

## DEVELOPMENT AND MANAGEMENT AGREEMENT

THIS DEVELOPMENT AND MANAGEMENT AGREEMENT (this "Agreement") dated as of the 10<sup>th</sup> day of October, 2005, by and between the City of Bloomington, Illinois, organized and existing pursuant to laws of the State of Illinois (the "City"), and Central Illinois Arena Management, Inc. (CIA), organized under the laws of the State of Illinois.

WHEREAS, the City is developing a sports and entertainment center, known as the U.S. Cellular Coliseum (the "Coliseum"), to be located in downtown Bloomington and serving the surrounding regional markets;

WHEREAS, it is currently contemplated that the Coliseum will contain an approximately 7,000 seat arena with self contained supporting and ancillary areas suitable for a variety of community activities and additionally, for professional ice hockey, professional indoor football, concerts, circus, ice shows and other entertainment events;

WHEREAS, it is further contemplated that the Coliseum will also contain an adjoining public ice rink, together with appropriate ancillary facilities, to be available for public ice-skating and related recreational activities;

WHEREAS, as the initial step in considering development of the Coliseum, the City has previously entered into a Consulting and Sale Agreement date January 14, 2002 (the "CSA Agreement") with Central Illinois Arena Management, Inc., a copy of which is attached hereto and incorporated herein by reference as "Exhibit A".

WHEREAS, in furtherance of the development of the Coliseum, the City has previously entered into a Pre Opening Sales and Management Agreement, dated April 27, 2004, (the "POSM agreement") with Central Illinois Arena Management, Inc., a copy of which is attached hereto and incorporated herein by reference as "Exhibit B".

WHEREAS, the CSA Agreement and POSM Agreement provide, in whole and in part as follows:

1. During the Pre-Opening Period, CIA is the sole and exclusive agent to provide comprehensive services with respect to sales and services and the development of the Coliseum, such services including, but not limited to design consulting, marketing, sale of key revenue generating sources, including naming rights, luxury suites, club seats, major sponsorships, and primary tenancies with private and third party funding sources;
2. The receipt by CIA from the City of commissions, fees, expense reimbursements and compensation as described in the CSA Agreement and POSM Agreement including paragraph 17 of POSM Agreement (Exhibit B).
3. Certain rights of CIA with respect to the future management and operations of the Coliseum including an obligation of the City to negotiate in good faith with CIA to

- enter into a management agreement for the operation and management of the Coliseum after opening and;
4. A right of first refusal with respect to any management agreement with the City in favor of CIA as provided in the POSM Agreement.
  5. A right until the thirtieth day before the public opening of the Coliseum, to provide services to the City and retain all rights under the POSM Agreement.

WHEREAS, CIA has exercised its right of first refusal and the City, by its approval of this agreement, acknowledges and accepts such right.

WHEREAS, CIA is prepared to provide a significant private investment in the Coliseum, as set forth hereinafter, and desires to utilize its resources to assist the City in the development and operation of the Coliseum;

WHEREAS, the City desires to receive the benefit of CIA's investment in the Coliseum and to engage CIA on its behalf, to provide development and management services for the Coliseum;

WHEREAS, this Agreement, consistent with the terms and conditions of the CSA Agreement and POSM Agreement, sets forth comprehensively the relationship between the City and CIA in the development and management of the Coliseum.

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

## **1. Definitions**

For purposes of this Agreement, the following terms have the meanings referred to in this Section 1:

"Affiliate" -- a person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person. For purposes of this definition, "control" means ownership of equity securities or other ownership interests that represent more than 40% of the voting power in the controlled person.

"Approved Budget" -- any budget submitted by CIA, as approved by the City pursuant to Section 5 hereof.

"Capital Equipment" -- any and all furniture, fixtures, machinery or equipment, either additional or replacement, having a per item original cost of \$5,000 (said \$5,000 to be adjusted by reference to the Consumer Price Index each January 1st) or more or an expected useful life of more than one year.

"Capital Improvements" -- any and all building additions, alterations, renovations, repairs or improvements that have an initial dollar cost of not less than \$5,000 (said \$5,000 to be adjusted by reference to the Consumer Price Index each January 1st) or per project.

"Coliseum" -- An approximately 7,000 seat entertainment center suitable for a variety of community activities and additionally, for professional ice hockey, professional indoor football, concerts, circus, ice shows and other entertainment events, but excluding the public ice rink;

"Coliseum Fund" - The fund within which there shall be accounts and sub-accounts into which all revenues of the Coliseum shall be deposited and from which payments shall be dispersed. Funds paid by the City shall also be deposited into the Coliseum Fund.

"Capital Costs" - the amounts necessary for purchase, replacement, or maintenance of all fixtures, signs, displays, equipment, machinery, appurtenances, improvements, additions, alterations, systems (including, but not limited to, plumbing systems, electrical system, wiring and conduits, heating and air-conditioning systems), and items of identical or similar nature and character, including, for example, seats and chairs, which are replaced and/or repaired in multiple units contemporaneously. The expense sum for such repairs, maintenance or replacement for multiple units shall be the total cost of same for all such multiple units.

"City" - the City of Bloomington, Illinois. In connection with this Agreement, the City Manager, unless applicable law requires action by the City Council, shall have the power and authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other actions required or described in this Agreement for and on behalf of the City, and with the effect of binding the City in that connection.

"City Council" -- the City Council for Bloomington, Illinois.

"City Manager" -- the duly appointed and acting City Manager or his designee, or, in the event of a vacancy in the office of City Manager, such person as may from time to time be authorized by the City Council to perform as City Manager during the term of such vacancy.

"Design/Build Team" - the architects and general contractor, together with any and all subcontractors and agents, selected by the City for the design and construction of the Coliseum.

"Event Expenses" - any and all expenses, exclusive of ordinary operating expenses, incurred or payments made by CIA in connection with the occurrence of events at the Coliseum, including but not limited to costs for event staffing including ushers, ticket takers, security and other event staff, and costs relating to setup and cleanup.

"Event Revenues" - For the sake of clarity, the parties acknowledge that revenues from the sale of tickets for events at the Coliseum are not Revenues under this Agreement, but are instead revenues of the promoter and/or performer of each such event. To the extent that CIA collects such ticket sale revenue on behalf of such promoter and/or performer, such ticket sale revenue (without taking into account excluding governmentally imposed taxes, fees, and charges, which shall be dispersed pursuant to applicable law) shall be the source of funds from which CIA collects the rental charges and other event reimbursements due by such promoter and/or performer for use of the Coliseum, which such charges and reimbursements are Revenues hereunder.

"Fiscal Year" -- a one-year period beginning May 1 and ending April 30; May 1 will commence the first day of the first Quarterly Period.

"Management Term" - as defined in Section 4.1 of this Agreement.

"Net Operating Loss/Profit - with respect to a Fiscal Year, in the case of a loss, the excess, if any, of Operating Expenses for such Fiscal Year over Revenues for such Fiscal Year, and in the case of a profit, the excess, if any, of Revenues for such Fiscal Year over Operating Expenses for such Fiscal Year.

"Operating Expenses" - (a) any and all expenses and expenditures of whatever kind or nature incurred, directly or indirectly, by CIA in promoting, operating, maintaining and managing the Coliseum, including, but not limited to: employee compensation and related expenses (e.g., base salaries, bonuses, severance and car allowances), employee benefits and related costs (e.g., relocation and other related expenses pursuant to CIA's relocation policy (a copy of which will be provided upon request), parking and other fringe benefits), supplies, material and parts costs, costs of any interns and independent contractors, advertising, marketing and public relations costs and commissions, janitorial and cleaning expenses, data processing costs, dues, subscriptions and membership costs, the costs of procuring and maintaining the insurance and fidelity bond referred to in Section 8 below, amounts expended to procure and maintain permits and licenses, charges, taxes, excises, penalties and fees, legal and professional fees, printing and stationery costs, Event Expenses, postage and freight costs, equipment rental costs, computer equipment leases and line charges, repairs and maintenance costs (e.g., elevators and HV AC), security expenses, utility and telephone charges, travel and entertainment expenses in accordance with CIA's policies, the cost of employee uniforms, safety and medical expenses, exterminator and waste disposal costs, costs relating to the maintenance of signage inventory and systems, the cost of annual independent audits of the Coliseum, the cost of compliance with laws and regulations, other start-up expenses associated with the opening of the Coliseum, costs incurred under agreements, commitments, licenses and contracts executed in CIA's name (or in CIA's name as agent of the City) as provided in Section 2 hereof, and the commissions and management fees payable to CIA pursuant to Section 7 and 10 below, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis.

(b) Solely for purposes of identifying Operating Expenses which will be budgeted in Approved Budgets, Operating Expenses shall exclude (A) Event Expenses, which are deducted from the gross receipts of all event activities at the Coliseum (in accordance with the last sentence in the definition of Event Expenses), and (B) all extraordinary expenses and all interest, income tax, depreciation and amortization expenses.

(c) Notwithstanding anything in this Agreement to the contrary, subparagraph (a) of this definition is subject to the Budget Approval process set forth in Section 5 of this Agreement.

(d) Extraordinary operating expenses must have the prior approval of the City.

"Revenues" - (a) any and all revenues of every kind or nature derived from operating, managing or promoting the Coliseum, including, but not limited to: license, lease and concession fees and rentals, revenues from merchandise sales, advertising sales, equipment rentals, utility revenues, box office revenues, including ticket surcharges, parking revenues, food service and concession revenues (if such revenues are collected in the first instance by and retained by the concessionaire, the amount of such revenues paid by the concessionaire

to the Coliseum shall be included as Operating Revenues), commissions or other revenues from decoration and set-up, security and other subcontractors (however, if such revenues are collected in the first instance by and retained by such subcontractors, the amount of such revenues paid by such contractors to the Coliseum shall be included as Operating Revenues), miscellaneous operating revenues, and interest revenues, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis.

(b) Solely for purposes of (i) identifying Revenues which will be budgeted in Approved Budgets, and (ii) calculating Net Operating Loss Profit and CIA's incentive fee hereunder, Revenues from all event activity at the Coliseum will be calculated to encompass the gross receipts from each such event, less Event Expenses.

"Public Ice Rink" - a public ice facility owned and operated by the City of Bloomington. It is adjacent to and shares some of the infrastructure of the Coliseum, and the Coliseum but, for the purposes of this Agreement, shall not be considered part of the Coliseum. The City and CIA may agree from time to time, in a form to be approved by Bond Counsel, in a manner so tax exempt status of bonds for the Public Ice Rink shall not be endangered, to agree to a division of revenue between the Coliseum and the Public Ice Rink.

"Pre-Opening Period" - the period commencing on the date hereof and ending on the date of the first public event in the Coliseum.

"License Agreement" -- each contract, license, agreement, option, lease and commitment that grants any person or entity any right (i) to license, use, occupy or rent all or any portion of the Coliseum, or (ii) to provide services to be used in the management, operation, use, possession, occupation, maintenance, promotion or marketing of all or any portion of the Coliseum.

"CIA" - Central Illinois Arena Management, Inc., organized under the laws of Illinois.

"CIA Capital Contribution" shall mean the sum of up to \$1,000,000 to be contributed by CIA to the Coliseum and to be utilized as provided in Section 2.2 hereof. The amount of the CIA Capital Contribution may be contributed by CIA in cash and/or in property purchased by CIA, provided, however, that if any such contribution is in property, the value of such property to be credited to the amount of CIA's contribution hereunder shall be proposed by CIA and approved by the City (which approval shall not be unreasonably withheld).

"Term" or "Renewal Terms" - as defined in Section 4 hereof.

## **2. Financial Contributions by CIA**

CIA agrees to make the following financial contributions to the development, financing and operations of the Coliseum.

### **2.1 Naming Rights.**

Pursuant to the aforementioned POSM, CIA negotiated a sale of the naming rights to the Coliseum with United States Cellular Corporation, a Delaware Corporation, the City of Bloomington, and CIA a copy of which agreement is attached hereto and incorporated herein by

reference as "Exhibit C" and a Beverage Marketing and Naming Rights Agreement with Pepsi-Cola General Bottlers, Inc. d/b/a Pepsi Americas, a Delaware Corporation, the City of Bloomington and CIA a copy of which agreement is attached hereto and incorporated herein by reference as "Exhibit D" and has tendered both such agreements to the City. The United States Cellular agreement provides for annual payments of \$175,000 per year to the City for a ten year period and the Pepsi-Cola Bottlers agreement provides for payments of 50,000 per year for a ten year period. CIA hereby, as agent for the City, transfers the Agreements, Exhibits C and D, and the contractual obligations to the City for the duration of Exhibits C and D.

The parties acknowledge that the revenue from the sale of the naming rights is a critical source of funding for the coliseum, that the City must receive a minimum of \$200,000.00 per year for a period of ten years from the sale of naming rights and that the City is entering into this agreement in reliance on the representation by CIA that the aforescribed naming rights agreements will provide the necessary amount of revenue over the time required. CIA agrees that in the event of a termination of either of the aforescribed agreements with United States Cellular Corporation or Pepsi-Cola General Bottlers or any subsequent agreement entered into as hereinafter provided, CIA shall be required to use its best efforts to resell those naming rights within one year of the date City receives notice of the termination of the naming rights agreement then in effect, subject to the provisions of Section 7.3 . In the event CIA is unable to procure a new naming rights agreement within one year, then CIA agrees to indemnify City from any loss of revenue that would have been generated from the naming rights agreement that was terminated by waiving its management fee, commissions or some combination of both in part or in whole up to the amount of revenue expected from the naming rights agreement in question, subject to the condition that CIA shall have no obligation to waive any fees or commissions if it sells the naming rights for an amount that would produce the same amount of revenue over ten year as the terminated agreement. CIA's obligation to indemnify the City shall remain in effect until such time as a new naming rights agreement becomes effective which provides at least as much revenue as would have been provided under the terminated agreements.

## 2.2 Capital Contribution.

CIA shall contribute to the direct cost of the project an amount not to exceed \$1,000,000 for the purchase of all concession equipment necessary and appropriate to provide the Coliseum with commercially reasonable food and beverage and merchandise related equipment. The amount of the capital contribution may be contributed by CIA in cash or property purchased by CIA, or both; provided, however that if any such contribution is in property, the value of such property to be credited to the amount of CIA's contribution hereunder shall be proposed by CIA and approved by the City, which approval shall not be unreasonably withheld.

## 2.3 Professional Sports Franchises.

- a. CIA shall be responsible for providing to the Coliseum commitments from professional sports franchises as long-term, primary tenants at the Coliseum with aggregate annual playing dates approximating 50 home games, at the Coliseum, as follows:
- b. Ice Hockey. CIA has secured on behalf of the City a debt free professional hockey franchise, approved for play in the Bloomington Region as defined by its league membership with BMI

Hockey, L.L.C., an Illinois Limited Liability Company. Said Hockey License shall be submitted for approval by the City and City Council by October 10, 2005 and executed upon approval by the City Council.

- c. Professional Indoor Football. CIA has secured on behalf of the City a debt free professional football franchise, approved for play in the Bloomington Region as defined by its league membership with B-N Football, L.L.C. an Illinois Limited Liability Company as shown and indicated on Football License Agreement. Said Football License shall be submitted for approval by the City and City Council by October 10, 2005 and executed upon approval by the City Council.

2.4 Additional Financial Commitments. With respect to both (b) and (c) above, CIA and the Licensee shall be fully responsible for all acquisition costs with respect to such tenants, including membership, maintenance and transfer costs, all financial guarantees and letters-of-credit obligations to the respective leagues and otherwise, and all operational costs. Acquisition costs with respect to such tenants shall not be construed to be operating expenses.

### **3. Engagement of CIA: Scope of Services.**

#### 3.1 Engagement.

- a. General Scope. The City hereby engages CIA to promote, operate and manage the Coliseum during the Term and the Renewal Terms, if any, upon the terms and conditions hereinafter set forth, and CIA hereby accepts such engagement. CIA shall perform and furnish such management services and systems as are appropriate or necessary to operate, manage and promote the Coliseum in a manner consistent with CIA's policies and procedures and the operations of other similar first-class facilities.
- b. Managing Agent for the Coliseum. Subject to the terms of this Agreement, CIA shall be the sole and exclusive managing agent of the City to manage, operate and promote the Coliseum during the Term and the Renewal Terms, if any. CIA shall have exclusive authority over the day-to-day operation of the Coliseum and all activities therein; provided that CIA shall follow all policies and guidelines of the City hereafter established or modified by the City that the City notifies CIA in writing are applicable to the Coliseum (including without limitation any methodology pertaining to the allocation of any costs and expenses by the City to the Coliseum as permitted herein).

With respect to (a) and (b) above, both parties acknowledge that the pro forma operating statements attached hereto as Exhibit E are a guideline as to the desired performance of the Center, including as to the number and quality of events to be conducted annually.

### 3.2 Specific Services.

Without limiting the generality of the foregoing, CIA shall have, without (except as otherwise expressly noted below) any prior approval by the City, sole right and authority to:

(a) employ, supervise and direct employees and personnel consistent with the provisions of this Agreement;

(b) administer relationships with all subcontractors, and all other contracting parties assume responsibility for any and all negotiations, renewals and extensions (to the extent CIA deems any of the foregoing to be necessary or desirable) relating to such contracts, and enforce contracts;

(c) negotiate, execute in its own name, deliver and administer any and all licenses, occupancy agreements, rental agreements, booking commitments, advertising agreements, supplier agreements, service contracts (including, without limitation, contracts for cleaning, decorating and set-up, snow removal, general maintenance and maintenance and inspection of HVAC systems, elevators, stage equipment, fire control panel and other safety equipment, staffing and personnel needs, including guards and ushers, and other services which are necessary or appropriate) and all other contracts and agreements in connection with the management, promotion and operation of the Coliseum; provided that the City shall have the right to approve any such license, agreement, commitment or contract in an amount in excess of \$9,999, and provided further, that, if any such license, agreement, commitment or contract other than those involving the license, lease or rental of the Coliseum in the ordinary course has a term that extends beyond the remaining Term or Renewal Terms, as the case may be, such license, agreement, commitment or contract shall be approved and executed by the City (which approval and execution shall not be unreasonably withheld);

(d) to the extent that Revenues or funds supplied by the City are made available therefore, maintain the Coliseum in the condition received, reasonable wear and tear excepted; provided that the City shall be responsible for undertaking all Capital Improvements and Capital Equipment purchases as provided in Section 5.8;

(e) to the extent that Revenues or funds supplied by the City are made available therefore, rent, lease or purchase all equipment and maintenance supplies necessary or appropriate for the operation and maintenance of the Coliseum, provided that the City shall be responsible for undertaking all Capital Improvements and Capital Equipment purchases pursuant to Section 5.8, subject to the CIA Capital Contribution as provided in Section 2.2;

(f) establish and adjust prices, rates and rate schedules for the aforesaid licenses, agreements and contracts and any other commitments relating to the Coliseum to be negotiated by CIA in the course of its management, operation and promotion of the Coliseum. In determining such prices and rate schedules, CIA shall evaluate comparable charges for similar goods and services at similar and/or competing



facilities and shall consult with the City Manager about any adjustments to the rate schedules- at the Coliseum to be made by CIA:

(g) pay, when due, on behalf of the City, all Operating Expenses from accounts established pursuant to Sections 5.6 and 5.7 of this Agreement;

(h) Subject to the written approval of the City, institute as agent for the City and at the reasonable expense of the City, with counsel selected by CIA and approved by the City, such legal actions or proceedings as CIA shall deem necessary or appropriate in connection with the operation of the Coliseum, including, without limitation, to collect charges, rents or other revenues due to the City or to cancel, terminate or sue for damages under, any license, use, advertisement or concession agreement for the breach thereof or default thereunder by any licensee, user, advertiser, or concessionaire at the Coliseum;

(i) maintain a master set of all booking records and schedules for the Coliseum;

(j) provide day-to-day administrative services in support of its management activities pursuant to Approved Budgets and annual plans described herein, including, but not limited to, the acquisition of services, equipment, supplies and facilities; internal budgeting and accounting; maintenance and property management; personnel management; record-keeping; collections and billing; and similar services;

(k) engage in such advertising, solicitation, and promotional activities as CIA deems necessary or appropriate to develop the potential of the Coliseum and the cultivation of broad community support (including without limitation selling advertising inventory and securing product rights for the Coliseum). CIA shall work with the City's designees to market the Coliseum for conventions, trade shows and public entertainment shows. CIA shall be permitted to use the term "Coliseum" and logos for such names in its advertising, subject to the approval of the City Manager.

(l) provide directly or by independent contractor (such contracts with independent contractors subject to the approval of the City, such approval not to be unreasonably withheld) (i) public concessions throughout the Coliseum at locations mutually agreed by the City and CIA (including, without limitation, at permanent and portable concession stands and cafes located in the Coliseum and on the grounds around it), (ii) catering and related services for all catering required at the Coliseum, as requested by the City or any outside group or organization seeking catering services at the Coliseum; (iii) vending services at the Coliseum, and (iv) alcoholic beverage services, to the extent the applicable liquor license permits (collectively referred to herein as "Concession Services"),

### 3.3 Right of Entry Reserved.

Representatives of the City designated in writing by the City Manager shall have the right, upon reasonable advance notice to CIA and at appropriate times, to enter all portions of the Coliseum to inspect same, to observe the performance of CIA 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 City may be obligated or have the right to do under this Agreement or otherwise. Nothing contained in this Section is intended or shall be construed to limit any other rights of the City under this Agreement. The City shall not interfere with the activities of CIA hereunder, and the City's actions shall be conducted such that disruption of CIA 's work shall be kept to a minimum. Nothing in this Section shall impose or be construed to impose upon the City 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.

### 3.4 Pre-Opening Services.

a. CIA shall continue to perform all terms and conditions and provide all Pre-Opening services as described in the CSA Agreement and PSOM Agreement during the Pre-Opening Period. Attached hereto as "Exhibits F & G" is a descriptive scope of Pre-Opening services and FF&E services.

b. The City shall continue to perform all terms and conditions and provide and pay to CIA all payments, compensation and reimbursements as described in the CSA Agreement and the PSOM Agreement during the Pre-Opening Period.

c. The City acknowledges and agrees that CIA is neither an architect nor an engineer and its consulting services provided under the CSA Agreement, PSOM Agreement and this Agreement with respect to the Coliseum are based upon its operational knowledge and the services to be provided are as a consultant. At no time should the services of CIA be construed as architectural or engineering. Neither the City nor any of their respective agent, consultants or representatives will rely upon CIA as having architectural or engineering expertise. Accordingly, notwithstanding any other term or condition of this agreement, CIA shall have no liability to the City with respect to architectural or engineering matters relating to the Coliseum.

### 3.5 Confidentiality/Nondisclosure.

The parties hereto agree that they shall keep secret and confidential any and all proprietary information (which shall include all documents which CIA marks as confidential or proprietary), and neither party shall divulge any such information, in whole or in part, to any third party, except as required by law, without the prior written consent of the other party, The parties shall provide notice to the other party of any known or suspected violations of this Section 3.6.

## 4. **Term and Renewal Terms.**

### 4.1 Term.

(a) The Term of this Agreement (Management Term) shall commence on the date of execution of this Agreement and shall expire on the date ten (10) years subsequent to the date of the first public event held in the Coliseum. If CIA fully complies with the

terms and conditions contained herein, then it shall have the first right of refusal and option to exercise one 5 year renewal of the Agreement for the term of April 1, 2016 to March 31, 2021, on terms and conditions negotiated at the time; except that in the event the City and CIA are unable to reach an agreement regarding fees and conditions CIA shall notify the City in writing no later than one year prior to the end of the tenth year of this Agreement of its intent to exercise its renewal option. Upon receipt of such notice by the City, CIA and the City shall meet promptly for the purpose of negotiating fees and conditions which shall replace the fees and conditions contained in this agreement.

## **5. Funding; Budgets; Bank Accounts.**

### 5.1 Operating Funds.

a. Pre-Opening Budget. Pursuant to the CSA Agreement, and the PSOM Agreement CIA has submitted and the City has approved a Pre-Opening Budget for the Coliseum through December 31, 2005. From time to time, CIA shall be entitled to revise and update the Pre-Opening Budget to reflect changes in circumstances, provided that any revised Pre-Opening Budget shall require the re-approval of the City. During the Pre-Opening Period, CIA's aggregate expenses (when taken as a whole relative to the total Pre-Opening Budget and not on a per line item basis) shall not exceed the aggregate Pre-Opening Budget, without consent of the City. In the event that any time during the Pre-Opening Period, CIA reasonably believes that its expenditures are (i) likely to exceed the budgeted amounts or (ii) there insufficient funds to perform the Pre-Opening services, CIA shall promptly give notice to the City.

(b) In order to provide funding for the expenses set forth in the Pre-Opening Budget, the City shall advance to CIA for deposit in an interest-bearing account established in accordance with Section 5.6 below and withdrawal upon incurrence of such pre-opening expenses ("Pre-Opening Fund"), an amount equal to or greater than the aggregate of the projected Pre-Opening Budget expenses for three (3) month period beginning on the date hereof (each a "Quarterly Period"). By no later than the first day of each successive Quarterly Period during the Pre-Opening Period, the City shall advance to CIA such amount as is necessary to replenish the Pre-Opening Fund to a minimum amount equal to the aggregate of projected pre-opening expenses set forth in the Pre-Opening Budget for the next Quarterly Period then in effect. If, at the end of the Pre-Opening Period, there is a balance in the Pre-Opening Fund in an amount in excess of the then accrued expenses set forth in the Pre-Opening Budget, CIA shall disburse such excess to account established pursuant to Section 5.6 below. If, after the first day of any month, the amount of moneys on deposit in the Pre-Opening Fund shall be insufficient for the payment of (i) pre-opening expenses set forth in the Pre-Opening Budget then due or budgeted to become due during such month or (ii) emergency expenditures to which the City has consented, CIA may, but shall not be required to, advance the amount of such insufficiency out of its funds. In that event, CIA shall immediately notify the City of any such advance, and the City shall promptly, but in no event later than the thirtieth (30th) day following the giving of such notice, reimburse CIA in an amount equal to such advance.

(c) Subject to Section 5.2, following the approval of the annual operating budget for a Fiscal Year (including, without limitation, any annual operating budget applicable to the first Fiscal Year during the Term hereof), the City shall make available to CIA all funds necessary to pay all Operating Expenses incurred or accrued in such Fiscal Year. To the extent that Operating Revenues during a calendar quarter period are insufficient, or expected to be insufficient, to cover Operating Expenses, the City shall advance funds to CIA as follows: ninety (90) days prior to the beginning of each calendar quarter during the Management Term and any Renewal Term, CIA will submit to the City an invoice for the projected Cash Flow Shortfall for such Quarterly Period and the City will transfer such funds to CIA within ten (10) days after the start of such Quarterly Period. Such funds shall be deposited by CIA in the operating or payroll account(s) established pursuant to Section 5.7 and used to pay Operating Expenses.

### 5.2 Non-Funding.

(a) The City shall have no obligation to provide funds for the payment of Operating Expenses incurred or committed for after the date CIA receives written notice (an "Appropriation Deficiency Notice") of the fact that insufficient funds or no funds have been appropriated for the Coliseum.

(b) If the Appropriation Deficiency Notice is of insufficient funds, the City shall pay all Operating Expenses incurred or committed for after such date which are within the aggregate level of appropriated funds specified in the Appropriations Deficiency Notice. The City shall pay all Operating Expenses incurred or committed for prior to the date receives the Appropriation Deficiency Notice. Any failure by the City to provide funds (beyond the aggregate level of appropriated funds) for the payment of Operating Expenses incurred or committed for after CIA receives an Appropriations Deficiency Notice shall not be a breach of or default under this Agreement by the City. Any failure by CIA to perform its obligations under this Agreement shall not be a breach of or default under this Agreement if such breach or default results from the City's failure to appropriate sufficient funds for the management, operation and promotion of the Coliseum.

(c) If the City appropriates funds at (or reduces appropriated funds) to a level that, in CIA 's judgment, renders the management of the Coliseum not feasible, CIA may, at its option, either (i) continue management of the Coliseum at a reduced level consistent with anticipated Operating Revenues and available funding or (ii) terminate this Agreement pursuant to Section 15. Following such termination, CIA shall have the right to resume management of the Coliseum at such time as the City shall first restore appropriated funds to reasonable levels.

### 5.3 Annual Budget: Cash Flow Budget.

(a) As part of the annual plan described in Section 8.2 herein, on or before September 15 of each year (beginning September 15, 2006), CIA will prepare an annual operating and cash flow budget for the next Fiscal Year (which shall be a calendar

year) to meet the scope of services and objectives under this Agreement. Such budget materials shall contain appropriate line items for revenues and expenses, including debt service, and the projected net operating deficit or surplus.

(b) The annual budget materials referred to in subparagraph (a) above shall be reviewed and are subject to approval by the City by sixty (60) days prior to the end of each Fiscal Year during the term of this Agreement, the City Manager shall notify CIA of any changes to the annual operating budget and the cash flow funding budget for the succeeding Fiscal Year proposed by CIA and with such changes, if any, as are made by the City prior to thirty (30) days prior to the end of each Fiscal Year during the Term of this Agreement, such budgets shall be the Approved Budgets for the following Fiscal Year, provided that if the annual operating budget or the annual cash flow budget as proposed by CIA are modified by the City in a manner which, in CIA 's commercially reasonable judgment, which judgment may be established only subsequent to a minimum of sixty (60) days of good faith discussions with the City, could materially interfere, impede or impair the ability of CIA to manage, operate or promote the Coliseum, CIA shall have the right to terminate this Agreement pursuant to Section 15, and provided further that if the approved annual operating budget or annual cash flow budget departs from the budgets proposed by CIA, CIA shall not be construed to have breached its obligations under this Agreement if the alleged breach has been caused by the limitations in the Fiscal Year's budgets.

#### 5.4 Budget Modifications Initiated by CIA.

CIA may submit to the City at any time prior to the close of a Fiscal Year a supplemental or revised annual operating budget or cash flow budget for such Fiscal Year. Upon the approval of the City of such supplemental or revised budget, the Approved Budgets for such Fiscal Year shall be deemed amended to incorporate such supplemental or revised budget. The Approved Budgets may only be amended as set forth in Section 5.5 below or in the two preceding sentences except that CIA shall have the right to amend the Approved Budgets as may be necessary or appropriate as the result of the scheduling by CIA of additional events or activities at the Coliseum (and the incurrence of additional Operating Expenses arising from the scheduling of additional events or activities at the Coliseum) as long as prior to the scheduling of such events or activities, CIA had a good faith belief that the Loss would be increased as a result of such additional events or activities.

#### 5.5 Budget Modifications Initiated by the City.

In the event that it appears reasonably likely, in any year during the term hereof, that the actual net operating loss/profit for such Fiscal Year will be less than projected (or greater with respect to a net operating loss) in the annual operating budget for such Fiscal Year, the City Manager may request from CIA a plan for reduction of Operating Expenses to a level consistent with the budgeted net operating loss/profit amount. CIA shall forthwith comply with any such expense reduction requested by the City and the approved budgets for such Fiscal Year shall be modified accordingly, provided that if the annual operating budget or annual cash flow budget is modified in a manner which, in CIA 's judgment, could materially interfere, impede or impair the

ability of CIA to manage, operate or promote the Coliseum, CIA shall have the right to terminate this Agreement pursuant to Section 15 and provided further that CIA shall not be construed to have breached its obligations under this Agreement if such alleged breach has been caused by the limitations in the Fiscal Year's budgets.

#### 5.6 Receipts and Disbursements.

CIA shall establish and maintain in one or more depositories one or more operating, payroll and other bank accounts for the promotion, operation and management of the Coliseum. All revenues collected by CIA from the operation of the Coliseum shall be deposited into such accounts and Operating Expenses (other than Operating Expenses to be paid from an account described in Section 5.7) shall be paid by CIA from such accounts. All revenues collected by CIA arising from operation of the Coliseum, including revenues from box office sales, Coliseum or equipment rentals, utility rental agreements, food and beverage concessions, or any other source are the sole property of the City. Any amounts remaining in such accounts upon termination of this Agreement for any reason, after payment of all outstanding Operating Expenses, shall be promptly paid by CIA to the City. The City shall have the right to review such accounts and to request and review bank statements to the same extent as CIA.

#### 5.7 Ticket Sales Revenues.

CIA shall hold in a separate interest-bearing account in a banking institution depository in the City of Bloomington, Illinois any ticket sale revenues which it receives with respect to an event to be held at the Coliseum pending the completion of the event. Such monies are to be held for the protection of ticket purchasers, the City and CIA, and to provide a source of funds, as required for such payments to performers and promoters and for such payments of Operating Expenses in connection with the presentation of events as may be required to be paid contemporaneously with the event. Following the satisfactory completion of the events, CIA shall make a nightly deposit into the operating account(s) established pursuant to Section 5.6 above of the amount in such account and shall pay from the operating account Event Expenses and provide the City with a full event settlement report. Interest which accrues on amounts deposited in the operating account(s) referred to in Section 5.7 and the ticket account referred to above shall be considered Revenues. Bank service charges, if any, on such account(s) shall be considered Operating Expenses.

#### 5.8 Capital Improvements: Capital Equipment.

The obligation to pay for, and authority to perform, direct and supervise Capital Improvements and Capital Equipment purchases (defined as equipment costing more than \$5,000.00 and services costing more than \$5,000.00, as adjusted by the CPI Index) shall remain with the City, and will not be considered Operating Expenses. The annual management plan submitted pursuant to Section 8.2 shall include CIA's recommendation for Capital Improvements and Capital Equipment purchases to be accomplished during the year and shall be accompanied by an estimate of the cost of all such items and projects and a request that the City budget funds therefore. The

City shall retain the discretion to determine whether and to what level to fund Capital Improvements and Capital Equipment purchases to the Coliseum.

#### 5.9 Limitation of CIA Liability.

Notwithstanding any provision herein-to the contrary and except for CIA 's express indemnification undertakings in Section 11.1 and its express reimbursement undertakings in Section 8.1 (b), and financial obligations pursuant to Section 2 hereof, CIA shall have no obligation to fund any cost, expense or liability with respect to the operation, management or promotion of the Coliseum, including, specifically, any pre-opening expenses incurred during the Pre-Opening Period as set forth in the Pre-Opening Budget. Notwithstanding anything to the contrary set forth in this Agreement, the City recognizes and agrees that performance by CIA of its responsibilities under this Agreement is in all respects subject to and conditioned upon the timely provision of funds to CIA for such purposes as hereinafter provided. In addition, any financial forecasts or projections made by CIA under this Agreement pertaining to the Coliseum (including without limitation operating expenses, advertising sales, and other revenues) are, or will be, made in good faith by CIA based upon its experience at other facilities which are as comparable as possible to the Coliseum; however, given the individual characteristics of each the Coliseum and the uncertainty associated with future events and/or market conditions, the actual financial results obtained may vary from such financial forecasts or projections, and such forecast and projections shall not be construed as a representation, warranty or guarantee by CIA of the actual financial results to be obtained.

#### 5.10 Funds for Emergency Repairs.

CIA shall have the right to act, with the consent of the City, in situations which CIA reasonably determines to be an emergency with respect to the safety, welfare and protection of the general public, including spending and committing funds held in the operating account(s) of the Coliseum, even if such expenses are not budgeted; provided, however, CIA shall have no obligation under any circumstance to spend or commit funds other than funds then available in such accounts for any such purpose. Immediately following such action, CIA shall inform the City of the situation and the action(s) taken, and the City shall pay into such account( s) the amount of funds, if any, spent or committed by CIA pursuant to this Section 5.10 in excess of budgeted amounts.

### **6. Concessions and Merchandise.**

#### 6.1 Capital Contribution.

Pursuant to Section 2.2 hereof, CIA shall contribute an amount not to exceed \$1,000,000 to provide the Coliseum with commercially reasonable food and beverage and merchandise related equipment, all as set forth in such provision. Title to such equipment shall remain with CIA. In the event of a termination of this Agreement, the City shall have the right to purchase the equipment at fair market value as may reasonably be determined by the parties.

## 6.2 Budget and Design.

CIA will work with the City to prepare, and mutually agree upon, a budget for the Capital Improvements and Capital Equipment to be funded with such contribution, along with the scope of work to be performed thereunder, the supervision of tasks and the estimated time frames for the projects listed in such budget. CIA shall additionally work with the Design/Build Team to develop a full food, beverage and merchandise program for the Coliseum. Final design, schematic and construction drawings will be the responsibility of the Design/Build Team, and the cost of installation will be a project cost. CIA will provide initial drawings and will oversee installation.

## 6.3 Scope.

CIA shall have the exclusive right to operate all food, beverage and merchandise concessions in the Coliseum, unless otherwise agreed, specifically excluding the public ice rink.

## 6.4 Payment to the Coliseum.

CIA will make payments to the Coliseum as follows:

### Food and Beverage Sales

\$0 - 1.0M	32%
\$0- 1.2M	34%
\$0- 1.8M	38%
\$0- 2.5M	42%
Suite sales	15%
Catering sales	15%

Such payments will be deposited under Section 5.6 within three business days after receipt. The foregoing payments to the Coliseum will be paid as a percentage of Gross Receipts, defined as total revenues from food and beverage sales, less sales and other taxes, service charges, employee meals, and reduced or at-cost items per Fiscal Year.

## 6.5 Food Prices and Menus.

CIA will in its reasonable discretion, determine menus and food prices based on industry standards. The City may require modifications of such menus and prices only on a commercially reasonable basis.

## 6.6 Utilities.



CIA will be responsible for the cleaning of the kitchen and food preparation areas. Utilities and cleaning expenses, including rubbish removal, will be from the account of the Coliseum.

#### 6.7 Sponsorships/Local Vendors.

CIA shall encourage participation by local vendors in the food and beverage services of the Coliseum. CIA shall have full responsibility for the negotiation of any such contracts, including the allocation and determination of the value of related sponsorships and food and beverage costs.

#### 6.8 Sales of Merchandise.

All sales of merchandise relating to teams with license agreements with the Coliseum will be in accordance with the terms of such license agreements, all as approved by the City and, accordingly, will be for the full account of the teams as to revenues and expenses. With respect to all other merchandise sold at the Coliseum, the Coliseum Fund shall receive 10% of the gross revenues, less sales and other similar levied charges.

### 7. **Sponsorship; Premium Seating; Naming Rights.**

#### 7.1 Sponsorship.

CIA shall, on behalf of the City and the Coliseum, have the sole and exclusive right to sell all sponsorship and advertising relating to the Coliseum, including but not limited to, all fixed and movable signage of any type, concourse and inner-bowl signage and Coliseum-related signage of the hockey and football tenants ("Sponsorship Inventory"). Such Sponsorship Inventory shall be under the exclusive control of CIA, on behalf of the City. The Coliseum will retain all proceeds from such sponsorship sales, less (i) industry standard commissions of 10%, (ii) cost of sales and (iii) payments to the hockey and football tenants in accordance with their respective License Agreements. The hockey and football teams will retain its own revenues that it generates from dasher boards, ice/field logos, program ads, and other sponsorship opportunities with the approval of CIA.

#### 7.2 Premium Seating.

CIA shall, on behalf of the City and the Coliseum, have the sole and exclusive right and responsibility to sell the suites and club seats that are part of the Coliseum program. The Coliseum shall retain all proceeds of such sales, less (i) industry standard commissions of 10%, (ii) cost of sales and (iii) payments to the hockey and football tenants, and other tenants whether single event or otherwise if so determined, with respect to the ticket value component of such sales, in accordance with their respective License Agreements. CIA shall guarantee the City the sale of 22 suites sold by the Coliseum's opening night and will secure the remaining two suites by similar long-term contracts or by leasing the suites on an event-by-event basis. The parties

hereto recognize that the consideration for certain suite or other licenses may be in the form of "trade" or other vendor relationships with the Coliseum and/or its tenants. In each such instance, amounts shall be allocated to the respective licenses based on commercially reasonable valuations determined by good faith discussions by the parties hereto.

### 7.3 Naming Rights.

Pursuant to Section 2.1 hereof, and as indicated in "Exhibits C & D" attached hereto and incorporated herein by reference, CIA has sold the Naming Rights to the Coliseum to United States Cellular Corporation and Pepsi-Cola General Bottlers, Inc d/b/a Pepsi Americas. The City, by approving this Management Agreement, hereby approves such sale; and in the event that such further and additional sales of naming rights, the City shall have the right to approve the identity of such naming rights entity; such approval to be withhold, however, only (i) in the event that the City reasonably determines that the business, character or reputation of the entity is inconsistent with the community values of the City of Bloomington or (ii) the entity does not have the financial capability to meet its obligations under the Naming Rights Agreement. All cash proceeds from the sale of Naming Rights up to \$200,000.00 annually shall be held for the Coliseum Fund; all cash amounts exceeding \$200,000.00 per Fiscal Year shall be deposited and distributed in accordance with the terms and conditions of Section 10.3 hereof.

## 8. **Records, Audits and Reports.**

### 8.1 Records and Audits.

(a) CIA shall keep full and accurate accounting records relating to its activities at the Coliseum in accordance with generally accepted United States accounting principles. CIA shall maintain a system of bookkeeping adequate for its operations hereunder. CIA shall give the City's authorized representatives access to such books and records maintained at the Coliseum during reasonable business hours and upon reasonable advance notice as often as the City shall deem reasonably necessary or appropriate. CIA shall keep and preserve for at least three (3) years following each Fiscal Year all sales slips, rental agreements, purchase order, sales books, credit card invoices, bank books or duplicate deposit slips, and other evidence of Revenues and Operating Expenses for such period. In addition, on or before April 1 following each Fiscal Year for which CIA is managing the Coliseum hereunder, CIA shall furnish to the City a balance sheet, a statement of profit or loss and a statement of cash flows for the Coliseum, for the preceding Fiscal Year, prepared in accordance with generally accepted United States accounting principles and accompanied by an independent auditor's report of a recognized, independent certified public accountant. The audit shall contain an opinion expressed by the independent auditor of the accuracy of financial records kept by CIA and of amounts due to the Coliseum Fund. The audit shall also provide a certification of Revenues and Operating Expenses as defined in this Agreement for such Fiscal Year. The audit shall be conducted by a reputable firm selected by CIA with City approval. The City shall not withhold or delay such

consent or approval unreasonably. Notwithstanding anything to the contrary herein, the costs of such audit shall be deemed Operating Expenses.

(b) The City shall have the right at any time, and from time to time, to cause recognized independent auditors to audit all of the books of CIA relating to Revenues and Operating Expenses, including, without limitation, bank books, sales slips, cash register tapes, credit card invoices, duplicate deposit tapes, and invoices. No costs incurred by the City in conducting such audit shall be considered an Operating Expense. If any such audit demonstrates that the Revenues or Operating Expenditures reflected in any financial statements prepared by CIA and audited as specified in the foregoing subparagraph ( a) are understated (in the case of Operating Expenses) or overstated (in the case of Revenues), in either case by more than five percent (5%), CIA shall pay to the City the reasonable cost of such audit and shall promptly refund to the City any portion of the Incentive Fee (defined in Section 10.2) paid for such Fiscal Year which is attributable to the overstatement or understatement, as the case may be. The City's right to have such an audit made with respect to any Fiscal Year and CIA's obligation to retain the above records shall expire three (3) years after CIA's statement for such Fiscal Year has been delivered to the City.

(c) The parties shall cooperate in any audits conducted pursuant to (a) or (b) above.

#### 8.2 Annual Plan.

(a) CIA shall provide to the City on or before September 1 of each year, an annual management plan, which shall include the annual operating budget described in Section 5.3 for the next Fiscal Year. The annual plan shall include information regarding CIA's anticipated operations for such Fiscal Year, including planned operating maintenance activities by CIA, requested Capital Improvements and Capital Equipment purchases and an anticipated budget therefore, anticipated events at the Coliseum, anticipated advertising and promotional activities, and planned equipment and furnishings purchases. The annual plan shall be subject to review, revision and approval by the City. Following review and revision by the City, CIA shall have thirty (30) days to incorporate the City's revisions into its plan. Upon approval by the City, such annual plan shall constitute the operating program for CIA for the following Fiscal Year.

#### 8.3 Monthly Reports.

By the twenty-fifth day of each month, CIA shall provide to the City a written monthly report in a form approved by the City and similar to that used in other CIA managed facilities setting out the Coliseum's anticipated activities for the upcoming month and reporting on the prior month's activities and finances.

#### 8.4 Event Report.

CIA shall provide to the City, after each event, a report showing the amount of revenue attributable to specific activities conducted by CIA in connection with that

event, such as ticket sales, concessions, merchandise sales, and parking fees. Such report shall be submitted to the City no later than 3 business days after the event.

## **9. Employees.**

### **9.1 CIA Employees.**

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

(b) CIA shall assign to the Coliseum a competent, full-time general manager who shall have no duties other than the day-to-day operation and management of the Coliseum, and a full-time marketing executive to direct, among other things, all sales of sponsorships, premium seating and the resale of naming rights. Prior to CIA's appointment of such general manager and marketing executive, CIA shall consult with the City with respect to the qualifications of each of the general manager and marketing executive proposed by CIA.

(c) CIA employees at the Coliseum shall not for any purpose be considered to be employees of the City, and CIA shall be solely responsible for their supervision and daily direction and control and for setting and paying as an Operating Expense, their compensation (and federal income tax withholding) and any employee benefits, and all costs related to their employment shall be an Operating Expense.

### **9.2 No Solicitation or Employment by City.**

During the period commencing on the date hereof and ending one (1) year after the termination of this Agreement, except with CIA's prior written consent, the City will not, for any reason, solicit for employment, or hire, the general manager, assistant general manager and any director level employee (e.g. director of sales or operations). In addition to any other remedies which CIA may have, specific performance in the form of injunctive relief shall be available for the enforcement of this provision.

## **10. Compensation.**

### **10.1 Management Fee.**

As base compensation to CIA for providing the services herein specified during the Term and any Renewal Terms, the City shall pay CIA during the Term and a Renewal Term, if any, an annual fee ("Base Fee") representing 4% of the Gross Revenues, as hereinafter defined, of the Coliseum. Gross Revenues shall be all revenues actually received by the Coliseum under Section 5.6 during such Fiscal Year, less any sales or other similar taxes imposed on such revenues. The Base Fee will be paid on a pro rata

monthly basis, such monthly amounts to be calculated based upon annual budgeted revenues in accordance with the mutually agreed budget established prior to each Fiscal Year in accordance with this Agreement. In the event that amounts paid on a monthly basis either exceed or are less than the actual amount due as a Base Fee for a given Fiscal Year, such differential shall be reimbursed to the City or paid to CIA, as the case may be, within 30 days of receipt of the relevant settlement calculation for such Fiscal Year.

#### 10.2 Incentive Fee.

In any Fiscal Year during the Term or any Renewal Terms, CIA shall be entitled to a 20% share of the Coliseum's Operating Revenue, as hereinafter defined. Operating Revenue for this purpose shall be Gross Revenues, as defined in Section 10.1, less all sales and other applicable use taxes, Operating Expenses, debt service and Incentive Fund payments as defined in Section 10.3 below. The Incentive Fee determined pursuant to this Section 10.2 shall be payable to CIA within 30 days after the City's receipt of an invoice from CIA accompanied by an annual statement certified by one of its officers setting forth the Operating Revenues for the previous Fiscal Year and showing in reasonable detail the basis of the calculation of the Incentive Fee payable with respect to such Fiscal Year.

#### 10.3 Incentive Account.

Any resale of naming rights resulting in cash and trade proceeds in excess of \$200,000 per Fiscal Year shall be contributed to an incentive account (the "Incentive Account") and divided equally between the City and CIA (such payments to CIA constitute the Incentive Fee). Proceeds from the Incentive Account, if any, shall be paid to the respective parties no later than 30 days from the date of the final settlement or reconciliation and pursuant to the procedure identified in Section 10.2 above.

### **11. Indemnification and Insurance.**

#### 11.1 Indemnification.

(a) CIA shall indemnify, defend, and hold harmless the City, its officers, agents, and employees from and against any and all losses, liabilities, claims, damages, and expenses (including reasonable attorneys' fees) (collectively, "Losses") arising from (x) any material default or breach by CIA of its obligations specified herein or (y) bodily and personal injury or death to any persons, including invitees, licensees and trespassers or damage to the property received or sustained by any persons to the extent caused by the negligent acts or omissions of CIA in the performance of this Agreement; provided, however, that the foregoing indemnification obligations shall not extend to Losses to the extent such Losses (i) arise from any breach or default by the City of its obligations hereunder and/or the negligent acts of the City, its officers, agents, and employees, (ii) are caused by or arise out of the services provided by the general contractors, subcontractors, architects, engineers and other agents (other than CIA) retained by the City in connection with the development, construction of the

Coliseum or Capital Improvements or Capital Equipment purchases at the Coliseum, (iii) arise from the fact that at any time prior to, as of, or after the commencement of the Term the Coliseum has not been or will not be operated, or the Coliseum and its premises are not, have not been or will not be, in compliance with all federal, state, local, and municipal laws, statutes, regulations, ordinances, and constitutional provisions (collectively, the "Laws"), including, but not limited to the Americans with Disabilities Act, except to the extent that such noncompliance directly results from the failure of CIA to follow any of its obligations specified herein, (v) arise from the fact that prior to, as of, or after the commencement of the Term there is any condition on, above, beneath, or arising from the premises occupied by the Coliseum which might, under any Law, give rise to liability or which would or may require any "response," "removal," or "remedial action" (as such terms are defined under the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act), except to the extent that CIA is directly responsible for the creation of the condition in question, or (vi) arise from any structural defect or unsound condition with respect to the Coliseum or the premises occupied by the Coliseum prior to, as of, or after the commencement of the Term, except to the extent directly caused by the failure of CIA to follow any of its obligations specified herein.

(b) The provisions set forth in subparagraph (a) above shall survive the completion of all services of CIA under this Agreement or the termination of this Agreement.

(c) The foregoing indemnification right shall be the exclusive remedy of the City (other than any right to terminate this Agreement pursuant to Section 15) arising from any breach of, default under or performance pursuant to this Agreement.

#### 11.2 Liability Insurance.

(a) CIA shall secure and deliver to the City Manager prior to the commencement of the Management Term hereunder and shall keep in force at all times during the term of this Agreement, a commercial liability insurance policy, including public liability and property damage, covering the premises, the operations hereunder, in the amount of One Million Dollars (\$1,000,000.00) for bodily injury and One Million Dollars (\$1,000,000.00) for property damage, including products and completed operations, personal and advertising liability and independent contractors. CIA shall also maintain (i) fire legal liability insurance in the amount of \$50,000 per occurrence and (ii) umbrella liability insurance with a limit of Five Million Dollars (\$5,000,000).

(b) CIA shall also maintain Comprehensive Automotive Bodily Injury and Property Damage Insurance for business use covering all vehicles operated by CIA officers, agents and employees in connection with the Coliseum, whether owned by CIA, the City, or otherwise, with a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence (including an extension of hired and non-owned coverage).

(c) Certificates evidencing the existence of the above policy, or policies, all in such form as the City may reasonably require, shall be delivered upon request to the City

prior to the commencement of this Agreement and periodically upon request thereafter. In addition, concurrently with the furnishing of each certificate of insurance under this Section 8.2(d), CIA shall, upon request by the City, furnish the City with a report of an independent insurance broker, signed by an officer of the broker, stating that in the opinion of such broker, the insurance then carried is in accordance with the terms of this Section 8 applicable to those policies. Notwithstanding the provisions of this Section 11.2(d), the parties hereto acknowledge that the above policies may contain exclusions from coverage which are reasonable and customary for policies of such type. Each such policy or certificate shall contain a valid provision or endorsement stating, "This policy will not be canceled or materially changed or altered without first giving thirty (30) days written notice thereof to the City Manager, at the address of the City Manager as provided thereby, sent by certified mail, return receipt requested."

(d) A renewal binder of coverage (or satisfactory evidence of such renewal) shall be delivered to the City Manager at least twenty (20) days after a policy's expiration date except for any policy expiring on the termination date of this Agreement or thereafter.

(e) Except as provided in Section 11.5 (b), all insurance procured by CIA in accordance with the requirements of this Agreement shall be primary over any insurance carried by the City and not require contribution by the City.

### 11.3 Workers Compensation Insurance.

CIA shall at all times maintain worker's compensation insurance (including occupational disease hazards) with an authorized insurance company or through the Illinois State Compensation Insurance Fund or through an authorized self-insurance plan approved by the State of Illinois, insuring its employees at the Coliseum in amounts equal to or greater than required under Illinois law. CIA shall carry employer's liability policies in an amount of at least Five Hundred Thousand Dollars (\$500,000.00) with an excess umbrella policy covering amounts in excess of Five Hundred Thousand Dollars (\$500,000) up to Five Million Dollars (\$5,000,000.00).

### 11.4 Fidelity Bond.

CIA shall provide to the City a Fidelity Bond covering all of CIA's personnel under this Agreement in the amount of Five Hundred Thousand Dollars (\$500,000.00) for each loss, to reimburse the City for losses experienced due to the omissions or dishonest acts of CIA's employees.

### 11.5 Property Insurance.

(a) CIA shall maintain sufficient property damage or loss insurance to cover personal property owned by the City and CIA at the Coliseum and shall maintain such insurance throughout the term of this Agreement. CIA shall maintain business interruption and loss of rent insurance for its operations. At least forty-five (45) days prior to the commencement of the Management Term hereunder, the City shall

provide to CIA a schedule of declaration of values at replacement cost for the personal property owned by the City at the Coliseum.

(b) The City shall, subject to Section 5.2, maintain its current property insurance covering the premises of the Coliseum. In addition, the City shall, with respect to the Losses covered by such property and hazard insurance and business interruption and extra expenses insurance, waive any subrogation rights that it may have against CIA, its partners and their respective officers, employees and agents, whether or not the City self-insures for the Losses covered by such insurance.

(i) The original or a certified copy of the above policy, or policies referred to in Section 11.5(b) (with all required policy' endorsements), plus certificates evidencing the existence thereof, all in such form as CIA may reasonably require, shall be delivered to CIA prior to the commencement of this Agreement. Notwithstanding the provisions of this Section 11.5(b), the parties hereto acknowledge that the above policies may contain exclusions from coverage which are reasonable and customary for policies of such type. Each such policy or certificate shall contain a valid provision or endorsement stating, "This policy will not be canceled or materially changed or altered without first giving thirty (30) days' written notice thereof to CIA." The original or a certified copy of the policies referred to in Section 11.2, 11.3 and 11.5 (a) (with all required policy' endorsements), plus certificates evidencing the existence thereof, all in such form as the City may reasonably require, shall be delivered to the City at appropriate times. Notwithstanding the provisions of this Section 11.5(a), the parties hereto acknowledge that the above policies may contain exclusions from coverage which are reasonable and customary for policies of such type. Each such policy or certificate shall contain a valid provision or endorsement stating, "This policy will not be canceled or materially changed or altered without first giving thirty (30) days' written notice thereof to the City."

(ii) A renewal binder of coverage (or satisfactory evidence of such renewal) shall be delivered to CIA or the City, as the case may be, at least twenty (20) days after a policy's expiration date except for any policy expiring on the Termination date of this Agreement or thereafter.

#### 11.6 Certain Other Insurance.

If CIA enters into any agreements during the Term with any independent contractors for the provision of services hereunder, CIA shall have the right to require such contractors to name CIA as an additional insured under any insurance required by CIA thereunder and to deliver to CIA prior to the performance of such services a certified copy of such policy, plus a certificate evidencing the existence thereof, which policy contains the same type of endorsements and provisions as provided in Sections 8.5(b)(i) and (ii).

## 12. Ownership of Assets.



## 12.1 Ownership.

With the exception of concession equipment acquired by CIA pursuant to Section 2 hereof, the ownership of buildings and real estate, technical and office equipment and facilities, furniture, displays, fixtures, vehicles and similar tangible property located at the Coliseum shall remain with the City. Ownership of and title to all intellectual property rights of whatsoever value held in the City's name shall remain in the name of the City. The ownership of consumable assets (such as office supplies and cleaning materials) purchased with Revenues or City funds shall remain with the City, but such assets may be utilized and consumed by CIA in the performance of services under this Agreement. The ownership of data processing programs and software owned by the City shall remain with the City, and the ownership of data processing programs and software owned by CIA shall remain with CIA. CIA shall not take or use, for its own purposes, customer or exhibitor lists or similar materials developed by the City for the use of the Coliseum, unless written consent is granted by the City. Ownership of equipment, furnishings, materials, or fixtures not considered to be real property and other personal property purchased by CIA with City funds for use at and for the Coliseum shall vest in the City automatically and immediately upon purchase or acquisition. The assets of the City as described herein shall not be pledged, liened, encumbered or otherwise alienated or assigned without the prior approval of the City.

## 12.2 City Obligations.

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

## **13. Assignment; Affiliates.**

### 13.1 Assignment.

Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either party hereto without the prior written consent of the other party hereto. Notwithstanding the foregoing, CIA may, upon sixty (60) days written notice to the City, assign all or any part of its rights hereunder to subsidiaries or affiliates under the direct control of CIA ("Affiliates") provided that (i) such Affiliates possess substantially the same degree of expertise and quality of personnel as originally provided under this Agreement, and (ii) such assignment shall be at no increased cost to the City. It is understood by the City and CIA that CIA may undertake the ownership and operation of the concession equipment to be purchased by CIA pursuant to Section 2 hereof through a separate legal entity. Such entity will be an Affiliate of CIA and will assume all obligations of CIA hereunder. The City agrees to assist in the execution of any necessary or appropriate documentation to effectuate such transaction.

## **14. Laws and Permits.**

#### 14.1 Permits, Licenses, Taxes and Liens.

CIA shall use reasonable efforts to procure any permits and licenses required for the business to be conducted by-it hereunder. The City shall cooperate with CIA in applying for such permits and licenses. CIA shall deliver copies of all such permits and licenses to the City. CIA shall pay promptly, out of the accounts specified in Section 5.6, all taxes, excises, license fees and permit fees of whatever nature arising from its operation, promotion and management of the Coliseum. CIA shall use reasonable efforts to prevent mechanic's or materialman's or any other lien from becoming attached to the premises or improvements at the Coliseum, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any mechanic or materialman, so long as the work, labor or material was provided at CIA's direction and the City has supplied funds for the payment of charges therefore in accordance with this Agreement. All work contracted by CIA to be done for the Coliseum shall be in accordance with the City's Prevailing Wage Resolution, as from time to time amended by the City.

#### 14.2 Governmental Compliance.

CIA, its officers, agents and employees shall comply with all federal, state, local and municipal regulations, ordinances, statutes, rules, laws and constitutional provisions (collectively, "Laws") applicable to CIA's management of the Coliseum hereunder, including without limitation Title III of the ADA and the provision of such auxiliary aids or alternate services as may be required by the ADA. Nothing in this Section 14.2 or elsewhere in this Agreement shall, however, require CIA to undertake any of the foregoing compliance activity, nor shall CIA have any liability under this Agreement therefore, if such activity requires any Capital Improvements or Capital Equipment purchases, unless the City provides funds for such Capital Improvements and Capital Equipment purchases pursuant to Section 5.8 hereof. Furthermore, CIA shall have the right to require any licensee, lessee, tenant, promoter or user of any portion of the Coliseum to comply, and to be financially responsible for compliance, with Title III of the in connection with any activities of such licensee, lessee, tenant, promoter or user at the Coliseum.

#### 14.3 No Discrimination in Employment.

In connection with the performance of work under this Agreement, CIA shall not refuse to hire, discharge, refuse to promote or demote, or to discriminate in matters of compensation against, any person otherwise qualified, unlawfully because of race, color, religion, gender, age, national origin, military status, sexual orientation, marital status or physical or mental disability.

### **15. Termination.**

#### 15 .1 Termination Upon Default.

Either party may terminate this Agreement upon a default by the other party hereunder. A party shall be in default hereunder if (i) such party fails to pay any sum payable hereunder within thirty (30) days after same is due and payable, or (ii) such party fails in any material respect to perform or comply with any of the other terms, covenants, agreements or conditions hereof and such failure continues for more than sixty (60) days after written notice thereof from the other party, or (iii) with respect to CIA, if CIA fails to maintain the Naming Rights L/C in accordance with Section 2.1 hereof. In the event that a default (other than a default in the payment of money) is not reasonably susceptible to being cured within the sixty (60) day period, the defaulting party shall not be considered in default if it shall within such sixty (60) day period have commenced with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default.

#### 15.2 Termination Other than Upon Default.

(a) CIA shall have the right to terminate this Agreement upon sixty (60) days written notice to the City (i) under the circumstances described in Sections 5.3, 5.4 or 5.5 hereof, or (ii) if the City fails to make Capital Improvements or Capital Equipment purchases at the Coliseum to the extent that such omission, in CIA's judgment, materially interferes with, impedes or impairs the ability of CIA to manage the Coliseum effectively.

#### 15.3 Effect of Termination.

In the event this Agreement expires or is terminated, (i) all Operating Expenses incurred or committed for prior to the date of expiration or termination shall be paid using funds on deposit in the account(s) described in Sections 5.6 and 5.7 and to the extent such funds are not sufficient, the City shall pay all such Operating Expenses and shall indemnify and hold CIA harmless therefrom, and (ii) the City shall promptly pay CIA all fees earned to the date of expiration or termination (the Base and Incentive Fees described in Section 10 hereof being subject to proration), provided that the City shall be entitled to offset against such unpaid fees any damages (actual, not consequential) directly incurred by the City in remedying any default by CIA hereunder which resulted in such termination (other than the fees or expenses of any replacement manager for the Coliseum), and (iii) the City shall pay, or cause any successor management company to pay, to CIA unconditionally and without set-off the unamortized amount of the CIA Capital Contribution pursuant to Section 2 hereof. Upon a termination pursuant to Section 15.1, all further obligations of the parties hereunder shall terminate except for the obligations in this Section 15.3, 9.2, 11.1 and 15.4; provided, however, that if such termination is the result of a willful default, the nondefaulting party exercising its right to terminate this Agreement shall be entitled to recover damages for breach arising from such willful default.

#### 15.4 Surrender of Premises.

Upon termination of this Agreement (termination shall, for all purposes in this Agreement, including termination pursuant to the terms of this Section 15.4 and any expiration of the term hereof), CIA shall surrender and vacate the Coliseum upon the

effective date of such termination. The Coliseum and all equipment and furnishings shall be returned to the City in good repair, reasonable wear and tear excepted, to the extent funds were made available therefore by the City. All reports, records, including financial records, and documents or copies thereof shall be maintained by CIA at the Coliseum relating to this Agreement (other than materials containing CIA's proprietary information) and shall be immediately surrendered to the City by CIA upon termination.

## **16. Miscellaneous.**

### **16.1 Use of Coliseum at Direction of City.**

(a) At the direction of the City, upon reasonable advance notice and subject to availability, CIA shall provide use of the Coliseum or any part thereof to civic and non-profit organizations located in the City of Bloomington at reduced rates. All event related expenses, including but not limited to ushers, ticket-takers, security and other expenses incurred in connection with the use of the Coliseum by such organizations, if not reimbursed to CIA by the organization using the Coliseum, shall be reimbursed by the City to CIA for deposit into the operating account(s) specified in Section 5.6.

(b) The City shall have the right to use the Coliseum or any part thereof, upon reasonable advance notice and subject to availability, for such purposes as meetings, seminars, training classes or other uses without the payment of any rental or use fee (or at a reduced fee), except that direct out-of-pocket expenses incurred in connection with such uses shall be paid by the City.

(c) The City shall not schedule use of the Coliseum pursuant to subparagraphs (a) and (b) above if such use will conflict with paying events booked by CIA and shall in all instances be subordinate thereto in terms of priority of use of the Coliseum. In all instances when the Coliseum, or part thereof, is to be used at the City's request or by the City pursuant to subparagraph (a) or (b) above, a rent or use fee which otherwise would be chargeable for such event shall be deemed to have been paid and such deemed payment shall constitute Revenues for the purpose of calculating CIA's Incentive Fee pursuant to Section 10.2 above.

### **16.2 Cooperation/Mediation.**

(a) The parties desire to cooperate with each other in the management and operation of the Coliseum pursuant to the terms hereof. In keeping with this cooperative spirit and intent, any dispute arising hereunder will first be referred to the parties' respective agents or representatives prior to either party initiating a legal suit, who will endeavor in good faith to resolve any such disputes within the limits of their authority and within ninety (90) days after the commencement of such discussions. If and only if any dispute remains unresolved after the parties have followed the dispute resolution procedure set forth above, the matter will be resolved pursuant to Section 16.2(b) and (c) below.

(b) If any dispute between the parties has not been resolved pursuant to Section 16.2(a) above, the parties will endeavor to settle the dispute by mediation under the then current Coliseum for Public Resources ("CPR") model procedure for mediation of business disputes or, if such model procedure no longer exists, some other mutually agreeable procedure. Within ten (10) business days from the date that the parties cease direct negotiations pursuant to Section 13.2(a) above, the City shall select a neutral third party mediator, who shall be subject to the reasonable approval of CIA. Each party will bear its own cost of mediation; provided, however, the cost charged by any independent third party mediator will be borne equally by the parties. Venue for all mediation and arbitration proceedings shall be in Bloomington, IL.

(c) The parties agree that any mediation proceeding (as well as any discussion pursuant to Section 16.2(a) above) will constitute settlement negotiations for purposes of the federal and state rules of evidence and will be treated as non-discoverable, confidential and privileged communication by the parties and the mediator. No stenographic, visual or audio record will be made of any mediation proceedings or such discussions. All conduct, statements, promises, offers and opinions made in the course of the mediation or such discussion by any party, its agents, employees, representatives or other invitees and by the mediator will not be discoverable nor admissible for any purposes in any litigation or other proceeding involving the parties and will not be disclosed to any third party.

(d) The parties agree that this mediation procedure will be obligatory and participation therein legally binding upon each of them. In the event that either party refuses to adhere to the mediation procedure set forth in this Section 16.2, the other party may bring an action to seek enforcement of such obligation in any court of competent jurisdiction.

(e) The parties' efforts to reach a settlement of any dispute will continue until the conclusion of the mediation proceeding. The mediation proceeding will be concluded when: (i) a written settlement agreement is executed by the parties, or (ii) the mediator concludes and informs the parties in writing that further efforts to mediate the dispute would not be useful, or (iii) the parties agree in writing that an impasse has been reached. Notwithstanding the foregoing, either party may withdraw from the mediation proceeding without liability therefore in the event such proceeding continues for more than ninety (90) days from the commencement of such proceeding. For purposes of the preceding sentence, the proceeding will be deemed to have commenced following the completion of the selection of a mediator as provided in Section 16.2(b).

(f) If any dispute has not been resolved pursuant to the foregoing, either party can submit the dispute to binding arbitration as provided below (the "Arbitration") and/or terminate the Agreement as provided in Section 15 hereof. The Arbitration shall be held in the City of Bloomington, Illinois before an arbitrator or a panel of arbitrators whose number shall be determined, and who shall be selected, in accordance with the rules of the American Arbitration Association ("AAA"). The then current Commercial Arbitration Rules of the AAA will apply to the Arbitration

(g) Notwithstanding the foregoing, the following shall apply to the Arbitration:

(i) Each arbitrator shall be neutral, independent, disinterested, impartial and shall abide by the Canon of Ethics of the American Bar Association for neutral, independent arbitrators. An arbitrator shall be subject to disqualification in an appointing party, either before or after the appointment, asks for the views of the arbitrator or makes an *ex parte* disclosure of significant facts or themes of the dispute beyond what is appropriate for the arbitrators' conflict check and revelation of his qualifications for the case. There shall be no *ex parte* communications with an arbitrator either before or during the arbitration, relating to the dispute of the issues involved in the dispute or the arbitration's views on any such issues.

(ii) It is the intention of the parties to expedite the resolution of the Arbitration. In that connection, the arbitrator(s) shall commit the time and priority of claim on his or their time so as to expedite the case. The arbitrator or if applicable, the chairman of the panel is directed to assume case management initiative and control to schedule the case early and reasonably to expedite the case toward full resolution promptly. The arbitrator or if applicable, the panel shall render the award within fifteen (15) days of the close of evidence or any post-evidence briefing.

(iii) The arbitrator shall have the authority to exclude evidence deemed to be irrelevant, redundant to prejudicial beyond its probative value and is instructed to exercise that authority consistently with expediting the proceeding reasonably. The parties explicitly agree that exclusion of evidence by the arbitrator on ground of irrelevance, redundancy, or prejudicial beyond its probative value shall not be grounds of failure to confirm and enforce the award.

(iv) If the Arbitration results in a determination by the arbitrator(s) that a default has occurred under this Agreement, then the provisions of Section 11 and 15 hereof shall govern the damages or other remedies that may be implemented or ordered by the arbitrator(s). Neither the requirement to utilize nor the pendency of any procedures under this Section 16.2 shall in any way invalidate any notices or extend any cure periods applicable to any default under Section 15.1

(h) The procedure specified in this Section 16.2 shall be the sole and exclusive procedures for the resolution of disputes between the parties arising out of or relating to this Agreement; provided, however, that (i) a party, without prejudice to the above procedures, may file a complaint to seek a preliminary injunction or other provisional judicial relief, if in its sole discretion such action is necessary to avoid irreparable damage or to preserve the status quo ("Equitable Litigation') or (ii) any party may institute legal proceedings in a court of competent jurisdiction to enforce judgment upon an Arbitration award in accordance with applicable law. Despite such action,

the parties will continue to participate in good faith in the procedures specified in this Section 16.2.

(i) Any interim or appellate relief granted in such Equitable Litigation shall remain in effect until the alternative dispute resolution procedures described in this Section 16.2 concerning the dispute that is the subject of such Equitable Litigation result in a settlement agreement or the issuance of an Arbitration award. Such written settlement agreement or Arbitration award shall be the final, binding determination on the merits of such dispute, shall supersede and nullify any decision in the Equitable Litigation, and shall preclude any subsequent litigation on such merits, notwithstanding any determination to the contrary in connection with any Equitable Litigation granting or denying interim relief or any appeal therefrom.

(j) All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this Section 16.2 are pending. The parties will take such action, if any, required to effectuate such tolling. Each party shall be required to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement, unless to do so would be impossible or impracticable under the circumstances.

#### 16.3 No Partnership or Joint Venture.

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

#### 16.4 Entire Agreement.

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

#### 16.5 Written Amendments.

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

#### 16.6 Force Majeure.

(a) No party will be liable or responsible to the other party for any delay, damage, loss, failure, or inability to perform caused by "Force Majeure" if notice is provided to the other party within ten (10) days of date on which such party gains actual knowledge of the event of "Force Majeure" that such party is unable to perform. The term "Force Majeure" as used in this Agreement means the following: an act of God, strike, war, public rioting, lightning, fire, storm, flood, explosions, inability to obtain

materials., supplies, epidemics, landslides, lightning storms, earthquakes, floods, storms, washouts, civil disturbances, explosions, breakage or accident to machinery or lines of equipment, temporary failure of equipment, freezing of equipment and any other cause whether of the kinds specifically enumerated above or otherwise which is not reasonably within the control of the party whose performance is to be excused and which by the exercise of due diligence could not be reasonably prevented or overcome (it being acknowledged that under no circumstances shall a failure to pay amounts due and payable hereunder be excusable due to a Force Majeure).

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

(c) Except as otherwise expressly provided in this Agreement, no abatement, diminution or reduction of the payments payable to CIA shall be claimed by the City or charged against CIA, nor shall CIA be entitled to additional payments beyond those provided for in this Agreement for any inconvenience, interruption, cessation, or loss of business or other loss caused, directly or indirectly, by any present or future Laws, or by priorities, rationing, or curtailment of labor or materials, or by war or any matter or thing.

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

(e) CIA may suspend performance required under this Agreement, without any further liability, in the event of any act of God or other occurrence, which act or occurrence is of such effect and duration as to effectively curtail the use of the Coliseum so as effect a substantial reduction in the need for the services provided by CIA for a period in excess of ninety (90) days; provided, however, that for the purposes of this subsection, CIA shall have the right to suspend performance retroactively effective as of the date of the use of the Coliseum was effectively curtailed. "Substantial reduction in the need for these services provided by CIA" shall mean such a reduction as shall make the provision of any services by CIA economically impractical. No payments of the management fees otherwise due and payable to CIA shall be made by the City during the period of suspension, In lieu thereof, the City and CIA may agree to a reduced management fee payment for the period of reduction in services required.

16.7 Binding Upon Successors and Assigns: No Third-Party Beneficiaries.



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

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

#### 16.8 Notices.

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

#### 16.9 Section Headings and Defined Terms.

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

#### 16.10 Counterparts.

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

#### 16.11 Severability.

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

16.12 Non-Waiver.

A failure by either party to take any action with respect to any default or violation by the other of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of such party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

16.13 Certain Representations and Warranties.

(a) The City represents and warrants to CIA the following: (i) all required approvals have been obtained, and the City has full legal right, power and authority to enter into and perform its obligations hereunder, and (ii) this Agreement has been duly executed and delivered by the City and constitutes a valid and binding obligation of the City, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

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

16.14 Governing Law.

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

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

ATTEST:

CITY OF BLOOMINGTON

[Signature]  
Its City Clerk

By: [Signature]  
Name: Stephen F. Stockton  
Title: Mayor

ATTEST

John J. Eudler  
Its Secretary

CENTRAL ILLINIOS ARENA MANAGEMENT,  
INC.

By: Tribe Nelson  
Name: Michael R. Nelson  
Title: President

# TAB A

CONSULTING AND SALES AGREEMENT

This Agreement is made this 21<sup>st</sup> day of January, 2002-2001, between the City of Bloomington, hereinafter called the City, and Central Illinois Arena Management, Inc., an Illinois corporation, hereinafter called CIA.

WHEREAS, the City is in the process of considering the development of a sports and entertainment center commonly known as the Bloomington Sports and Entertainment Center (hereinafter referred to as the "Project"), and

WHEREAS, in the event that the City approves the development of the Project, it is critical to secure, and have in place, funding for the Project through naming rights, luxury suites, club seats, sponsorships, partnerships and leases, and

WHEREAS, CIA is in the business of and desires to act on behalf of the City in securing pre-development commitments of funding sources for the Project.

NOW, THEREFORE, in consideration of the mutual promises herein set forth, the parties agree as follows:

1. The City hereby appoints CIA as its exclusive agent providing consulting services related to the design and marketing of the Project and to procure third party funding sources for the development of the Project.
2. The term of this Agreement commences immediately and shall terminate upon thirty (30) days' written notice by either party, but no sooner than the date that the City, through its City Council, takes final action regarding the approval of the development and construction of the Project.
3. The sales services to be performed by CIA on behalf of the City include the following:
  - a. The sale of naming rights for the Project.
  - b. The sale of suites (luxury suites/boxes) for the Project.
  - c. The sale of club seats for the Project.
  - d. The sale of sponsorships for the Project.

Exhibit A

- e. The sale of signage for the Project.
- f. The negotiation and development of partnerships relating to the use of space within the Project.
- g. The procurement and securing of state and federal grants, or other public funds, for the Project.

CIA may perform such other marketing and funding services that may provide additional third party funding sources for the development of the Project.

In the event the City receives inquiries or has knowledge of inquiries related to those matters described in this paragraph 3, the City shall refer such inquiries to CIA as its exclusive agent.

4. CIA shall negotiate and prepare the necessary documentation for the Project's relationships and contracts, through an RFP (request for proposals) process which shall include, but not be limited to, those items described in paragraph 3 above and contracts related to food and beverage, pouring rights, and scoreboard/videoboards.
5. CIA shall use its best efforts to negotiate and secure anchor tenants (i.e. hockey and football) and other tenants for the Project. This shall include an RFP process beginning in early December, 2001, with the request that letters of intent for long-term leases from hockey and/or arena football teams be in place by March, 2002.
6. CIA shall assist in the Project design, planning and operation as part of the Project development team.
7. CIA shall market and promote the Project through correspondence, public appearances, news releases, website and such other means as is requested by the City.
8. CIA shall perform such other services that are reasonably requested by the City manager and CIA shall report directly to the City manager with respect to all of its activities performed under this Agreement.

9. CIA has the authority to negotiate on behalf of the City the price, terms and conditions of those matters described in paragraphs 3, 4 and 5, with the finalization of such being subject to the approval of the City manager.
10. The City agrees to pay CIA as follows:
  - a. A commission of five (5%) percent of the gross receipts realized from those items described in paragraph 3, with such commission being earned by CIA as the exclusive agent regardless of whether its efforts procured the income. Payment shall be made by the City to CIA within thirty (30) days of the City's receipt of the gross income.
  - b. Operating expenses incurred by CIA in the performance of this Agreement upon CIA providing to the City an itemization of the expenses, which expenses shall be paid upon approval of the City manager.
  - c. In the event that income is received by the City from those matters described in paragraph 3 after termination of this Agreement because of installment agreements or otherwise, the City remains liable for payment of the described commission.
  - d. Except for those matters described in paragraph 3, all of the other services to be provided by CIA to the City shall be at no additional charge to the city.
  - e. CIA has the right to negotiate fees or commissions that it will be paid with respect to securing any tenants at the Project, with such fees or commissions not being the liability of the City.
  - f. In the event the Project is not approved by the City, the City has no financial obligation to CIA other than expenses described in paragraph 10b.
11. In the event that any legal action is necessary to enforce any of the terms and conditions of this Agreement, the prevailing party shall be paid promptly by the other, all costs and fees incurred, including reasonable attorneys' fees.

CITY OF BLOOMINGTON,

By: [Signature]  
Its Mayor

Attest: [Signature]  
Its City Clerk

CENTRAL ILLINOIS ARENA  
MANAGEMENT, INC.

By: [Signature]  
Michael R. Nelson  
Its President

Attest: [Signature]  
John Y. Butler  
Its Secretary





CITY OF BLOOMINGTON

CITY CLERK

January 17, 2002

Michael Nelson  
Central Illinois Arena Management, Inc.  
1010 Show Creek Lane  
Normal, IL 61761

Re: Agreement for Downtown Center

Dear Mr. Nelson:

On January 14, 2002 City Council approved an Agreement for securing sponsorships, rental of suites, etc. for the Downtown Multipurpose Center. Enclosed are two partially executed agreements. Please sign both contracts and return one original agreement to this office. The other original is for your record.

If you have any questions, please call our office at (309) 434-2240.

Sincerely,

Sharon Gibson, CMC  
Deputy City Clerk

cc: File

109 East Olive Street  
Post Office Box 3157  
Bloomington, Illinois  
61702-3157  
309.434.2240 tel  
309.434.2802 fax  
For Hearing Impaired  
TTY 309.829.5115  
*an equal opportunity  
employer*

**TAB B**

# Pre-Opening Sales and Management Agreement

CONFIDENTIAL

This Agreement is made this 7th day of April, 2004, between the City of Bloomington, hereinafter called the City, and Central Illinois Arena Management, Inc., an Illinois corporation, hereinafter called CIA.

WHEREAS, the City is in the process of developing and constructing a sports and entertainment center commonly known as the Bloomington Sports and Entertainment Center (hereinafter referred to as the "Center"), and

WHEREAS, during the pre-opening period of the Center (the period of council approval to the grand opening), it is critical to secure, and have in place, funding for the Center through the sale of naming rights, luxury suites, club seats, sponsorships, partnerships and leases, and

WHEREAS, CIA is in the business of and desires to act on behalf of the City in securing commitments of funding sources for the Center.

NOW, THEREFORE, in consideration of the mutual promises herein set forth, the parties agree as follows:

1. CIA shall provide to the City commencing on February 1, 2004 and ending with the city council approval of the pre-opening agreement with Bloomington Partners in the Arena comprehensive services to assist the City in the development of the Center and to facilitate the transition of the Center from the developmental phase to the operational phase. These Pre-Opening services will include: project coordination; design consulting; facility marketing; tenant integration; and operational start-up.
2. The sales services to be performed by CIA on behalf of the City include the following:
  - a. The sale of naming rights for the Center.
  - b. The sale of suites for the Center.
  - c. The sale of club seats for the Center.
  - d. The sale of sponsorships for the Center.
  - e. The sale of signage for the Center.

CIA may perform such other marketing and funding services that may provide additional third party funding sources for the Center.

Exhibit B

In the event the City receive inquiries or has knowledge of inquiries related to those matters described in this paragraph 2, the City shall refer such inquiries to CIA as its exclusive agent.

3. CIA shall negotiate and prepare the necessary documentation for the Center's relationships and contracts, through an RFP (request for proposals) process which shall include, but not be limited to, those items described in paragraph 2 above and contracts related to food and beverage, pouring rights, sound system and scoreboard/videoboards.

④ 4. CIA shall prepare a "Pre-Opening Operating Budget" for the Center to include all aspects of operational needs, such as on-site staffing, training, marketing activities including sales materials and the procurement and implementation of agreed upon administrative and fiscal operations management systems and an inaugural post-opening operating year of the Center, which shows the projected operating revenues and expenses.

- \* 5. CIA shall negotiate and secure anchor tenants (i.e. hockey and football) and other tenants for the Center.
6. CIA shall assist in the Center's design, planning and operation as part of the Project development team.
7. CIA shall market and promote the Center through correspondence, public appearances, news releases, website and such other means as is required by the City.
8. CIA shall submit to the City recommendations regarding appropriate Policies and Procedures to be implemented in operating the Center.
9. CIA shall recommend marketing and event booking strategies and relationships with planners, promoters and regional marketing/sales agencies to promote a regional and national identity for the Center.
10. CIA shall prepare a list of operating supplies to be procured for the start-up of the Center.
11. CIA shall recommend a booking policy and rental rate policy for the Center.
12. CIA shall recommend strategies and relationships to solicit third party vendor service programs such as food and beverage, parking, ticketing, etc.

13. CIA shall maintain accurate accounting records relating to its activities on behalf of the Center.
14. CIA will issue to the City periodic financial reports reflecting CIA's activities on behalf of the Center.
15. CIA shall perform such other services that are reasonably requested by the City and CIA shall report to the City with respect to all its activities performed under this Agreement.
16. CIA has the authority to negotiate on behalf of the City the price, terms and conditions of those matters described in paragraphs 2, 3, 4 and 5 with the finalization of such being subject to the approval of the City Council.
17. The City agrees to pay CIA as follows:
  - a. Monthly fee of \$14,300 per month
  - b. A commission of five (5%) percent of the gross receipts realized from those items in paragraph 2, with such commission being earned by CIA as the exclusive agent.
  - c. Operating expenses incurred by CIA in the performance of this Agreement upon CIA providing to the City an itemization of the expenses, which expenses shall be paid upon approval of City manager.
  - d. Items listed in Pre-opening budget (staffing, benefits, expenses, etc.) described in Paragraph 3, which shall be subject to the approval of the City Council
  - e. All revenues collected under the terms of this Agreement shall be assigned to the City as owner of the building and anchor tenants.
- \* 18. In further consideration of this Agreement, the City shall negotiate in good faith with CIA to enter into a Management Agreement for the operation and management of the sports and entertainment center which Agreement shall take effect upon substantial completion and opening of the Center. Further, CIA shall have a right of first refusal with respect to any Management Agreement the City may negotiate with another entity.
19. Paragraphs 17 and 18 shall survive termination of this Agreement except if replaced by a pre-opening agreement under the terms and conditions set forth by the agreement with Bloomington Partners.
20. In the event that any legal action is necessary to enforce any terms and conditions of this Agreement, the prevailing party shall be paid promptly by the other, all costs and fees incurred, including reasonable attorneys' fees.

City of Bloomington

By: [Signature]  
Its Mayor

Attest: [Signature]  
Its City Clerk

Central Illinois Arena Management, Inc.

By: [Signature]  
Michael R. Nelson  
Its President

Attest: [Signature]  
John Y. Butler  
Its Secretary

**TAB C**

## NAMING RIGHTS AGREEMENT

This Agreement is made as of March 29, 2005 ("Effective Date") among United States Cellular Corporation ("U.S. Cellular"), a Delaware corporation; the City of Bloomington, Illinois ("City"), an Illinois municipal corporation; and Central Illinois Arena Management, Inc. ("Management"), an Illinois corporation.

WHEREAS, City is constructing and will own the sports and entertainment facility located at 101 South Madison Street (also known as U.S. Business Route 51) at the corner of Front Street and U.S. Business Route 51, Bloomington, Illinois, 61701, currently known as the Bloomington Sports and Entertainment Center ("Facility").

WHEREAS, City has the right to name the Facility and to authorize certain advertising and promotional activities at the Facility.

WHEREAS, City has entered into a management agreement with Management pursuant to which City has authorized Management to operate and manage the Facility and to enter into an agreement with a third party to grant to such third party certain rights to conduct advertising and promotional activities in connection with the Facility and to provide to such third party other promotional rights and benefits.

WHEREAS, City wishes to grant to U.S. Cellular the right to name the Facility, and Management wishes to grant to U.S. Cellular the rights to conduct advertising and promotional activities in connection with the Facility as well as the other promotional rights and benefits described in this Agreement.

WHEREAS, U.S. Cellular desires to acquire such rights.

NOW, THEREFORE, the parties agree as follows:

### Section 1. Facility

1.1 The Facility, which is currently under construction, is expected to be completed by March 2006. The Facility shall consist of a state-of-the-art multi-use complex for sports, entertainment, and business and civic events, including ice hockey, basketball, arena football, soccer, volleyball, and tennis; medium-size trade shows and conventions; and medium-size entertainment programs.

1.2 The Facility shall include:

(a) At least 180,000 square feet of space with a fixed seating capacity of approximately 6,800 for hockey and indoor football games and over 8,000 for concerts and family events. The Facility shall also be capable of hosting smaller events, with seating capacity ranging from 2,000 to 5,000 through use of a "half-of-the-house" curtain system.

Exhibit C



(b) Twenty-four luxury suites, two large group suites, at least 800 "club seats" with a club member lounge, and a full-service restaurant and bar, which seats 150 patrons, that will overlook the main arena floor.

(c) A media room used for press conferences and video production.

1.3 The construction budget for the Facility shall be at least \$36,000,000.

1.4 The Facility shall also include:

(a) An attached structure containing a public ice skating facility that will be operated by the Bloomington Parks and Recreation Department and will host youth and adult hockey leagues, figure skating, skating lessons, and open public skating.

(b) An attached 375-car parking structure.

(c) From 800 to 1,000 square feet of retail space in the southeast corner of the Facility, with direct access to and from each of the main concourse and the exterior of the Facility ("Retail Store"). Unless otherwise specified, the Retail Store shall not include furnishings or interior or exterior finishing.

(d) At least 10' x 20' of secure space adjacent to or within the Retail Store referenced above, including electrical and wiring connections sufficient to permit U.S. Cellular, at its option, to create a wireless telephone network for the facility within the space ("Wireless Network Space").

1.5 City shall and will continue to own the Facility, which shall be of a quality at least comparable to the quality of other similar venues. City shall cause Management, or another reputable management company, to operate the Facility in a manner comparable to the operation of other similar venues.

1.6 City and Management shall each use their best efforts to secure the following activities for the Facility each year:

(a) Approximately 36 home games of a professional hockey team (e.g., East Coast Hockey League, American Hockey League or United Hockey League) based in the Bloomington, Illinois, area.

(b) Approximately eight home games of a professional arena football team (e.g., United Indoor Football League or Arena Football2) based in the Bloomington, Illinois, area.

(c) Approximately three Illinois High School Association or Illinois Elementary Association tournaments or events.

- (d) Approximately 40 concerts, family shows, and special events.
- (e) Approximately eight trade shows, conventions, or expositions.

1.7 City and Management acknowledge the importance of U.S. Cellular's connection with the Facility to U.S. Cellular's public image and business reputation. City and Management shall each use its best efforts to ensure that its actions, as well as the actions of its agents and others associated with the Facility, do not damage, detract from, or reflect unfavorably on U.S. Cellular's public image, good will, or business reputation.

1.8 Except as expressly set forth in this Agreement, U.S. Cellular shall not bear any responsibility for the operation of the Facility.

## Section 2. Fees and Other Consideration

2.1 Naming Rights and Sponsorship Fees. Except as provided in Exhibit A, U.S. Cellular shall pay City an annual fee of \$175,000 each year the Facility is open.

(a) U.S. Cellular shall pay one-half the first annual fee by January 31, 2006, provided that, on January 1, 2006, the Facility continues to be scheduled to open on or before March 31, 2006. If, on January 1, 2006, the Facility is scheduled to open after March 31, 2006, the first half of the annual fee shall not become due until two months before the scheduled opening. U.S. Cellular shall pay the remainder of the first annual fee within 10 days after the opening of the Facility. For purposes of this Agreement "opening" means opening and operation of the main arena, restaurant, suites, public ice rink, and parking garage at a public event with an attendance of more than 2,000.

(b) Subsequent annual payments shall be due on the anniversary date of the first payment, provided that the Facility opens within two months after such payment. If the Facility does not open within two months after the first payment, subsequent annual payments shall be due on the anniversary date of the opening of the Facility.

2.2 Additional Consideration. In addition to payment of the fee identified above, U.S. Cellular shall provide the products and services identified on Exhibit E.

## Section 3. Grant of Rights

3.1 Grant of Naming Rights. City grants to U.S. Cellular the exclusive, irrevocable right to name the Facility and to advertise and promote the Facility and U.S. Cellular's naming rights. Pursuant to such grant, U.S. Cellular hereby names the Facility "U.S. Cellular Coliseum" ("Facility Name").

(a) Facility Logo. U.S. Cellular may create and develop a logo for the Facility, consisting of one or more stylized versions of the Facility name (each, a "Facility Logo") for use in different applications (e.g., logo for use on center ice, logo for use on exterior signs).

(b) Changes.

(1) U.S. Cellular may propose a new name for the Facility, to replace the name "U.S. Cellular Coliseum," upon notice to City and Management. The new name shall be subject to City's prior written approval, which shall not be unreasonably withheld. Any dispute regarding the reasonableness of City's withholding approval of a new name shall be subject to arbitration under Section 17.

(2) U.S. Cellular may change the logo for the Facility, to replace the then-current logo, upon notice to City and Management.

U.S. Cellular shall pay all costs and expenses incurred in implementing a new name or logo pursuant to this subsection 3.1(b).

3.2 Grant of Sponsorship Rights. City grants to U.S. Cellular, or shall cause to be granted to U.S. Cellular:

(a) The exclusive sponsorship right to be identified as "Official Wireless Provider" of the Facility

(b) The exclusive sponsorship right to be identified as "Official Wireless Provider" of all professional sports teams based in the Facility.

(c) The right to advertise and promote the Facility, professional sports teams based in the Facility, and U.S. Cellular's sponsorships including dashboards, radio, and game day promotions.

#### Section 4. Exclusivity.

Neither City nor Management shall authorize any manufacturer, seller, distributor, or dealer of any of the following competitive goods or services to be a sponsor or co-sponsor of the Facility or any part thereof: telecommunications services and telecommunications equipment. Any dispute regarding the authorization of a sponsor or co-sponsor by City or Management shall be subject to arbitration under Section 17.

## Section 5. Trademarks

### 5.1 Ownership.

(a) U.S. Cellular Trademarks. As between the parties, U.S. Cellular's trade names, trademarks, service marks, and logos, including those identified on Exhibit B (collectively, "U.S. Cellular Trademarks"), are and shall remain the property of U.S. Cellular. U.S. Cellular Trademarks shall not include Facility Trademarks (as defined below).

(b) Facility Trademarks. As between the parties, the Facility Name and the Facility Logo, including those identified on Exhibit B (collectively, "Facility Trademarks"), are and shall remain the property of U.S. Cellular. U.S. Cellular may seek a trademark or service mark registration for the Facility Name and the Facility Logo.

5.2 License Grant. U.S. Cellular hereby grants to City the right to use and to license others to use the Facility Trademarks in connection with the marketing, operation, and promotion of the Facility, subject to U.S. Cellular's prior written approval of such uses. City may not use the Facility Trademarks other than as authorized by U.S. Cellular. U.S. Cellular expressly reserves all other rights in the U.S. Cellular Trademarks.

5.3 Quality Control. City and Management shall manage and operate the Facility in a manner generally consistent with the standards of quality applicable to comparable venues.

### 5.4 Protection of Facility Trademarks.

(a) Each of City and Management shall notify U.S. Cellular of any infringement or potential infringement of the Facility Trademarks that come to its attention. Neither City nor Management may, without U.S. Cellular's prior written consent take any action with respect to such infringement or alleged infringement.

(b) U.S. Cellular shall, in its discretion and at its own cost and expense, be responsible for protecting the Facility Trademarks (including, initiating, prosecuting, defending and controlling any litigation). City and Management shall provide all reasonable assistance to U.S. Cellular in connection therewith.

## Section 6. Advertising and Merchandising

6.1 All material designed to publicize, advertise, promote, disseminate information regarding, or otherwise refer to the Facility, including: signs, press materials, brochures, tickets, media advertising of any type (such as radio and television

commercial announcements, and print advertising) (collectively, "Advertising and Promotional Materials") and material designed to publicize, advertise, promote, or otherwise refer to the Facility, other than "Advertising and Promotional Materials," including but not limited to equipment, uniforms, programs, clothing, souvenirs, and memorabilia (collectively, "Promotional Merchandise"), whether or not specifically identified as such, shall:

- (a) Be of a high standard of quality at least comparable to the quality used for other similar facilities.
- (b) Be of a style, appearance, and quality as to suit the best exploitation of the Facility.
- (c) Bear appropriate trademark and copyright notices.
- (d) Be free from product defects, merchantable, and fit for its particular purpose.

6.2 U.S. Cellular shall have the royalty-free right to produce, sell, and distribute Promotional Merchandise, retaining all proceeds and without accounting to City or Management therefor. Any Promotional Merchandise bearing Facility Trademarks shall be subject to City's approval, which shall not be unreasonably withheld.

6.3 City shall have the royalty-free right to produce, sell, and distribute Promotional Merchandise bearing Facility Trademarks. Such merchandise shall be subject to U.S. Cellular's approval, which shall not be unreasonably withheld. City shall not place any other trademark, service mark, name, logo, or design on Promotional Merchandise bearing Facility Trademarks, without U.S. Cellular's prior written approval.

6.4 If any Promotional Merchandise manufactured, distributed, or sold by a party shall be defective in material or workmanship or otherwise fail to conform with the terms of this Agreement, the other party may, in addition to its other rights, require destruction of such goods or the alteration to remove the trademarks therefrom, at the sole expense of the owner of such merchandise.

6.5 If U.S. Cellular desires to purchase any Promotional Merchandise that City has licensed a third party to produce, sell, or distribute, City shall require such licensee to sell such merchandise to U.S. Cellular without City's royalty thereon. City and licensee shall certify the amount of any royalty applicable to such merchandise.

## Section 7. Display of Facility Trademarks and U.S. Cellular Trademarks

7.1 Use of Trademarks. City and Management shall use the Facility Trademarks and U.S. Cellular Trademarks as set forth on Exhibit C. Unless otherwise specified, all such uses shall be at the cost and expense of City and Management, including the cost and responsibility for producing, installing, and maintaining such displays in good order, repair and condition at all times.

7.2 Use of Facility Trademarks. City and Management shall use the Facility Name, and where feasible, the appropriate Facility Logo, in all Advertising and Promotional Materials and Promotional Merchandise for the Facility. The Facility Logo shall be displayed in a manner that is aesthetically consistent with the overall context in which it appears.

### 7.3 Preeminence of U.S. Cellular Naming Rights and Sponsorship.

(a) City and Management shall each ensure that no other trademarks or signs shall be displayed on the exterior of the Facility except:

(1) Signs of a non-commercial nature related to the operation of the Facility.

(2) For an individual event, on the day of the event up to four temporary banners promoting the event, provided that the banners: (A) are subject to U.S. Cellular's prior approval; (B) are placed at least 30 feet from any of the Facility Trademarks or U.S. Cellular Trademarks; (C) contain information relating to the sponsor of such event, including such sponsor's name, logo, products, services, slogans and taglines; and (D) do not advertise, market or promote a third party's telecommunications services or telephone equipment.

(b) U.S. Cellular acknowledges that City may grant other sponsorships related to the Facility. Specifically, City may grant "founding" or "presenting" sponsorships to up to twelve other entities which shall not be unreasonably withheld.

(c) U.S. Cellular acknowledges that Pepsi Americas shall be the sponsor of the skating ice in the public ice rink that is part of the Facility and that the center of the skating ice will bear a Pepsi logo.

(d) City acknowledges that U.S. Cellular's rights shall be superior to and have precedence over all other sponsorships related to the Facility:

(1) City shall ensure that, compared to U.S. Cellular, no other single sponsor or brand has or related sponsors or brands have: (A) a

greater number of signs, (B) larger signs, (C) a greater aggregate square footage taking into account all signs, (D) priority in choosing locations for signs, or (E) priority in choosing the dates of events.

(2) Wherever feasible, references to U.S. Cellular shall appear in the primary position and in the largest font whenever more than one Facility sponsor is identified.

(3) If additional sponsorship opportunity related to the Facility becomes available, City and Management shall offer the opportunity to U.S. Cellular prior to offering it to any other party.

7.4 Advertising and Promotional Benefits. City and Management shall provide U.S. Cellular with the advertising, promotional, and hospitality benefits set forth on Exhibit D.

7.5 Retail Store. City shall make the Retail Store available to U.S. Cellular for use as a retail outlet owned and operated by U.S. Cellular or one of its affiliates on the lease terms included on Exhibit F.

7.6 Wireless Network Space. City shall make the Wireless Network Space available to U.S. Cellular. The Wireless Network Space shall be located adjacent to or in the Retail Store and shall be accessible only by U.S. Cellular and its authorized personnel.

7.7 Antenna. If physically feasible, City shall provide U.S. Cellular, at no additional cost, with at least 200 square feet of secure space for the erection by U.S. Cellular of a roof antenna, cellular tower, or other similar structure. Such space shall be accessible only by personnel authorized by U.S. Cellular. U.S. Cellular's use of such space shall be subject to U.S. Cellular's then-standard lease terms.

Any dispute regarding the fulfillment of City or Management's obligations under Section 7.3 or Section 7.4 shall be subject to arbitration under Section 17.

## **Section 8. Approval Rights**

8.1 U.S. Cellular may review and approve in advance the following elements with respect to the Facility:

(a) Other sponsors and co-sponsors; any exclusive suppliers of goods and services to the Facility; and any charities, foundations, educational institutions, or other organizations that will receive any proceeds or otherwise benefit from the operation of the Facility.

(b) Any management company for the Facility.

(c) All Advertising and Promotional Materials and Promotional Merchandise.

(1) U.S. Cellular may provide City and Management with branding guidelines governing use of the U.S. Cellular Trademarks and Facility Trademarks in certain Advertising and Promotional Materials. City and Management shall comply with such branding guidelines. Advertising and Promotional Materials that use U.S. Cellular Trademarks and Facility Trademarks only to identify the Facility and U.S. Cellular and not, for example, to provide any substantive or factual information about U.S. Cellular, its goods or services, or its relationship with the Facility, City, or Management shall be deemed approved if they comply with U.S. Cellular's written branding guidelines.

(2) Advertising and Promotional Materials that use U.S. Cellular Trademarks and Facility Trademarks and provide any substantive or factual information about U.S. Cellular, its goods or services, or its relationship with the Facility, City, or Management shall remain subject to U.S. Cellular's prior written approval.

8.2 City and Management may review and approve in advance any Advertising and Promotional Materials and Promotional Merchandise produced by or on behalf of U.S. Cellular bearing Facility Trademarks, which approval shall not be unreasonably withheld.

## Section 9. Reports

9.1 Each year of this Agreement, Management shall submit to U.S. Cellular a written report outlining the activities engaged in by City and Management with specific reference to their obligations and duties under this Agreement. At U.S. Cellular's request, each City and Management shall provide U.S. Cellular with reasonable access to documentation and other information that relates to the fulfillment of such party's obligations hereunder.

(a) If the opening of the Facility is March 31, 2006, Management shall submit the report by May 1 of each year beginning in 2007.

(b) If the opening of the Facility is after March 31, 2006, Management shall submit the report 30 days after the anniversary date of the opening of the Facility.

9.2 From time to time, U.S. Cellular may require Management to submit written progress reports to U.S. Cellular in connection with the construction and operation of the Facility. Such reports shall describe: (a) the status since the submission of a prior report, if any, and the expected progress to be made; (b) any actual or



anticipated problems or delays; and (c) other information relevant to the performance of City or Management or otherwise required under this Agreement.

#### Section 10. Term

10.1 Initial Term. This Agreement shall begin as of the Effective Date and continue until the end of the ten-year period commencing on the date of the opening of the Facility.

10.2 Renewal. U.S. Cellular may renew this Agreement for one additional ten-year term on the same terms and conditions contained herein, except for the amount of the fee, on written notice to City at least one year prior to the expiration of the initial term, provided that U.S. Cellular and City agree to the amount of the fee. If U.S. Cellular does not renew this Agreement, any remaining renewal rights shall terminate.

10.3 Right of Exclusive Negotiation. During the term, U.S. Cellular shall have an exclusive right of first negotiation regarding: (a) the name of the Facility and (b) any sponsorship comparable to its sponsorship rights under this Agreement. The parties shall negotiate in good faith and U.S. Cellular shall notify City if it wishes to end the negotiations.

10.4 Right of First Refusal. Neither City nor Management may enter into any agreement with another party that contains terms and conditions materially different from the terms last offered to U.S. Cellular and refused by U.S. Cellular, unless City and Management have provided U.S. Cellular with notice of such terms and U.S. Cellular has either failed to accept such terms or has not responded to the notice within sixty days.

#### Section 11. Termination

11.1 By U.S. Cellular. U.S. Cellular may terminate this Agreement:

(a) Upon 90 days' notice to City and Management if the minimum level of events and activities set forth in Exhibit A have not been conducted at the Facility during any year after the opening of the Facility.

(b) Upon notice to City and Management of a material breach by City or Management. Such termination shall be effective ten days after the date of such notice (unless a greater period is specified in the notice) unless City or Management cures the breach within such period. In addition to the breaches identified in Section 11.1(c), a material breach includes, without limitation:

(1) Any representation or warranty by City or Management contained in this Agreement that is false or misleading in any material respect. ✓

(2) A default by City or Management in the performance or observance of any material term of this Agreement.

The cure period shall not apply to any breach that by its nature is not capable of cure.

(c) Immediately upon notice to City and Management if:

(1) The construction of the Facility is not completed by June 1, 2006 except if construction is affected by an act of God, strike, lightning, epidemics, floods, earthquakes, explosions, etc.

(2) The Facility is not opened by June 30, 2006 except if construction is affected by an act of God, strike, lightning, epidemics, floods, earthquakes, explosions, etc.

(3) The management agreement between City and Management is terminated or expires.

(4) City: (A) has proceedings in bankruptcy, reorganization, receivership, or dissolution initiated by or against it; (B) makes an assignment for the benefit of its creditors; (C) admits in writing that it is unable to pay its debts generally as they become due; or (D) winds up or liquidates its business.

(5) City or Management, any of their agents, or others associated with the Facility, become involved in or have at any time been involved in scandalous, criminal, notorious, or disreputable activity that is likely to damage, detract from, or reflect unfavorably on U.S. Cellular's public image, good will, or business reputation.

**11.2 By City and Management.** City and Management may terminate this Agreement upon notice to U.S. Cellular if U.S. Cellular fails to pay the Naming Rights Fee. Such termination shall be effective fifteen days after the date of such notice (unless a greater period is specified in the notice) unless U.S. Cellular cures the breach within such period.

**11.3 Consequence of Termination.** On any termination of this Agreement, City and Management shall:

(a) Take all action necessary to protect any property in their possession in which U.S. Cellular has an interest, including any property bearing U.S. Cellular Trademarks.

(c) At U.S. Cellular's request, take all action necessary to announce and publicize the discontinuation of U.S. Cellular's affiliation with the Facility.

Notwithstanding the foregoing, upon the expiration of this Agreement, City may continue to use the Facility Name for a commercially reasonable period, but no longer than six months.

## Section 12. Confidentiality

12.1 Each party shall maintain in confidence the terms and conditions of this Agreement unless authorized by the other parties in advance to disclose them to third parties.

12.2 Notwithstanding the foregoing, a party may disclose confidential information to a party's attorneys, accountants, advisors, lenders, or prospective acquirers (provided that such persons are obliged to maintain the information in confidence) and to the extent required by law (provided that the disclosure is made after consultation with the other parties and after a party has taken all reasonable steps to limit the disclosure and maintain the confidentiality of the information, including attempting to exempt it from disclosure under freedom of information or other laws, as "confidential business information" or otherwise).

## Section 13. Other Contractual Obligations

Any agreement related to the Facility between City or Management and any third party, under which obligations or liabilities in excess of \$10,000 in the aggregate may be incurred, shall contain a clause substantially in the following form:

[Third party] shall look solely to [City or Management] for performance and for payment and satisfaction of any obligation or claim arising out of or in connection with this Agreement, and [Third Party] hereby covenants that it shall not assert any claim against or look to U.S. Cellular or any of its officers, directors, employees, or representatives for satisfaction of any such obligation or claim.

## Section 14. Representations and Warranties

14.1 By U.S. Cellular. U.S. Cellular represents and warrants that:

(a) It owns and has adopted and used U.S. Cellular Trademarks.

(b) It has full power and authority to enter into this Agreement, grant the rights granted hereunder, and perform its obligations as set forth herein and the person signing this Agreement on its behalf has the authority to do so.

14.2 By City. City represents and warrants that:

(a) It has and will continue to have the authority to own and operate the Facility.

(b) It has full power and authority to enter into this Agreement, grant the rights granted hereunder, and perform its obligations as set forth herein and the person signing this Agreement on its behalf has the authority to do so.

14.3 By Management. Management represents and warrants that:

(a) It has and will continue to have the authority to manage and promote the Facility.

(b) It has full power and authority to enter into this Agreement, grant the rights granted hereunder, and perform its obligations as set forth herein and the person signing this Agreement on its behalf has the authority to do so.

#### Section 15. Indemnification

15.1 By U.S. Cellular. U.S. Cellular shall indemnify and hold harmless City and Management and their respective officers, directors, employees, successors, and assigns from any claims, damages, liabilities, losses, government procedures, costs, and expenses, including reasonable attorneys' fees and costs of suit, arising out of any claims by third parties relating to negligent or intentional acts or omissions of U.S. Cellular or its employees, agents, or representatives in the exercise of its rights hereunder, including any events or activities conducted by U.S. Cellular, except to the extent caused by the negligence or willful misconduct of the City or Management.

15.2 By City. City shall indemnify and hold harmless U.S. Cellular and U.S. Cellular's officers, directors, employees, successors, and assigns from any claims, damages, liabilities, losses, government procedures, costs, and expenses, including reasonable attorneys' fees and costs of suit, arising out of claims by third parties relating to:

(a) Any negligent or intentional acts or omissions of City or its employees, agents, or representatives in the exercise of its rights hereunder, except to the extent caused by the negligence or willful misconduct of the U.S. Cellular.

(b) Any injury, including death, to the person or property of another or other damage occurring in connection with the Facility or the activities of City related to Facility, including but not limited to Promotional Merchandise manufactured, distributed, or sold by City.

(c) All loss, damage, or expense whatsoever resulting from the execution or the performance of this Agreement that constitutes a breach of any obligation of City to a third party.

(d) Any use of U.S. Cellular products or services provided to City under this Agreement.

**15.3** By Management. Management shall indemnify and hold harmless U.S. Cellular and U.S. Cellular's officers, directors, employees, successors, and assigns from any claims, damages, liabilities, losses, government procedures, costs, and expenses, including reasonable attorneys' fees and costs of suit, arising out of claims by third parties relating to:

(a) Any negligent or intentional acts or omissions of Management or its employees, agents, or representatives in the exercise of its rights hereunder, except to the extent caused by the negligence or willful misconduct of the U.S. Cellular.

(b) Any injury, including death, to the person or property of another or other damage occurring in connection with the Facility or the activities of Management related to Facility, including but not limited to Promotional Merchandise manufactured, distributed, or sold by Management.

(c) All loss, damage, or expense whatsoever resulting from the execution or the performance of this Agreement that constitutes a breach of any obligation of Management to a third party.

(d) Any use of U.S. Cellular products or services provided to Management under this Agreement.

**15.4** The party seeking to be indemnified ("Indemnified Party") shall give prompt written notice to the other ("Indemnifying Party") of any such claim, suit, or demand. Indemnifying Party shall thereupon be entitled to defend or settle the same through counsel of its own choosing and shall promptly notify Indemnified Party of its intention in this regard. Indemnified Party shall cooperate with the Indemnifying Party in the defense. Indemnified Party may conduct the defense itself, at Indemnifying Party's expense, if Indemnifying Party has not notified Indemnified Party of its election in this regard within 30 days following notice by Indemnified Party of such matters.

## **Section 16. Insurance**

**16.1** Each of City and Management shall obtain and maintain at its own expense, during the term of this Agreement, and for a period of one year thereafter, insurance policies written by a United States insurance company admitted in the State

of Illinois with a minimum A.M. Best rating of "A-" and a financial size of at least Class VIII in the amounts and on the terms specified below, which policies shall:

(a) Provide standard comprehensive general liability insurance and umbrella and excess liability insurance with at least \$10,000,000 Combined Single Limit Bodily Injury and Property Damage Limits, including coverage for premises and operations, products/completed operations, contractual liability, independent contractors, broad form property damage liability, and personal/advertising injury liability.

(b) Provide Statutory Workers Compensation and Employers Liability in the minimum aggregate amount of \$1,000,000, with a minimum of \$1,000,000 per accident/disease.

(c) Professional Liability Insurance in the amount of \$2,000,000 per claim, including coverage for infringement of any intellectual property right of any third party, including without limitation trade secret, copyright, and trademark infringement.

(d) Provide standard product liability protection.

(e) Identify U.S. Cellular Corporation, its affiliates, and related entities and the officers, directors, partners, employees and representatives of each, including their respective successors and assigns, as additional insureds under the commercial general liability and umbrella and excess liability policies.

16.2 Such insurance shall be in a form reasonably acceptable to U.S. Cellular and shall require the insurer to give U.S. Cellular at least 30 days prior written notice of any modification or cancellation. City shall provide U.S. Cellular with such evidence of coverage as may be reasonably acceptable to U.S. Cellular within 30 days following execution of this Agreement.

16.3 The foregoing insurance shall be issued on an occurrence basis, shall be primary with respect to any liability assumed, and shall include a waiver of subrogation in favor of U.S. Cellular, consistent with the indemnity obligations of City and Management.

#### **Section 17. Arbitration**

17.1 The parties shall negotiate in good faith in order to resolve any disputes relating to this Agreement. Any disputes that the parties are unable to resolve, which are required by this Agreement to be submitted to arbitration, shall be subject to arbitration in Chicago, Illinois under the rules of the American Arbitration Association ("AAA"). There shall be three neutral arbitrators chosen by the parties to the dispute, or in the event of their failure to agree, by the AAA.

17.2 All of the parties shall facilitate the arbitration by (a) making available to each other and to the arbitrators for inspection and extraction all documents, books and records that would be so available under the Federal Rules of Civil Procedure, (b) making personnel under their control available to other parties and the arbitrators, and (c) strictly observing the time periods established by the arbitrators for the submission of evidence and pleadings. The arbitrators shall have the power to render declaratory judgments, as well as to award monetary claims; provided, however, that the arbitrators shall not have the power to act without providing an opportunity to each party to the dispute to be represented before the arbitrators. The arbitrators shall use all reasonable means to settle the dispute with dispatch and shall state their decision in writing along with their reasons for the decision. The arbitration award shall be final and binding and judgment may be entered upon it in accordance with applicable law in accordance with any court of competent jurisdiction. The arbitrators may allocate the costs and expenses (including without limitation attorneys' fees) of the proceedings between the parties to the dispute and shall award interest as the arbitrators deem appropriate.

#### Section 18. General

18.1 Relationship. The parties are acting as independent contractors; nothing in this Agreement shall be deemed to create a joint venture, partnership, agency, employment, or other relationship between the parties.

18.2 Survival. The following provisions shall survive the termination or expiration of this Agreement: Section 5, Section 6, Section 14, Section 15, and Section 16.

18.3 Entire Agreement. This Agreement is the parties' entire agreement with respect to its subject matter and supersedes any other agreements, written or oral relating to that subject matter.

18.4 Modifications. This Agreement may not be amended, modified, waived, or adjusted except in a writing signed by the parties.

18.5 Assignment. Neither City nor Management may assign or delegate any of its rights or obligations under this Agreement without U.S. Cellular's prior written consent. Any assignment or delegation made without such consent shall be void.

18.6 Notice. All communications and notices hereunder shall be in writing addressed to a party at its address set forth below or at such other address as may be given by a party pursuant to a notice that complies with this section.

U.S. Cellular:

U.S. Cellular Corporation  
One Pierce Place  
Suite 800  
Itasca, Illinois 60143  
Attention: Hilde Marnul, Sponsorship  
and Event Specialist

Telecopy: (630) 773-3208

With a copy to:

Stephen P. Fitzell, Esq.  
Sidley Austin Brown & Wood LLP  
Bank One Plaza  
10 South Dearborn Street  
Chicago, Illinois 60603

Telecopy: (312) 853-7036

Bloomington:

City of Bloomington  
109 East Olive Street  
Bloomington, Illinois 61701  
Attention: City Manager

Telecopy: 309-434-2802

Management:

Central Illinois Arena Management, Inc.  
316 West Washington Street  
Bloomington, Illinois 61701  
Attention: Michael R. Nelson, President

Telecopy: 309-434-2667

All notices shall be delivered personally, by telecopy, by reputable overnight courier service, or by United States mail, provided that in all cases, delivery is confirmed.

18.7 No Implied Waivers. A party's waiver of its rights under this Agreement on one occasion shall not waive those rights on another occasion.

18.8 Remedies. The rights and remedies of this Agreement are intended to be cumulative and the exercise of one shall not waive the exercise of another.

18.9 Severability. If any provision of this Agreement is deemed to be invalid: (a) the remainder shall not be deemed invalid, and (b) it shall be deemed amended by modifying such provision to the extent necessary to make the provision valid while



preserving its intent or, if such a modification is not possible, substituting another valid provision so as to materially effectuate the parties' intent.

18.10 Governing Law. This Agreement shall be deemed to have been executed in the State of Illinois, without regard to its conflicts of law rules.

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective authorized representatives as of the date first set forth above.

United States Cellular Corporation

City of Bloomington, Illinois

By: *John E. Rooney*  
John E. Rooney, Chief Executive Officer

By: *Judy Markowitz*  
Judy Markowitz, Mayor

Date: March 29, 2005

Date: March 29, 2005

Central Illinois Arena Management, Inc.

By: *Michael R. Nelson*  
Michael R. Nelson

Date: March 29, 2005

## NAMING RIGHTS AGREEMENT

### Exhibit B

#### Trademarks

##### Section 1. U.S. Cellular Trademarks

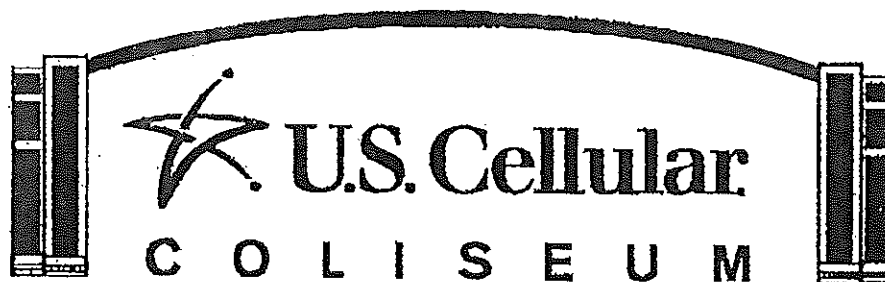
- 1.1 The word mark: U.S. CELLULAR
- 1.2 The U.S. Cellular logo:



Nothing in this Agreement shall be deemed to give City or Management any right to use or claim any rights in the U.S. Cellular Trademarks, except as explicitly provided for in this Agreement.

##### Section 2. Facility Trademarks

- 2.1 The word mark: U.S. CELLULAR COLISEUM
- 2.2 The U.S. Cellular Coliseum logos:



Neither City nor Management claim any rights in the name "U.S. Cellular" contained in any Facility Trademarks, as more fully set forth in this Agreement.

## NAMING RIGHTS AGREEMENT

### Exhibit C

#### Use of Facility Name and Logo

The following is not intended to limit the rights of U.S. Cellular or the obligations of City and Management under Section 7.

#### Section 1. Facility Exterior.

City shall provide and maintain the following signs bearing the Facility Logo on the exterior of the Facility:

1.1 Façade. At least four rear-illuminated signs on the upper exterior facade of the Facility, as follows:

(a) Main Entrance. One 12' high and 48' wide sign above the main entrance on the east side of the Facility on Madison Street (U.S. Business Route 51).

(b) Side Entrance. One approximately 4' high and 20' wide sign above the entrance on the north side of the Facility on Front Street.

(c) Video Marquee. One 3' high and 14' wide sign mounted above the LED marquee on the northwest corner of the Facility on the corner of Front Street and U.S. Business Route 51.

(d) Box Office. At least one approximately 1' high and 10' wide fixed panel sign above the ticket window and box office on the northeast corner of the Facility. All exterior box office, will call, or ticketing signs.

1.2 Roof. One non-illuminated painted or vinyl sign, at least 20' high and 20' wide and in proportion to the scale of building and the sign's location, mounted to the Facility's roof. The precise size, type, and orientation of the sign shall be determined by the parties.

1.3 Removable Banners. At least two temporary banners that would reflect the U.S. Cellular logo on the east side of the Facility on US Business 51 if special events are scheduled and if banners are deemed necessary by Management Company.

1.4 City acknowledges that, where necessary, it shall increase the size of a sign in order to provide an area for the Facility Logo or Facility Name that is reasonably visible and in proportion to the overall sign.

## Section 2. Other Exterior Signs.

City shall cause interstate, county, and city directional road-signs to bear the Facility Name and Facility Logo.

## Section 3. Facility Interior.

City shall provide and maintain the following signs bearing the Facility Name and Facility Logo on the interior of the Facility:

3.1 Main Scoreboard. One backlit 5' high and 27' wide (4 ½' X 25' approximate copy area) arched panel sign on the top fascia, above the Facility's main video board.

3.2 Ice/Field/Court.

(a) One approximately 15' wide by 15' high Facility Logo on center ice, mid-field, or mid-court, as applicable, for all sporting events in the main arena.

3.3 Public Ice Rink. One 4' X 4' Facility Logo or, at U.S. Cellular's option, U.S. Cellular Trademark in each corner of the ice in the public ice rink.

3.4 Other Signs. The parties shall determine the precise size, type, and orientation of the following signs. A reasonable area proportional to the overall size of the sign, whichever is larger, shall be available for the Facility Logo or Facility Name.

(a) Box Office. All interior box office, will call, or ticketing signs.

(b) Directional Signs. Interior directional signs, including signs for seating sections, restrooms, elevators, and suites.

## Section 4. Other Interior Activities

City shall cause the Facility Logo, or at U.S. Cellular's option, U.S. Cellular Trademarks, to appear and be maintained on:

4.1 Zamboni. Two Zamboni machines.

4.2 Uniforms.

(a) Uniforms of all professional sports teams based in the Facility.

(b) Employee uniforms.

4.3 Websites. The official website for the facility and all official websites for professional sports teams based in the Facility.

4.5 Print Materials. Specifically including but not limited to the front and back cover of all programs for activities in the main arena, Facility letterhead, press releases, drinking cups, tickets, and schedules.

4.6 Media Room. On the backdrop in the media room used for press conferences, coaches shows, and other programs.

#### Section 5. U.S. Cellular Retail Store.

U.S. Cellular, at it's own costs, shall provide and maintain the following in connection with the Retail Store at the Facility:

5.1 Exterior. Space for one sign above the store entrance on the east side of the Facility on U.S. Business 51.

5.2 Interior.

(a) One sign bearing U.S. Cellular Trademarks above the main concourse entrance to the Retail Store.

(b) At least two directional signs bearing U.S. Cellular Trademarks leading the Retail Store.

U.S Cellular and Management will mutually agree on the placement, size and location of retail store signs six months prior to the opening of the facility

#### Section 6. U.S. Cellular Advertising.

6.1 City shall provide the following advertising to U.S. Cellular, which shall supply the advertising at its own expense:

(a) Concourse. Two 4' x 6' rear illuminated advertising panels to be located in the concourse at locations selected by U.S. Cellular from among all available locations.

(b) Facade Message Center: U.S. Cellular shall receive at least six commercial messages on the Center's LED message center on the facade above the suite level during each activity or event at the Facility.

If additional locations within the interior of the Facility are available for advertising, City and Management shall offer the space to U.S. Cellular, for the display of additional signs at U.S. Cellular's expense, prior to offering it to any other party.

6.2 Programs. One full-page color print advertisement in the program for each activity or event at the Facility.

6.3 Video Spots. At least three and up to four :30 commercials shall be broadcast during each activity or event at the Facility at which the scoreboard video screens are used. The commercials shall be broadcast: before the event, during intermission (i.e., quarter breaks, between periods, halftimes, set changes, etc.) and after the event.

## NAMING RIGHTS AGREEMENT

### Exhibit D

#### Promotional Benefits

##### Section 1. Benefits Provided By City

City shall provide the following services, benefits, and privileges to U.S. Cellular, at no additional cost to U.S. Cellular (except as set forth below):

1.1 Web Site. Management shall create, operate, and maintain a web site for the Facility at [www.uscellularcoliseum.com](http://www.uscellularcoliseum.com), which shall include a link to U.S. Cellular's web site. U.S. Cellular shall be the owner of and registrant of the domain name and hereby grants to Management a limited right and license to use the domain name in connection with such site.

1.2 Publicity. City shall conduct a public relations campaign that promotes the naming of the Facility in accordance with an agreed public relations plan.

1.3 Promotion of Retail Store. Management shall promote the U.S. Cellular retail store at each activity or event at the Facility through:

(a) Game day promotions, the nature of which shall be determined by the parties.

(b) At least three :30 announcements on the public address system.

1.4 Corporate Suite. The use of a prime corporate suite with seating for twelve for each hockey and football home game. In addition, U.S. Cellular shall have priority access to a prime corporate suite for all other public events. U.S. Cellular shall be responsible for any food and beverage service for the suite as well as for tickets to all public events other than hockey and football home games. U.S. Cellular will also be responsible for any hockey and football ticket price increases based on season ticket rates for the twelve corporate suite tickets for the duration of the contract and will be billed accordingly.

1.5 Priority Access to Event Tickets. Priority access to purchase tickets to all public events. City and Management shall use their best efforts to ensure that U.S. Cellular can purchase tickets for all public events and activities at the Facility.

1.6 Employee Events. Complementary use of the Arena for 24 hour periods twice annually for corporate presentations, meetings, etc.

1.7 VIP Parking. Six parking spots designated in the VIP parking area in the parking structure.

## NAMING RIGHTS AGREEMENT

### Exhibit E

#### Cellular Products and Services

##### Section 1. Cellular Telephones

U.S. Cellular shall provide Management with at least twelve cellular telephones, of a type determined by U.S. Cellular, to Management for the usual wireless communication needs of Management and its personnel from the Effective Date through the term of this Agreement. U.S. Cellular shall, every two years, replace the telephones with new telephones of a type determined by it.

##### Section 2. Terms and Conditions of Use

2.1 U.S. Cellular shall promptly deliver the cellular telephones to Management.

2.2 Each cellular telephone shall include a wireless service package consisting of up to 3,000 national anytime minutes under the terms of U.S. Cellular's standard trade agreement.

2.3 Management shall return the cellular telephones to U.S. Cellular no later than five days after the termination or expiration of this Agreement, in the same condition as when delivered, ordinary wear and tear excepted.

As between the parties, Management shall be responsible for all use of the telephones provided hereunder, including use that exceeds the service package described above, in accordance with the terms of the wireless services package selected by Management, and all applicable taxes.



**NAMING RIGHTS AGREEMENT**

**Exhibit F**

**Retail Store Lease**

**See attached.**



## NAMING AGREEMENT

### Exhibit A

#### Facility Activities and Events

#### Section 1. Level of Facility Activities and Events

City and Management acknowledge that the value of this Agreement to U.S. Cellular depends upon a minimum level and quality of activity and events taking place at the Facility during each year that the Facility is open.

#### Section 2. Option to Terminate or Reduce Annual Fee

2.1 First Year. U.S. Cellular may terminate this Agreement pursuant to Section 11.1(a), unless the minimum number of event days set forth below has taken place during the first year after the opening of the Facility. For purposes of this section, an "event day" is one day of an independent and separable activity with an attendance of more than 2,000, such as one game of an amateur or professional sporting team, one day of a tournament, one concert, show, or special event, or one day of a multi-day event or activity, such as one day of a concert series, trade show, convention, or exposition.

2.2 Subsequent Years. U.S. Cellular may either: (a) terminate this Agreement pursuant to Section 11.1(a), or (b) reduce the annual fee for the following year by 20% unless the minimum number of event days set forth below has taken place during each subsequent year after the opening of the Facility.

<u>Year</u>	<u>Minimum Number of Event Days</u>
First Year	108 event days
Subsequent Years	The greater of: (A) 118 event days or (B) the number of event days that took place in the first year after the opening of the Facility plus 10%.

1.8 Team Sponsorship and Promotions. U.S. Cellular may conduct at least one promotion during one hockey game and one football game each season that may include a giveaway, post game concert, celebrity appearance, etc. U.S. Cellular will also agree to consider individual team sponsorships on an annual basis such as dashboards, game day promotions, community based sponsorship programs, radio, tickets, etc. for the duration of the contract.

**Section 2. U.S. Cellular's Promotional Rights:**

U.S. Cellular shall have the following promotional rights, provided that any materials, products, or services required with respect to U.S. Cellular's exercise of these rights shall be at U.S. Cellular's expense:

2.1 U.S. Cellular may refer to its naming rights and sponsorship in Advertising and Promotional Materials, including on the U.S. Cellular web site.

2.2 U.S. Cellular may include on its web site a link to the Facility's web site; City shall provide the link.

2.3 U.S. Cellular may photograph or film activities and events at the Facility. Further, subject only to the rights of third parties, U.S. Cellular may use any of the photographs or film without territorial, time, use, or other limitation.

2.4 U.S. Cellular may conduct national or regional advertising and dealer promotion programs in connection with U.S. Cellular's naming rights and sponsorship.



## WIRELESS NETWORK SPACE AGREEMENT

### **1 The Parties**

THIS AGREEMENT, is dated \_\_\_\_\_, 2005, and entered into by City of Bloomington, IL, hereinafter referred to as "Licensor", whose address is 109 East Olive Street, Bloomington, IL 61701,

and United States Cellular Corporation, d/b/a U.S. Cellular, hereinafter referred to as "Licensee", whose address is **Real Estate, 8410 West Bryn Mawr Avenue, Chicago, IL 60631** (Phone: 773-399-8900 Fax 773-399-4206)

All notices to the parties shall be delivered to the addresses for each set forth above.

In consideration of the mutual covenants and agreements in the Naming Rights Agreement and set forth below, the parties agree as follows:

### **2 In Line Sales Space**

#### **a. Size & Location.**

Licensor agrees to provide Licensee Sales Space in the "RETAIL STORE" located in the southeast corner of the Facility, at a fixed location depicted on a drawing or blueprint made a part of this Agreement as Exhibit "A". This is the "Sales Space", and Lessor agrees to permit the Lessee to use:

An area of approximately 800-1,000 square feet with direct access to and from the main concourse and the exterior of the facility finished to US Cellular "White Box" standards.

Additionally, an area with a minimum size of 200 square feet with the approximate dimensions of 10 feet by 20 feet adjacent to the Retail Space including electrical and wiring connections sufficient to create a wireless telephone network for the facility.,

b. Purpose & Use

This License is agreed to so that the parties can mutually pursue retail business towards the general public.

c. Access by Public.

The Sales Space will be situated in the Facility where the general public can access the sales space.

**3 Rent None**

**4 Usage & Removal**

a. Use of Sales Space. Lessee shall use the In Line Sales Space for the purpose of selling wireless communication services and related products, for the advertising and promotion of those products and services, and for no other purpose.

b. Removal & Restoration of Sales Space at Termination.

Licensee shall promptly remove any furniture, fixtures and signage at the termination of this Agreement, and shall restore the Sales Space used to its original condition, less ordinary wear and tear.

**5 Licensee Obligations.**

In connection with its use of the Sales Space, Licensee shall, at its sole expense:

a. Install sales fixtures and equipment in the Sales Space, and upon termination of this Agreement, remove the same.

b. Provide sales personnel to staff the Sales Space at such times as determined by Licensee.

c. Maintain the Sales Space in a good, clean, orderly and attractive condition.

d. Maintain a policy of commercial general liability insurance relating to Licensee's use of the Sales Space in the amount of One million dollars, (\$1,000,000.00).

## 6 Licensor's Obligations.

In connection with Licensee's use of the in line sales space, the Licensor shall, at its sole cost:

- a. Provide utility services to the area per requirements defined in US Cellular "White Box" requirements. Additionally, ongoing utility services will be provided to the Sales Space by Licensor.
- b. Maintain complete public access and parking facilities to the Sales Space.
- c. Provide and maintain commercial general liability insurance for the store in the amount of at least \$ 1 million dollars (\$1,000,000.00) and provide the Lessee with a current certificate of insurance evidencing such insurance.
- d. Provide lighting, heating and air conditioning to the Sales Space in the same manner as the balance of the sales area of the store.
- e. Licensor Shall Not Compete.

As an inducement for the Tenant to enter into this Agreement, Licensor agrees that it itself shall not sell wireless telephones and wireless communication services during the license period.

## 7 Access.

Licensor agrees to provide Licensee's employees with access and parking to the store, including after hours, as may be reasonably requested by Licensee in order to operate the In Line Sales Space, or to install, service or remove the Licensee's property and supplies.

Provide access during construction of the Facility for US Cellular personnel and contractors to complete interior construction of the Retail Space.

## **8 Term & Extension**

- a. Commencement Date. Subject to extension or termination as described below, this Agreement shall be for a period of one year or less, commencing on the date Licensee occupies Sales Space ("The Commencement Date").
- b. If for any reason Licensor cannot provide the space, electrical connection or heating and air conditioning for the subject space by that date, then Licensee may cancel this Agreement without notice or penalty.
- c. Option to Extend If the Licensee is not in default in any portion of this agreement, the Term of this agreement shall be automatically extended during the Term of the NAMING RIGHTS AGREEMENT. Licensee may elect to end the Term of this agreement by providing a written notice to the Licensor at least 90 days prior to the end of the then current Term.

## **9 U.S. Cellular Exclusive Use.**

While this Agreement is in force and effect, the Lessor shall not sell or permit any person or business enterprise other than Lessee to sell cellular telephones or wireless communication services or related products out of any other portion of the location, or outside the store within the premises of the Lessor.

## **10 Signage.**

- a. While this Agreement is in force and effect, the Licensor agrees to permit Licensee to display signage on all sides of the Sales Space that are viewable by the general public.
- b. If permitted by the building owner, either at the time this Agreement is signed or at a later time, the Licensor agrees to permit Licensee to install one sign on the large shopping center sign if approved by the building owner and at a cost to be determined by and paid to the owner by the Licensee.
- c. All signage will be installed at the expense of Licensee and maintained by Licensee in good and proper repair and working order, and removed at termination at the sole expense of the Licensee. Signage may only be permitted where it conforms to local

building or appearance codes. Signage examples are attached hereto as **Exhibit "B"**. Signage must be approved by Licensor, whose approval may not be unreasonably withheld.

#### **11 Mutual Indemnification.**

Licensee agrees to defend, indemnify and hold Licensor harmless from and against any and all liability, damages, causes of action, suits, claims, judgments or expenses, including reasonable attorneys' fees, for any bodily injury or property damage arising out of or in connection with Licensee's use and occupancy of the In Line Sales Space unless attributable in whole or in part to the negligence or willful misconduct of Licensor, its employees or agents. Licensor in turn, agrees to defend, indemnify and hold the Licensee harmless from and against any and all liability, damages, causes of action, suits, claims, judgments or expenses, including reasonable attorneys' fees, for any personal injury or property damage arising out of or in connection with Licensor's ownership and operation of the store, unless attributable in whole or part to the negligence or willful misconduct of the Licensee, its employees or agents.

#### **12 Approvals.**

Licensor represents and warrants that it has obtained all necessary consents, approvals and permits from the property landowner (if any) and all governmental authorities, as are necessary and appropriate to permit Licensee to use the Sales Space in the manner provided in this Agreement.

#### **13 Entire Agreement.**

This Agreement is the entire, final, and complete agreement of the parties with respect to the matters set forth in this Agreement, and supersedes and replaces all written and oral agreements previously made or existing by and between the parties or their representatives with respect to such matters. This Agreement may not be modified except by an Amendment endorsed in writing and attached hereto, dated and signed by the parties.



**14 Provisions Binding.**

The terms of this Agreement will be binding upon and will inure to the benefit of the heirs, personal representatives, successors, and assigns, respectively of both parties.

**15 Governing Law.**

This Agreement will be governed by the laws of the State of Illinois in which the Property is located.

**16 Attorneys' Fees.**

In the event suit or action is instituted to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial or on appeal of such suit or action, in addition to all other sums provided by law.

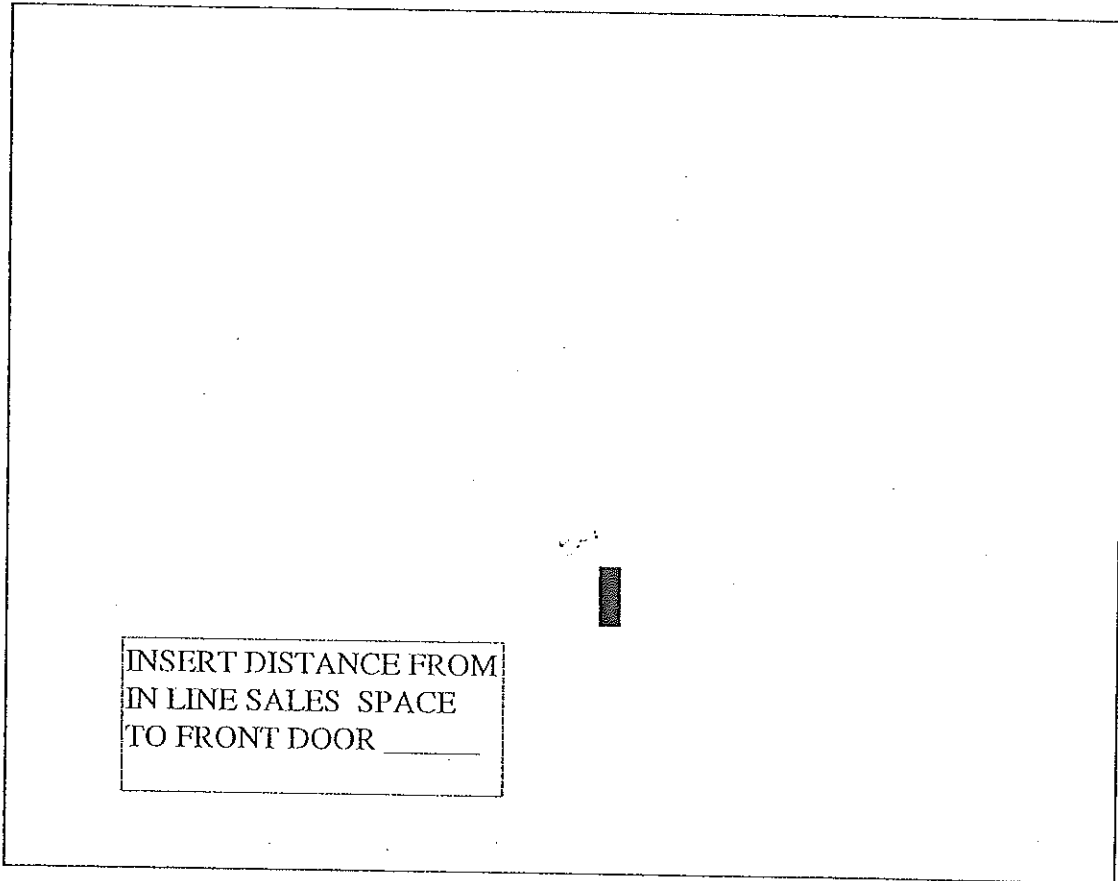
The parties have executed this agreement as of the date first written above.

Licensor:  
City of Bloomington

Licensee:  
United States Cellular Corporation  
d/b/a U.S. Cellular

Signatures on the Naming Rights Agreement provide approval of this document.

EXHIBIT "A"  
SALES SPACE LINE DRAWING



Location Address:

Front Street and US Business Route 51, Bloomington, IL 61701

EXHIBIT B  
SIGNAGE



**TAB D**

## BEVERAGE MARKETING AND NAMING RIGHTS AGREEMENT

This Beverage Marketing and Naming Rights Agreement ("Agreement") is made as of April 25, 2005 ("Effective Date") among Pepsi-Cola General Bottlers, Inc. d/b/a PepsiAmericas ("Pepsi"), a Delaware corporation; the City of Bloomington, Illinois ("City"), an Illinois municipal corporation; and Central Illinois Arena Management, Inc. ("Management"), an Illinois corporation.

WHEREAS, City is constructing and will own the sports and entertainment facility located at 101 South Madison Street (also known as U.S. Business Route 51) at the corner of Front Street and U.S. Business Route 51, Bloomington, Illinois, 61701, currently known as the Bloomington Sports and Entertainment Center ("Facility").

WHEREAS, City has the right to name the Facility and to authorize certain advertising and promotional activities at the Facility.

WHEREAS, City has entered into a management agreement with Management pursuant to which City has authorized Management to operate and manage the Facility and to enter into an agreement with a third party to grant to such third party certain rights to conduct advertising and promotional activities in connection with the Facility and to provide to such third party other promotional rights and benefits.

WHEREAS, City and Management wish to grant to Pepsi the right to name the Facility and the right to have beverage exclusivity and the rights to conduct advertising and promotional activities as described in this Agreement.

WHEREAS, Pepsi desires to acquire such rights.

NOW, THEREFORE, the parties agree as follows:

### Section 1. Facility

1.1 The Facility, which is currently under construction, is expected to be completed by March 2006. The Facility shall consist of a state-of-the-art multi-use complex, known as the U.S. Cellular Coliseum, for sports, entertainment, and business and civic events, including ice hockey, basketball, arena football, soccer, volleyball, and tennis; medium-size trade shows and conventions; and medium-size entertainment programs.

1.2 The Facility shall include:

(a) At least 180,000 square feet of space with a fixed seating capacity of approximately 6,800 for hockey and indoor football games and over 8,000 for concerts and family events. The Facility shall also be capable of hosting smaller

Exhibit D

events, with seating capacity ranging from 2,000 to 5,000 through use of a "half-of-the-house" curtain system.

(b) Twenty-four luxury suites, two large group suites, at least 800 "club seats" with a club member lounge, and a full-service restaurant and bar, which seats 150 patrons, that will over look the main arena floor.

(c) A media room used for press conferences and video production.

1.3 The construction budget for the Facility shall be at least \$36,000,000.

1.4 The Facility shall also include:

(a) An attached structure, known as the Pepsi Ice Center, containing a public ice skating facility that will be operated by the Bloomington Parks and Recreation Department and will host youth and adult hockey leagues, figure skating, skating lessons, and open public skating.

(b) An attached 375-car parking structure.

(c) All such other City owned or managed facilities that are opened during the term of this Agreement

1.5 City shall and will continue to own the Facility, which shall be of a quality at least comparable to the quality of other similar venues. City shall cause Management, or another reputable management company, to operate the Facility in a manner comparable to the operation of other similar venues.

1.6 City and Management shall each use their best efforts to secure the following activities for the Facility each year:

(a) Approximately 36 home games of a professional hockey team (e.g., East Coast Hockey League, American Hockey League or United Hockey League) based in the Bloomington, Illinois, area.

(b) Approximately eight home games of a professional arena football team (e.g., United Indoor Football League or Arena Football<sup>2</sup>) based in the Bloomington, Illinois, area.

(c) Approximately three Illinois High School Association or Illinois Elementary Association tournaments or events.

(d) Approximately 40 concerts, family shows, and special events.

(e) Approximately eight trade shows, conventions, or expositions.

1.7 City and Management acknowledge the importance of Pepsi's connection with the Facility to Pepsi's public image and business reputation. City and Management shall each use its best efforts to ensure that its actions, as well as the actions of its agents and others associated with the Facility, do not damage, detract from, or reflect unfavorably on Pepsi's public image, good will, or business reputation.

1.8 Except, as expressly set forth in this Agreement, Pepsi shall not bear any responsibility for the operation of the Facility.

## Section 2. Fees and Other Consideration

2.1 Naming Rights and Sponsorship Fees. Pepsi shall pay City an annual fee of \$175,000 each year the Facility is open.

(a) Pepsi shall pay one-half the first annual fee by January 31, 2006, provided that, on January 1, 2006; the Facility continues to be scheduled to open on or before March 31, 2006. If, on January 1, 2006, the Facility is scheduled to open after March 31, 2006, the first half of the annual fee shall not become due until two months before the scheduled opening. Pepsi shall pay the remainder of the first annual fee within 10 days after the opening of the Facility.

(b) Subsequent annual payments shall be due on the anniversary date of the first payment, provided that the Facility opens within two months after such payment. If the Facility does not open within two months after the first payment, subsequent annual payments shall be due on the anniversary date of the opening of the Facility.

## Section 3. Grant of Rights

3.1 Grant of Naming Rights. City grants to Pepsi the exclusive, irrevocable right to name the Facility and to advertise and promote the Facility and Pepsi's naming rights. Pursuant to such grant, Pepsi hereby names the attached public ice rink, "Pepsi Ice Center" ("Facility Name").

(a) Facility Logo. Pepsi may create and develop a logo for the Facility, consisting of one or more stylized versions of the Facility name (each, a "Facility Logo") for use in different applications (e.g., logo for use on center ice, logo for use on exterior signs).

(b) Changes.

(1) Pepsi may propose a new name for the Facility, to replace the name "Pepsi Ice Center," upon notice to City and Management. The new name shall be subject to City's prior written approval, which shall not be unreasonably withheld. Any dispute regarding the reasonableness of

City's withholding approval of a new name shall be subject to arbitration under Section 17.

(2) Pepsi may change the logo for the Facility, to replace the then-current logo, upon notice to City and Management.

Pepsi shall pay all costs and expenses incurred in implementing a new name or logo pursuant to this subsection 3.1(b).

**3.2 Grant of Sponsorship Rights.** City and Management, grants to Pepsi, or shall cause to be granted to Pepsi:

(a) The exclusive sponsorship right and soft drink pouring rights to be identified as "Official Soft Drink" of the Facility and the U.S. Cellular Coliseum.

(b) The exclusive sponsorship right to be identified as "Official Soft Drink" of all professional sports teams based in the Facility.

(c) The right to advertise and promote the Facility, professional sports teams based in the Facility, and Pepsi's sponsorships including dasher boards, radio, and game day promotions.

(d) The exclusive sponsorship right to be identified as the "Official Soft Drink of the City of Bloomington."

**Section 4. Exclusivity.**

Neither City nor Management shall authorize any manufacturer, seller, distributor, or dealer of any of the following competitive goods or services to be a sponsor or co-sponsor of the Facility or any part thereof: any non-alcoholic beverages. Any dispute regarding the authorization of a sponsor or co-sponsor by City or Management shall be subject to arbitration under Section 17.

**Section 5. Trademarks**

**5.1 Ownership.**

(a) Pepsi Trademarks. As between the parties, Pepsi's trade names, trademarks, service marks, and logos, including those identified on Exhibit B (collectively, "Pepsi Trademarks"), are and shall remain the property of Pepsi. Pepsi Trademarks shall not include Facility Trademarks (as defined below).

(b) Facility Trademarks. As between the parties, the Facility Name and the Facility Logo, including those identified on Exhibit B (collectively, "Facility Trademarks"), are and shall remain the property of Pepsi. Pepsi may seek a



trademark or service mark registration for the Facility Name and the Facility Logo.

**5.2 License Grant.** Pepsi hereby grants to City the right to use and to license others to use the Facility Trademarks in connection with the marketing, operation, and promotion of the Facility, subject to Pepsi's prior written approval of such uses. City may not use the Facility Trademarks other than as authorized by Pepsi. Pepsi expressly reserves all other rights in the Pepsi Trademarks.

**5.3 Quality Control.** City and Management shall manage and operate the Facility in a manner generally consistent with the standards of quality applicable to comparable venues.

**5.4 Protection of Facility Trademarks.**

(a) Each of City and Management shall notify Pepsi of any infringement or potential infringement of the Facility Trademarks that come to its attention. Neither City nor Management may, without Pepsi's prior written consent take any action with respect to such infringement or alleged infringement.

(b) Pepsi shall, in its discretion and at its own cost and expense, be responsible for protecting the Facility Trademarks (including, initiating, prosecuting, defending and controlling any litigation). City and Management shall provide all reasonable assistance to Pepsi in connection therewith.

## **Section 6. Advertising and Merchandising**

**6.1** All material designed to publicize, advertise, promote, disseminate information regarding, or otherwise refer to the Facility, including: signs, press materials, brochures, tickets, media advertising of any type (such as radio and television commercial announcements, and print advertising) (collectively, "Advertising and Promotional Materials") and material designed to publicize, advertise, promote, or otherwise refer to the Facility, other than "Advertising and Promotional Materials," including but not limited to equipment, uniforms, programs, clothing, souvenirs, and memorabilia (collectively, "Promotional Merchandise"), whether or not specifically identified as such, shall:

(a) Be of a high standard of quality at least comparable to the quality used for other similar facilities.

(b) Be of a style, appearance, and quality as to suit the best exploitation of the Facility.

(c) Bear appropriate trademark and copyright notices.

(d) Be free from product defects, merchantable, and fit for its particular purpose.

6.2 Pepsi shall have the royalty-free right to produce, sell, and distribute Promotional Merchandise, retaining all proceeds and without accounting to City or Management therefore. Any Promotional Merchandise bearing Facility Trademarks shall be subject to City's approval, which shall not be unreasonably withheld.

6.3 City shall have the royalty-free right to produce, sell, and distribute Promotional Merchandise bearing Facility Trademarks. Such merchandise shall be subject to Pepsi's approval, which shall not be unreasonably withheld. City shall not place any other trademark, service mark, name, logo, or design on Promotional Merchandise bearing Facility Trademarks, without Pepsi's prior written approval.

6.4 If any Promotional Merchandise manufactured, distributed, or sold by a party shall be defective in material or workmanship or otherwise fail to conform with the terms of this Agreement, the other party may, in addition to its other rights, require destruction of such goods or the alteration to remove the trademarks there from, at the sole expense of the owner of such merchandise.

6.5 If Pepsi desires to purchase any Promotional Merchandise that City has licensed a third party to produce, sell, or distribute, City shall require such licensee to sell such merchandise to Pepsi without City's royalty thereon. City and licensee shall certify the amount of any royalty applicable to such merchandise.

## **Section 7. Display of Facility Trademarks and Pepsi Trademarks**

7.1 Use of Trademarks. City and Management shall use the Facility Trademarks and Pepsi Trademarks as set forth on Exhibit C. Unless otherwise specified, all such uses shall be at the cost and expense of City and Management, including the cost and responsibility for producing, installing, and maintaining such displays in good order, repair and condition at all times.

7.2 Use of Facility Trademarks. City and Management shall use the Facility Name, and where feasible, the appropriate Facility Logo, in all Advertising and Promotional Materials and Promotional Merchandise for the Facility. The Facility Logo shall be displayed in a manner that is aesthetically consistent with the overall context in which it appears.

7.3 Preeminence of Pepsi Naming Rights and Sponsorship.

(a) City and Management shall each ensure that no other trademarks or signs shall be displayed on the exterior of the Facility except:

(1) Signs of a non-commercial nature related to the operation of the Facility.

(2) For an individual event, on the day of the event up to four temporary banners promoting the event, provided that the banners: (A) are subject to Pepsi's prior approval; (B) are placed at least 30 feet from any of the Facility Trademarks or Pepsi Trademarks; (C) contain information relating to the sponsor of such event, including such sponsor's name, logo, products, services, slogans and taglines; (D) do not advertise, market or promote a third party's non-alcoholic beverages; and (E) are promptly removed immediately following completion of the individual event.

(b) Pepsi acknowledges that City may grant other sponsorships related to the Facility. Specifically, City may grant "founding" or "presenting" sponsorships to up to twelve other entities which shall not be unreasonably withheld.

(c) Pepsi acknowledges that U.S. Cellular shall be the sponsor of the Main Arena and that the main center shall bear a U.S. Cellular logo.

(d) City acknowledges that Pepsi's rights shall be superior to and have precedence over all other sponsorships related to the Facility:

(1) City shall ensure that, compared to Pepsi, no other single sponsor or brand has or related sponsors or brands have: (A) a greater number of signs, (B) larger signs, (C) a greater aggregate square footage taking into account all signs, (D) priority in choosing locations for signs, or (E) priority in choosing the dates of events.

(2) Wherever feasible, references to Pepsi shall appear in the primary position and in the largest font whenever more than one Facility sponsor is identified.

(3) If additional sponsorship opportunity related to the Facility becomes available, City and Management shall offer the opportunity to Pepsi prior to offering it to any other party.

## **Section 8. Approval Rights**

**8.1** Pepsi may review and approve in advance the following elements with respect to the Facility:

(a) Other sponsors and co-sponsors; any exclusive suppliers of goods and services to the Facility; and any charities, foundations, educational

institutions, or other organizations that will receive any proceeds or otherwise benefit from the operation of the Facility.

(b) Any management company for the Facility. ✓

(c) All Advertising and Promotional Materials and Promotional Merchandise.

(1) Pepsi may provide City and Management with branding guidelines governing use of the Pepsi Trademarks and Facility Trademarks in certain Advertising and Promotional Materials. City and Management shall comply with such branding guidelines. Advertising and Promotional Materials that use Pepsi Trademarks and Facility Trademarks only to identify the Facility and Pepsi and not, for example, to provide any substantive or factual information about Pepsi, its goods or services, or its relationship with the Facility, City, or Management shall be deemed approved if they comply with Pepsi's written branding guidelines.

(2) Advertising and Promotional Materials that use Pepsi Trademarks and Facility Trademarks and provide any substantive or factual information about Pepsi, its goods or services, or its relationship with the Facility, City, or Management shall remain subject to Pepsi's prior written approval.

8.2 City and Management may review and approve in advance any Advertising and Promotional Materials and Promotional Merchandise produced by or on behalf of Pepsi bearing Facility Trademarks, which approval shall not be unreasonably withheld.

## Section 9. Reports

9.1 Each year of this Agreement, Management shall submit to Pepsi a written report outlining the activities engaged in by City and Management with specific reference to their obligations and duties under this Agreement. At Pepsi's request, each City and Management shall provide Pepsi with reasonable access to documentation and other information that relates to the fulfillment of such party's obligations hereunder.

(a) If the opening of the Facility is March 31, 2006, Management shall submit the report by May 1 of each year beginning in 2007.

(b) If the opening of the Facility is after March 31, 2006, Management shall submit the report 30 days after the anniversary date of the opening of the Facility.

9.2 From time to time, Pepsi may require Management to submit written progress reports to Pepsi in connection with the construction and operation of the Facility. Such reports shall describe: (a) the status since the submission of a prior report, if any, and the expected progress to be made; (b) any actual or anticipated problems or delays; and (c) other information relevant to the performance of City or Management or otherwise required under this Agreement.

## Section 10. Term

10.1 Initial Term. This Agreement shall begin as of the Effective Date and continue until the later to occur of the ten-year period after the grand opening of the U.S. Cellular Coliseum or sale of 67,000 24-unit cases of 20 oz. PET bottles of Pepsi's beverages.

10.2 Renewal. Pepsi may renew this Agreement for one additional ten-year term on the same terms and conditions contained herein, except for the amount of the fee, on written notice to City at least one year prior to the expiration of the initial term, provided that Pepsi and City agree to the amount of the fee. If Pepsi does not renew this Agreement, any remaining renewal rights shall terminate.

10.3 Right of Exclusive Negotiation. During the term, Pepsi shall have an exclusive right of first negotiation regarding: (a) the name of the Facility and (b) any sponsorship comparable to its sponsorship rights under this Agreement. The parties shall negotiate in good faith and Pepsi shall notify City if it wishes to end the negotiations.

10.4 Right of First Refusal. Neither City nor Management may enter into any agreement with another party that contains terms and conditions materially different from the terms last offered to Pepsi and refused by Pepsi, unless City and Management have provided Pepsi with notice of such terms and Pepsi has either failed to accept such terms or has not responded to the notice within sixty days.

## Section 11. Termination

11.1 By Pepsi. Pepsi may terminate this Agreement:

(a) Upon 90 days' notice to City and Management if the minimum level of events and activities set forth in Exhibit A have not been conducted at the Facility during any year after the opening of the Facility or that Facility and City have not sold the appropriate level of products. (TO BE DETERMINED)

(b) Upon notice to City and Management of a material breach by City or Management. Such termination shall be effective ten days after the date of such notice (unless a greater period is specified in the notice) unless City or

Management cures the breach within such period. In addition to the breaches identified in Section 11.1(c), a material breach includes, without limitation:

(1) Any representation or warranty by City or Management contained in this Agreement that is false or misleading in any material respect.

(2) A default by City or Management in the performance or observance of any material term of this Agreement.

The cure period shall not apply to any breach that by its nature is not capable of cure.

(c) Immediately upon notice to City and Management if:

(1) The construction of the Facility is not completed by June 1, 2006.

(2) The Facility is not opened by June 30, 2006.

(3) The management agreement between City and Management is terminated or expires.

(4) City: (A) has proceedings in bankruptcy, reorganization, receivership, or dissolution initiated by or against it; (B) makes an assignment for the benefit of its creditors; (C) admits in writing that it is unable to pay its debts generally as they become due; or (D) winds up or liquidates its business.

(5) City or Management, any of their agents, or others associated with the Facility, become involved in or have at any time been involved in scandalous, criminal, notorious, or disreputable activity that is likely to damage, detract from, or reflect unfavorably on Pepsi's public image, good will, or business reputation.

**11.2 By City and Management.** City and Management may terminate this Agreement upon notice to Pepsi if Pepsi fails to pay the Naming Rights Fee. Such termination shall be effective fifteen days after the date of such notice (unless a greater period is specified in the notice) unless Pepsi cures the breach within such period.

**11.3 Consequence of Termination.** On any termination of this Agreement, City and Management shall:

(a) Take all action necessary to protect any property in their possession in which Pepsi has an interest, including any property bearing Pepsi Trademarks.

(b) Take all reasonable steps to protect Pepsi Trademarks, including ceasing use of them within a reasonable period under the circumstances of the termination.

(c) At Pepsi's request, take all action necessary to announce and publicize the discontinuation of Pepsi's affiliation with the Facility.

Notwithstanding the foregoing, upon the expiration of this Agreement, City may continue to use the Facility Name for a commercially reasonable period, but no longer than six months.

## **Section 12. Confidentiality**

**12.1** Each party shall maintain in confidence the terms and conditions of this Agreement unless authorized by the other parties in advance to disclose them to third parties.

**12.2** Notwithstanding the foregoing, a party may disclose confidential information to a party's attorneys, accountants, advisors, lenders, or prospective acquirers (provided that such persons are obliged to maintain the information in confidence) and to the extent required by law (provided that the disclosure is made after consultation with the other parties and after a party has taken all reasonable steps to limit the disclosure and maintain the confidentiality of the information, including attempting to exempt it from disclosure under freedom of information or other laws, as "confidential business information" or otherwise).

## **Section 13. Other Contractual Obligations**

Any agreement related to the Facility between City or Management and any third party, under which obligations or liabilities in excess of \$10,000 in the aggregate may be incurred, shall contain a clause substantially in the following form:

[Third party] shall look solely to [City or Management] for performance and for payment and satisfaction of any obligation or claim arising out of or in connection with this Agreement, and [Third Party] hereby covenants that it shall not assert any claim against or look to Pepsi or any of its officers, directors, employees, or representatives for satisfaction of any such obligation or claim.

## **Section 14. Representations and Warranties**

**14.1** By Pepsi. Pepsi represents and warrants that:

(a) It has full authority to use the Pepsi Trademarks in the manner contemplated in this Agreement.

(b) It has full power and authority to enter into this Agreement, grant the rights granted hereunder, and perform its obligations as set forth herein and the person signing this Agreement on its behalf has the authority to do so.

**14.2** By City. City represents and warrants that:

(a) It has and will continue to have the authority to own and operate the Facility.

(b) It has full power and authority to enter into this Agreement, grant the rights granted hereunder, and perform its obligations as set forth herein and the person signing this Agreement on its behalf has the authority to do so.

**14.3** By Management. Management represents and warrants that:

(a) It has and will continue to have the authority to manage and promote the Facility.

(b) It has full power and authority to enter into this Agreement, grant the rights granted hereunder, and perform its obligations as set forth herein and the person signing this Agreement on its behalf has the authority to do so.

## **Section 15. Indemnification**

**15.1** By Pepsi. Pepsi shall indemnify and hold harmless City and Management and their respective officers, directors, employees, successors, and assigns from any claims, damages, liabilities, losses, government procedures, costs, and expenses, including reasonable attorneys' fees and costs of suit, arising out of any claims by third parties relating to negligent or intentional acts or omissions of Pepsi or its employees, agents, or representatives in the exercise of its rights hereunder, including any events or activities conducted by Pepsi, except to the extent caused by the negligence or willful misconduct of the City or Management.

**15.2** By City. City shall indemnify and hold harmless Pepsi and Pepsi's officers, directors, employees, successors, and assigns from any claims, damages, liabilities, losses, government procedures, costs, and expenses, including reasonable attorneys' fees and costs of suit, arising out of claims by third parties relating to:

(a) Any negligent or intentional acts or omissions of City or its employees, agents, or representatives in the exercise of its rights hereunder, except to the extent caused by the negligence or willful misconduct of the Pepsi.

(b) Any injury, including death, to the person or property of another or other damage occurring in connection with the Facility or the activities of City



related to Facility, including but not limited to Promotional Merchandise manufactured, distributed, or sold by City.

(c) All loss, damage, or expense whatsoever resulting from the execution or the performance of this Agreement that constitutes a breach of any obligation of City to a third party.

(d) Any use of Pepsi products or services provided to City under this Agreement.

**15.3 By Management.** Management shall indemnify and hold harmless Pepsi and Pepsi's officers, directors, employees, successors, and assigns from any claims, damages, liabilities, losses, government procedures, costs, and expenses, including reasonable attorneys' fees and costs of suit, arising out of claims by third parties relating to:

(a) Any negligent or intentional acts or omissions of Management or its employees, agents, or representatives in the exercise of its rights hereunder, except to the extent caused by the negligence or willful misconduct of the Pepsi.

(b) Any injury, including death, to the person or property of another or other damage occurring in connection with the Facility or the activities of Management related to Facility, including but not limited to Promotional Merchandise manufactured, distributed, or sold by Management.

(c) All loss, damage, or expense whatsoever resulting from the execution or the performance of this Agreement that constitutes a breach of any obligation of Management to a third party.

(d) Any use of Pepsi products or services provided to Management under this Agreement.

**15.4** The party seeking to be indemnified ("Indemnified Party") shall give prompt written notice to the other ("Indemnifying Party") of any such claim, suit, or demand. Indemnifying Party shall thereupon be entitled to defend or settle the same through counsel of its own choosing and shall promptly notify Indemnified Party of its intention in this regard. Indemnified Party shall cooperate with the Indemnifying Party in the defense. Indemnified Party may conduct the defense itself, at Indemnifying Party's expense, if Indemnifying Party has not notified Indemnified Party of its election in this regard within 30 days following notice by Indemnified Party of such matters.

## **Section 16. Insurance**

**16.1** Each of City and Management shall obtain and maintain at its own expense, during the term of this Agreement, and for a period of one year thereafter,

insurance policies written by a United States insurance company admitted in the State of Illinois with a minimum A.M. Best rating of "A-" and a financial size of at least Class VIII in the amounts and on the terms specified below, which policies shall:

(a) Provide standard comprehensive general liability insurance and umbrella and excess liability insurance with at least \$10,000,000 Combined Single Limit Bodily Injury and Property Damage Limits, including coverage for premises and operations, products/completed operations, contractual liability, independent contractors, broad form property damage liability, and personal/advertising injury liability.

(b) Provide Statutory Workers Compensation and Employers Liability in the minimum aggregate amount of \$1,000,000, with a minimum of \$1,000,000 per accident/disease.

(c) Professional Liability Insurance in the amount of \$2,000,000 per claim, including coverage for infringement of any intellectual property right of any third party, including without limitation trade secret, copyright, and trademark infringement.

(d) Provide standard product liability protection.

(e) Identify Pepsi Americas, its affiliates, and related entities and the officers, directors, partners, employees and representatives of each, including their respective successors and assigns, as additional insureds under the commercial general liability and umbrella and excess liability policies.

**16.2** Such insurance shall be in a form reasonably acceptable to Pepsi and shall require the insurer to give Pepsi at least 30 days prior written notice of any modification or cancellation. City shall provide Pepsi with such evidence of coverage as may be reasonably acceptable to Pepsi within 30 days following execution of this Agreement.

**16.3** The foregoing insurance shall be issued on an occurrence basis, shall be primary with respect to any liability assumed, and shall include a waiver of subrogation in favor of Pepsi, consistent with the indemnity obligations of City and Management.

## **Section 17. Arbitration**

**17.1** The parties shall negotiate in good faith in order to resolve any disputes relating to this Agreement. Any disputes that the parties are unable to resolve, which are required by this Agreement to be submitted to arbitration, shall be subject to arbitration in Chicago, Illinois under the rules of the American Arbitration Association ("AAA"). There shall be three neutral arbitrators chosen by the parties to the dispute, or in the event of their failure to agree, by the AAA.

17.2 All of the parties shall facilitate the arbitration by (a) making available to each other and to the arbitrators for inspection and extraction all documents, books and records that would be so available under the Federal Rules of Civil Procedure, (b) making personnel under their control available to other parties and the arbitrators, and (c) strictly observing the time periods established by the arbitrators for the submission of evidence and pleadings. The arbitrators shall have the power to render declaratory judgments, as well as to award monetary claims; provided, however, that the arbitrators shall not have the power to act without providing an opportunity to each party to the dispute to be represented before the arbitrators. The arbitrators shall use all reasonable means to settle the dispute with dispatch and shall state their decision in writing along with their reasons for the decision. The arbitration award shall be final and binding and judgment may be entered upon it in accordance with applicable law in accordance with any court of competent jurisdiction. The arbitrators may allocate the costs and expenses (including without limitation attorneys' fees) of the proceedings between the parties to the dispute and shall award interest as the arbitrators deem appropriate.

#### Section 18. General

18.1 Relationship. The parties are acting as independent contractors; nothing in this Agreement shall be deemed to create a joint venture, partnership, agency, employment, or other relationship between the parties.

18.2 Survival. The following provisions shall survive the termination or expiration of this Agreement: Section 5, Section 6, Section 14, Section 15, and Section 16.

18.3 Entire Agreement. This Agreement is the parties' entire agreement with respect to its subject matter and supersedes any other agreements, written or oral relating to that subject matter.

18.4 Modifications. This Agreement may not be amended, modified, waived, or adjusted except in a writing signed by the parties.

18.5 Assignment. Neither City nor Management may assign or delegate any of its rights or obligations under this Agreement without Pepsi's prior written consent. Any assignment or delegation made without such consent shall be void.

18.6 Notice. All communications and notices hereunder shall be in writing addressed to a party at its address set forth below or at such other address as may be given by a party pursuant to a notice that complies with this section.

**Pepsi:** PepsiAmericas  
3075 Tollview Drive  
Rolling Meadows, Illinois 60008  
Attn: Vice President - Customer Development

Telecopy: 847-483-7644

		After 1/1/06 to:
<b><u>With a copy to:</u></b>	<u>PepsiAmericas</u>	<u>PepsiAmericas</u>
	3501 Algonquin Road	1475 E. Woodfield Road
	<u>Rolling Meadows, Illinois 60008</u>	<u>Schaumburg, Illinois 60173</u>
	<u>Attn: Legal Department</u>	<u>Attn: Legal Department</u>
	Telecopy: 847-483-6848	Telecopy: 847-483-6848

**Bloomington:** City of Bloomington  
109 East Olive Street  
Bloomington, Illinois -61701  
Attn: City Manager  
Telecopy: 309-434-2802

**Management:** Central Illinois Arena Management, Inc.  
316 West Washington Street  
Bloomington, Illinois 61701  
Attn: Michael R. Nelson, President  
Telecopy: 309-434-2667

All notices shall be delivered personally, by telecopy, by reputable overnight courier service, or by United States mail, provided that in all cases, delivery is confirmed.

18.7 No Implied Waivers. A party's waiver of its rights under this Agreement on one occasion shall not waive those rights on another occasion.

18.8 Remedies. The rights and remedies of this Agreement are intended to be cumulative and the exercise of one shall not waive the exercise of another.

18.9 Severability. If any provision of this Agreement is deemed to be invalid: (a) the remainder shall not be deemed invalid, and (b) it shall be deemed amended by modifying such provision to the extent necessary to make the provision valid while preserving its intent or, if such a modification is not possible, substituting another valid provision so as to materially effectuate the parties' intent.

18.10 Governing Law. This Agreement shall be deemed to have been executed in the State of Illinois, without regard to its conflicts of law rules.

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective authorized representatives as of the date first set forth above.

Pepsi Americas

By: Keith Melanque

Date: 4-30-05

City of Bloomington, Illinois

By: Judy Markowitz  
Judy Markowitz, Mayor

Date: 4-30-05

Central Illinois Arena Management, Inc.

By: Michael R. Nelson

Michael R. Nelson  
Date: 4-30-05

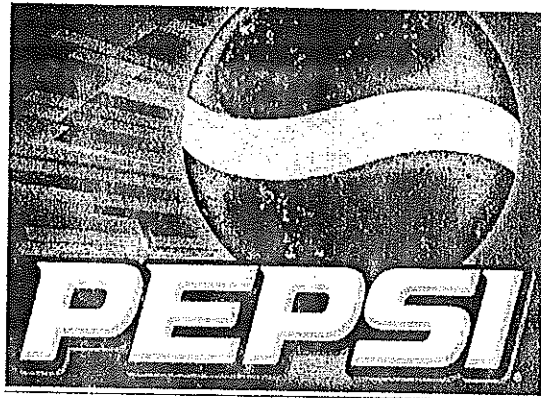
# NAMING RIGHTS AGREEMENT

## Exhibit B

### Trademarks

#### Section 1. Pepsi Trademarks

- 1.1 The word mark: PEPSI
- 1.2 The Pepsi logo:



Nothing in this Agreement shall be deemed to give City or Management any right to use or claim any rights in the Pepsi Trademarks, except as explicitly provided for in this Agreement.

#### Section 2. Facility Trademarks

- 2.1 The word mark: PEPSI ICE CENTER
- 2.2 The Pepsi Ice Center logos:



Neither City nor Management claim any rights in the name "Pepsi" contained in any Facility Trademarks, as more fully set forth in this Agreement.

# NAMING RIGHTS AGREEMENT

## Exhibit C

### Use of Facility Name and Logo

The following is not intended to limit the rights of Pepsi or the obligations of City and Management under Section 7.

#### Section 1. Facility Exterior.

City shall provide and maintain the following signs bearing the Facility Logo on the exterior of the Facility:

##### 1.1 Façade.

(a) Main Entrance. One rear-illuminated sign above the main entrance to the Pepsi Ice Center located on the south side of the Facility approximately 8'0" high X 16'0" wide.

(b) Video Marquee: One 3' high X 8' wide sign mounted below the LED marquee on the northwest corner of the Facility on the corner of Front Street and U.S. Business Route 51..

1.2 City acknowledges that, where necessary, it shall increase the size of a sign in order to provide an area for the Facility Logo or Facility Name that is reasonably visible and in proportion to the overall sign.

#### Section 2. Other Exterior Signs.

City shall cause city directional road-signs to bear the Facility Name and Facility Logo.

#### Section 3. Facility Interior.

City shall provide and maintain the following signs bearing the Facility Name and Facility Logo on the interior of the Facility:

3.1 Main Public Scoreboard. One 3' high X 8' wide sign on top of the two Pepsi Ice Center scoreboards.

3.2 Ice Logo. One 15' high X 15' wide Facility logo on center ice at the Pepsi Ice Center.

3.3 Public Ice Rink. One 4' X 4' Facility Logo or, at Pepsi's option, Pepsi Trademark in each corner of the ice in the public ice rink.



**3.4 Main Facility Video/Scoreboard.** One backlit 6' high X 6' wide panel on the Facility's Main Scoreboard.

(a) Directional Signs. Interior directional signs, including signs for seating, locker rooms, restrooms at the Pepsi Ice Center.

#### **Section 4. Other Interior Activities**

City shall cause the Facility Logo, or at Pepsi's option, Pepsi Trademarks, to appear and be maintained on:

**4.1 Zamboni.** Two Zamboni machines.

**4.2 Uniforms.**

(a) Uniforms of youth sports teams based in the Facility.

(b) Employee uniforms.

**4.3 Websites.** The official website for the Pepsi Ice Center and all official websites for the U.S. Cellular Coliseum, Bloomington Parks and Recreation, City of Bloomington and professional sports teams based in the facility.

**4.4 Print Materials.** Specifically including but not limited to the front and back cover of all programs for activities in the Pepsi Ice Center, letterhead, press releases, drinking cups, and schedules.

#### **Section 5. Pepsi Advertising.**

**5.1** City shall provide the following advertising to Pepsi, which shall supply the advertising at its own expense:

(a) Concourse. One 4' x 6' rear illuminated advertising panel to be located in the concourse at a location selected by Pepsi from among all available locations.

(b) Façade Message Center: Pepsi shall receive at least six commercial messages on the Center's LED message center on the façade above the suite level during each activity or event at the Facility.

If additional locations within the interior of the Facility are available for advertising, City and Management shall offer the space to Pepsi, for the display of additional signs at Pepsi's expense, prior to offering it to any other party.

**5.2 Ticket Back Advertising.** Advertising sold on all ticket backs at the Facility.

5.3 Video Spots. At least three and up to four :30 commercials shall be broadcast during each activity or event at the Facility at which the scoreboard video screens are used. The commercials shall be broadcast: before the event, during intermission (i.e., quarter breaks, between periods, halftimes, set changes, etc.) and after the event.

# NAMING RIGHTS AGREEMENT

## Exhibit D

### Promotional Benefits

#### Section 1. Benefits Provided By City

City shall provide the following services, benefits, and privileges to Pepsi, at no additional cost to Pepsi (except as set forth below):

**1.1 Web Site.** Management shall create, operate, and maintain a web site for the Facility at [www.pepsiicecenter.org](http://www.pepsiicecenter.org), which shall include a link to Pepsi's web site. Pepsi shall be the owner of and registrant of the domain name and hereby grants to Management a limited right and license to use the domain name in connection with such site.

**1.2 Publicity.** City shall conduct a public relations campaign that promotes the naming of the Facility in accordance with an agreed public relations plan.

**1.3 Corporate Suite.** The use of a prime corporate suite with seating for twelve for each hockey and football home game. In addition, Pepsi shall have priority access to a prime corporate suite for all other public events. Pepsi shall be responsible for any food and beverage service for the suite as well as for tickets to all public events other than hockey and football home games. Pepsi will also be responsible for any hockey and football ticket price increases based on season ticket rates for the twelve corporate suite tickets for the duration of the contract and will be billed accordingly.

**1.4 Priority Access to Event Tickets.** Priority access to purchase tickets to all public events. City and Management shall use their best efforts to ensure that Pepsi can purchase tickets for all public events and activities at the Facility.

**1.5 Employee Events.** Complementary use of the Pepsi Ice Center for 24 hour periods twice annually for special events, etc.

**1.6 VIP Parking.** Six parking spots designated in the VIP parking area in the parking structure.

**1.7 Team Sponsorship and Promotions.** Pepsi may conduct at least one promotion during one hockey game and one football game each season that may include a giveaway, post game concert, celebrity appearance, etc. Pepsi will also agree to consider individual team sponsorships on an annual basis such as dasher boards, game day promotions, community based sponsorship programs, radio, tickets, etc. for the duration of the contract.

## **Section 2. Benefits Provided By Pepsi**

Pepsi shall provide the following services, benefits, and privileges to Management for the use of professional sports teams:

2.1 Radio. Pepsi shall provide Management at least 100 :20 radio tags annually to be used for professional hockey and indoor football teams.

2.2 Television. Pepsi shall provide Management at least 50 :07 television tags annually to be used for professional hockey and indoor football teams.

2.3 Can Panel. Pepsi shall provide Management and City a can panel on a Pepsi product annually to promote professional hockey, indoor football, or special events in the City.

## **Section 3. Pepsi's Promotional Rights:**

Pepsi shall have the following promotional rights, provided that any materials, products, or services required with respect to Pepsi's exercise of these rights shall be at Pepsi's expense:

3.1 Pepsi may refer to its naming rights and sponsorship in Advertising and Promotional Materials, including on the Pepsi web site.

3.2 Pepsi may include on its web site a link to the Facility's web site; City shall provide the link.

3.3 Pepsi may photograph or film activities and events at the Facility. Further, subject only to the rights of third parties, Pepsi may use any of the photographs or film without territorial, time, use, or other limitation.

3.4 Pepsi may conduct national or regional advertising and dealer promotion programs in connection with Pepsi's naming rights and sponsorship.

# **TAB E**

## PRO FORMA FINANCIAL STATEMENTS

### Accountants' Compilation Report

Mayor and City Council  
City of Bloomington  
Bloomington, Illinois

We have compiled the accompanying projected balance sheet and operations, cash flows, revenues and operating expenses for the pro Bloomington Sports & Entertainment Center from inception and Period Three, in accordance with standards established by the American Institute of Public Accountants.

The accompanying projection and this report were prepared to assist Bloomington in evaluating the financial aspects of the proposed Entertainment Center. They should not be used for any other purpose.

A compilation is limited to presenting, in the form of a projection, in the representation of management, and does not include evaluation of the assumptions underlying the projection. We have not examined, and, accordingly, do not express an opinion or any other form of assurance on, the accompanying statements or assumptions. Furthermore, even if financial differences between the projected and actual results because of circumstances frequently do not occur as expected, and those differences are material. We have no responsibility to update this report for events and circumstances occurring after the date of this report.

Bloomington, Illinois  
August 18, 2003

Exhibit E

**CITY OF BLOOMINGTON  
SPORTS & ENTERTAINMENT CENTER**

**Projected Revenues and Operating Expenses**

**For Periods One Through Three**

	<u>Twelve Months Ended</u>			
	<u>Year One</u>	<u>Year Two</u>	<u>Year Three</u>	<u>Total</u>
<b>Projected revenues per signed agreements:</b>				
Events- hockey	\$ 200,000	\$ 200,000	\$ 200,000	\$ 600,000
Ticketing commissions	88,000	70,040	72,141	210,181
20 suites committed for	400,000	400,000	400,000	1,200,000
168 club seats sold	50,000	50,000	50,000	150,000
Food/beverage/novelty	1,060,000	1,081,500	1,113,855	3,245,355
Advertising	580,000	480,000	480,000	1,540,000
Naming rights	200,000	200,000	200,000	600,000
<b>Projected revenues - other:</b>				
Events - other	688,000	605,840	623,809	1,817,449
Parking	400,000	400,000	400,000	1,200,000
Reimbursements ✓	1,400,000	1,442,000	1,485,280	4,327,280
Four additional suites	80,000	80,000	80,000	240,000
Additional club seat sales (total 532)	150,000	150,000	150,000	450,000
Facility fees	315,000	324,450	334,184	973,634
	<u>\$ 5,481,000</u>	<u>\$ 5,483,630</u>	<u>\$ 5,589,339</u>	<u>\$ 16,553,969</u>
<b>Projected operating expenses:</b>				
Management fee	\$ 219,240	\$ 219,345	\$ 223,573	\$ 662,158
Salaries	1,000,000	1,030,000	1,060,900	3,090,900
Benefits	200,000	206,000	212,180	618,180
General	130,000	133,900	137,917	401,817
Advertising	100,000	103,000	106,090	309,090
Utilities	395,000	406,850	419,058	1,220,906
Insurance	130,000	133,900	137,917	401,817
Maintenance	200,000	206,000	212,180	618,180
Reimbursements	800,000	824,000	848,720	2,472,720
Administrative	75,000	77,250	79,568	231,818
Interest expense	1,291,289	1,271,863	1,251,034	3,813,986
Depreciation and amortization	700,000	700,000	700,000	2,100,000
	<u>\$ 5,240,529</u>	<u>\$ 5,311,908</u>	<u>\$ 5,389,135</u>	<u>\$ 15,941,572</u>

See summary of significant projection assumptions and accountants' report.

Exhibit E

**CITY OF BLOOMINGTON  
SPORTS & ENTERTAINMENT CENTER**

**Notes to Projections**

**From Inception and Periods One Through Three**

**Note 1 - Nature of Projections and Significant Assumptions:**

This financial projection is based on revenue volume at the levels and financing as described throughout the projections and the following notes. It presents, to the best of management's knowledge and belief, the City's expected results of operations and cash flows from operations for the projection period if such revenue volume and financing were attained. Accordingly, the projection reflects management's judgment as of May 12, 2003, the date of this projection, of the expected conditions and its expected course of action if such revenue volume and financing were experienced.

The presentation is designed to provide information for determination of the financial feasibility of this proposed project and should not be considered to be a presentation of expected future results. Accordingly, this projection may not be useful for other purposes. The assumptions disclosed herein are those that management believes are significant to the projection. Further, even if the stated revenue volume was attained, there will usually be differences between projected and actual results because events and circumstances frequently do not occur as expected, and those differences may be material.

**Note 2 - Construction Cost:**

It is assumed the City would construct a multi-purpose facility on real estate currently owned by the City. The total cost of this project has been estimated at \$28,750,000. This does not include the construction of the public ice rink. It does include land, infrastructures, equipment and \$750,000 of construction period interest necessary to enhance the property. Construction period interest was estimated assuming 60% of \$25,750,000 construction loan outstanding for one year at 5% interest.

**Note 3 - Nature of Operations:**

The City, being a unit of local government, would operate the facility as an enterprise fund. As such, it is anticipated that non-tax revenues would be sufficient to support its cost. This operation would be similar to the City's water and parking departments. The public ice rink portion of the project would be considered part of the Parks and Recreational Department and, hence, those costs would be supported by tax revenues. Therefore, those costs were excluded from this projection.



**CITY OF BLOOMINGTON  
SPORTS & ENTERTAINMENT CENTER**

**Notes to Projections - Continued**

**From Inception and Periods One Through Three**

**Note 4 - Revenue Assumptions:**

The projected revenues are based on the following:

- Hockey events per proposal presented by the East Coast Hockey League.
- Ticketing commission is based on contractual arrangements with ticket.com and commissions are estimated on volume of sales.
- Suite and club seat revenue is based on signed agreements with patrons at \$20,000 per year for suites and \$300 per year for club seats.
- Food and beverage is based on agreements with commission vendors and anticipated revenues.
- Advertising revenue is based on signed agreements.
- Projected revenues (other) are based on reports submitted by C. H. Johnson Consulting, Inc. dated April 2000. These amounts were reviewed and updated by Stephen R. Hyman, October 2001.

**Note 5 - Operating Expense Assumption:**

The projected expenditures, other than interest, depreciation and management fee were based on the study by C. H. Johnson Consulting, Inc.'s report and later updated amounts by Stephen R. Hyman. Management fee was estimated at 4% of revenues.

**Note 6 - Depreciation Assumptions:**

Projected depreciation expense is based on the following:

	<u>Cost</u>	<u>Life</u>	<u>Method</u>
Equipment and fixtures	\$ 6,600,000	15 years	Straight Line
Building	19,150,000	75 years	Straight Line

**Note 7 - Debt Service Assumption:**

It is anticipated the Arena will need total third party financing of \$26,000,000. The projected term used was 30-year amortization at 5% interest. This would require monthly payments of \$139,574.

**CITY OF BLOOMINGTON  
SPORTS & ENTERTAINMENT CENTER**

**Notes to Projections - Continued**

**From Inception and Periods One Through Three**

**Note 8 - Other Assumptions:**

Between periods, it is anticipated that variable revenues and expenses will increase 3% per period. This has been projected to reflect inflation.

# **TAB F**

## PRE-OPENING SERVICES

### Planning and Programming

1. Advise and assist in the project's preliminary program development through meetings with City and representatives of the hospitality industry, hoteliers, and other potential user groups.
2. Review pertinent operational reports and studies as directed and provide comment on operational issues as it affects programming, marketing, and efficient fiscal operations.
3. BP will work with the Design/Build Team selected by the City in connection with such Team's design of the Center.
4. Advise and assist in refining and finalizing the development of the program to be used during the schematic design phase.
5. Advise and assist with the development of a preliminary project schedule as prepared by the Design/Build Team.
6. Prepare a "Pre-Opening Operating Budget" for the Center to include all aspects of operational needs, such as on-site staffing, training, marketing activities including sales materials and the procurement and implementation of agreed upon administrative and fiscal operations management systems and an inaugural post-opening operating year of the Center, which shows the projected operating revenues and expenses, in each case in a format which conforms generally to pre-opening budgets used by BP on other projects.

### Design, Development and Construction Services

1. Review and advise on designs as required and all drawings prepared by the Design/Build Team and provide operational expertise and comments and suggestions intended to improve the functionality, durability and life-cycle costs of the Center. BP will review the following components of the overall design and will make recommendations to the City, and its other consultants, agents and representatives with respect thereto prior to issuance of construction documents.
  - A. Utility Review - review electrical lighting, show power and audio/visual plans, with a focus on the adequacy of utility service in light of projected user and

Center needs.

- B. Telecommunications Review - formulate anticipated end user requirements for reference in system design. Develop equipment list in consultation with telecommunications consultants, and develop administrative telecommunications plan in light of Center needs.
- C. Keying System Review - review master key and hardware schedules. Develop keying plan for contractor to follow, with emphasis on developing long-term focus on promoting building security/safety needs.
- D. Interior Finish Review - review interior finish components, including public furniture, carpet, etc. with a focus on desire for cost-efficient long-term care and upkeep; make recommendations regarding the purchase of proper maintenance equipment and initial procurement of durable fixtures.
- E. Security System/CCTV Review - review of planned security/CCTV system with a focus on desire to identify, with prioritization, security needs.
- F. Sound System Review - review the sound system specifications with a focus on sound quality and coverage, and functional requirements.
- G. Ice Floor and Refrigeration System Review - review the refrigeration system and the dehumidification system.
- H. Directional Signage Review - review signage specifications in design plans with a focus on desire that signage meet the needs of anticipated event schedule and related vehicle/patron traffic patterns. Assist the graphics designers in the selection of interior graphics communication needs and locational plans.
- I. Kitchen/Concession Review - review both permanent and portable kitchen specifications and equipment and, together with any proposed concessionaire, recommend layout of facilities and procurement of small wares,
- J. HVAC Review - review HVAC specifications with view to control of appropriate zones in the Center that will tend to optimize energy conservation.
- K. Load In/Loud Out - review ingress and egress with a view to event participation and production, including ceiling heights, storage availability and truck accessibility.
- L. Rigging/Hanging Point Analysis — recommend specifications and guidelines together with project designer and structural consultants with a view to safety

and load-in and load-out efficiency considerations.

- M. Staging and Seating - recommend seating and staging type and provide specifications with a view to set-up, maintenance, storage and labor efficiency considerations.
  - N. Vertical Transportation - review the capacities, dimensions and location of all elevators and escalators.
2. Conduct reviews of design documents at predetermined intervals to identify whether comments resulting from previous design reviews have been incorporated.
  3. Monitor and analyze the construction budget estimates and consult with the City on any impact that significant budget adjustments may have on operations and functionality. BP will actively participate in any and all value engineering exercises along with any budgetary discussions.
  4. Analyze income potential based on the design including an analysis of operating systems and the design of the Center, as it affects event profitability. Identify design and construction concerns and issues which affect the ability to offer outstanding and economical service to users, and recommend alternative solutions for more efficient and effective operations after completion and opening of the Center.
  5. Make recommendations regarding layout for administrative and box offices and back- of-house areas for incorporation into the design documents.

#### Pre-Opening Operational Tasks

1. Submit to the City recommendations regarding appropriate Policies and Procedures to be implemented in operating the Center.
2. Recommend marketing and event booking strategies and relationships with planners, promoters and regional marketing/sales agencies to promote a regional and national identity for the Center.
3. Prepare a list of operating supplies to be procured for the start-up of the Center.
4. Recommend a booking policy and a rental rate policy for the Center.
5. Recommend strategies and relationships to solicit primary third-party vendor service programs such as food and beverage, parking, ticketing, etc.

6. Maintain accurate accounting records relating to its activities on behalf of the Center.
7. Negotiate, execute, and deliver, in BP's name as agent for the City tenant user agreements, booking commitments, and licenses.
8. Negotiate, execute, and deliver, in BP's name as agent for the City service contracts and vendor agreements, provided that to the extent that any such contract or agreement will extend beyond the management term of any full service management agreement or the renewal term, if any, the City will approve and execute such contract or agreement.
9. Issue to the City periodic financial reports reflecting BP's activities on behalf of the Center.

# TAB G



## FF&E SERVICES

BP will provide during the Pre-Opening Period the following consulting services pertaining to furniture, fixtures, and equipment (collectively, "FF&E"), which are directed to the non-food and beverage areas described below.

- General housekeeping and maintenance (janitorial carts, floor polishers, etc.);
- Trash collection/removal (trash carts, compactors, sweepers, etc.);
- Transportation (pickup trucks, utility carts, etc.);
- Material Handling (forklifts, pallets, jacks, etc.);
- Communications and operations (two-way radios, time and attendance systems, computer systems, etc.);
- Hospitality/Banquet items (banquet tables, chairs, skirting, etc.);
- Event-related equipment (staging, spotlights, folding chairs, tables, etc.);
- Uniforms
- Crowd Control (turnstiles, barricades, stanchions, etc.);
- Center services (audiovisual equipment, laundry facilities, etc.);
- Electronic media (scoreboards, marquees, dioramas, etc.)
- Shop Equipment (power tools, hand tools, shelving)
- Hockey Related (dashers and ice resurfacers)
- Football Related (football carpet and goals)

### **Programming/Conceptual Design**

BP will:

- Develop and recommend a proposed FF&E Inventory for review and acceptance by the City. These recommendations will be based on the size and specific needs of the Center and BP's experience as to which equipment is necessary to most effectively operate the Center.
- Assist in modifying the working budget, including hard and soft costs for FF&E Inventory. These modifications will be based on agreed upon changes to the FF&E Inventory.
- Revise both the initial inventory and budget accordingly based on agreed upon program changes to the working budget.
- Prepare submittals including transmittals, and cut-sheets of the FF&E items identified in the FF&E Inventory, for review and acceptance by the City.

## Specifications

BP will:

- Provide technical specifications based on the submittals for all FF&E required not within the scope of any other consultants work.
- If required, review the FF&E specifications and work prepared by the architect or other consultants, for all areas within their scope of work and submit comments and modifications where necessary.
- Review current lists, and identify new qualified/responsible bidders to satisfy the procurement of all FF&E.

## **MARKETING SERVICES**

The Marketing Services will consist of the following services relating to naming rights, product and service rights, advertising signage, and suite and premium seating planning and sales for the Center:

### **Naming Rights Planning and Procurement**

- Research and analysis of industry naming rights deals.
- Evaluation of potential Center values.
- Creation of proposal detailing timelines and all sponsor benefits.
- Development of financial analysis related to revenue and expenses for naming rights deal.
- Assist in the development and creation of all written and video presentation materials, as appropriate. As an alternative, develop RFP to be sent to prospective corporations and assist in the negotiation of contract documents with potential corporate partners.
- Creation of local and national target account list to be reviewed with the City, if appropriate.
- Solicitation and procurement of local and national accounts or review of RFP responses.
- Assistance and consultation in negotiation of final transaction, including review and analysis of bids and development contract.
- Advice and consultation with respect to ongoing servicing of naming rights sponsor.

### **Advertising Inventory Design and Premium Seating Planning:**

- Create comprehensive list of available advertising inventory at the venue.
- Consult with architects and engineers, if applicable on the design and placement of inventory.
- Negotiation with signage manufacturers and consultation on RFPs.
- Develop proformas for premium seating and advertising.
- Develop relevant sales materials and displays.
- Develop premium seating leases and amenities packages.

### **Advertising Sales:**

- Analyze potential inventory and maximize revenue in a variety of product categories.
- Create sponsor benefit packages to include all aspects of venue partnership programs, including premium seating, serving rights, signage, promotions, and sponsorship.
- Provide the City with projected sales and inventory rate card.
- Develop a sales plan to solicit prospective venue partnership programs. Establish a

- potential target list for the region.
- Develop relevant sales materials and videos.
  - Develop contracts for advertisers.
  - Perform reporting functions including monthly status reports and meetings as requested.

**Premium Seating—Suites and Club Seats:**

- Oversee development of a model suite.
- Develop pricing strategies and amenities packages based on market conditions.
- Develop a target list and timelines for sales.
- Implement sales strategies in conjunction with advertising sales efforts.
- Develop sample contracts
- Execute agreements with corporate clients.
- Develop plan regarding servicing of premium seating clients.