federal, state or local laws which may be in effect and, further, shall be in compliance with applicable union or labor organizational agreements which may be in effect at the time of said dismissal and **MANAGER** shall defend, indemnify and save **OWNER** harmless from any claim, cause of action, expense (including attorneys' fees) lost, cost or damage of any kind or nature arising there from, except in the case of express written direction from **OWNER**.

7.9.4 Background Checks. **MANAGER** agrees that background checks shall be a term of employment for all employees of the **MANAGER** . Working in cooperation with **MANAGER**, the **OWNER** shall assume responsibility to perform the background checks on behalf of the **MANAGER** and provide documentation of the background checks to the **MANAGER**.

7.10 Availability of Facility. **MANAGER** agrees that, except as a result of full or partial destruction of the Facility, the Facility will be made available for all events scheduled therein and **MANAGER** agrees to defend, indemnify and save **OWNER** harmless from and against any and all claims, causes of action, expenses (including attorneys' fees) losses, costs and damages arising from the

failure of the Facility to be available in the condition necessary for the conduct of such events for scheduled events due to the negligence or willful misconduct of **MANAGER**, its agents, servants, employees or contractors of any tier, and in such case, **MANAGER** shall pay to **OWNER** the estimated Revenues, less Operating Expenses, for such event within five (5) days after the event was to have taken place.

7.11 No Payment by **OWNER**. Notwithstanding anything in this Agreement or exhibits hereto to the contrary, **OWNER** shall not be obligated to reimburse **MANAGER** as Operating Expenses or otherwise for costs and expenses (including attorneys, fees) for litigation which is covered by **MANAGER**' defense and indemnification obligations as set forth in Article 7, Sections 7.7 and 7.10 of this Agreement.

7.12 Termination for Convenience. Notwithstanding anything herein contained to the contrary, either party may terminate this Agreement on the following dates and occasions: December 31, 2010, or at the end of any subsequent year in which Facility failed to meet the mutually approved Budget.

7.12.1 In the event either the **OWNER** or **MANAGER** should choose to terminate the Agreement, the terminating party shall provide ninety (90) days written notice to the other party. In the event of termination, the **OWNER** shall pay to **MANAGER** all amounts owing hereunder and accrued through the date of termination. **MANAGER** shall not be deemed to have "failed to meet budget" for any year in which **OWNER** transferred or relegated revenues from the Facility to another entity in ways not anticipated in the annual budget.

7.13 Compliance with Laws. **MANAGER** will comply with all federal, state and local ordinances, statutes, rules and regulations as they relate to the operation of the Facility. **MANAGER'S** failure to comply with such ordinances, statutes, rules and regulations relating to the Facility shall be an Event of Default under this Agreement and shall entitle **OWNER** to terminate this Agreement pursuant to the provisions of Article 7, Section 7.5 of this Agreement. **MANAGER** agrees that it shall not be entitled to claim litigation costs (including attorneys' fees) as Operating Expenses pursuant to Subparagraph (1) of Exhibit A with regard to its rules and obligation to comply with ordinances, statutes, regulations as set forth herein.

- 7.14 Non-waiver. The failure of either party at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.
- 7.15 Amendment. The parties may amend this Agreement only by written agreement executed by the parties.
- 7.16 Choice of Law. The laws of the State of Minnesota shall govern the rights and obligations of the parties under this Agreement.
- 7.17 Severability. Any provision of this Agreement decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of this Agreement.
- 7.18 Notices. Any notice required herein shall be in writing and shall be deemed effective and received (a) upon personal delivery; (b) five (5) days after deposit in the United States mail, certified mail, return receipt requested, postage prepaid; or (c) one (1) business day after deposit with a national overnight air courier, fees prepaid, to **MANAGER** or **OWNER** at the following addresses:

If to **OWNER**:

City of Burnsville
100 Civic Center Parkway
Burnsville, MN 55337
Attention: City Manager

If to **MANAGER**:

MANAGER of VenuWorks of Burnsville, LLC
103 E 6th St., P.O. Box 625
Ames, IA 50010
Attention: President

Either party may designate an additional or another representative or address for notices upon giving notice to the other party pursuant to this paragraph. For the purposes of this Agreement,

"business day" shall mean a day which is not a Saturday, a Sunday or a legal holiday of the United States of America.

- 7.19 Representatives. **OWNER'S** representative to **MANAGER** in connection with Facility operations shall be **OWNER** Board of Directors or its designee, and the **MANAGER** representative shall be **MANAGER'** on-site General Manager / Executive Director at the Facility.
- 7.20 Force Majeure. Neither party shall be obligated to perform hereunder, and neither shall be deemed to be in default, if performance is prevented by fire, earthquake, flood, act of God, riot, civil commotion or other matter or condition of like nature, including the unavailability of sufficient fuel or energy to operate the Facility, or any law, ordinance, rule, regulation or order of any public or military authority stemming from the existence of economic controls, riot, hostilities, war or governmental law and regulations.
- 7.21 Labor Dispute. In the event of a labor dispute, which results in a strike, picket or boycott affecting the Facility or the services described in this Agreement, **MANAGER** shall not be deemed to be in default or to have breached any part of this Agreement.
- 7.22 Geographic Exclusivity. **MANAGER** shall not contract for the management of another performing arts center within sixty (60) miles of the Facility without the express written permission of **OWNER**, such permission not to be unreasonably withheld.
- 7.23 Integration. This Agreement and all appendices and exhibits hereto embody the entire agreement of the parties relating to the services to be provided hereunder. There are no promises, terms, conditions or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto. Exhibits hereby integrated hereto are Exhibit A: Operating Expenses, and Exhibit B: Business Plan. If the terms of this Agreement and any exhibit are inconsistent, the terms of the Agreement shall control.
- 7.24 Section Headings. Section headings in this Agreement are for convenience only and shall have no effect on the interpretation of this Agreement.

7.25 VenuWorks, Inc. VenuWorks, Inc. joins in execution of this agreement for the purposes of guaranteeing all payments due from **MANAGER** contained herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

OWNER

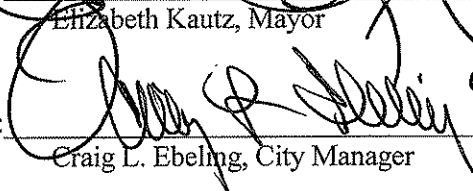
BY:


Elizabeth Kautz, Mayor

DATE

1/29/08

BY:


Craig L. Ebeling, City Manager

DATE

01/23/08

MANAGER of VenuWorks of Burnsville, LLC

BY:


Steven L. Peters

DATE

Its: President

3/7/08

EXHIBIT A

Operating Expenses

1. The term "Operating Expenses" shall mean the following and shall be, in all cases, subject to the Annual Budget for the Facility:
 - a. on-the-job payroll cost, including wages paid to employees and the cost of paid holidays, vacations, severance benefits, sick leave, employment practices liability, work compensation and other compensation and benefits; cost of training; payroll processing costs; and
 - b. employer contribution cost, in relation to employees carried on the on-the-job payroll mentioned in the foregoing clause (1), of every nature whatsoever, including but not limited to, social security, reemployment insurance, benefits for medical and hospital care, disability, death, termination, retirement or pensions, or insurance or annuity contracts to provide any of the foregoing, and all payments, other than those referred to in the foregoing clause (2), required under any collective bargaining agreement to which **MANAGER** is a party, or under any state or federal law or any regulations promulgated thereunder; and
 - c. cost of medical and security examination for employees on the on-the-job payroll; and
 - d. cost of purchasing, renting, maintaining and cleaning uniforms; and
 - e. cost of equipment, materials and supplies, including the cost of installation thereof; and
 - f. cost of insurance, permits, licenses and fees; and
 - g. cost of property, business, privilege, sales and all taxes other than taxes based on net income, provided that any penalties or fines for failure to collect and remit sales taxes shall not be an Operating Expenses but shall be borne by **MANAGER**; and
 - h. cost of marketing, promotions and advertising; cost of travel on behalf of Facility; and

- i. cost of necessary outside professional services, upon prior written approval by the **OWNER**; and
- j. cost of the commodities, (i.e. food stuffs' purchased for resale to the public); and
- k. cost of utilities; and
- l. litigation expenses or other costs (including attorneys' fees) incurred by **MANAGER** in connection with any proceeding; provided however that **OWNER** shall not be obligated to pay any such fees or costs (including attorneys' fees) unless prior to incurring any legal expense (including attorneys' fees), **MANAGER** shall consult with the **OWNER**, and **OWNER** and **MANAGER** shall jointly determine the course of action (including payment obligations thereof) to be taken with regard to any claim made against **MANAGER** or **OWNER** (concerning the Facility) or to be made by **MANAGER** or **OWNER**; and
- m. cost of installation of additional equipment and replacements thereof; and
- n. cost of replacements of pots, pans, dishes, linens, uniforms, silverware and glassware necessary for the operation of the concessions; and
- o. cost of ordinary maintenance and repair of the Facility and the equipment, additional equipment and replacements thereof; and
- p. cost of ordinary housekeeping of the Facility; and
- q. all costs related to **MANAGER** corporate staff travel, lodging, and supply costs incurred in connection with servicing **OWNER'S** needs at Facility, provided these expenses are consistent with the approved Operating Budget, or are specifically approved in advance by **OWNER**.
- r. all other expenses not specifically set forth in this Exhibit but not including the cost of home office overhead relating to the services provided by **MANAGER** hereunder, subject to **OWNER'S** prior written approval of any such expense, which approval shall not be unreasonably withheld or denied.

EXHIBIT B

Business Plan

[to be added]