IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT OF ILLINOIS
MCLEAN COUNTY

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	)	
v.	)	No. 2017-CF-1025
JOHN Y. BUTLER Defendant.	)	

MOTION TO RECONSIDER RULING ON NOTICE OF INTENT TO OFFER EVIDENCE OF PRIOR BAD ACTS EVIDENCE AND INCLUDED MEMORANDUM IN SUPPORT THEREOF

NOW COMES the Defendant, JOHN Y. BUTLER, by and through his attorneys, J. Steven Beckett of Beckett Law Office, P.C. and Tristan N. Bullington of Meyer Capel, P.C., and in support of his ***Motion to Reconsider Ruling on Notice of Intent to Offer Evidence of Prior Bad Acts Evidence*** states as follows:

Procedural History

1. On July 27, 2020, the State filed its ***Notice of Intent to Offer Evidence of Prior Bad Acts Evidence*** (hereinafter "Notice of Intent"), in which the State notified Defendant of their intent to offer evidence of the presence of a shredding truck at the Coliseum during the last month of CIAM's contract with the City of Bloomington.

2. On July 31, 2020, Defendant filed his response to the State's Notice of Intent, arguing that this information did not show an absence of mistake, intent, plan or knowledge as alleged by the State, and that the only purpose this information would serve would be to imply some sort of wrongdoing onto a completely legitimate business activity.

3. On August 5, 2020, arguments were heard before the Court. During the Court's consideration of the issue, both parties were asked if there was any other proof of Defendant destroying documents or obstructing the collection of evidence in this case.

4. In response to this query, the State alluded to a text message, not originally addressed in the State's Notice of Intent, sent by Defendant to Jay Laesch on March 12, 2016. The State represented to the Court that this text message from Defendant to Jay Laesch showed that Defendant had attempted to "destroy evidence" when he ordered Jay to delete information from a City computer. The State further argued that the only reason investigators were able to view the deleted records was because they were able to recover the deleted files.

5. The State also represented to the Court that Jay Laesch had copied all of the deleted files onto a flash drive and that Defendant was not aware that Jay had even done this.

6. Based upon these representations by the State, the Court in ruling noted that Defendant having previously engaged in destruction of evidence was a relevant consideration that supported the court's ruling that evidence of the presence of a shredding truck was admissible.

Argument

I. The State's Recollection of the Contents of the Text Message was Inaccurate as to the Content and Context

7. The text message as it was presented to the Court by the State was misrepresented. The State did not convey the entirety of that text message to the Court. The entirety of the text conversation between Defendant and Jay Laesch on March 12, 2016 is as follows:

> Defendant: Jay. A reminder. Get everything off the city computer asap. Go buy an external hard drive if you need backup info. Nothing BMI related should be on city computer. Thanks.
>
> Jay: OK. I will transfer all files on to flash drive and put everything on laptop today. That will suffice.

Defendant: Thats [sic]. And erase when done. Thanks.

A true and accurate copy of the above text messages are attached hereto as Exhibit 1.

8. The State's recollection of the text message implies criminal wrongdoing onto a completely standard business practice. The "city computer" that Defendant references in his text is a computer that belonged to the City of Bloomington and would not be taken with CIAM or BMI when they left. Defendant did nothing wrong by copying his company's data onto an external storage device and then deleting his company's files off of a computer that did not belong to him. CIAM and BMI dealt with a substantial amount of confidential information that was the subject of an ongoing controversy, including a FOIA-based lawsuit, *Benjamin v. City of Bloomington & Central Arena Management*, 2015-MR-763. CIAM and BMI's position that event concession information was confidential and proprietary from public disclosure was well known and had been presented in motions to dismiss in the pending litigation. While the City of Bloomington could have access to that information upon request, pursuant to the Management Agreement, CIAM was ending its management relationship, and if the BMI financial information was on the city computer, CIAM would not be able to have any way to assure unauthorized disclosure in the pending FOIA lawsuit.

9. The State's flawed recollection of the contents of this text message lead to the misleading interpretation that the only reason investigators got access to the records was because Jay made a copy without Defendant knowing or that investigators were able to recover the deleted files. In fact, Defendant was not only aware that a copy of the records had been made, Defendant told Jay to create the backup.

10. Defendant did not destroy a single business record when he told Jay to delete those records from the City computer. Nor was he attempting to prevent investigators from accessing the files, as this occurred prior to Defendant becoming aware that he was under investigation or the criminal

investigation even beginning. It is a standard business practice to remove business files from a computer that does not belong to the business when a company loses access to that computer.

11. To take this analysis one step further: 1) Jay copied all of Defendant's companies' data onto a flash drive; 2) a month later, Defendant's then-attorney's legal assistant, Sabrina, meets with Jay to retrieve a flash drive; 3) Defendant's attorney then uses the information on that flash drive to comply with discovery demands in a civil FOIA law suit. Defendant shared the business records necessary to comply with the discovery demands in that civil law suit. If Defendant had truly destroyed records in an attempt to prevent investigators from accessing that information, he would not have released his records in a civil FOIA matter.

12. In short, Defendant did not tell Jay to delete records from a city computer in an attempt to prevent investigators from investigating wrongdoing. As shown in the text messages, Defendant instructed Jay to make a copy of all of the files. No files were destroyed; they were simply moved to a location that Defendant could still access once he could no longer use the city computer.

13. The State has taken a flawed recollection of one innocent activity – transferring files off of a computer that Defendant did not even own to an external hard drive – to support the idea that a second innocent activity was undertaken for nefarious reasons.

II. The State Knew, or Should Have Known, That No Material Records Were Destroyed by the Shredding Truck

14. During the hearing on August 5, 2020, the State was not able to identify a single record, document, or category of records that were material to their investigation that they were unable to obtain because the records were shredded.

15. Not only can the State not identify a document that would have been material to the investigation that was destroyed, they were actually informed by an employee who was on the scene during the presence of the shredding truck that no material documents were destroyed.

16. In her interview with Special Agent Daniel Rossiter and Lisa Matheny from the Illinois Department of Revenue, Kelly Klein responded to the suggestion by Agent Rossiter that a shredding truck was at the coliseum for one week, and told the agent that the truck was there only two days for the purpose of purging payroll records that were more than 7 years old. She specifically disavowed that there was destruction of other documents, stating that it was better to shred the old records for recycling than to put them in a dumpster. She advised that all the old records she had shredded had been scanned and saved electronically. She noted that people were cleaning out and leaving their offices.

17. The State has not listed a single business record that was material to their investigation that they were unable to locate. The State materially misrepresented the content of Defendant's text message to the Court. The State and its investigators had been told previously that no material documents were shredded.

18. When viewing the full content and context of Defendant's text, coupled with the interview of Kelly Klein, it is clear that the presence of the shredding truck makes no fact in this case more or less likely to be true. Because there is no probative value to this information, its prejudicial nature would far outweigh any other purpose for introducing this information.

WHEREFORE the Defendant, JOHN Y. BUTLER, prays that the Court reconsider its August 5, 2020 ruling on Defendant's ***Notice of Intent to Offer Evidence of Prior Bad Acts Evidence***, and enter an order barring the State from introducing any evidence related to the

presence of a shredding truck at the Coliseum, and for such other relief deemed just and appropriate.

Respectfully Submitted,
JOHN Y. BUTLER, Defendant

By: _____
TRISTAN BULLINGTON,
one of his attorneys

TRISTAN BULLINGTON
MEYER CAPEL, A Professional Corporation
202 North Center Street,
Bloomington, IL 61701
(309) 829-9486 [Voice]
(309) 827-8139 [Fax]
TBullington@MeyerCapel.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is one of the attorneys for the Defendant in this above-titled cause, and that on August 6, 2020, he did cause a copy of the foregoing Motion To Reconsider to be hand delivered to the following:

State's Attorney's Office
McLean County Courthouse
104 West Front Street
Bloomington, IL 61701

TRISTAN BULLINGTON

TRISTAN BULLINGTON
MEYER CAPEL, A Professional Corporation
202 North Center Street,
Bloomington, IL 61701
(309) 829-9486 [Voice]
(309) 827-8139 [Fax]
TBullington@MeyerCapel.com

95	To: 3092427107 John Butler	10/31/2015	10/31/2015 1:08:57 PM(UTC-5)	Sent	Sent		
96	From: 3092427107 John Butler	10/31/2015	10/31/2015 1:28:48 PM(UTC-5)	Inbox	Read		
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99	From: 3092427107 John Butler	12/3/2015	12/3/2015 4:45:29 PM(UTC-6)	Inbox	Read		
100	From: 3092427107 John Butler	12/9/2015	12/9/2015 1:19:18 PM(UTC-6)	Inbox	Read		
101	To: 3092427107 John Butler	12/9/2015	12/9/2015 1:31:56 PM(UTC-6)	Sent	Sent		
102	From: 3092427107 John Butler	12/9/2015	12/9/2015 1:33:42 PM(UTC-6)	Inbox	Read		
103	From: 3092427107 John Butler	1/7/2016	1/7/2016 11:32:28 AM(UTC-6)	Inbox	Read		
104	To: 3092427107 John Butler	1/7/2016	1/7/2016 12:01:49 PM(UTC-6)	Sent	Sent		
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106	From: 3092427107 John Butler	1/12/2016	1/12/2016 9:58:54 AM(UTC-6)	Inbox	Read		
107	To: 3092427107 John Butler	1/17/2016	1/17/2016 12:57:20 AM(UTC-6)	Sent	Sent		
108	From: 3092427107 John Butler	1/17/2016	1/17/2016 7:59:40 AM(UTC-6)	Inbox	Read		
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111	From: 3092427107 John Butler	2/25/2016	2/25/2016 11:03:16 AM(UTC-6)	Inbox	Read		
112	To: 3092427107 John Butler	2/25/2016	2/25/2016 12:01:18 PM(UTC-5)	Sent	Sent		
113	From: 3092427107 John Butler	3/12/2016	3/12/2016 9:11:03 AM(UTC-5)	Inbox	Read	Phone	(1/2) Jay: A reminder. Get everything off the city computer asap. Go buy an external hard drive if you need backup info. Nothing BMI related should be on city c
114	From: 3092427107 John Butler	3/12/2016	3/12/2016 9:11:06 AM(UTC-6)	Inbox	Read	Phone	(2/2) ompuler. Thanks
115	To: 3092427107 John Butler	3/12/2016	3/12/2016 9:59:57 AM(UTC-6)	Sent	Sent	Phone	OK. I will transfer all files on to flash drive and put everything on laptop today. That will suffice.
116	From: 3092427107 John Butler	3/12/2016	3/12/2016 10:02:33 AM(UTC-6)	Inbox	Read	Phone	That's. An erase when done. Thanks
117	To: 3092427107 John Butler	3/12/2016	3/12/2016 10:02:56 AM(UTC-6)	Sent	Sent		
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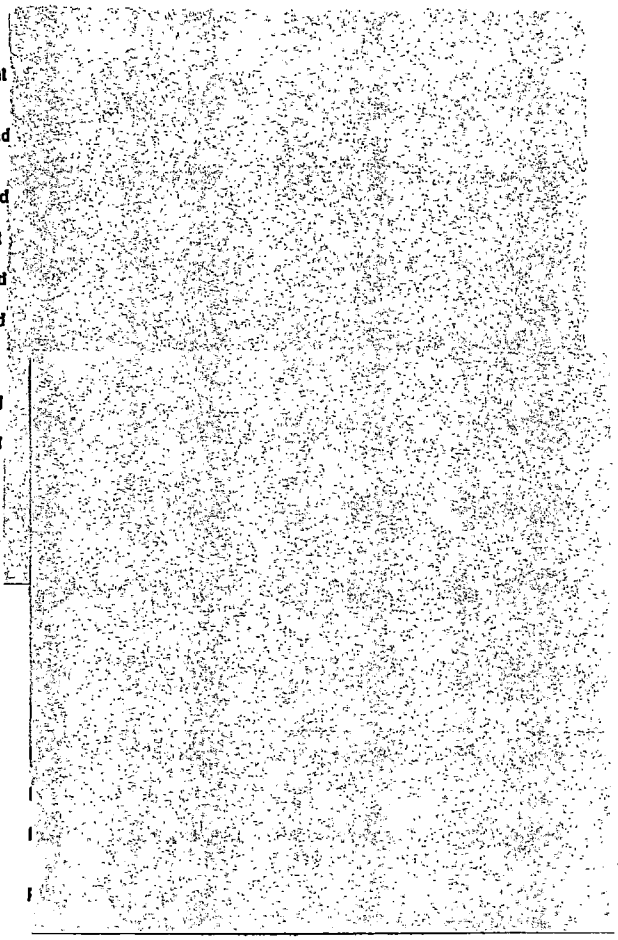
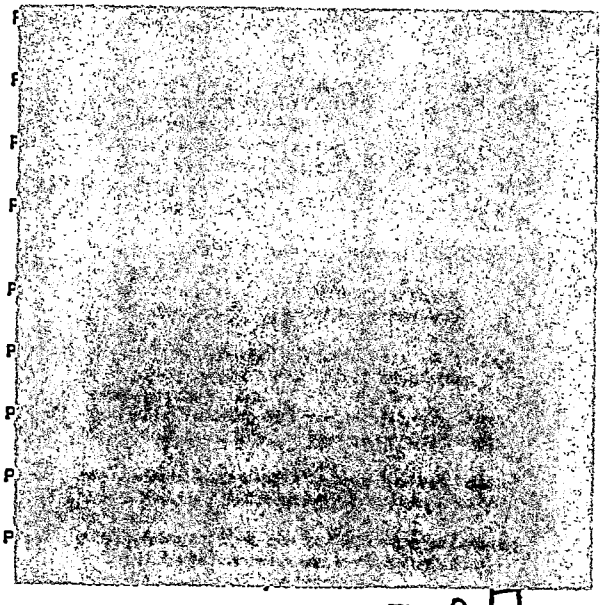




727

EXHIBIT 1

ENGAD 800-631-6989

FOSTER INVESTIGATIONS, LTD

AFFIDAVIT OF SERVICE OF PROCESS

Case Number: 17 CF 1025

McLEAN COUNTY

FILED

AUG 06 2020

CIRCUIT CLERK

People of the State of Illinois
Plaintiff
vs.

John Y. Butler
Defendant

Received by Foster Investigations, Ltd. to be served on Tom Hamilton
2709 Wellington Way, Bloomington, IL 61704

I, Mark Foster, who, being duly sworn, depose and say that on the 4 day of August, 2020 at 3:00pm executed by delivering a true copy of the

Subpoena, Witness Fee & Correspondence from Attorney Bullington dated August 4, 2020

in accordance with the state statutes in the manner marked below:

X INDIVIDUAL SERVICE: Served the within-named person

____ SUBSTITUTE SERVICE: By leaving copies at the usual place of abode of the defendant with a person, of age 13 years or upward, informing that person of the contents.
Name: ____ Relation: ____
Date copy mailed: ____

____ SERVICE ON: ____
Left a copy of the document(s) with the following:
Name: ____ Title: ____

____ OTHER SERVICE: As described in the comments below by serving ____ as ____

____ NON SERVICE: For the reason detailed in the Comments below.

COMMENTS:

Age: 64 Sex: M Race: W

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Mark Foster
Licensed Private Detective
Illinois License #: 115-001201

Subscribed and sworn to before me on the 5 day of Aug, 2020 by the affiant who is personally known to me.

NOTARY PUBLIC

OFFICIAL SEAL
JACQUELINE M FOSTER
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 12/31/2021

FOSTER INVESTIGATIONS, LTD
PO BOX 863
Normal, IL 61761
(309) 862-3473

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17-CF-1025
	)	
JOHN Y. BUTLER,	)	
	)	
Defendant.	)	

AGREED ORDER REGARDING ALLOWING CELL PHONE IN COURTHOUSE

This cause comes before the Court upon agreement of the parties. The State appears by and through Assistant State's Attorney Bradly Rigdon. The Defendant, JOHN Y. BUTLER, appears by and through his attorneys, J. Steven Beckett of Beckett Law Office, P.C. and Tristan N. Bullington of Meyer Capel, A Professional Corporation. The Court, being fully advised in the premises, hereby FINDS and ORDERS as follows:

1. The parties stipulate to entry of this ***Agreed Order Regarding Allowing Cell Phone in Courthouse.***

2. Beginning August 10, 2020, through August 28, 2020, the Court is conducting a jury trial in this matter.

3. During the trial, several witnesses will be called to testify by the State and the Defendant.

4. In order to coordinate the appearance of several witnesses in this matter, the Defendant requires a staff member of Meyer Capel, A Professional Corporation, Valerie Bolte Uihlein (hereinafter the "staff member"), to assist with the coordination of witnesses.

5. Since the State presents evidence first and the management of their case and witnesses is unpredictable, the Defendant requires some flexibility in scheduling of his witnesses.

6. In order to facilitate witnesses appearing when necessary and being released when not needed, the staff member must have her cell phone while in the courthouse.

7. Therefore, the Valerie Bolte Uihlein is allowed to bring her cell phone into the courthouse during August 10, through August 28, 2020, for the purpose of witness coordination.

8. Presentation of this order at the security line of the courthouse will allow the staff member to bring her cell phone into the courthouse.

IT IS SO ORDERED.

Entered this 5 day of August, 2020.

THE HONORABLE WILLIAM A. YODER
Judge of the Circuit Court

Approved as to Form and Substance:

Assistant State's Attorney

Counsel to Defendant

Prepared by:
Tristan N. Bullington
MEYER CAPEL, A Professional Corporation
202 North Center Street
Bloomington, IL 61701
(309) 829-9486 [Voice]
(309) 827-8139 [Fax]
TBullington@MeyerCapel.com
ARDC No. 6302971

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

THE PEOPLE OF THE STATE OF ILLINOIS)
)
VS.) NO. 2017-CF-1025
)
JOHN BUTLER)

APPLICATION FOR ORDER AUTHORIZING USE IMMUNITY
725 ILCS 5/106-2.5(b)

Now come the People of the State of Illinois by Bradly Rigdon, Assistant State's Attorney in and for the County of McLean, and hereby moves that this court issue an order pursuant to 725 ILCS 5/106-2.5(b) compelling Kelly Klein (DOB of 09/10/1960), to give testimony or provide other information, which she has refused/is likely to refuse to give or provide on the basis of her privilege against compelled self-incrimination, as to all matters about which she may be interrogated before this Court and alleges as follows:

1. That the State intends to call Kelly Klein as a witness (DOB of 09/10/1960) to testify before this Court in the above-entitled matter.

2. In the judgment of the undersigned, the testimony or other information from said witness is necessary and material to the State's case-in-chief in the above-entitled matter.

3. In the judgment of the undersigned, said witness is likely to refuse to testify or provide other information on the basis of his privilege against compulsory self-incrimination. Specifically, Kelly Klein is represented by counsel in regards to this matter. There is no agreement between the State and Kelly Klein regarding her cooperation or providing evidence by way of testimony at trial in the above-entitled matter. Kelly Klein's attorney has indicated a desire to be heard by the Court in regards to this Application for Order Authorizing Use Immunity.

4. This application is made with the approval of Don Knapp, State's Attorney of McLean County.

B. A. B.
Bradly Rigdon
Assistant State's Attorney

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorney of record of the Defendant, John Butler, in the above cause by:

X Via U.S. Mail by depositing a true and correct copy of the same in outgoing mail tray for pick-up by a county employee and addressed to the attorney of record on the 4th day of August, 2020.

X Via E-Mail by sending a true and accurate copy of the same to the e-mail address of the attorney of record, Steve Beckett on the 4th day of August, 2020.

The undersigned certifies that a copy of the foregoing instrument was served upon the attorney of Kelly Klein, Joel Brown, in the above cause by:

X Via U.S. Mail by depositing a true and correct copy of the same in outgoing mail tray for pick-up by a county employee and addressed to attorney Joel Brown on the 4th day of August, 2020.

X Via E-Mail by sending a true and accurate copy of the same to the e-mail address of attorney Joel Brown on the 4th day of August, 2020.

B. A. B.

Bradly Rigdon
Assistant State's Attorney

IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT OF ILLINOIS
MCLEAN COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff,	)	
v.	)	**No. 2017-CF-1025**
	)	
JOHN Y. BUTLER,	)	
Defendant.	)	

SUBPOENA

To: Kristy Fairfield
407 Gambel Ct.
Normal, IL 61761

YOU ARE COMMANDED TO APPEAR TO TESTIFY before the Honorable Judge Yoder, in Circuit Courtroom 5C at the McLean Courthouse, 104 W Front St, Bloomington, IL 61701, on August 10, 2020, at 9:00 a.m.

YOUR FAILURE TO APPEAR IN RESPONSE TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF THIS COURT.

As an officer of the Court, the undersigned attorney at law, who is admitted to practice in the State of Illinois, hereby issues this *Subpoena* on behalf of the Circuit Court.

On behalf of the Circuit Court by

Dated: 07/29/2020

J. STEVEN BECKETT, Attorney at Law

Prepared by:
J. STEVEN BECKETT
BECKETT LAW OFFIC, P.C.
ARDC #: 0151580
508 South Broadway Avenue
Urbana, IL 61801
Office: (217) 328-0263
E-mail: steve@beckettlawpc.com

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

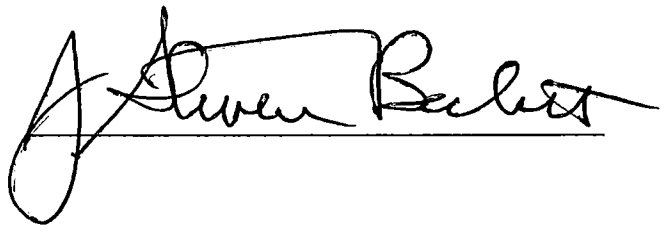
PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17-CF-1025
	)	
JOHN Y. BUTLER,	)	
	)	
Defendant.	)	

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the undersigned caused service of the foregoing ***Subpoena***, to be made upon the recipient(s) designated below by the following method(s):

✓ VIA ELECTRONIC MAIL: A true and correct copy of the foregoing instrument(s) was transmitted electronically via e-mail to the following recipient(s) on this 30th day of July, 2020.

Kristy Fairfiled



Prepared by:
TRISTAN N. BULLINGTON
MEYER CAPEL, P.C.
202 North Center Street, Suite 2
Bloomington, IL 61701
(309) 829-9486 [Voice]
(309) 827-8139 [Facsimile]
TBullington@MeyerCapel.com
ARDC No. 6302971

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff, vs. JOHN Y. BUTLER, Defendant.	)	No. 17-CF-1025

SUBPOENA

TO: Tom Hamilton, 2709 Wellington Way, Bloomington, IL 61704-4672

YOU ARE HEREBY COMMANDED personally to be and appear before the Circuit Court identified above at the date, time, and location specified below to testify truthfully as a witness for the Defendant in the above-captioned case now pending before the Circuit Court.

Date:	August 10-28, 2020
Time:	9:00 A.M.
Judge:	The Honorable Judge William Yoder (or such other judge substituting in the stead of the foregoing judge)
Courtroom:	Room 503 (or such other courtroom as is designated by courthouse personnel on the hearing date)
Location:	McLean County Law & Justice Center 104 West Front Street Bloomington, Illinois

As an officer of the Court, the undersigned attorney at law, who is admitted to practice in the State of Illinois, hereby issues this subpoena on behalf of the Circuit Court under lawful authority of Section 2-1101 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-1101.

Dated: August 4, 2020

On behalf of the Circuit Court by

TRISTAN N. BULLINGTON, Attorney at Law

Prepared by:
TRISTAN N. BULLINGTON
MEYER CAPEL, P.C.
202 North Center Street, Suite 2
Bloomington, IL 61701
(309) 829-9486 [Voice]
(309) 827-8139 [Facsimile]
TBullington@MeyerCapel.com
ARDC No. 6302971

NOTICE TO WITNESS: The attorney who issued this subpoena is identified in this document. Please refer questions about your knowledge of the subject matter or testimony to the attorney (or to your attorney). DO NOT CALL THE COURT CLERK.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
MCLEAN COUNTY

THE PEOPLE OF THE STATE OF ILLINOIS
Plaintiff
Vs.
JOHN YALE BUTLER
Defendant

FILED
AUG 04 2020
CIRCUIT CLERK
McLEAN COUNTY

Case Number: 2017CF001025
Report Number: 1613024
Event Type: Jury Trial

RECEIVED
20 JUL 29 AM 11:07
WILL COUNTY SHERIFF'S OFFICE

SUBPOENA

TO: **DAVID A HALES**
1007 NEUFAIRFIELD DR JOLIET, IL 60432

YOU ARE COMMANDED TO APPEAR TO TESTIFY BEFORE THE CIRCUIT COURT OF MCLEAN COUNTY IN THE ABOVE ENTITLED CASE AT LAW AND JUSTICE CENTER, 104 W. FRONT STREET, BLOOMINGTON, ILLINOIS 61701 BEFORE JUDGE WILLIAM YODER ON 08/10/2020 AT 09:00 AM ON BEHALF OF THE PEOPLE OF THE STATE OF ILLINOIS.

YOUR FAILURE TO APPEAR IN RESPONSE TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR **CONTEMPT OF COURT.**

ATTACHMENTS:
VW1

MCLEAN COUNTY CIRCUIT COURT 11TH JUDICIAL CIRCUIT ILLINOIS

Witness, this day: Fourteenth day of May , 2020

Don R. Everhart Jr
Clerk of the Circuit Court

649868

COURT PAPER ATTACHMENTS

VW1 State Attorney Contact Info -- Victim Witness

IMPORTANT

Contact the McLean County State's Attorney's Office IMMEDIATELY upon receiving this subpoena. This subpoena is good for the whole week. This telephone call MAY PREVENT UNNECESSARY TRIPS TO COURT. Please call the Director in Victim Witness at 309-888-5424.

Please refer to the case number at the top, right hand corner of the subpoena.

Monday - Friday
8:30 AM - 4:30 PM

Access to the courts is available to all persons in McLean County. If you are a victim or witness with a disability and are in need of accommodation, please call the Victim/Witness Service at (309) 888-5424 no later than seven (7) days prior to your subpoena date. Please have your case number, court date and what accommodation you are requesting available when you call.

Will County Sheriff's Office | Affidavit of Service

Case Number: 17 CF 1025 Paper Number: 2020-00005572 _____ Attorney _____ Pro Se

Plaintiff:
PEOPLE OF THE STATE OF ILLINOIS

Defendant:
JOHN YALE BUTLER

MCLEAN COUNTY STATE'S ATTORNEY

(5)

Paper Description

SUBPOENA 4223

Issued: Thursday, May 14, 2020
Expires: Monday, August 10, 2020
Payment:

Attempted Services

Date	Time	Deputy and I.D.#
7/30/2020	850	WG #1857

RECEIVED
AUG 03 2020
McLean County
State's Attorney's Office

Person To Be Served

DAVID A HALES
1007 NEUFAIRFIELD DR
JOLIET, Illinois 60432

Special Notes:
SHANNY

I certify that I have served the attached Civil Process on the person to be served as follows:

(A) ✓ Personal Service: By leaving a copy of the ___ Summons/Compaint ___ Rule ___ Order ✓ Subpoena ___ Notice ___ Judgment ___ Order of Protection ___ Summons/Petition for Order of Protection ___ Citation ___ Civil/Stalking No Contact Order

(B) _____ Substitute Service: By leaving a copy of the ___ Summons/Complaint ___ Citation ___ Notice ___ Judgment ___ Order of Possession at the defendant's usual place of abode, with some person of the family or person residing there, of the age of 13 years or upwards, and informing said person of the contents. Also, a copy of the Civil Process was mailed to the defendant at his/her usual place of abode on _____ (Date Only).

(C) _____ Service On: ___ Corporation ___ Company ___ Business
By leaving a copy of the ___ Summons/Complaint ___ Citation ___ Rule ___ Order ___ Notice ___ Judgment ___ Subpoena with the registered agent or any officer, or agent of the corporation, or partner or agent of the partnership.

(D) _____ Other Service: ___ Certified Mail ___ Posting

(E) _____ The named defendant was not served: ___ Moved ___ No Contact ___ Returned by Attorney ___ Expired ___ Not Listed ___ No Such Address ___ Deceased ___ Other Reason (See Remarks)

Person to Serve: David A Noles
Serving Address: 1007 Neufairfield Joliet
Process Served On: David A Noles 6/24/54 Relationship: Self
Sex: M M/F Race: White Age Range: 66
This 30th day of July 20 20 Time: 850 hours
Sheriff Mike Kelley by: WG I.D. Number: 1857
Remarks:

Entered By: KS Date Entered: Wednesday, July 29, 2020 11:45:27AM

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17-CF-1025
	)	
JOHN Y. BUTLER,	)	
	)	
Defendant.	)	

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the undersigned caused service of the foregoing ***Subpoena***, to be made upon the recipient(s) designated below by the following method(s):

Y VIA ELECTRONIC MAIL: A true and correct copy of the foregoing instrument(s) was transmitted electronically via e-mail to the following recipient(s) on this 28th day of July, 2020.

Jay Reece
jreece@mrh-law.com

Steven Beckett

Prepared by:
TRISTAN N. BULLINGTON
MEYER CAPEL, P.C.
202 North Center Street, Suite 2
Bloomington, IL 61701
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TBullington@MeyerCapel.com
ARDC No. 6302971

IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT OF ILLINOIS
MCLEAN COUNTY

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	)	
v.	)	No. 2017-CF-1025
JOHN Y. BUTLER Defendant.	)	

AMENDED RESPONSE TO STATE'S NOTICE OF INTENT TO OFFER STATEMENTS OF COCONSPIRATORS

NOW COMES the Defendant, JOHN Y. BUTLER, by and through his attorneys, J. Steven Beckett of Beckett Law Office, P.C. and Tristan N. Bullington of Meyer Capel, P.C., and in support of his ***Amended Response to State's Notice of Intent to Offer Statements of Coconspirators*** states as follows:

1. A statement is not hearsay if it is being offered against a party and is a statement by a coconspirator of a party during the course and in furtherance of the conspiracy. Ill. R. Evid. 801(d)(2)(E). The co-conspirator exception to the hearsay rule provides that any act or declaration by a co-conspirator of a party committed in furtherance of the conspiracy and during its pendency is admissible against each and every co-conspirator, provided that there exists a foundation of independent proof of the conspiracy. *People v. Martinez*, 278 Ill.App.3d 218 (1st Dist. 1996).

2. Under Illinois Rule of Evidence 104(a), preliminary questions concerning the qualifications of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determine by the court. Ill. R. Evid. 801(d)(2)(E). In making its determination, the court is not bound by the rules of evidence except those with respect to privileges. *Id.*

3. Under Rule 104, the competence of a co-conspirator declaration justifying its admissibility depends upon whether or not the existence of the conspiracy has been sufficiently established, and

whether under Rule 801(d)(2)(E) the declaration was made during the course and in furtherance of the conspiracy. *United States v. Santiago*, 582 F.2d 1128, 1133 (7th Cir. 1978). The competence of evidence is determined by whether or not the probability of its reliability is sufficiently great to permit its admissibility. *Id.*

4. In order for the State's disclosed statements to qualify as non-hearsay under 801(d)(2)(E), the State must first establish a *prima facie* case that two or more persons were engaged in a common plan to accomplish a criminal goal, and the evidence supporting the *prima facie* case was independent of the declaration sought to be admitted against the defendant. *People v. Meagher*, 70 Ill.App.3d 597 (3rd Dist. 1979). The existence of a conspiracy and defendant's involvement in it must be shown by evidence independent of the statements themselves. *People v. Cortes*, 123 Ill.App.3d 816 (1st Dist. 1984).

5. The requirement that the act or declaration be in furtherance of the conspiracy has engendered a corollary to the co-conspirator rule. While the acts and declarations of one conspirator during the existence of a conspiracy are competent evidence against his co-conspirators, no act or declaration before the beginning or after the termination of the conspiracy is admissible against a non-declaring co-conspirator. *Id.* As to whether the conspiracy terminated with the commission of the underlying criminal objective, a conspiracy includes subsequent efforts at concealment, but only if those efforts are proximate in time to the commission of the principal crime. When acts or declarations directed towards concealment are distant from the commission of the offense, they are subject to such grave doubts as to their trustworthiness that they should not be admissible under the co-conspirator exception. *Id.*

I. Statements of Paul Grazar by Jay Laesch Regarding the Removal of Cash from the Vault Room

a. First Statement

6. The first statement that the State wishes to admit pursuant to IRE 801(d)(2)(E) are the statements of Paul Grazar, told to the State by Jay Laesch.

7. The State has completely failed to allege any form of conspiracy involving the defendant. In order for this statements to meet the requirements of IRE 801(d)(2)(E), the statements must be made *during* the conspiracy and *in furtherance* of the conspiracy. This first statement describes the procedure by which events received cash buyouts. At no point is Defendant mentioned, at no point is any form of conspiracy mentioned.

8. Furthermore, the burden is on the State to make a *prima facie* showing that two or more persons were engaged in a common plan to accomplish a criminal goal, and the evidence supporting the *prima facie* case was independent of the declaration sought to be admitted against the defendant. *People v. Meagher*, 70 Ill.App.3d 597 (3rd Dist. 1979).

9. No independent evidence is presented aside from the statements of Jay Laesch repeating the alleged statements of Paul Grazar. The statements alone cannot be the basis for the *prima facie* showing.

10. Furthermore, in addition to not making a *prima facie* showing of a conspiracy, the State has not laid any foundation for the admission of these statements. Where were these statements made? Who was present for these statements? When were the statements made? Were they made during the time period of the alleged conspiracy or were they made in 2000, when CIAM first came into being? What conspiracy are these statements furthering? If the State cannot lay

foundation for the statements, then they cannot make a *prima facie* showing that there was a conspiracy and that the statements were made in furtherance of the conspiracy.

11. The statements the State wishes to introduce pursuant to IRE 801(d)(2)(E) should be barred for lack of proper foundation and a lack of a *prima facie* showing that they comply with the requirements of IRE 801(d)(2)(E) in that the State has failed to allege that the statements were made during the course of and in furtherance of a conspiracy.

b. Second Statement

12. The second statement that the State wishes to admit pursuant to IRE 801(d)(2)(E) are the alleged statements that Paul Grazar claimed Defendant told him, all being told to the State by Jay Laesch.

13. Just as with the statements above, the State has failed to make a *prima facie* showing of the existence of any conspiracy or how this statement would be in furtherance of a conspiracy.

14. Additionally, just as above, the State did not provide, and cannot provide, any foundation for the alleged statements of Defendant told to Jay Laesch by Paul Grazer. This incredible morass of hearsay within hearsay does not indicate: a location for the conversation; who was present for the conversation; when the conversation took place; whether the conversation took place in the time period relevant to the alleged conspiracy or years before; what conspiracy Defendant is alleged to be involved in; etc. This statement is Jay Laesch telling the State what John Butler allegedly told Paul Grazer who allegedly told Jay Laesch.

15. This statement that the State wishes to introduce pursuant to IRE 801(d)(2)(E) should be barred for lack of proper foundation and a lack of a *prima facie* showing of compliance with the requirements of IRE 801(d)(2)(E).

c. Third Statement

16. The arguments made for the above two statements apply equally to this third statement. The State has not made a *prima facie* showing that there was a conspiracy, that the statements were made in furtherance of the conspiracy, or laid any foundation to support this statement. As such, this statement should be barred.

II. Statements of Sabrina, the legal assistant of William Mueller, Defendant's prior attorney

a. First Statement

17. The State appears to be arguing that the statements made between Defendant's former attorney and Defendant's former attorney's legal assistant, which were recorded by Jay Laesch without the knowledge or consent of either of the other two parties, are co-conspirator statements.

18. Defense counsel originally filed a response mistakenly assuming that this statement was related to the compliance with a subpoena. After conferring with William Mueller, Defendant's former attorney and participant of the statement being offered by the state, Defense counsel is now aware that this conversation likely took place on June 5, 2016 and was related to Mr. Mueller's need to obtain records to respond to a civil FOIA lawsuit, and not related to the current charges, as the State's investigation had not yet begun.

19. In this situation, the legal assistant of Defendant's then attorney called Jay Laesch to arrange the return of a flashdrive containing BMI records, and left a message in his voicemail. She then apparently did not realize that the phone was not properly hung up before initiating a private conversation with Defendant's then-attorney. Mr. Mueller's and Sabrina's conversation, including discussion of billing matters, are not even related to Mr. Mueller's representation of the Defendant or his companies. These statements are completely unrelated to any charges in the case at bar. It is

apparent that the State made no effort to confirm the context of these statements prior to filing their notice.

20. First, as with the statements in the above section, the State has failed to make even a cursory attempt at a *prima facie* showing of any conspiracy or that the statements they wish to admit were made in furtherance of a conspiracy.

21. The State has made no showing that Sabrina, the legal assistant to Defendant's attorney, is a knowing participant in a conspiracy. The State has never disclosed Sabrina as a witness to the defense. The State does not even disclose her last name. Furthermore, Sabrina is an agent of Defendant's former attorney and the attorney-client privilege extends to her. Attempting to backdoor privileged conversations of an agent of Defendant's counsel, made while unaware of a recording taking place, is a violation of Defendant's Sixth Amendment right to effective assistance of counsel. *See Weatherford v. Bursey*, 429 U.S. 545 (1977) ("the sixth amendment's assistance-of-counsel guarantee can be meaningfully implemented only if a criminal defendant knows that . . . his lawful preparations for trial are secure against intrusion by the government, his adversary in the proceeding").

22. Third, the statements of William Mueller and Sabrina are not relevant to any of the charges that Defendant is facing. As this call likely took place in 2016 and was unrelated to any of the charges in this case, the fact that Sabrina sought this records is not relevant to any issue before the court. The fact that Sabrina told Bill that there is no reason for "the[m]" to know what she and Bill are doing in collecting this information is, while completely true, not relevant to Defendant's charges. Lastly, once again, as above, the State fails to provide the proper foundation for the admission of this statement.

23. For all of the above reasons, this statement should be barred.

b. Second Statement

24. The statement made by Sabrina here is "thanks."

25. The State failed to make a *prima facie* showing that a conspiracy exists, that this statement is in furtherance of the conspiracy, that there was foundation for this statement, or that there was any independent information to corroborate its claim of a conspiracy, in which Defendant and Sabrina are participants. For these reasons, this statement should be barred.

III. Statement of Bart Rogers Regarding Ownership of the Cleaning Equipment Conveyed to the State Through Jay Laesch

26. The State failed to make a *prima facie* showing that a conspiracy exists and that this statement is in furtherance of the conspiracy.

27. Once again, there is no foundation provided for this statement. Where was this statement made? Who was present for this statement? When was the statement made? Was it made during the time period of the alleged conspiracy or was it made in 2000, when CIAM first came into being? What conspiracy is this statement furthering? If the State cannot lay foundation for the statement, then they cannot make a *prima facie* showing that there was a conspiracy and that the statement was made in furtherance of the conspiracy. For these reasons, this statement should be barred.

IV. Authorizations of Bart Rogers

28. The State failed to make a *prima facie* showing that a conspiracy exists and that this statement is in furtherance of the conspiracy. For these reasons, this statement should be barred.

V. Email Correspondence of Kelly Klein

29. While these emails may very well be admissible as business records, the State will have to lay that foundation.

30. As far as laying the foundation for a hearsay exemption under IRE 801(d)(2)(E), the State has failed to make *prima facie* case that a conspiracy exists and that the emails are in furtherance of that conspiracy.

31. For these reasons, this statement should be barred as an exemption to hearsay.

VI. Email Correspondence Between Paul Grazar and Defendant

32. While these emails may very well be admissible as business records, the State will have to lay that foundation.

33. As far as laying the foundation for a hearsay exemption under IRE 801(d)(2)(E), the State has failed to make *prima facie* case that a conspiracy exists and that the emails are in furtherance of that conspiracy.

34. For these reasons, this statement should be barred as an exemption to hearsay.

WHEREFORE the Defendant, JOHN Y. BUTLER, prays that the Court bar the State from introducing any evidence raised in its ***Notice of Intent to Offer Evidence of Offer Statements of Coconspirators*** pursuant to IRE 801(d)(2)(E) and for such other relief deemed just and appropriate.

Respectfully Submitted,
JOHN Y. BUTLER, Defendant

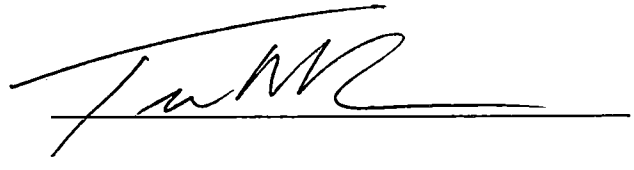
By: Lindsay C. Thompson for JSB
J. STEVEN BECKETT,
one of his attorneys

J. STEVEN BECKETT
BECKETT LAW OFFICE, P.C.
508 South Broadway Ave.
Urbana, IL 61801
(217) 328-0263
(217) 328-0290 (FAX)
steve@beckettlawpc.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is one of the attorneys for the Defendant in this above-titled cause, and that on July 31, 2020, he did cause a copy of the foregoing ***Amended Response to State's Notice of Intent to Offer Evidence of Statements of Coconspirators*** to be hand delivered to the following:

State's Attorney's Office
McLean County Courthouse
104 West Front Street
Bloomington, IL 61701



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STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

THE PEOPLE OF THE STATE OF ILLINOIS	)	
VS.	)	No. 2017-CF-1025
JOHN BUTLER, DEFENDANT	)	

PEOPLE'S RESPONSE TO DEFENDANT'S SECOND MOTION IN LIMINE

Now comes the People of the State of Illinois by Bradly Rigdon and Christopher J. Spanos, Assistant State's Attorneys, in and for the County of McLean, State of Illinois, and in response to the Defendant's Second Motion in Limine, hereby states the following:

1. The above-entitled matter is set for a jury trial to commence on August 10, 2020.

2. On July 28, 2020, the Defendant filed a document entitled "Defendant's Second Motion in Limine" which sets forth multiple counts for which it seeks relief.

Count I

3. The State does not intend to elicit testimony from witnesses in regard to "industry standards" as evidence during its case-in-chief.

4. Should such testimony become relevant or necessary based upon cross-examination or through defense evidence, then the State will seek to revisit this issue.

Count II

5. The State does not intend to elicit testimony utilizing the terminology of "illegal contracts." The State does intend to elicit testimony about whether contracts entered into by CIAM during CIAM's time managing the U.S. Cellular Coliseum were properly authorized and known by the representatives of the City of Bloomington.

6. Payments regarding said contracts relate to the charges in Counts 1, 2, 43, and 44. As such, the existence of said contracts, the propriety of entering into them, and the resultant funds paid to John Butler is relevant to this proceeding.

7. The State will instruct witnesses that the phrasing of "illegal contracts" is not to be used during testimony.

8. Court should deny the Defendant's the remaining requests as outlined in Count II of this pleading.

Count III

9. The Defendant misstates the relevant time period for evidence in this matter.

10. While the Defendant correctly states the time period in which Mike Nelson was involved with management of the U.S. Cellular Coliseum, the Defendant overlooks that the charging documents allege conduct going back to January 4, 2008.

11. Mike Nelson has relevant information to provide about the operation of the U.S. Cellular Coliseum during his time with that organization and, in particular, his time there overlaps with the timeframe during which criminal charges have been filed against this Defendant.

12. The Court should deny the Defendant's requests as outlined in Count III of this pleading.

Count IV

13. During presentation of its case-in-chief, the State is entitled to present relevant evidence regarding audits of the U.S. Cellular Coliseum if said evidence conforms with the Illinois Rules of Evidence.

14. The Defendant makes a baseless allegation that the 2016 and 2017 limited review and addendum prepared by Scott Bailey with Bronner group was not prepared in accordance with generally accepted accounting principles. The Defendant cites to a document prepared by Baker Tilly in 2017 in support of said allegation.

15. The materials prepared by Bronner group were prepared by Scott Bailey, CPA, CISA, who has been previously disclosed as an expert witness and his audit reports have been disclosed to the Defendant.

a. Within each of the documents cited by the Defendant is an introductory letter from Bronner group identifying that the "audit was performed in accordance with internal auditing standards issued by the Institute of Internal Auditors."

b. In support of the allegation, the Defendant has tendered a letter from Baker Tilly on February 2017 regarding an audit performed by that entity. Of note is that the letter tendered is misleading to the Court in that it refers to a completely separate audit performed independently of Bronner group. That audit was not a commentary on the previous audits but stands separate and apart from the audits tendered in discovery in this matter.

c. That audit by Baker Tilly was performed as part of the City of Bloomington's Comprehensive Annual Financial Report for the fiscal year ending April 30, 2016. A letter from the Director of Finance and the City Manager referenced the fact that full documentation regarding the U.S. Cellular Coliseum was not provided in stating "[d]ue to the on-going investigation, the auditors were unable to obtain all of the documents necessary to complete an audit of the Coilseum operations and have issued a disclaimer of opinion on the U.S. cellular Coliseum fund and qualified opinions on areas that were impacted by this fund." *See* attached People's Exhibits 1 through 4 (Defendant 2nd MIL) inclusive for documents pertaining to the Baker Tilly audit. Said documents were obtained from the Comprehensive Annual Financial Report of the City of Bloomington, Illinois for the Fiscal Year May 1, 2015 to April 30, 2016 available at https://www.cityblm.org/Home/ShowDocument?id=12330.

16. The Court should deny the Defendant's requests as outlined in Count IV of this pleading.

WHEREFORE, the People of the State of Illinois respectfully request that this Court enter an order consistent with the State's Response to the Defendant's Second Motion in Limine.

Respectfully Submitted,

Bradly Rigdon
Assistant State's Attorney

Christopher J. Spanos
Assistant State's Attorney

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorney of record of the Defendant, John Butler, in the above cause by:

X Via U.S. Mail by depositing a true and correct copy of the same in outgoing mail tray for pick-up by a county employee and addressed to the attorney of record on the 31st day of July, 2020.

X Via E-Mail by sending a true and accurate copy of the same to the e-mail address of the attorney of record, Steve Beckett at steve@beckettlawpc.com on the 31st day of July, 2020.

B. A. B.

Bradly Rigdon
Assistant State's Attorney

IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT OF ILLINOIS MCLEAN COUNTY

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	)	
v.	)	No. 2017-CF-1025
JOHN Y. BUTLER Defendant.	)	

RESPONSE TO STATE'S NOTICE OF INTENT TO OFFER STATEMENTS OF COCONSPIRATORS

NOW COMES the Defendant, JOHN Y. BUTLER, by and through his attorneys, J. Steven Beckett of Beckett Law Office, P.C. and Tristan N. Bullington of Meyer Capel, P.C., and in support of his ***Response to State's Notice of Intent to Offer Statements of Coconspirators*** states as follows:

1. A statement is not hearsay if it is being offered against a party and is a statement by a coconspirator of a party during the course and in furtherance of the conspiracy. Ill. R. Evid. 801(d)(2)(E). The co-conspirator exception to the hearsay rule provides that any act or declaration by a co-conspirator of a party committed in furtherance of the conspiracy and during its pendency is admissible against each and every co-conspirator, provided that there exists a foundation of independent proof of the conspiracy. *People v. Martinez*, 278 Ill.App.3d 218 (1st Dist. 1996).

2. Under Illinois Rule of Evidence 104(a), preliminary questions concerning the qualifications of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determine by the court. Ill. R. Evid. 801(d)(2)(E). In making its determination, the court is not bound by the rules of evidence except those with respect to privileges. *Id.*

3. Under Rule 104, the competence of a co-conspirator declaration justifying its admissibility depends upon whether or not the existence of the conspiracy has been sufficiently established, and

whether under Rule 801(d)(2)(E) the declaration was made during the course and in furtherance of the conspiracy. *United States v. Santiago*, 582 F.2d 1128, 1133 (7th Cir. 1978). The competence of evidence is determined by whether or not the probability of its reliability is sufficiently great to permit its admissibility. *Id.*

4. In order for the State's disclosed statements to qualify as non-hearsay under 801(d)(2)(E), the State must first establish a *prima facie* case that two or more persons were engaged in a common plan to accomplish a criminal goal, and the evidence supporting the *prima facie* case was independent of the declaration sought to be admitted against the defendant. *People v. Meagher*, 70 Ill.App.3d 597 (3rd Dist. 1979). The existence of a conspiracy and defendant's involvement in it must be shown by evidence independent of the statements themselves. *People v. Cortes*, 123 Ill.App.3d 816 (1st Dist. 1984).

5. The requirement that the act or declaration be in furtherance of the conspiracy has engendered a corollary to the co-conspirator rule. While the acts and declarations of one conspirator during the existence of a conspiracy are competent evidence against his co-conspirators, no act or declaration before the beginning or after the termination of the conspiracy is admissible against a non-declaring co-conspirator. *Id.* As to whether the conspiracy terminated with the commission of the underlying criminal objective, a conspiracy includes subsequent efforts at concealment, but only if those efforts are proximate in time to the commission of the principal crime. When acts or declarations directed towards concealment are distant from the commission of the offense, they are subject to such grave doubts as to their trustworthiness that they should not be admissible under the co-conspirator exception. *Id.*

I. Statements of Paul Grazar by Jay Laesch Regarding the Removal of Cash from the Vault Room

a. First Statement

6. The first statement that the State wishes to admit pursuant to IRE 801(d)(2)(E) are the statements of Paul Grazar, told to the State by Jay Laesch.

7. The State has completely failed to allege any form of conspiracy involving the defendant. In order for this statements to meet the requirements of IRE 801(d)(2)(E), the statements must be made *during* the conspiracy and *in furtherance* of the conspiracy. This first statement describes the procedure by which events received cash buyouts. At no point is Defendant mentioned, at no point is any form of conspiracy mentioned.

8. Furthermore, the burden is on the State to make a *prima facie* showing that two or more persons were engaged in a common plan to accomplish a criminal goal, and the evidence supporting the *prima facie* case was independent of the declaration sought to be admitted against the defendant. *People v. Meagher*, 70 Ill.App.3d 597 (3rd Dist. 1979).

9. No independent evidence is presented aside from the statements of Jay Laesch repeating the alleged statements of Paul Grazar. The statements alone cannot be the basis for the *prima facie* showing.

10. Furthermore, in addition to not making a *prima facie* showing of a conspiracy, the State has not laid any foundation for the admission of these statements. Where were these statements made? Who was present for these statements? When were the statements made? Were they made during the time period of the alleged conspiracy or were they made in 2000, when CIAM first came into being? What conspiracy are these statements furthering? If the State cannot lay

foundation for the statements, then they cannot make a *prima facie* showing that there was a conspiracy and that the statements were made in furtherance of the conspiracy.

11. The statements the State wishes to introduce pursuant to IRE 801(d)(2)(E) should be barred for lack of proper foundation and a lack of a *prima facie* showing that they comply with the requirements of IRE 801(d)(2)(E) in that the State has failed to allege that the statements were made during the course of and in furtherance of a conspiracy.

b. Second Statement

12. The second statement that the State wishes to admit pursuant to IRE 801(d)(2)(E) are the alleged statements that Paul Grazar claimed Defendant told him, all being told to the State by Jay Laesch.

13. Just as with the statements above, the State has failed to make a *prima facie* showing of the existence of any conspiracy or how this statement would be in furtherance of a conspiracy.

14. Additionally, just as above, the State did not provide, and cannot provide, any foundation for the alleged statements of Defendant told to Jay Laesch by Paul Grazer. This incredible morass of hearsay within hearsay does not indicate: a location for the conversation; who was present for the conversation; when the conversation took place; whether the conversation took place in the time period relevant to the alleged conspiracy or years before; what conspiracy Defendant is alleged to be involved in; etc. This statement is Jay Laesch telling the State what John Butler allegedly told Paul Grazer who allegedly told Jay Laesch.

15. This statement that the State wishes to introduce pursuant to IRE 801(d)(2)(E) should be barred for lack of proper foundation and a lack of a *prima facie* showing of compliance with the requirements of IRE 801(d)(2)(E).

c. Third Statement

16. The arguments made for the above two statements apply equally to this third statement. The State has not made a *prima facie* showing that there was a conspiracy, that the statements were made in furtherance of the conspiracy, or laid any foundation to support this statement. As such, this statement should be barred.

II. Statements of Sabrina, the legal assistant of William Mueller, Defendant's prior attorney

a. First Statement

17. The State appears to be arguing that the statements made between Defendant's former attorney and Defendant's former attorney's legal assistant, which were recorded by Jay Laesch without the knowledge or consent of either of the other two parties, are co-conspirator statements.

18. In this situation, the legal assistant of Defendant's then attorney called Jay Laesch to arrange the return of a flashdrive containing CIAM and BMI records, and left a message in his voicemail. She then apparently did not realize that the phone was not properly hung up before initiating a private conversation with Defendant's then-attorney. Defendant's prior counsel sought the return of that flashdrive in order to comply with a subpoena that Defendant had been served with by the State. The State is now apparently arguing that Defendant's attorney's assistant's actions of complying with the State's subpoena is relevant to some conspiracy theory.

19. First, as with the statements in the above section, the State has failed to make even a cursory attempt at a *prima facie* showing of any conspiracy or that the statements they wish to admit were made in furtherance of a conspiracy.

20. The State has made no showing that Sabrina, the legal assistant to Defendant's attorney, is a knowing participant in a conspiracy. The State has never disclosed Sabrina as a witness to the defense. The State does not even disclose her last name. Furthermore, Sabrina is an agent of

Defendant's former attorney and the attorney-client privilege extends to her. Attempting to backdoor privileged conversations of an agent of Defendant's counsel, made while unaware of a recording taking place, is a violation of Defendant's Sixth Amendment right to effective assistance of counsel. *See Weatherford v. Bursey*, 429 U.S. 545 (1977) ("the sixth amendment's assistance-of-counsel guarantee can be meaningfully implemented only if a criminal defendant knows that . . . his lawful preparations for trial are secure against intrusion by the government, his adversary in the proceeding").

21. Third, the statements of Bill Mueller and Sabrina are not relevant to any of the charges that Defendant is facing. The fact that Sabrina and Bill arranged for the return of CIAM and BMI property to comply with a subpoena is not relevant to Defendant's charges. The fact that Sabrina told Bill that there is no reason for the State to know what she and Bill are doing in collecting this information is, while completely true, not relevant to Defendant's charges. Lastly, once again, as above, the State fails to provide the proper foundation for the admission of this statement. While at least with this statement, there is an indication as to the day, time, and a rough idea of the parties present, but there is no indication of the year or who is being discussed. It can be presumed that this phone call took place on June 5 of 2017, 2018, 2019, or 2020, because the Illinois State Police did not even begin their investigation until June 9, 2016.

22. For all of the above reasons, this statement should be barred.

b. Second Statement

23. The statement made by Sabrina here is "thanks."

24. The State failed to make a *prima facie* showing that a conspiracy exists, that this statement is in furtherance of the conspiracy, that there was foundation for this statement, or that there was

any independent information to corroborate its claim of a conspiracy, in which Defendant and Sabrina are participants. For these reasons, this statement should be barred.

III. Statement of Bart Rogers Regarding Ownership of the Cleaning Equipment Conveyed to the State Through Jay Laesch

25. The State failed to make a *prima facie* showing that a conspiracy exists and that this statement is in furtherance of the conspiracy.

26. Once again, there is no foundation provided for this statement. Where was this statement made? Who was present for this statement? When was the statement made? Was it made during the time period of the alleged conspiracy or was it made in 2000, when CIAM first came into being? What conspiracy is this statement furthering? If the State cannot lay foundation for the statement, then they cannot make a *prima facie* showing that there was a conspiracy and that the statement was made in furtherance of the conspiracy. For these reasons, this statement should be barred.

IV. Authorizations of Bart Rogers

27. The State failed to make a *prima facie* showing that a conspiracy exists and that this statement is in furtherance of the conspiracy. For these reasons, this statement should be barred.

V. Email Correspondence of Kelly Klein

28. While these emails may very well be admissible as business records, the State will have to lay that foundation.

29. As far as laying the foundation for a hearsay exemption under IRE 801(d)(2)(E), the State has failed to make *prima facie* case that a conspiracy exists and that the emails are in furtherance of that conspiracy.

30. For these reasons, this statement should be barred as an exemption to hearsay.

VI. Email Correspondence Between Paul Grazar and Defendant

31. While these emails may very well be admissible as business records, the State will have to lay that foundation.

32. As far as laying the foundation for a hearsay exemption under IRE 801(d)(2)(E), the State has failed to make *prima facie* case that a conspiracy exists and that the emails are in furtherance of that conspiracy.

33. For these reasons, this statement should be barred as an exemption to hearsay.

WHEREFORE the Defendant, JOHN Y. BUTLER, prays that the Court bar the State from introducing any evidence raised in its ***Notice of Intent to Offer Evidence of Offer Statements of Coconspirators*** pursuant to IRE 801(d)(2)(E) and for such other relief deemed just and appropriate.

Respectfully Submitted,
JOHN Y. BUTLER, Defendant

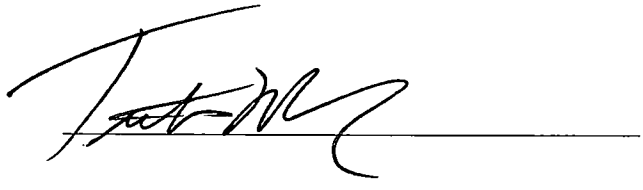
By: /s/ J. Steven Beckett
J. STEVEN BECKETT,
one of his attorneys

J. STEVEN BECKETT
BECKETT LAW OFFICE, P.C.
508 South Broadway Ave.
Urbana, IL 61801
(217) 328-0263
(217) 328-0290 (FAX)
steve@beckettlawpc.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is one of the attorneys for the Defendant in this above-titled cause, and that on July 31, 2020, he did cause a copy of the foregoing ***Response to State's Notice of Intent to Offer Evidence of Statements of Coconspirators*** to be hand delivered to the following:

State's Attorney's Office
McLean County Courthouse
104 West Front Street
Bloomington, IL 61701



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steve@beckettlawpc.com

IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT OF ILLINOIS
MCLEAN COUNTY

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	)	
v.	)	No. 2017-CF-1025
JOHN Y. BUTLER Defendant.	)	

RESPONSE TO STATE'S NOTICE OF INTENT TO OFFER EVIDENCE OF PRIOR BAD ACTS EVIDENCE

NOW COMES the Defendant, JOHN Y. BUTLER, by and through his attorneys, J. Steven Beckett of Beckett Law Office, P.C. and Tristan N. Bullington of Meyer Capel, P.C., and in support of his ***Response to State's Notice of Intent to Offer Evidence of Prior Bad Acts Evidence*** states as follows:

I. The State Should be Barred from Introducing Evidence of the Presence of a Shredding Truck or the Alleged Destruction of Documents

1. The State indicates an intent to offer evidence of the presence of a shredding truck at the U.S. Cellular Coliseum in the final days of CIAM's management of the building, claiming that this is proof of intent (to destroy documents that would show wrongdoing), absence of mistake (in not providing these documents to investigators), as well as plan and knowledge (to ensure that the City "did not get a full understanding as to the extent of the fraudulent conduct and theft committed by the Defendant and his co-defendants").

2. The State has no evidence that any *material* documents were destroyed, beyond the vague assertion of "an unknown number of documents relating to the billing and invoicing for events, catering, and other matters were not recovered."

3. Merely presenting testimony that there was a shredding truck lawfully present at the Coliseum is not evidence of a prior bad act, as defined in Illinois Rule of Evidence 404(b).

4. Allowing the evidence of a shredding truck to be presented serves no valid purpose other than implying to the jury that Defendant did something wrong by destroying his own documents.

5. Destroying outdated and unnecessary records is a common business practice, especially when a business is downsizing from an 8,000-person arena to a 100-square foot storage unit. As a result of new technology and the accompanying exponential increase in electronically-stored data, document retention policies are now the rule rather than the exception. *See, e.g., Arthur Andersen LLP v. United States*, 544 U.S. 696, 704 (2005). "It is, of course, not wrongful for a manager to instruct his employees to comply with a valid document retention policy under ordinary circumstances." *Id.* at 696.

6. There is no wrongdoing when a person "persuades others to shred documents under a document retention policy when he does not have in contemplation any particular official proceeding in which those documents might be material." *Id.* The State contends that the shredding truck was present at the Coliseum in March of 2016, the final days that CIAM occupied the Coliseum. The City of Bloomington did not contact the Illinois State to begin its investigation of CIAM until June 9, 2016. (See Synopsis of the Illinois State Police Investigative Report, a true and accurate copy of which is attached hereto as Exhibit 1). There is no way that Defendant would have contemplated any particular official proceeding in which his documents might be material at the time that the shredding truck was allegedly parked at the Coliseum.

7. Defendant, as a business owner, had a document retention policy. CIAM was incorporated in 2000. It would be impossible for Defendant to store and maintain every single paper record that his business accumulated since 2000 just on the off chance that the Illinois State Police might

request it. After all, "[n]o company possibly can, or should, indefinitely retain all the documents that it receives or generates." Margaret M. Koesel & Tracey L. Turnbull, Spoliation of Evidence: Sanctions and Remedies for Destruction of Evidence in Civil Litigation 25 (2d ed.2006). Retention policies have become a nearly-essential part of the corporate landscape. And limited-duration retention policies have become commonplace. *See, e.g., In re Weekley Homes, L.P.*, 295 S.W.3d 309, 312 (Tex. 2009); *Brookshire Bros., Ltd. v. Aldridge*, 57 Tex. Sup. Ct. J. 947 (Tex. 2014).

8. Merely acting in conformity with standard business practices is not evidence of criminal wrongdoing or bad acts.

9. The only way the destruction of documents would constitute a bad act is if the State could establish that the destruction was in violation of a court order, subpoena, warrant, or discovery request.

10. TheState has failed to identify identify either documents destroyed outside of the documentation retention policy, or in violation of some obligation not to destroy the records, as such they cannot show a bad act, much less a bad act relevant to the case at bar. The presence of the vehicle is not evidence of "intent to destroy documents which would show evidence of wrongdoing"; it is evidence of Defendant's completely legitimate document retention policy and his intent to consolidate potentially sixteen years of business records into a storable amount. Defendant was not aware of any investigation into his businesses at the time that the alleged shredding occurred, and frankly, neither was the Illinois State Police.

11. The presence of the vehicle is not evidence of "absence of mistake in the fact that [documents] were never provided to investigators"; the Defendant is not charged with obstruction of justice.

12. The presence of the vehicle is not evidence of a "plan and knowledge to ensure that the City of Bloomington did not get a full understanding as to the extent of the fraudulent conduct and theft committed by the Defendant and his codefendants"; it is once again evidence of Defendant's completely legitimate document retention policy. Allowing the State to imply wrongdoing onto a totally innocent and judicially accepted business practice is not what the Illinois Supreme Court anticipated in the formation of IRE 404(b). In fact, this conduct is not even a prior bad act, as anticipated in 404(b).

13. The fact that Defendant, in conformity with standard business practices, was allegedly destroying records – potentially from as early as 2000 – is not relevant to the case at bar. The State did not show any specific documents relevant to the investigation that Defendant destroyed.

14. Even if the Court does decide that evidence of a shredding truck is character evidence, subject to an exception under 404(b), and that the evidence is relevant, that evidence must still survive a 403 balancing test.

15. Illinois Rule of Evidence 403 dictates that evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Ill. R. Evid. 403.

16. Evidence that Defendant had a shredding truck present is not relevant to the charges that he is facing. However, if the Court finds this fact relevant, then its probative value is substantially outweighed by the prejudicial effect. Defendant is not charged with any obstruction or destruction of evidence counts, and this evidence will only confuse and mislead the jury as to the actual issues at trial. This information is incredibly prejudicial due to the implication that the State will attempt

to make – that Defendant was destroying evidence of alleged wrongdoing – despite the fact that destroying old business records is a common and widely accepted business practice.

17. The State should be barred from introducing any evidence of the alleged presence of a shredding truck at the Coliseum during the final days of CIAM's occupation, or at any other point in time.

II. Any Evidence Relating to Defendant's Alleged Attempted Removal of Fixtures or Equipment is not a Prior Bad Act as Anticipated by IRE 404(b)

18. The State intends to offer evidence that Defendant attempted to remove fixtures and equipment from the Coliseum prior to exiting the premises.

19. Evidence showing that Defendant allegedly attempted to remove equipment and fixtures that he paid for with his own money, and whose title was in his business' name, is not a bad act.

20. Reference to the actual language of the Management Agreement governing the Coliseum is helpful to understanding this issue. Section 6.1 of the Management Agreement states, "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." (See Management Agreement is attached to Second Motion in Limine).

21. The fixtures that the State is alleging Defendant attempted to remove belonged to Defendant's company, and not the City of Bloomington.

22. Firstly, attempting to remove items that belonged to Defendant in no way "shows an absence of mistake in billing practices related to equipment as well as the request for funds in the month priors [sic] to the time of the departure from the facility." These two concepts are unrelated. The act of removing a stove or a dishwasher cannot and does not show that Defendant was or was

not mistaken in his billing practices, or that Defendant was or was not mistaken when requesting funds.

23. Secondly, the State argues that this is evidence of "intent, plan, preparation, and knowledge on [sic] the ongoing theft". The State's logic is apparently that Defendant first tried to physically steal equipment whose title was in his company's name, and then once the City of Bloomington threatened to have him arrested for removing his own equipment, he then decided to just continue to try to steal his own equipment by allowing the City to purchase it at a severely reduced price. The fact that Defendant allegedly attempted to remove his own equipment is not rationally tied to criminal act alleged in the indictment.

24. Once again, the State is attempting to convict Defendant in a trial by innuendo. Defendant was well within his legal rights to remove his companies' equipment from a building that he would no longer have access to at the end of the month. This is not evidence of a prior bad act.

III. Any Evidence Admitted under 404(b) Must Have Some Threshold Similarity to the Crime Charged

25. The State intends to offer evidence of a 2010 Sales Tax audit that resulted in double payment of taxes by BMI Concessions as proof of "the intent, plan, preparation, knowledge, and motive behind the utilization of the 'Kelly Discount'" and of "knowledge and absence of mistake as it related to the appropriate utilization of sales tax exemption."

26. The 2010 audit that the State is referring to resulted in BMI Concessions having to double-pay its sales tax for that year due to a signage issue. At the time, the Coliseum included sales tax in the prices displayed on the menus. The Defendant's company paid the appropriate sales tax based on those sales. However, the Illinois Department of Revenue found that, because the menus on display at the Coliseum did not state "sales tax included", BMI Concessions did not comply

with a requirement of the Illinois tax code, and required Defendant to pay sales tax that he had already paid, a second time.

27. The failure on BMI Concessions' part to include "sales tax included" on its menus has absolutely nothing to do with the "Kelly Discount" allegations in the indictment. Any criminal counts alleged in the indictment that pertain to the "Kelly Discount" have nothing to do with sales tax. "It is well established that evidence of another offense may be used only when the other offense has some threshold similarity to the crime charged." *People v. Illgen*, 145 Ill. 2d 353, 372 (1991). The "Kelly Discount" counts of the indictment allege that Defendant improperly withheld commissions on discounted food items. There is no correlation between the "Kelly Discount" and any form of sales tax issue.

28. The only value this 2010 audit has to the State is a propensity argument. The State clearly wishes to use this evidence to argue that, because Defendant had issues with a sales tax audit in the past, he was more likely to have committed tax fraud in the instant case. This is an impermissible use of character evidence.

29. Illinois Rule of Evidence 404(b) dictates that evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. Ill. R. Evid. 404(b).

30. Furthermore, a misunderstanding of the requirements of the Illinois tax code in neglecting to add "sales tax included" on a menu does not show an absence of mistake in the "appropriate utilization of sales tax exemption."

31. "Where evidence of prior bad acts is offered to prove . . . that the crime charged was part of a common design or plan, there must be a high degree of identity between the facts of the crime charged and the other offense in which the defendant was involved." *People v. Illgen*, 145 Ill. 2d

353, 372-73 (1991). There is no degree of identity between the "Kelly Discount", the "appropriate utilization of sales tax exemption", and failing to include the words "sales tax included" on menus.

32. Evidence of a 2010 audit must pass the 403 balancing test. However, since the findings of the audit – that BMI Concessions failed to include the language "sales tax included" on their menus – have absolutely nothing to do with the charges in the indictment, there is no relevance to this information. As such, the prejudicial value – that BMI has previously had issues with a sales tax audit – far outweighs the non-existent relevance of this evidence.

33. The State should be barred from introducing any evidence of this 2010 audit or its findings, as it is impermissible character evidence under IRE 404(b) and does not survive the balancing test under IRE 403.

IV. All Evidence Tendered in the State's *Notice of Intent* is Untimely and Should Be Barred

34. The State filed its ***Notice of Intent*** on July 27, 2020, despite filing the indictment on September 20, 2017. The State had over two years to inform Defendant of its intent to offer character evidence, but waited until two weeks before trial – after all discovery deadlines had passed – to notify Defendant.

35. In a criminal case where the State intends to offer evidence under IRE 404(b), it must disclose the evidence, including statements of witnesses or a summary of the substance of any testimony, at a reasonable time in advance of trial. Ill. R. Evid. 404(c).

36. The purpose of the pretrial notice requirement "is to prevent undue prejudice and surprise by giving the defendant time to meet such a defense." *People v. Peterson*, 2017 IL 120331 ¶ 128 (*citing United States v. Skoczen*, 405 F.3d 537 (7th Cir. 2005)).

37. Prior to being notified by the State of its intention to admit the above evidence, Defendant was not expecting the use of that evidence. As such, he must now attempt to quickly formulate defenses to evidence that he was not aware he would have to combat.

38. As far as the shredding truck issue is concerned, Defendant does not have time before trial to track down the records of who specifically ordered the presence of the shredding truck; who authorized the shredding truck; who paid for the shredding truck; who was actually shredding documents; what witnesses can testify as to the contents of the documents that were allegedly shredded; and whether or not those witnesses were already disclosed to the State before the discovery deadline expired. This task is impossible to complete in the time remaining before trial. If the State is allowed to present evidence of the shredding truck, Defendant will suffer undue prejudice by not being allowed to complete or even begin preparing a defense to these ancillary allegations.

39. If the State is allowed to present evidence of Defendant's alleged attempted removal of fixtures and equipment, Defendant will suffer undue prejudice. Defendant does not have time to track down, interview, and subpoena the witnesses that would be required to testify as to these events. On the day in question, there were CIAM staff, BMI staff, City of Bloomington staff, law enforcement officers, multiple lawyers, and specialized moving crew employees all present at the Coliseum. Defendant does not have time before trial to locate even a portion of the necessary witnesses and records needed to defend against the implications the State will attempt to make regarding Defendant's actions. Furthermore, a good portion of the witnesses necessary to rebut the implications of the State are unidentified at this time and were not disclosed prior to the discovery deadline expiration. Defendant did not anticipate having to defend himself on this

ancillary issue and did not prepare his discovery responses as such. Allowing the State to present this evidence would unduly prejudice Defendant.

40. Lastly, the 2010 audit was conducted by employees of the Illinois Department of Revenue. Defendant does not have time prior to trial to track down the original auditor; obtain the original support documents that the auditor relied upon; interview that auditor; and disclose that discovery to the State – especially given that the discovery deadline has already passed.

41. The State had over two years to bring these issues to Defendant's attention to allow his proper time to prepare his defense to these tangential issues. The two weeks that the State attempts to allow Defendant to prepare is insufficient and would result in undue prejudice to the Defense. As such, the State should be barred from introducing any of the evidence in its ***Notice of Intent*** as it is untimely.

WHEREFORE the Defendant, JOHN Y. BUTLER, prays that the Court bar the State from introducing any evidence raised in its ***Notice of Intent to Offer Evidence of Prior Bad Acts Evidence*** and for such other relief deemed just and appropriate.

Respectfully Submitted,
JOHN Y. BUTLER, Defendant

By: _____
J. STEVEN BECKETT,
one of his attorneys

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Urbana, IL 61801
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is one of the attorneys for the Defendant in this above-titled cause, and that on July 31, 2020, he did cause a copy of the foregoing ***Response to State's Notice of Intent to Offer Evidence of Prior Bad Acts Evidence*** to be hand delivered to the following:

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McLean County Courthouse
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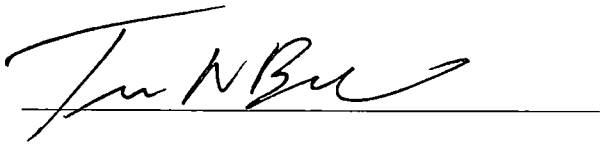

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ILLINOIS STATE POLICE
INVESTIGATIVE REPORT

File No:	Reporting Date(s):	Reporting Agent(s):	ID#:	Lead No:
16-13024-BL	12/22/16	S/A D. Rossiter	6230	

Title:	Case Agent:	ID#:	Office:	Typed:	Date:
Butler Et. Al.	S/A D. Rossiter	6230	Z5/BL	DR	12/22/16

Purpose:

ABC Storage Search Warrant

SYNOPSIS:

On June 9, 2016 at approximately 2:00 PM, the assistance of Zone 5 Investigations was requested by the City of Bloomington, Illinois to investigate allegations of embezzlement and theft by the previous management team for the U.S. Cellular Coliseum.

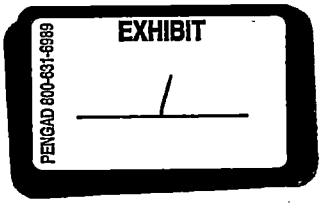
DETAILS:

On December 21, 2016 I, Special Agent Rossiter #6230 executed a search warrant for the physical address of Striegel Knobloch & Company, L.L.C. at 115 W. Jefferson Street, Suite 200, Bloomington, IL 61701. Within document seized pursuant to this warrant were invoices for ABC Storage located in the office of KELLY KLINE (CPA (Former CIAM Finance Director), F/W, DOB: 9/10/1960, 3180 Shepard Rd, Normal, IL 61761). The storage unit documentation was in the name of JOHN BUTLER (9513 N 2125 East Road, TX: (309) 242-7107) for unit 14 beginning on March 11, 2016. Hand written in the top right form of the document is "CIAM Storage".

On December 22, 2016 I, Special Agent Rossiter #6230 prepared a search warrant for ABC Storage located at 2442 S. Main Street, Bloomington, IL 61704. Judge Butler found probable cause and signed the search warrant on December 22, 2016 at 8:57 AM.

I made contact with ABC Storage employee TINA POWNALL (F/W, 2442 S Main St, Bloomington, IL 61704) who confirmed unit 14 was registered to BUTLER and paid in full. I provided POWNALL with a copy of the search warrant which was executed on December 22, 2016 at 9:38 AM. The key lock securing unit 14 was cut to gain entry and sixty-one boxes were seized and transported to a secure location for inventory. Twenty-seven boxes were determined to be outside the scope of the search warrant and set aside in a secure location. These twenty-seven boxes will be returned to BUTLER at a later time. The remaining thirty-four boxes covered by the search warrant are itemized below. All documents were removed from the storage locker and a copy of the search warrant was left inside taped to the top of a five foot "Pepsi" plastic pallet.

- Box 1: Federal Tax returns
- Box 2: BMI Personnel Files
- Box 3: Event Settlements 2012
- Box 4: 2013-2014 tax returns / Various Invoices
- Box 5: Event settlements 2012
- Box 6: 2013 Payables / Bank Statements
- Box 7: 2013 Event Settlements



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Dissemination:

- Box 8: Event Settlements 11/13 – 1/14
- Box 9: Event Settlements 2/14 – 5/14
- Box 10: Event Settlements 5/14 – 12/14
- Box 11: 2014 Payables
- Box 12: Event Settlements 5/13 – 10/13
- Box 13: Event Settlements 5/15 – 12/15
- Box 14: 2015 Payables
- Box 15: 2012 – 2013 Payroll / Event Folders
- Box 16: Event settlements 3/13 – 5/13
- Box 17: Event Settlements 3/15 – 5/15
- Box 18: Event Settlements 2/15 & 6/15
- Box 19: 2013 – 2015 Past Events / Backstage/catering
- Box 20: Event Settlements 1/16 – 3/16
- Box 21: Personnel Files A-D
- Box 22: Personnel Files A-Z
- Box 23: Personnel Files D-G
- Box 24: Personnel Files H-J
- Box 25: Personnel Files K-M
- Box 26: Personnel Files M-P
- Box 27: Personnel Files P-S
- Box 28: Personnel Files S-W
- Box 29: Personnel Files W-Z
- Box 30: Personnel Files C-S
- Box 31: Terminated employees / Admin Personnel Files / 2014 Payroll
- Box 32: Bank statements 2011-2013 / Payroll 2010-2013 / Payables 2011-2014
- Box 33: Event Settlements
- Box 34: Tax forms / Payroll 2015

Identifiers:

KELLY KLINE, CPA (Former CIAM Finance Director)
F/W, DOB: 9/10/1960
3180 Shepard Rd, Normal, IL 61761

JOHN BUTLER (CIAM & BMI Concessions Owner)
M/W, DOB: 8/28/1959
9513 N 2125 East Road, Bloomington, IL, 61705

TINA POWNALL
F/W,
2442 S Main St, Bloomington, IL 61704

1200

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
MCLEAN COUNTY

THE PEOPLE OF THE STATE OF ILLINOIS
Plaintiff
Vs.
JOHN YALE BUTLER
Defendant

McLEAN COUNTY
FILED
JUL 30 2020
CIRCUIT CLERK

Case Number: 2017CF001025
Report Number: 1613024
Event Type: Jury Trial

SUBPOENA

TO: **KELLY W KLEIN**

9919 E 1200 NORTH RD BLOOMINGTON, IL 61704

YOU ARE COMMANDED TO APPEAR TO TESTIFY BEFORE THE CIRCUIT COURT OF MCLEAN COUNTY IN THE ABOVE ENTITLED CASE AT LAW AND JUSTICE CENTER, 104 W. FRONT STREET, BLOOMINGTON, ILLINOIS 61701 BEFORE JUDGE WILLIAM YODER ON 08/10/2020 AT 09:00 AM ON BEHALF OF THE PEOPLE OF THE STATE OF ILLINOIS.

YOUR FAILURE TO APPEAR IN RESPONSE TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR **CONTEMPT OF COURT.**

ATTACHMENTS:
VW1

MCLEAN COUNTY CIRCUIT COURT
11TH JUDICIAL CIRCUIT
ILLINOIS

Witness, this day: Twenty-Seventh day of July , 2020

Don R. Everhart Jr
Clerk of the Circuit Court

654252

VW1 State Attorney Contact Info -- Victim Witness

IMPORTANT

Contact the McLean County State's Attorney's Office IMMEDIATELY upon receiving this subpoena. This subpoena is good for the whole week. This telephone call MAY PREVENT UNNECESSARY TRIPS TO COURT. Please call the Director in Victim Witness at 309-888-5424.

Please refer to the case number at the top, right hand corner of the subpoena.

Monday - Friday
8:30 AM - 4:30 PM

Access to the courts is available to all persons in McLean County. If you are a victim or witness with a disability and are in need of accommodation, please call the Victim/Witness Service at (309) 888-5424 no later than seven (7) days prior to your subpoena date. Please have your case number, court date and what accommodation you are requesting available when you call.

THE PEOPLE OF THE STATE OF ILLINOIS

VS

JOHN YALE BUTLER

Case Number: 2017CF001025

COURT PAPER TYPE : Subpoena
COURT PAPER SUMMARY: -KLEIN, KELLY W
COURT PAPER STATUS: Completed

Individual Summary: KLEIN, KELLY W - DOB: 09/10/1960 RACE: White SEX: Female
Individual Return / Service Status: Served

Personal Served this writ this 28 day of July , 2020 ,
by serving it to the within named KLEIN, KELLY - 09/10/1960 .

Served Sex: F Served Race: W Served DOB: 09-10-1960

Comment: Served at 9919 E 1200 North Rd. Bloomington, IL
Service, ... $ 50.00
Miscellaneous Fees:

_____ SHERIFF

20 miles necessary travel from Law and Justice Center to place of service of within named person and return,

$ .50 per mile . . . . . $ 10.00 By MCSP DEPUTY LONNIE KIRBY - ID # 12876

Return . . . . . $ 14.00

TOTAL . . . . . $ 74.00

ATTACHMENTS:
VW1

654252

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17-CF-1025
	)	
JOHN Y. BUTLER,	)	
	)	
Defendant.	)	

NOTICE OF HEARING

TO: McLean County State's Attorney
Law & Justice Center
104 West Front Street
Bloomington, IL 61701

John Y. Butler
9513 North 2125 East Road
Bloomington, IL 61705

YOU ARE HEREBY NOTIFIED that at 2:30 P.M. on August 5, 2020, or as soon thereafter as counsel may be heard, we shall appear before The Honorable William Yoder, or such other judge as may be substituting for the foregoing judge, in Courtroom 5C of the McLean County Law & Justice Center, 104 West Front Street, Bloomington, Illinois, for a status hearing on Admissibility of Co-Conspirator Statements and Motions

Dated this 24th day of July, 2020.

TRISTAN N. BULLINGTON, Attorney at Law

TRISTAN N. BULLINGTON
MEYER CAPEL, P.C.
202 North Center Street, Suite 2
Bloomington, IL 61701
(309) 829-9486 [Voice]
(309) 827-8139 [Facsimile]
TBullington@MeyerCapel.com
ARDC No. 6302971

PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the undersigned caused service of the foregoing ***Notice of Hearing*** to be made upon the recipient(s) designated below by the following method(s):

✓ VIA U.S FIRST-CLASS MAIL: A true and correct copy of the foregoing instrument(s) was sent via regular U.S. first-class mail to the following person or professional office in a properly addressed envelope and bearing full prepaid postage deposited in a U.S. Post Office box in Bloomington-Normal, Illinois, on this 24th day of July, 2020.

John Y. Butler
9513 North 2125 East Road
Bloomington, IL 61705

McLean County State's Attorney's Office
Law & Justice Center
104 West Front Street
Bloomington, IL 61701

Ashley McCleary

TRISTAN N. BULLINGTON
MEYER CAPEL, P.C.
202 North Center Street, Suite 2
Bloomington, IL 61701
(309) 829-9486 [Voice]
(309) 827-8139 [Facsimile]
TBullington@MeyerCapel.com
ARDC No. 6302971

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17-CF-1025
	)	
JOHN Y. BUTLER,	)	
	)	
Defendant.	)	

DEFENDANT'S SECOND MOTION IN LIMINE

NOW COMES the Defendant, JOHN Y. BUTLER, by and through his attorneys, J. Steven Beckett of Beckett Law Office, P.C., and Tristan N. Bullington of Meyer Capel, A Professional Corporation, in support of this ***Defendant's Second Motion in Limine***:

GENERAL ALLEGATIONS

1. This felony prosecution is set for trial.

2. Defendant anticipates that the State may attempt to offer inadmissible evidence or otherwise improper evidence during Defendant's trial.

3. This Defendant's Second Motion in Limine is brought to seek pretrial rulings on evidentiary issues.

4. Good cause exists for granting the various counts of this Defendant's Second Motion in Limine.

COUNT I: *EXCLUSION OF TESTIMONY REGARDING INDUSTRY STANDARDS*

NOW COMES the Defendant, JOHN Y. BUTLER, by and through his attorneys, J. Steven Beckett of Beckett Law Office, P.C., and Tristan N. Bullington of Meyer Capel, A Professional Corporation, who state as follows for Count I of this ***Defendant' Second Motion in Limine***:

1-4. Defendant realleges and reasserts General Allegations paragraphs 1-4 and incorporates them by reference into Count 1 as paragraphs 1-4 as if those paragraphs were fully recited in Count 1.

5. Defendant anticipates that the State may attempt to offer evidence through one or more witnesses—including Special Agent Daniel Rossiter of the Illinois State Police—evidence regarding "industry standards" related to the event space industry. (hereinafter collectively the "Second Motion Count I Evidence").

6. Testimony regarding "industry standards" is evidence that requires scientific, technical, or other specialized knowledge, and is not appropriate testimony for a lay witness.

7. A lay witness's testimony is limited to "opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." Ill. R. Evid. 701.

8. "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Ill. R. Evid. 702.

9. Special Agent Daniel Rossiter of the Illinois State Police lacks the requisite knowledge, skill, experience, training, or education necessary to testify regarding industry standards in the event space industry.

10. Any witness disclosed by the State in discovery must have any knowledge, skill, experience, training, or education necessary in order to testify regarding industry standards in the event space industry.

11. In addition to Officer Rossiter, in prior discovery the State has alluded to calling Scott Bailey, Russ Ferguson, and Mike Piehl as potential experts regarding industry standards and for which the subject of disclosure was raised in Count 6 of Defendant's First Motion in Limine.

12. The State has not disclosed reports, statements of opinions, or curriculum vitae for Russ Ferguson and Mike Piehl.

13. During the hearing on Defendant's First Motion in Limine, the State indicated it had not yet finalized their witnesses, and ruling on Count 6 was reserved.

14. "An expert's opinions are subject to the fundamental requirement that they have some evidentiary basis." *City of Chicago v. Concordia Evangelical Lutheran Church*, 2016 IL App (1st) 151864, ¶ 72, 69 N.E.3d 255, 270.

15. "[A]n expert's opinion lacks probative value unless it is accompanied by foundation evidence establishing a witness' expertise or experience to form such an opinion." *Harmon v. Patel*, 247 Ill.App.3d 32, 37–38, 186 Ill.Dec. 944, 617 N.E.2d 183 (1993) (citing *Johnson v. Equipment Specialists, Inc.*, 58 Ill.App.3d 133, 15 Ill.Dec. 491, 373 N.E.2d 837 (1978)).

WHEREFORE, the Defendant, JOHN Y. BUTLER, respectfully requests that this Court enter an Order consistent with the following:

A. Granting Count I of this ***Defendant's Second Motion in Limine***;

B. Prohibiting the State from mentioning or offering the Motion Count I Evidence during the trial of this cause through any witness not disclosed and qualified;

C. Requiring the State to disclose all expert opinions;

D. Ordering the State to disclose all proposed exhibits or demonstrative displays that their expert witnesses intend to reference at trial;

E. Ordering the State to disclose resumes or curriculum vitae for all proposed expert witnesses; and

F. Granting to Defendant such other and further relief as the Court deems just and proper.

COUNT II: ***EXCLUSION OF TESTIMONY REGARDING "ILLEGAL CONTRACTS"***

NOW COMES the Defendant, JOHN Y. BUTLER, by and through his attorneys, J. Steven Beckett of Beckett Law Office, P.C., and Tristan N. Bullington of Meyer Capel, A Professional Corporation, who state as follows for Count II of this ***Defendant' Second Motion in Limine***:

1-4. Defendant realleges and reasserts General Allegations paragraphs 1-4 and incorporates them by reference into Count 1 as paragraphs 1-4 as if those paragraphs were fully recited in Count 1.

5. Defendant anticipates that the State may attempt to offer evidence through one or more witnesses—including Special Agent Daniel Rossiter of the Illinois State Police—evidence regarding "illegal contracts" related to contracts entered into by Central Illinois Arena Management. (hereinafter collectively the "Second Motion Count II Evidence").

6. The Defense believes that the State's witnesses' testimony on this issue is based off a misinterpretation of the language of section 3.2(c) of the Management Agreement between the City of Bloomington and Central Illinois Arena Management, in which the witness claims that licenses and agreements entered into the ordinary course of business which continue in effect beyond March 31, 2016 are "illegally negotiated", which is contrary to the lawful

interpretation of the management agreement. (See Paragraph D10 of Complaint for Search warrant attached as Exhibit 1).

7. Officer Rossiter's conclusions ignores the language of the management agreement that contracts and agreements that extend beyond the termination date of the contract are exempt from city approval if they "involve[e] the license, lease or rental of the Coliseum in the ordinary course[.]" (See Management Agreement attached as Exhibit 2).

8. Further, even if said interpretation of the contract was accurate, referring to differences of opinions regarding the interpretation of a contract as "illegal" misstates the law.

9. Testimony regarding "illegal contracts" is not relevant to any issues before the court, as a determination of whether the contracts were improper is the sole providence of the jury.

10. Illinois Rule of Evidence 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ill. R. Evid. 401.

11. The Motion Count II Evidence is irrelevant to any of the triable issues in this cause.

12. Illinois Rule of Evidence 402 makes plain that "[e]vidence which is not relevant is not admissible." Ill. R. Evid. 402.

13. Accordingly, the Court should exclude the Motion Count II Evidence as inadmissible evidence that is irrelevant.

14. Illinois Rule of Evidence 403 specifies that evidence that is relevant may nevertheless "be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Ill. R. Evid. 403.

15. Testimony that contracts entered into by Central Illinois Arena Management being "illegal" assumes the guilt of the Defendant and his actions, causing the jury to predispose his guilty instead of presuming his innocence.

16. Thus, even if the Court were to conclude that the Motion Count II Evidence were relevant, the Motion Count II Evidence has such little probative value when compared to the relatively significant and unfair prejudice that would be occasioned if the evidence were admitted or presented to the trier of fact during the trial.

17. Under authority of Illinois Rules of Evidence 401, 402, and 403, the Court should exclude the Motion Count II Evidence from trial and prohibit the State from mentioning or offering the Motion Count II Evidence during the trial of this cause.

WHEREFORE, the Defendant, JOHN Y. BUTLER, respectfully requests that this Court enter an Order consistent with the following:

A. Granting Count II of this ***Defendant's Motion in Limine***;

B. Finding and declaring the Motion Count II Evidence to be inadmissible as evidence which is either irrelevant or for which the probative value is substantially outweighed by its prejudicial effect;

C. Prohibiting the State from mentioning or offering the Motion Count II Evidence during the trial of this cause; and

D. Granting to Defendant such other and further relief as the Court deems just and proper.

denied

COUNT III: *EXCLUSION OF TESTIMONY OF MIKE NELSON*

NOW COMES the Defendant, JOHN Y. BUTLER, by and through his attorneys, J. Steven Beckett of Beckett Law Office, P.C., and Tristan N. Bullington of Meyer Capel, A Professional Corporation, who state as follows for Count III of this ***Defendant's Second Motion in Limine***:

1-4. Defendant realleges and reasserts General Allegations paragraphs 1-4 and incorporates them by reference into Count 3 as paragraphs 1-4 as if those paragraphs were fully recited in Count 3.

5. Defendant anticipates that the State may attempt to offer evidence through the testimony of Mike Nelson, the former business partner of Defendant.

6. Defendant bought out all of Mike Nelson's interest in both CIAM and BMI in April of 2009.

7. By April 10, 2009, Nelson had no interest at all in CIAM or BMI, nor did he have any participation, employment, or involvement in the continued management of the Coliseum, CIAM, or BMI.

8. As such, any testimony that Nelson may be asked to give would be irrelevant, as his personal knowledge would be based on events which occurred prior to the dates alleged in the indictment.

9. Any claim of knowledge by Nelson as to the relevant time frame could not be based on the personal knowledge of the witness and would therefore be based entirely on impermissible hearsay.

10. Illinois Rule of Evidence 801 defines hearsay as "a statement . . . offered in evidence to prove the truth of the matter asserted." Ill. R. Evid. 801(c).

11. Illinois Rule of Evidence 802 indicates that hearsay is generally inadmissible at trial. Ill. R. Evid. 802.

12. Accordingly, any testimony that Nelson could offer is inadmissible as either irrelevant or as hearsay.

13. Under authority of Illinois Rules of Evidence 701, if a witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702. Ill. R. Evid. 701.

14. Under authority of Illinois Rules of Evidence 701, 801, and 802, the Court should exclude any testimony from Mike Nelson as to any occurrence after April 10, 2009 from trial and prohibit the State from mentioning or offering any such evidence during the trial of this cause.

WHEREFORE, the Defendant, JOHN Y. BUTLER, respectfully requests that this Court enter an Order consistent with the following:

A. Granting Count III of this ***Defendant's Motion in Limine***;

B. Finding and declaring the testimony of Mike Nelson to be inadmissible hearsay;

C. Finding and declaring the testimony of Mike Nelson to be irrelevant;

D. Prohibiting the State from mentioning or offering such evidence during the trial of this cause; and

E. Granting to Defendant such other and further relief as the Court deems just and proper.

denied

COUNT IV: *EXCLUSION OF TESTIMONY OF REGARDING ACCOUNTING AND AUDITING PROCEDURES NOT DONE IN ACCORDANCE WITH GENERALLY ACCEPTED METHODS*

NOW COMES the Defendant, JOHN Y. BUTLER, by and through his attorneys, J. Steven Beckett of Beckett Law Office, P.C., and Tristan N. Bullington of Meyer Capel, A Professional Corporation, who state as follows for Count IV of this ***Defendant's Second Motion in Limine***:

1-4. Defendant realleges and reasserts General Allegations paragraphs 1-4 and incorporates them by reference into Count 4 as paragraphs 1-4 as if those paragraphs were fully recited in Count 4.

5. The Defense anticipates that the State may offer evidence regarding claims of financial improprieties based on records related to the Coliseum.

6. There exist nine annual audits that were conducted in accordance with United States generally accepted accounting principles by McGladrey and Pullen as well as Sikich LLP.

7. In 2016 and 2017 a limited review and addendum to the limited review was created by the Bronner group, said accounting procedure was not prepared in accordance with generally accepted accounting principles.

8. Further an audit conducted by Baker Tilly in 2017, states that the City of Bloomington "omitted the required supplementary information that accounting principles generally accepted in the United States of America require to be presented to supplement basic financial statements." (Page 1 of the Baker Tilly audit attached hereto as Exhibit 3).

9. The Defense anticipates that witnesses may testify regarding conclusions or claimed findings of financial impropriety related to the Coliseum, which are not based upon generally accepted principles of accounting or auditing.

10. "Rule 702 confirms that Illinois is a *Frye* state." Comment on Ill. R. Evid. 701.

11. "In Illinois, expert testimony is subject to admissibility under the standard first articulated in Frye." *People v. Vercolio*, 363 Ill. App. 3d 232, 236, 843 N.E.2d 417, 421 (3d Dist. 2006)

12. "[E]vidence is admissible only if the methodology or scientific principle upon which the expert's opinion is based has gained general acceptance in that particular scientific field." *People v. Vercolio*, 363 Ill. App. 3d 232, 236, 843 N.E.2d 417, 421 (3d Dist. 2006).

13. Claims of financial impropriety requires analysis in accordance with generally Accepting Accounting Principles (GAAP) and Generally Accepting Auditing Standards (GAAS). See https://smallbusiness.chron.com/definition-gaap-audit-15329.html and https://www.aicpa.org/Research/Standards/AuditAttest/DownloadableDocuments/AU-00150.pdf copies of which are attached as Exhibits 4 and 5.

WHEREFORE, the Defendant, JOHN Y. BUTLER, respectfully requests that this Court enter an Order" consistent with the following:

A. Granting Count IV of this ***Defendant's Motion in Limine***;

B. Prohibiting the State from offering evidence that meetings the requirements of Illinois Rules of Evidence 702;

C. Prohibiting the State from mentioning or offering such evidence during the trial of this cause; and

D. Granting to Defendant such other and further relief as the Court deems just and

proper.

Respectfully submitted,
JOHN Y. BUTLER, Defendant

By: _____
Tristan N. Bullington Attorney at Law

Prepared by:
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(309) 827-8139 [Fax]
TBullington@MeyerCapel.com
ARDC No. 6302971

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is one of the attorneys for the Defendant in this above titled cause, and that on July 27, 2020 he did cause a copy of the foregoing ***Defendant's Motion in Limine*** to be hand delivered to the following:

State's Attorney's Office
McLean County Courthouse
104 W. Front Street
Bloomington, IL 61701

_____
TRISTAN N. BULLINGTON

Tristan N. Bullington
MEYER CAPEL, A Professional Corporation
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(309) 829-9486 [Voice]

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ARDC No. 6302971

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
COUNTY OF MC LEAN

COMPLAINT FOR SEARCH WARRANT

A. Complainant: Special Agent Daniel Rossiter
Illinois State Police Department
McLean County, Illinois

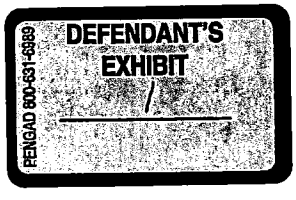
B. **Places or Objects to be searched:**

B.1. Daneelec 4 GB flash drive
Duracell 4GB flash drive
Geek Squad 8 GB flash drive
Seized from Mike Nelson for the application of this warrant
Currently in the possession of the Illinois State Police

C. **Items and Materials to be seized:**

C.1. **Central Illinois Arena Management Business Documents (CIAM) including but not limited to:** General Journals and charts of accounts; general ledger and subsidiary ledgers; cash receipt journals, cash deposit journals, cash drop journals from concessions; and cash disbursement journals; sales journals and purchase journals; Point of Sale (POS) daily close reports; Point of Sale (POS) monthly close reports; balance sheets, income statements and profit/loss statements; records pertaining to customer accounts, accounts receivables, notes receivables, etc.; records pertaining to allowance for bad debts and bad expenses; records pertaining to accounts payable, notes payable, loans payable, mortgages payable, etc.; cash receipt books; bank statements, deposit slips, cancelled checks, withdrawal slips, debit memos, and credit memos for all checking and or savings accounts; assets and/ or investments, such as certificates of deposits, stocks, bonds, real estate, vehicles, aircraft, boats, etc.; itemized inventory records; purchase orders, vouchers, invoices, receipts, etc.; payroll records, payroll journals, personnel files, W 2's, 1099's; copies of all certified audits along with accountants confidential file; all work sheets, accountant work papers, adjusting entries, etc.; copies of all federal and state income tax, and/or employee tax returns for the identified period; any and all reconciliations of books to tax returns for the identified period; any other financial records that were created for, by, or on behalf of the partnership/corporation, such as loan applications, deeds to real estate, schedules of loan payments, etc.;

C.2. **BMI Concessions business documents including but not limited to:** General Journals and charts of accounts; general ledger and subsidiary ledgers; cash receipt journals, cash deposit journals, cash drop journals from concessions; and cash disbursement journals; sales journals and purchase journals; Point of Sale (POS) daily close reports; Point of Sale (POS) monthly close reports; balance sheets, income statements and profit/loss statements; records pertaining to customer accounts, accounts receivables, notes receivables, etc.; records pertaining



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to allowance for bad debts and bad expenses; records pertaining to accounts payable, notes payable, loans payable, mortgages payable, etc.; cash receipt books; bank statements, deposit slips, cancelled checks, withdrawal slips, debit memos, and credit memos for all checking and or savings accounts; assets and/ or investments, such as certificates of deposits, stocks, bonds, real estate, vehicles, aircraft, boats, etc.; itemized inventory records; purchase orders, vouchers, invoices, receipts, etc.; payroll records, payroll journals, personnel files, W 2's, 1099's; copies of all certified audits along with accountants confidential file; all work sheets, accountant work papers, adjusting entries, etc.; copies of all federal and state income tax, and/or employee tax returns for the identified period; any and all reconciliations of books to tax returns for the identified period; any other financial records that were created for, by, or on behalf of the partnership/corporation, such as loan applications, deeds to real estate, schedules of loan payments, etc.;

D. Affiant Petitioner Special Agent Daniel Rossiter (hereinafter SA Rossiter) of the Illinois State Police Department has probable cause to believe such items or materials are located on, at, or within the places or objects to be searched based on the information contained within this Complaint for Search Warrant and attachments incorporated by reference.

D.1. Affiant petitioner SA Rossiter is a police officer with the Illinois State Police Department. As a regular part of Petitioner's duties, he regularly works with other law enforcement officers and personnel investigating illegal activities in the McLean County and central Illinois area. SA Rossiter has specific experience in complex financial crimes as well various other crimes. The information contained within this affidavit for search warrant is for the purpose of establishing probable cause for the aforementioned warrant applications and does not include documentation of all discovered evidence in this case.

Background

D.2. The Coliseum, with a seating capacity of 5,000 to 7,000 opened in April 2006 managed by CIAM under the Development and Management Agreement adopted in October 2005. CIAM is owned by John Butler. The Coliseum has incurred significant operating losses in recent years and has required annual cash infusions from City funds. In 2002 CIAM and the City of Bloomington entered into a Consulting and Sales Agreement under which CIAM became the city's exclusive agent responsible for the sales of naming rights, sponsorship, signage, luxury suites, and premium seating agreements. During CIAM's 10 years term of the management agreement, CIAM continued to receive annual commissions on these various sales agreements. CIAM was also responsible for negotiating with the anchor tenants, including sports franchises, and assisting with the design of the Coliseum facility. In 2005, an agreement was reached between the City of Bloomington and CIAM which incorporated provisions from the previous 2002 and 2004 agreements. In addition, the 2005 agreement allowed CIAM to use organizations affiliated with CIAM to provide all Coliseum concession and merchandizing services. As Coliseum managers, CIAM became responsible for the marketing and contracting of all Coliseum events. CIAM entered into an agreement with "BMI Concessions" for all concession and merchandizing services. BMI Concessions is also owned by John Butler.

In 2016 the City of Bloomington engaged into contract negotiations with CIAM asking for larger and stricter auditing powers. CIAM refused to agree to any new and more stringent auditing requests and negotiations ended. The City of Bloomington hired a new management company named VenuWorks.

Investigation

D.3. On March 31, 2016 CIAM vacated their position with the Coliseum. Subsequently it was learned that from 3/28/16 – 3/31/16 someone accessed the City of Bloomington secure servers and began to delete all contents of the folder to include business documents and emails sent across the city of Bloomington's server dealing with CIAM. Many of these files were recovered by the City of Bloomington's IT department and are currently being stored on the City's secure server.

D.4. When CIAM vacated the Coliseum on March 31, 2016 they abandoned several boxes labeled CIAM. It is believed that those boxes contain payroll and other business documents. As part of the turnover VenuWorks began to review current and expiring contracts. During this review significant issues were discovered to include commissions paid to CIAM or agents for money or goods which were not received by the Coliseum. It should be noted that these commissions are paid by City of Bloomington funds. Further, alcohol sales in the Coliseum were tracked using a "MICROS" program. This program is a reporting system that records sales and inventory from multiple points of sale from within the Coliseum. A review of that program reflects a $210,141 discrepancy alcohol purchases.

D.5. City of Bloomington finance department began to review the Coliseum's yearly audit forms prepared and submitted by CIAM's Assistant GM of Finance Kelly Klein. The City Finance department had observed the Box Office Account currently has a $150,000 shortfall. During this review a $60,000 shortfall from the Revolving Loan Account for the Coliseum was also discovered. Since CIAM has been replaced by VenuWorks it has been discovered that the numbers reported on the yearly auditing forms prepared by Kelly Klein do not match the city funds remaining in the Coliseum accounts.

D.6. On April 26, 2016 The City of Bloomington contracted the Bronner Group, LLC to complete a limited review focusing on six main concerns, Legal fees and CIAM expenses charged to the Coliseum Fund, Commission claimed paid to CIAM, Box Office Activities, concessions and transactions with CIAM affiliates, use of Coliseum credit cards and personal expenses, and unbooked audit corrections. The Petitioner has reviewed that audit in conjunction with the investigation. For FY 2016 CIAM paid legal billings totaling $43,210 to the City of Bloomington to one law firm from Coliseum funds and was unable to associate any of the billings with Coliseum operations adding most appeared to relate to CIAM corporate matters.

Several expense categories have been identified that are high risk for inappropriate usage of Coliseum funds. In reviewing an "Extraordinary Expenses"- many of the expenses were for insurance. The audit noted that added insurance costs are usually predictable and would not be charged to an Extraordinary Expense account. A total of $3,752 was reflected as insurance costs to the Coliseum's insurance provider. CIAM records reflect $5,000 in prepaid expenses for the

OSF St. Joseph Medical Center, however it was not clear what services were being received in exchange. There were other expense accounts that raised concern including an "automobile expense" reflecting one entry per month.

D.7. From the investigation it appears that CIAM, John Butler and Bart Rogers were receiving personal benefits from sales agreements made on behalf of the Coliseum. The investigation to this point has identified multiple commissions or benefits totaling $157,810.00 in FY2016 to be questionable in nature.

Suite #1 – Extreme Motors – Free vehicle provided to Bart Rogers in exchange for a discounted suite. This contract does not contain any documentation of the vehicle trade. It has been reported the vehicle was provided for personal use by Bart Rogers with a dealership license plate.

Suite #4 – Suzi Davis Travel – appears that this suite was sold at a 50% discount, and in exchange CIAM received $8,000 in travel vouchers for use on official Coliseum business. Information from employees has implicated Bart Rogers, Kelly Kline, and John Butler has used these vouchers for personal travel expenses to include family vacations to Pennsylvania and Hawaii.

D.8. The Annual Net Concession Sales for FY2016 (5/1/15 to 4/12/16) totaled $908,986 per the MICROS Point of Sale system. Of this, the Coliseum should have been paid 32% of regular sales and 15% of sales from luxury suites and catering (according to the management agreement). Estimated revenues paid to the Coliseum would have been approximately $279,054 for regular sales (32%) and $5,541 for luxury suites and catering (15%) – for a total of $284,595. Actual concession revenues recorded in Commission records through March 31, 2016 were $215,085 – a difference of $69,510. It should be noted that BMI Concessions is owned by the owners of CIAM. It was determined the annual sales report from the MICROS system reflected beer sales for Fiscal Year 2016 of $425,970. A review of the beer distributor report reflects annual beer purchases by the Coliseum in Calendar year 2015 of 5,300 cases or 127,222 individual beers. If sold at an average price of $5.00, this beer should have generated sales totaling $636,111.

Further, an email was discovered titled "Hide Details". This e-mail was sent to BMI Concessions owner, John Butler form Paul Grazer BMI Concessions General Manager and CC: Jay Laesch, BMI Concessions Finance Director **(Exhibit 1)**.

D.9. CIAM owners, John Butler and Bart Rogers were issued CEFCU credit cards that were paid by City of Bloomington funds. Both CIAM owners used Coliseum credit cards to purchase gasoline for personal vehicles when commuting to Bloomington for work. Under the CIAM management agreement, both of these individuals were to be full-time Coliseum employees and their cost to commute to and from the coliseum should have been personal expenses of the owner and not the operating expenses of the Coliseum. Both CIAM owners combined for a total of 98 transactions at gas stations in Morton, Peoria, and Bloomington totaling $2,925. Coliseum credit cards were also used to make ticket purchases with the United Center, the Chicago Blackhawks, and ITicket Ohio totaling $1,836.00. Various good were

purchased with these credit cards to local stores including, Wal-Mart, Lowe's, Menard's, Kroger, Hobby Lobby, Farm & Fleet, and Amazon.com totaling $8,706.00.

D.10. While reviewing CEFCU Bank records provided pursuant to a Mclean County Warrant signed by Judge Butler on March 21, 2016 several transactions were correlated with all three CEFCU bank accounts during the month of March 2016. Account #0819255 (Coliseum Box Office) had $202,252.52 transferred to account #0816438 (Coliseum Fund). Account #0816438 (Coliseum Fund) had $197,039.76 transferred to account #0803706 (CIAM Savings). On March 11, 2016 the City of Bloomington granted CIAM's request for an infusion of $247,843.42 to cover utilities and other building expenses. On March 11, 2016 check #10937 for $162,004.73 was written to CIAM and deposited into account #0803706 (CIAM Savings). On March 11, 2016 check #2853 from account #0803706 (CIAM Savings) was written to John Butler for $100,000. On March 14, 2016 check #2855 was written from the same account to John Butler in the amount of $42,887.29. On March 28, 2016 the amount of $10,000 was transferred form account #0816438 (Coliseum Fund) to account #0803706 (CIAM Savings).

Further, a FY2016 commissions Excel spreadsheet documenting a $0.00 balance of $142,233.75 **(Exhibit 2)** was recovered from a Coliseum computer used by Kelly Kline pursuant to a July 20, 2016 warrant signed by Judge Butler. $99,504.69 of these funds were paid on illegally negotiated contracts that extended past CIAM's management of the Coliseum on March 31, 2016 **(Exhibit 3)**. Per the contract signed by CIAM and the City of Bloomington stipulated in section 3.2 paragraph (c) **"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 provide 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);" (Exhibit 4)**

Commissions on these contracts would have been owed to the city. Further, it was discovered through invoicing two payments for $10,000 were paid to CIAM for the State Farm Contract starting on April 1, 2016 through April 1, 2017 including a wire transfer on March 28, 2016.

D.12. The financial activity described above was done using the accounts listed above under paragraph B and C and can be seen in **(Exhibit 5)**.

D.13. On January 6, 2017 affiant conducted an interview of Michael Nelson. Mr. Nelson was a partner with John Butler in the company CIAM until his buy out by Butler in late 2009. Nelson was responsible for managing the building to include negotiating suite and marketing contracts. During this interview Mr. Nelson stated that he was in possession of several CIAM/BMI Concessions documents ranging in dates from 2006 to 2009. He also stated that he learned Butler was under reporting BMI Concessions sales to the city and showed me several supporting BMI Concessions documents located on three separate flash drives. Nelson further reported having two boxes of documents for CIAM and BMI Concessions. On January 6, 2017 I

took possession of the flash drives and documents to preserve their current status while applying for this search warrant.

It should be noted that the documents to be seized from these flash drives are probable to assist in establishing the beginning practices by CIAM and BMI and thereafter the onset of underreporting by BMI Concessions.

E. Affiant Petitioner Special Agent Daniel Rossiter of the Illinois State Police Department has probable cause to believe such items or materials are located on, at, or within the place or object to be searched based on the information contained within this Complaint for Search Warrant and attachments incorporated by reference.

#6230

Affiant, Special Agent Daniel Rossiter

Subscribed and sworn to before me this 12th day of January of 2017 at 1:20 PM.

Associate / Circuit Judge

DEVELOPMENT AND MANAGEMENT AGREEMENT

Filed 10/10/05

THIS DEVELOPMENT AND MANAGEMENT AGREEMENT (this "Agreement") dated as of the 10th 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 or 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 aforedescribed 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 aforedescribed 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 pay able 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 in stances 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 of 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 untenantable, 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:

Its City Clerk

CITY OF BLOOMINGTON

By: Stephen F Stockton

Name: Stephen F Stockton

Title: Mayor

ATTEST

Its John J. Butler Secretary

COPY

CENTRAL ILLINIOS ARENA MANAGEMENT, INC.

By: Mike Nelson

Name: Michael R. Nelson

Title: President

BAKER TILLY

ACCOUNTANT'S COMPILATION REPORT

To the Honorable Mayor and Members of the City Council
City of Bloomington, Illinois

We have compiled the accompanying financial statements of the U.S. Cellular Coliseum, an enterprise fund of the City of Bloomington, Illinois, as of and for the year ended April 30, 2016, which collectively comprise the Coliseum's basic financial statements as listed in the table of contents. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or provide any assurance about whether the financial statements are in accordance with accounting principles generally accepted in the United States of America.

The management of the City of Bloomington, Illinois is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America and for designing, implementing, and maintaining internal control relevant to the preparation of the financial statements.

Our responsibility is to conduct the compilation in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. The objective of a compilation is to assist management in presenting financial information in the form of financial statements without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial statements.

Management has omitted the required supplementary information that accounting principles generally accepted in the United States of America require to be presented to supplement basic financial statements. Such missing information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting and for placing the basic financial statements in an appropriate operational, economic, or historical context.

Baker Tilly Virchow Krause, LLP

Oak Brook, Illinois
February 27, 2017

Definition of a GAAP Audit

Small Business | Accounting & Bookkeeping | Audits

By Sean Mullin

All publicly traded companies must annually disclose their financial performance to the public: GAAP audits ensure that these disclosures are valid. Every year, independent accountants review a company's public financial records and compare the records to the company's documents and physical assets. Companies call this process an audit. Small businesses becoming eligible for public trade must begin auditing their records yearly. If any of the company's records are not in accord with GAAP, or generally accepted accounting principles, the auditors report the company to the Securities and Exchange Commission for correction.

The Audit Committee

The company's board of directors first elects one or more of its members to fulfill the company's legal responsibility to hire independent auditors. Small businesses have fewer directors than global organizations, but small business audits are less complicated. The audit committee prepares the company's financial records for the auditors and addresses any complications. The committee also handles appointments for the auditors to inspect the company's physical assets.

The Auditors

When accounting firms accept an auditing assignment, they send an audit team led by a certified public accountant, or CPA, referred to as the lead engagement partner. Small businesses typically receive a small audit team because their assets are smaller and their operations are less complex than those of large, global organizations.

Inspection and Fraud

The lead engagement partner assigns auditors based on skills and expertise. Because large organizations have numerous documents and operating sites, auditors analyze only a sample of the organization's claims and assets, and fraud is more difficult to detect. Small businesses have smaller, more focused operations where fraudulent claims are more apparent and audit teams communicate quickly.

Opinions

The final result of a GAAP audit is the audit report, which expresses one of four opinions: unqualified, qualified, adverse or disclaimer. Auditors report an unqualified opinion if the company's records conform to GAAP and have not misled the public. Qualified opinions express one or two reservations about the company's records but do not accuse the company of fraud. Adverse opinions mean that the company's records are false or misleading, and disclaimer opinions announce that the records are insufficient and an audit is impossible. Small businesses that earn an adverse or disclaimer opinion face corrective measures from the SEC.

References

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- Jupiterimages/Goodshoot/Getty Images

About the Author

Sean Mullin has been creating online content since 2007. He also worked in an online writing center for college students. In addition to writing, Sean has a Master of Arts in classics and teaches Greek and Latin part-time at the college level.

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AU Section 150

Generally Accepted Auditing Standards

(Supersedes SAS No. 1, section 150.)

Source: SAS No. 95; SAS No. 98; SAS No. 102; SAS No. 105; SAS No. 113.

Effective for audits of financial statements for periods beginning on or after December 15, 2001, unless otherwise indicated.

.01 An independent auditor plans, conducts, and reports the results of an audit in accordance with generally accepted auditing standards. Auditing standards provide a measure of audit quality and the objectives to be achieved in an audit. Auditing procedures differ from auditing standards. Auditing procedures are acts that the auditor performs during the course of an audit to comply with auditing standards.

Auditing Standards

.02 The general, field work, and reporting standards (the 10 standards) approved and adopted by the membership of the AICPA, as amended by the AICPA Auditing Standards Board (ASB), are as follows:

General Standards

1. The auditor must have adequate technical training and proficiency to perform the audit.
2. The auditor must maintain independence in mental attitude in all matters relating to the audit.
3. The auditor must exercise due professional care in the performance of the audit and the preparation of the report.

Standards of Field Work

1. The auditor must adequately plan the work and must properly supervise any assistants.
2. The auditor must obtain a sufficient understanding of the entity and its environment, including its internal control, to assess the risk of material misstatement of the financial statements whether due to error or fraud, and to design the nature, timing, and extent of further audit procedures.
3. The auditor must obtain sufficient appropriate[1] audit evidence by performing audit procedures to afford a reasonable basis for an opinion regarding the financial statements under audit.

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[1] See paragraph .06 of section 326, *Audit Evidence*, for the definition of the term *appropriate*. [Footnote added, effective for audits of financial statements for periods beginning on or after December 15, 2006, by Statement on Auditing Stand

Standards of Reporting [2]

1. The auditor must state in the auditor's report whether the financial statements are presented in accordance with generally accepted accounting principles.[3]
2. The auditor must identify in the auditor's report those circumstances in which such principles have not been consistently observed in the current period in relation to the preceding period.
3. When the auditor determines that informative disclosures are not reasonably adequate, the auditor must so state in the auditor's report.
4. The auditor must either express an opinion regarding the financial statements, taken as a whole, or state that an opinion cannot be expressed, in the auditor's report. When the auditor cannot express an overall opinion, the auditor should state the reasons therefor in the auditor's report. In all cases where an auditor's name is associated with financial statements, the auditor should clearly indicate the character of the auditor's work, if any, and the degree of responsibility the auditor is taking, in the auditor's report.

[As amended, effective for audits of financial statements for periods beginning on or after December 15, 2006, by Statement on Auditing Standards (SAS) No. 105. As amended, effective for audits of financial statements for periods beginning on or after December 15, 2006, by SAS No. 113.]

.03 Rule 202, *Compliance With Standards*, of the AICPA Code of Professional Conduct [ET section 202.01], requires an AICPA member who performs an audit (the auditor) to comply with standards promulgated by the ASB. [4] The ASB develops and issues standards in the form of SASs through a due process that includes deliberation in meetings open to the public, public exposure of proposed SASs, and a formal vote. The SASs are codified within the framework of the 10 standards.

.04 The nature of the 10 standards and the SASs requires the auditor to exercise professional judgment in applying them. Materiality and audit risk also underlie the application of the 10 standards and the SASs, particularly those related to field work and reporting.[5] When, in rare circumstances, the auditor departs from a presumptively mandatory requirement, the auditor must document in the working papers his or her justification for the departure and

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[2] The reporting standards apply only when the auditor issues a report. [Footnote added, effective for audits of financial statements for periods beginning on or after December 15, 2006, by SAS No. 113.]

[3] When an auditor reports on financial statements prepared in accordance with a comprehensive basis of accounting other than generally accepted accounting principles (GAAP), the first standard of reporting is satisfied by stating in the auditor's report that the basis of presentation is a comprehensive basis of accounting other than GAAP and by expressing an opinion (or disclaiming an opinion) on whether the financial statements are presented in conformity with the comprehensive basis of accounting used. [Footnote added, effective for audits of financial statements for periods beginning on or after December 15, 2006, by SAS No. 113.]

[4] In certain engagements, the auditor also may be subject to other auditing requirements, such as Government Auditing Standards issued by the comptroller general of the United States, or rules and regulations promulgated by the U.S. Securities and Exchange Commission. [Footnote renumbered by the issuance of SAS No. 105, March 2006. Footnote subsequently renumbered by the issuance of SAS No. 113, November 2006.]

[5] See section 312, *Audit Risk and Materiality in Conducting an Audit*. [Footnote renumbered by the issuance of SAS No. 105, March 2006. Footnote subsequently renumbered by the issuance of SAS No. 113, November 2006.]

how the alternative procedures performed in the circumstances were sufficient to achieve the objectives of the presumptively mandatory requirement. [As amended, effective December 2005, by SAS No. 102. As amended, effective for audits of financial statements for periods beginning on or after December 15, 2006, by SAS No. 113.]

Interpretive Publications

.05 *Interpretive publications* consist of auditing interpretations of the SASs, appendixes to the SASs,[6] auditing guidance included in AICPA Audit and Accounting Guides, and AICPA auditing Statements of Position.[7] Interpretive publications are not auditing standards. Interpretive publications are recommendations on the application of the SASs in specific circumstances, including engagements for entities in specialized industries. An interpretive publication is issued under the authority of the ASB after all ASB members have been provided an opportunity to consider and comment on whether the proposed interpretive publication is consistent with the SASs. [As amended, effective September 2002, by SAS No. 98.]

.06 The auditor should be aware of and consider interpretive publications applicable to his or her audit. If the auditor does not apply the auditing guidance included in an applicable interpretive publication, the auditor should be prepared to explain how he or she complied with the SAS provisions addressed by such auditing guidance.

Other Auditing Publications

.07 *Other auditing publications* include AICPA auditing publications not referred to previously; auditing articles in the *Journal of Accountancy* and other professional journals; auditing articles in the AICPA *CPA Letter*; continuing professional education programs and other instruction materials, textbooks, guide books, audit programs, and checklists; and other auditing publications from state CPA societies, other organizations, and individuals.[8] Other auditing publications have no authoritative status; however, they may help the auditor understand and apply the SASs.

.08 If an auditor applies the auditing guidance included in an other auditing publication, he or she should be satisfied that, in his or her judgment, it is both relevant to the circumstances of the audit, and appropriate. In determining whether an other auditing publication is appropriate, the auditor may wish to consider the degree to which the publication is recognized as being helpful in understanding and applying the SASs and the degree to which the issuer or author is recognized as an authority in auditing matters. Other auditing

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[6] Appendixes to SASs referred to in paragraph .05 of this section do not include previously issued appendixes to original pronouncements that when adopted modified other SASs. [Footnote added, effective September 2002, by SAS No. 98. Footnote renumbered by the issuance of SAS No. 105, March 2006. Footnote subsequently renumbered by the issuance of SAS No. 113, November 2006.]

[7] Auditing interpretations of the SASs are included in the codified version of the SASs. AICPA Audit and Accounting Guides and auditing Statements of Position are listed in appendix D. [Footnote renumbered by the issuance of SAS No. 98, September 2002. Footnote subsequently renumbered by the issuance of SAS No. 105, March 2006. Footnote subsequently renumbered by the issuance of SAS No. 113, November 2006.]

[8] The auditor is not expected to be aware of the full body of other auditing publications. [Footnote renumbered by the issuance of SAS No. 98, September 2002. Footnote subsequently renumbered by the issuance of SAS No. 105, March 2006. Footnote subsequently renumbered by the issuance of SAS No. 113, November 2006.]

publications published by the AICPA that have been reviewed by the AICPA Audit and Attest Standards staff are presumed to be appropriate.[9]

Effective Date

.09 This section is effective for audits of financial statements for periods beginning on or after December 15, 2001.

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[9] Other auditing publications published by the AICPA that have been reviewed by the AICPA Audit and Attest Standards staff are listed in AU appendix F. [Footnote renumbered by the issuance of SAS No. 98, September 2002. Footnote subsequently renumbered by the issuance of SAS No. 105, March 2006. Footnote subsequently renumbered by the issuance of SAS No. 113, November 2006.]