

CONFIDENTIAL

PRE-OPENING SERVICES AND MANAGEMENT AGREEMENT

BY AND BETWEEN

~~The Aaron Broussard Foundation~~
The Aaron F. Broussard Performing Arts Foundation, Inc.
AND

FMSQUARED, LLC

Effective Date:

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PRE-OPENING SERVICES AND MANAGEMENT AGREEMENT

This Pre-Opening Services and Management Agreement (this "**Agreement**") is made effective as of the ? ("**Effective Date**"), by and between the Aaron Broussard Foundation, (the "**Foundation**"), and FMsquared, LLC, a Texas Limited Liability Corporation ("**Manager**").

RECITALS

WHEREAS, the Foundation is constructing and will own a performing arts center in Orleans Foundation, Louisiana, currently known as the Temple Theatres (the "**Facility**");

WHEREAS, the Foundation desires to engage Manager to provide certain pre-opening consulting services with respect to the Facility prior to the date the Facility is opened for business to the general public ("**Opening Date**"), and to manage and operate the Facility, on behalf and for the benefit of the Foundation, following the Opening Date, and Manager desires to accept such engagement, pursuant to the terms and conditions contained herein.

WHEREAS, all references to "the Facility" in this Agreement shall be deemed to include, and Manager's duties hereunder shall cover, the entire facility complex, including but not limited to the theater, fixtures, improvements, lobby areas, executive and other offices, storage and utility facilities, and the entrances, grounds, sidewalks and parking areas surrounding the Facility and/or adjacent thereto.

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

ARTICLE 1 SCOPE AND DELIVERY OF SERVICES

*what is constituted
the official beginning
on the Pre-Opening Period*

Section 1.1 Engagement.

(a) Foundation hereby engages Manager during the Pre-Opening Period (as defined in Section 3.1) to perform the pre-opening services described in Exhibit A-1 attached hereto, Foundation hereby engages Manager following the Opening Date to act as the sole and exclusive manager and operator of the Facility, subject to and as more fully described in this Agreement, and, in connection therewith, to perform the services described in Exhibit A-2 attached hereto.

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

Section 1.2 Contingency. Manager's obligations under this Agreement are contingent upon and subject to the Foundation making available, in the manner prescribed in this Agreement, the funds budgeted for and/or reasonably requested by Manager to carry out such obligations during the Term. Manager shall not be considered to be in breach or default of this Agreement, and shall have no liability to the Foundation or any other party, in the event Manager

⊕ A
Does (a) fee include the during of a "boots on the ground" manager and a secretary and/or staff?

(b) Should make reference to "in house" manager and staff being hired by Manager and said will be accountable to Manager regarding regularly oversight however entire Manager team is accountable to Found 6373 1 and/or discuss for terms of this agreement.

does not perform any of its obligations hereunder due to failure by the Foundation to timely provide such funds, except as otherwise provided in Section 8.3 below.

Section 1.3 Standard of Care. Subject to the limitations of the Operating Budgets, Manager shall exercise reasonable commercial, good faith efforts in managing and operating the Facility so as to minimize Operating Expenses and maximize Operating Revenues, provided, that Manager shall be permitted to book events at no or reduced rental fees. Manager acknowledges and agrees that in performing its duties and responsibilities pursuant to this Agreement, including without limitation performance of the services set forth in Exhibit A-1 and Exhibit A-2, Manager shall maintain, operate and manage the Facility in a manner substantially consistent with the Quality Operating Standard.

Section 1.4 Maintenance and Capital Expenditures. During the Term, Manager shall (i) perform all Maintenance and, to the extent requested by the Foundation pursuant to Section 11.2, perform all Capital Expenditures, or cause the performance of all Maintenance and all requested Capital Expenditures, necessary to keep and maintain the Facility in a First Class Condition and in a manner substantially consistent with the Quality Operating Standard and (ii) maintain and keep, or cause to be maintained and kept, the Facility in a clean, neat, safe, and orderly condition given the nature and use of the Facility.

Section 1.5 Duty. Manager shall owe to the Foundation a duty to perform its obligations under this Agreement and to conduct the management and operation of the Facility at all times with integrity and good faith and in a manner which is in the best interests of the Facility and the Foundation and consistent with the terms of this Agreement. Manager shall not engage in any act that is not within the scope of its authority under this Agreement, that is not in good faith or from which Manager derives an improper personal benefit.

3 or 5?

ARTICLE 2 COMPENSATION

*which constitutes
the official beginning
on the Pre-Opening Period.*

Section 2.1 Fixed Management Fee. As consideration for the performance of Manager's obligations hereunder, the Foundation shall pay Manager a fixed management fee ("**Fixed Management Fee**") which (i) during the Pre-Opening Period, shall be equal to Five-Thousand and No/100 Dollars (\$3,000.00) per month, and (ii) beginning on the Opening Date, shall be equal to Six Thousand 00/100 Dollars (\$6,000.00) per month. Beginning in the second Operating Year, the Fixed Management Fee shall be increased annually by 3% of the then annual management fee. The Fixed Management Fee shall be payable to Manager monthly on the first business day of each month of the Term (prorated as necessary for any partial months). The Fixed Management Fee will be paid to Manager directly from the Facility Operating Account.

Section 2.2 Incentive Fee. In addition to the Fixed Management Fee, Manager shall be entitled to earn an incentive fee ("**Incentive Fee**") each Operating Year of the Term as set forth in Exhibit B hereto. Notwithstanding anything to the contrary contained herein, in no event shall the Incentive Fee for any Operating Year exceed the Fixed Management Fee for such

Operating Year. The Incentive Fee, if any, will be paid to Manager directly from the Facility Operating Account.

**ARTICLE 3
TERM; TERMINATION**

*50 years from beginning
being beginning of this agreement*

Section 3.1 Term. The term of this Agreement shall begin on the Effective Date, and, unless sooner terminated pursuant to the provisions of this Agreement, shall expire at 11:59 p.m. on the day immediately preceding the third (50th) anniversary of the Opening Date ("**Term**"). The period of time beginning on the Effective Date and ending on the Opening Date shall be referred to herein as the "**Pre-Opening Period**". Each twelve (12) month period during the Term commencing on the Opening Date and continuing on the anniversary of such date, shall be referred to herein as an "**Operating Year**".

Section 3.2 Termination.

(a) This Agreement may be terminated (i) by the Foundation upon thirty (30) days written notice to Manager in the event the Foundation decides to not complete the building of, the Facility, or close the Facility for any reason whatsoever, and certifies such fact in writing to Manager, (ii) by either party immediately by written notice upon the other party being adjudicated bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of the other party shall be appointed and shall not be discharged within one hundred twenty (120) days after appointment, or if either party shall make an assignment of its property for the benefit of creditors or shall file a voluntary petition in bankruptcy or insolvency, or shall apply for bankruptcy under the bankruptcy or insolvency laws now in force or hereinafter enacted, Federal, State or otherwise, or if such petition shall be filed against either party and shall not be dismissed within one hundred twenty (120) days after such filing, (iv) by the Manager or the Foundation as expressly set forth and permitted in this Agreement, or (v) (purposely omitted).

(b) In the event this Agreement is terminated prior to the end of the Term, the Foundation shall promptly pay Manager any Fixed Management Fee and Incentive Fee earned by Manager up to the date of termination or expiration, computed on a prorata basis to the effective date of termination (if applicable.) Any disputed amounts that cannot be resolved by the parties shall be resolved as set forth in Section 17.12.

(c) To the extent the Agreement is terminated by the Foundation pursuant to Section 3.2(a)(i) or (v), the Foundation shall reimburse Manager for any actual ordinary and necessary expenses, if any, incurred by Manager in withdrawing from the provision of services hereunder following such termination, not to exceed an aggregate of One Hundred Thousand Dollars (\$100,000). Such ordinary and necessary expenses shall include costs associated with (i) severance pay not to exceed four (4) months for the General Manager, (ii) severance pay not to exceed two (2) months for other members of Senior Management; (iii) reasonable household relocation expenses for the General Manager if he or she had previously relocated to Louisiana in connection with this Agreement; and (iv) other reasonable costs actually incurred by Manager in withdrawing

from the provision of services hereunder. In addition to the foregoing reimbursable expenses, the Foundation shall reimburse Manager for the actual ordinary and necessary expenses incurred by Manager, if any, in connection with the termination and/or assignment of contracts or leases entered into by Manager pursuant to this Agreement, provided that (i) Manager has not violated any of the terms of this Agreement in entering into such other contracts or leases, (ii) the contracts or leases are terminated or assigned, as the case may be, in the manner specified in writing by the Foundation and (iii) such costs are pre-approved in writing by the Foundation. The Foundation's payment of such ordinary and necessary expenses will occur only following receipt and review of written documentation of expenses by Manager reasonably acceptable to the Foundation. Except for the reimbursement of the above stated ordinary and necessary expenses, Manager shall have no other right or remedy, at law or in equity, against the Foundation, including without limitation, monetary damages, for a termination pursuant to Sections 3.2(a)(i).

(d) Upon termination or expiration of this Agreement for any reason, Manager shall (i) promptly discontinue the performance of all services hereunder and shall surrender and vacate the Facility upon the effective date of such termination, unless the Foundation requests that such services be provided for a transitional period not to exceed 120 days so long as Manager is paid the monthly Fixed Management Fee (prorated as necessary) and (ii) immediately deliver or otherwise make available to the Foundation all data, electronic files, documents, procedures, reports, estimates, summaries, and other such information and materials with respect to the Facility as may have been created or accumulated by Manager in performing its obligations hereunder, whether completed or in process. The Facility and all equipment and furnishings located therein shall be returned to the Foundation in good repair, reasonable wear and tear excepted.

ARTICLE 4

OWNERSHIP; USE OF THE FACILITY

Section 4.1 Ownership of Facility, Data, Equipment and Materials. The Foundation will at all times retain ownership of the Facility, including but not limited to real estate, technical equipment, furniture, displays, fixtures and similar property, including improvements made during the Term, at the Facility. Ownership of and title to all intellectual property rights of whatsoever value that is held in the Foundation's name shall remain in the name of the Foundation. Any data, software, equipment or materials furnished by the Foundation to Manager or acquired by Manager as an Operating Expense to be used at or for the Facility, shall remain the property of the Foundation, and shall be returned to the Foundation upon the earlier to occur of the expiration or termination of this Agreement or when same are no longer needed by Manager to perform under this Agreement. The Manager shall not take or use, for its own purposes, customer or exhibitor lists or similar materials specifically developed by any party for the use of the Facility. Notwithstanding the above, all proprietary computer software developed or otherwise owned or licensed by Manager prior to the Effective Date or that is thereafter developed independently of the services provided pursuant to this Agreement shall, as between the Foundation and Manager, remain the sole property of Manager. All software developed by Manager for the Facility shall be the sole property of the Foundation. The assets of the Foundation as described herein shall not be pledged, liened, encumbered or otherwise alienated

or assigned by Manager other than in the ordinary course of business of the Facility, without the prior approval of the Foundation.

Section 4.2 Right of Use. The Foundation hereby grants Manager the right and license to use the Facility, and Manager accepts such right of use, for the purpose of performing the services herein specified, including the operation and Maintenance of all physical and mechanical facilities necessary for, and related to, the operation, Maintenance and management of the Facility. The Foundation shall provide Manager, as the Foundation reasonably deems appropriate, with a sufficient amount of suitable office space in the Facility and with such office equipment as is reasonably necessary to enable Manager to perform its obligations under this Agreement.

Section 4.3 Compliance with Agreements.

(a) The Foundation agrees to pay, keep, observe and perform all payments, terms, covenants, conditions and obligations under any leases, bonds, debentures, loans and other financing and security agreements (collectively, the "**Financial Documents**") to which the Foundation is bound in connection with its ownership of the Facility. The Manager agrees that it shall not take any action that would cause or constitute a breach by the Foundation under any of the Financial Documents. Manager shall be provided with copies of or access to any such Financial Documents.

(b) The Manager agrees to perform, discharge and comply in all material respects and, to the extent that it is within its power and within the scope of services undertaken by it hereunder, to use reasonable commercial efforts to cause the Foundation to comply in all material respects with the Foundation's obligations under the Material Contracts, subject to the terms of Section 1.2 above.

Section 4.4 Use by the Foundation and others.

(a) Subject to availability, any civic, educational or nonprofit organization designated by the Foundation may be allowed to use the Facility or any part thereof for a discounted fee as the Foundation may reasonably establish from time to time, provided that the user thereof shall be required to promptly reimburse Manager for any direct third-party expenses incurred by Manager in connection with such use, it being acknowledged that Manager shall not charge such user any additional fees for its services. To the extent Manager has an opportunity to book a revenue-producing event on a date which is otherwise reserved for use by a civic, educational or non-profit organization designated by the Foundation, Manager may propose alternative dates and other incentives for such user to consider in rescheduling its event, and the Foundation agrees that it shall assist and cooperate with Manager in its attempt to reschedule such event by participating in Manager's discussions with such user, provided that such user shall not be obligated to reschedule its event and the Foundation shall have no liability for the user's decision not to reschedule such event.

(b) Subject to availability, the Foundation shall each have the right to use the Facility or any part thereof free of charge, provided that the Foundation shall promptly

reimburse Manager for any direct third-party expenses incurred by Manager in connection with such use, it being acknowledged that Manager shall not charge the Foundation any additional fees for its services. To the extent that Manager has an opportunity to book a revenue-producing event on a date which is otherwise reserved for use by the Foundation, Manager may propose alternative dates and other incentives for the Foundation to consider in rescheduling their event, provided, that the Foundation and shall not be obligated to reschedule their event. The Operator shall receive a credit to Operating Revenues solely for purposes of determining its Incentive Fees in an amount equal to the licensing/rental fees that a third party would be charged by the Operator for use of the Facility for each of the Foundation's events.

(c) The use of the Facility by the Foundation, any civic, educational or nonprofit organization designated by the Foundation shall (i) not conflict with the dates booked by Manager for paying events, (ii) not consist of normally touring attractions (other than for occasional fund-raising events coordinated in advance with Manager, which may determine, in its good faith judgment, that such events will generate significant civic, cultural or other benefits for the community), and (iii) be booked in advance upon reasonable notice to Manager pursuant to the Facility's approved booking policies. Upon request of the Foundation, Manager shall provide to such party a list of available dates for the use of the Facility as set forth in this Section.

Section 4.5 Right of Ingress and Egress. Manager acknowledges that the Foundation shall have the right to enter the Facility and to grant to others the right of ingress and egress to and from the Facility for the purpose of inspection thereof or the conduct of capital improvements and for other purposes. The Foundation agrees to use reasonable commercial efforts to coordinate such entry with Manager so as to minimize interference with scheduled activities at the Facility.

Section 4.6 Property. Manager shall have no authority to sell or otherwise dispose of any personal or real property owned by the Foundation, without the prior written approval of the Foundation. Upon notice from Manager to the Foundation of the need to move off-site any movable property that Manager has determined is surplus or unnecessary at the Facility, the Foundation shall use reasonable commercial efforts to arrange for, or ask that Manager arrange for, the removal of such property within five (5) business days.

ARTICLE 5 PERSONNEL

Section 5.1 Generally. All Facility staff and other personnel shall be engaged or hired by Manager, and shall be employees, agents or independent contractors of Manager (or a subsidiary or affiliate thereof), and not of the Foundation. Subject to the limitations of the Pre-Opening Expense Budget or the Operating Budgets, as applicable, Manager shall select the number, function, qualifications, and compensation, including salary and benefits, of its employees and shall control the terms and conditions of employment (including without limitation termination thereof) relating to such employees. Manager agrees to use its best efforts to recruit employees who will be proficient, productive and courteous to patrons, and to use its reasonable and prudent judgment in the supervision of such personnel, which shall be under

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

Section 5.2 General Manager. Personnel engaged by Manager will include a qualified individual with managerial experience in similar facilities to serve as a full-time, on-site general manager of the Facility (the "**General Manager**"). The General Manager will have general supervisory responsibility for Manager and will be responsible for day-to-day operations of the Facility, supervision of employees, and management and coordination of all activities associated with events taking place at the Facility.

Section 5.3 Non-Solicitation. During the Term and for a period of two (2) years after the end of the Term, the Foundation shall not, without Manager's prior written consent, solicit for employment by the Foundation, or encourage to cease rendering services to Manager, any of Manager's employees. In the event the Foundation breaches this Section 5.3 with respect to any of Manager's employees, the Foundation shall pay to Manager as liquidated damages an amount equal to (i) two (2) year's base salary, in the case of the General Manager and (ii) one (1) year's base salary in the case of any employee other than the General Manager. The parties agree that such amount is an estimate of the actual damages Manager will suffer as a result of a breach of this Section, and shall be deemed to constitute liquidated damages and not a penalty of any kind. Except for the payment of the above stated liquidated damages, Manager shall have no other right or remedy, at law or in equity, against the Foundation, including without limitation, ~~monetary damages, for a breach of this Section. It is further understood and agreed that no~~ failure or delay by Manager in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

*Salary
and other
expenses
above
General Manager*

ARTICLE 6 PRE-OPENING EXPENSE BUDGET

Section 6.1 Establishment of Pre-Opening Expense Budget. The parties shall attach hereto as Exhibit C a line-item expense budget ("**Pre-Opening Expense Budget**") prepared by Manager covering the Pre-Opening Period, which Pre-Opening Expense Budget details the projected salary, travel, operating, and other expenses of Manager (including without limitation the anticipated fees and reimbursable expenses of Manager) in connection with its obligations hereunder during the Pre-Opening Period. Such Pre-Opening Expense Budget shall be subject to the approval of the Foundation, acting in its sole discretion, but may be amended by Manager from time to time, subject to the further approval of the Foundation, which approval may be withheld or granted in its sole discretion. The Manager represents and warrants to the Foundation that the Pre-Opening Expense Budget does not contain any expenses that are unrelated to the Facility or that constitute overhead, general or other administrative expenses attributable to Manager's or its affiliates corporate offices.

Section 6.2 Reimbursement of Expenses During Pre-Opening Period. The Foundation shall fund a facility operating account on behalf of Manager for payment of all direct expenses incurred by Manager in good faith in connection with the services provided hereunder that are included in the Pre-Opening Expense Budget, provided the amount of expenses during the Pre-Opening Period does not exceed the amount of expenses budgeted in the Pre-Opening Expense Budget. Manager shall invoice the operating account on a monthly basis in arrears for monthly management fees.

ARTICLE 7 OPERATING BUDGETS

Section 7.1 Establishment of Operating Budgets.

(a) Manager agrees that ninety (90) days prior to the Opening Date in respect of the first Operating Year, and ninety (90) days prior to the commencement of each subsequent Operating Year in respect of such year, it will prepare and submit to the Foundation a line item budget (in form mutually acceptable to the parties) for the Facility (as approved by the Foundation pursuant to Section 7.2, the "**Operating Budget**"). Each annual Operating Budget shall include a projection of Operating Revenues and Operating Expenses, presented on a monthly and annual basis, and the projected net operating loss or profit for such year. The Operating Budget shall serve as an estimate of expected Operating Revenues and Operating Expenses for the Facility. The Foundation agrees to take reasonable commercial steps to provide Manager, subject to any limitations of applicable law, with all information in its possession, which the Foundation reasonably believes is necessary to enable Manager to prepare the Operating Budgets.

(b) The Operating Expenses in each annual Operating Budget shall be payable by Manager with funds from the Facility Operating Account.

Section 7.2 Approval of Operating Budget and Amendments.

(a) The Foundation and Manager will use reasonable commercial efforts to cooperate with each other in the preparation of the annual Operating Budgets, including any amendments thereto. In the event of any disagreement regarding a line item expense or the aggregate amounts included in a proposed Operating Budget, or any proposed amendment thereto, the Foundation and Manager shall engage in discussions and use reasonable commercial efforts to attempt to resolve such matter to the mutual satisfaction of the parties, provided, that such discussions shall not obligate the parties to resolve such matter, nor affect the Foundation's right to approve the Operating Budgets or any amendments thereto in its sole discretion, as provided below.

(b) Notwithstanding the terms of paragraph (a) above, each annual Operating Budget shall be subject to the final review and approval of the Foundation, which approval shall not be unreasonably withheld. A failure by Manager to perform its obligations under this Agreement shall not be a breach of or default under this Agreement if such breach or default is directly caused by the Foundation's failure to appropriate sufficient funds for the management, operation and promotion of the Facility. In order

for the Foundation to fully evaluate and analyze such budgets or any other request by Manager relating to income and expenses, Manager agrees to provide to the Foundation such reasonable financial information relating to the Facility as may be requested by the Foundation from time to time.

(c) Manager acknowledges and agrees that certain portions of the Operating Budgets, including amendments thereto, will also be subject to the approval of the Foundation pursuant to the. Manager shall cooperate with the Foundation and deliver the Operating Budgets, or any portions thereof, to the Foundation as may be requested from time to time by the Foundation in order to assure its compliance.

(d) If extraordinary events occur during any Operating Year which could not reasonably be contemplated at the time the corresponding Operating Budget was prepared, Manager may submit an amendment to such budget for review and approval by the Foundation, which approval shall not be unreasonably withheld.

Section 7.3 Adherence to Operating Budget. Manager shall manage and operate the Facility in accordance with the Operating Budget, but shall have no liability for failing to achieve such estimated amounts, unless such failure is due to Manager's breach of the terms of this Agreement. Without the prior consent of the Foundation, Manager shall not exceed, commit or contract to expend any sums in excess of the Operating Budget or otherwise approved by the Foundation, except (i) for expenses for services provided to the Facility by third parties, the cost of which is not within the reasonable control of Manager, such as the costs of utilities and insurance; (ii) approved Emergency Repairs; (iii) increased costs resulting from the scheduling by Manager of additional revenue producing events or activities at the Facility, so long as prior to the scheduling of such events or activities, Manager had a good faith belief that the projected ~~net operating loss or profit for the Operating Year as set forth in the applicable Operating Budget~~ would be improved as a result of such additional events or activities; and (iv) increased costs resulting from events scheduled pursuant to Section 4.4. Notwithstanding the foregoing, in no event will Operating Expenses exceed five percent (5%) of the aggregate budgeted expenses in the Operating Budget (including any amendments thereto, if any) without the prior written approval of the Foundation.

ARTICLE 8 FUNDING

Section 8.1 Source of Funding. Manager shall pay all items of expense for the operation, Maintenance, supervision and management of the Facility from the funds in the Facility Operating Account (as hereinafter defined), which Manager may access periodically for this purpose. The Facility Operating Account shall be funded with amounts generated by operation of the Facility (as described in Article 9 below), or otherwise made available by the Foundation. To ensure sufficient funds are available in the Facility Operating Account, the Foundation will transfer to and/or retain in the Facility Operating Account an amount equal to one hundred eighty (180) days of operating expenses. Except as otherwise set forth in Section 8.3, Manager shall have no liability to the Foundation or any third party in the event Manager is unable to perform its obligations hereunder, or under any third party contract entered

into pursuant to the terms hereof, due to the fact that sufficient funds are not generated from the operation of the Facility or otherwise made available by the Foundation in a timely manner.

Section 8.2 Advancement of Funds. Under no circumstances shall Manager be required to pay for or advance any of its own funds to pay for any Operating Expenses

Section 8.3 Non-Funding If the Foundation appropriates funds at (or reduces appropriated funds to) a level that, in Manager's good faith reasonable judgment, renders the management of the Facility as contemplated in the Agreement not feasible, Manager and the Foundation shall meet as necessary to formulate a plan to continue management of the Facility at a reduced level of services consistent with anticipated Operating Revenues and available funding.

ARTICLE 9 PROCEDURE FOR HANDLING INCOME

Section 9.1 Event Operating Account. Manager shall deposit as soon as practicable following receipt, in an interest-bearing account in a local qualified public depository to be designated by the Foundation in writing ("**Event Operating Account**"), all revenue received from ticket sales and similar event-related revenues which Manager receives in contemplation of, or arising from, an event, pending completion of the event. Such monies will be held in escrow for the protection of ticket purchasers, the Foundation and Manager, to provide a source of funds as required for payments to performers and for payments of direct incidental expenses in connection with the presentation of events that must be paid prior to or contemporaneously with such events. Promptly following completion of such events, Manager shall transfer all funds in the Event Operating Account relating to such events into the Facility Operating Account. Interest accrued on amounts in the Event Operating Account shall be part of the Facility operating income and shall be transferred to the Facility Operating Account, unless Manager is required to pay such interest to the promoter of an event pursuant to its respective license agreement with the promoter. Bank service charges, if any, on such account(s) shall be deducted from the Event Operating Account. The Event Operating Account shall be established by the Foundation in the name of the Foundation, and under the Foundation's federal identification number.

Section 9.2 Facility Operating Account. All revenues collected by the Manager from operation of the Facility shall be the sole property of the Foundation and will be held in trust by the Manager for the Foundation for application as provided herein. Except as provided in Section 9.1, all Operating Revenues derived from operation of the Facility shall be deposited by Manager into an interest-bearing account in a local qualified public depository to be designated by the Foundation in writing ("**Facility Operating Account**") as soon as practicable upon receipt (but not less often than once each business day). The Facility Operating Account shall be established by the Foundation, in the name of the Foundation and under the Foundation's federal identification number. As provided in Section 8.1, Manager shall have the right to withdraw and use the funds in the Facility Operating Account to pay the Facility Operating Expenses.

ARTICLE 10
FISCAL RESPONSIBILITY; REPORTING

Section 10.1 Records. Manager agrees to keep and maintain (for such period of time as may be required by the Foundation or applicable law, whichever is longer), at its office in the Facility, separate and independent records, in accordance with generally accepted accounting principles, devoted exclusively to its operations in connection with its management of the Facility. Such records (including books, ledgers, journals, and accounts) shall contain all entries reflecting the business operations of Manager under this Agreement. The Foundation, and their respective representatives shall have the right to audit and inspect such records from time to time during the Term, upon reasonable notice to Manager and during Manager's ordinary business hours.

Section 10.2 Monthly Financial Reports. Manager agrees to provide to the Foundation, within twenty (20) days after the end of each month during the Term, financial reports for the Facility that include a balance sheet, aging report on accounts receivable, and statement of revenues and expenditures (budget to actual) for such month and year to date, in accordance with generally accepted accounting principles. In addition, Manager agrees to provide to the Foundation a summary of bookings and events held during each such month, as well as a summary of events booked or planned for the next month. Additionally, Manager shall submit to the Foundation, or shall cause the applicable public depository utilized by Manager to submit to the Foundation, on a monthly basis, copies of all bank statements concerning the Event Operating Account and the Facility Operating Account.

Section 10.3 Auditing Controls; State Audit. Manager agrees to abide by all internal audit controls and procedures established by the Foundation for the Facility and those otherwise ~~required by applicable state law. Manager agrees that it will cooperate fully with the Auditor's~~ Office of the State of Louisiana and provide it and its agents with all information that it may request in connection with its audit of the Facility's financial statements. Costs associated with such audit shall be an Operating Expense.

Section 10.4 Independent Audits. In addition to the state audits set forth above, the Foundation shall have the right to at any time, and from to time, cause an independent auditor of its choosing to audit all of the books of Manager and the Facility relating to, among other things, Operating Revenues and Operating Expenses, including, without limitation, cash register tapes, credit card invoices, duplicate deposit tapes, and invoices. Manager shall cooperate in good faith with the independent auditor during such audit. The costs incurred by the Foundation, as the case may be, in connection with such audit will be an Operating Expense to the extent included in the Operating Budget. If such audit costs are not included in the Operating Budget, they shall be paid for by the Foundation. The Foundation's and 's right to conduct such audit with respect to any Operating Year shall expire three (3) years after an audit report for such Operating Year is delivered to the Foundation.

Section 10.5 Additional Statements and Reports. In the event the Foundation reasonably requests from time to time additional financial or statistical reports with respect to the Facility, Manager agrees to use reasonable commercial efforts to prepare such reports and deliver same to the Foundation, the cost of which shall be an Operating Expense.

ARTICLE 11
CAPITAL EXPENDITURES

Section 11.1 Capital Expenditures Budget. Manager shall annually, at the time of submission of the annual Operating Budget to the Foundation, provide to the Foundation for its approval, which may be granted or withheld in its sole discretion, a budget of anticipated capital improvements necessary at the Facility and requiring a Capital Expenditure (as defined below) in the coming Operating Year. Manager may at any time present to the Foundation for its approval, amendments to any previously submitted Capital Expenditures budget to reflect unanticipated Capital Expenditures for the applicable budget period.

Section 11.2 Responsibility for Capital Expenditures. The Foundation shall be solely responsible for all Capital Expenditures at the Facility; provided, however, that the Foundation shall be under no obligation to make such Capital Expenditures. Manager shall have no authority to make any material alterations or any capital improvements to the Facility, unless otherwise requested by the Foundation in writing and subject to the Foundation making the necessary funds available therefore in the Capital Expenditures budget. Notwithstanding the foregoing, Manager shall have the right to make Capital Expenditures at the Facility for Emergency Repairs (defined as the repair of a condition which, if not performed immediately, creates an imminent danger to persons or property and/or an unsafe condition at the Facility threatening persons or property), and shall be promptly reimbursed by the Foundation for any such expenditures; provided, however, that in the event that any such Emergency Repairs will exceed \$10,000 in one occurrence or \$25,000 in the aggregate during any given Operating Year, Manager must first obtain the written approval of the Foundation before proceeding with such work, unless it would be unreasonable to obtain such approval due to the circumstances of such emergency, in which case Manager must at least notify via telephone the Foundation's contract administrator.

ARTICLE 12
AGREEMENT MONITORING

Section 12.1 Contract Administrator. The Foundation shall appoint a contract administrator who shall monitor compliance with the terms of this Agreement. Any matters in this Agreement requiring the Foundation's participation or approval shall be directed to the Foundation's contract administrator, or the alternate contract administrator during the absence of the contract administrator, each of which shall be designated by the Foundation. The Foundation's contract administrator may, to the extent such contract administrator believes that such authority has been delegated to him by the Foundation, act for and bind the Foundation with respect to any matter involving the day-to-day management and operation of the Facility. Notwithstanding the foregoing, any matter in this Agreement that expressly requires the approval or action of the Foundation may only be acted upon by the Foundation (or a committee thereof) at a properly convened meeting of the Foundation (or a committee thereof), held in accordance with applicable law and regulations.

ARTICLE 13 INDEMNIFICATION

Section 13.1 Indemnification by Manager. Subject to the terms of Sections 14.5 and 17.19, and except for matters as to which the Foundation has agreed to indemnify Manager Indemnitees under Section 13.2, to the fullest extent permitted by Louisiana law, Manager agrees to defend, indemnify and hold harmless the Foundation, and their respective successors and assigns, and all agents, servants, officials, directors, consultants and employees of the foregoing (collectively, the "**Foundation Indemnitees**") against any claims, causes of action, costs, expenses (including reasonable attorneys' fees) liabilities, or damages (collectively, "**Losses**"), in law or in equity, for bodily injury, death or damage to property, or other Losses, suffered by any of the Foundation Indemnitees, arising out of or in connection with any (a) subject to the terms of Section 13.4, any negligent act or omission, or intentional misconduct, on the part of Manager or any of the Manager Indemnitees, (b) breach by Manager of any of its representations, covenants or agreements made herein, (c) any violation of any copyright, patent, service mark, trade name or trademark by Manager, (d) failure by Manager to perform any obligations of the Foundation or Manager under any third party contracts as required in this Agreement, unless such failure was caused by any negligence or other fault on the part of the Foundation or (e) injury to or death of any person or damage to or destruction of property caused by the conduct of Manager or Manager's management or operation of the Facility (or any portion thereof) in violation of this Agreement.

Section 13.2 Indemnification by the Foundation. Subject to the terms of Sections 14.5 and 17.19, and except for matters as to which Manager has agreed to indemnify the Foundation Indemnitees under Section 13.1, to the fullest extent permitted by Louisiana law, the Foundation agrees to defend, indemnify and hold harmless Manager, its parents, subsidiaries and affiliates, ~~and their respective successors and assigns, and all agents, employees, directors and officers of~~ the foregoing (collectively, the "**Manager Indemnitees**"), against any Losses, in law or in equity, for bodily injury, death or damage to property, or other Losses suffered by any of the Manager Indemnitees, arising out of or in connection with (a) subject to the terms of Section 13.4, any negligent act or omission, or intentional misconduct, on the part of the Foundation or any of the Foundation Indemnitees, (b) a breach by the Foundation of any of its representations, covenants or agreements made herein, including without limitation the Foundation's obligation, if any, to fund any budgeted or otherwise approved expenses in a timely manner, (c) the performance by Manager of its duties hereunder, other than Losses for which Manager is obligated to indemnify any of the Foundation Indemnitees under Section 13.1, or (d) injury to or death of any person or damage to or destruction of property caused by the Foundation's use or occupancy of the Facility (or any portion thereof) in violation of this Agreement.

Section 13.3 Conditions to Indemnification. With respect to each separate matter brought by any third party against which a party hereto ("**Indemnitee**") is indemnified by the other party ("**Indemnitor**") under this Article 13, the Indemnitor shall be responsible, at its sole cost and expense, for controlling, litigating, defending and/or otherwise attempting to resolve any proceeding, claim, or cause of action underlying such matter, except that (a) the Indemnitee may, at its option, participate in such defense or resolution at its expense and through counsel of its choice; (b) the Indemnitee may, at its option, assume control of such defense or resolution if

the Indemnitor does not promptly and diligently pursue such defense or resolution, provided that the Indemnitor shall continue to be obligated to indemnify the Indemnitee hereunder in connection therewith; and (c) neither Indemnitor nor Indemnitee shall agree to any settlement without the other's prior written consent (which shall not be unreasonably withheld or delayed). In any event, Indemnitor and Indemnitee shall in good faith cooperate with each other and their respective counsel with respect to all such actions or proceedings, at the Indemnitor's expense. With respect to each and every matter with respect to which any indemnification may be sought hereunder, upon receiving notice pertaining to such matter, Indemnitee shall promptly (and in no event more than twenty (20) days after any third party litigation is commenced asserting such claim) give reasonably detailed written notice to the Indemnitor of the nature of such matter and the amount demanded or claimed in connection therewith.

Section 13.4 Applicability of Insurance. The parties acknowledge and agree that they (and their respective indemnitee's) shall look first to the proceeds of any insurance policies carried pursuant to this Agreement for recovery in respect of the obligations of the other party under this Article 13 and, if such proceeds are insufficient, then to such other party. Subject to Section 14.5, notwithstanding any other provision of this Article 13, any party that has primary insurance coverage hereunder shall indemnify any other named or additional insured as to such coverage to the full extent of such coverage. Each insurance policy obtained pursuant to this Agreement shall confirm, by way of endorsement or in any other written form, that the insurer agrees to be bound by the terms of this Section, and will not raise any defense to its primary obligations to reimburse the parties under its policy as a result of the indemnification provisions of this Agreement.

Section 13.5 Survival. The obligations of the parties contained in this Article 13 shall survive the termination or expiration of this Agreement.

ARTICLE 14 INSURANCE; BONDS

Section 14.1 Types and Amount of Coverage. Manager agrees to obtain insurance coverage in the manner and amounts as set forth in Exhibit E, attached hereto, and shall provide to the Foundation promptly following the Effective Date certificates of insurance evidencing such coverage. Manager shall maintain such referenced insurance coverage at all times during the Term, and will not make any material modification or change from these specifications without the prior approval of the Foundation. Each insurance policy shall include a requirement that the insurer provide Manager, the Foundation at least thirty (30) days written notice of cancellation or material change in the terms and provisions of the applicable policy. The cost of all such insurance shall be an Operating Expense of the Facility.

Section 14.2 Rating; Additional Insureds. All insurance policies shall be (i) rated no less than A-VIII in the most recent "Bests" insurance guide, (ii) issued by insurance companies licensed in the State of Louisiana, (iii) issued as primary policies; and (iv) in such form and contain such provisions as are generally considered standard for the type of insurance involved. All insurance companies required to be obtained by Manager pursuant to Section 14.1 shall be endorsed to name the Foundation, as additional insureds. Manager shall require that all users of the Facility, including without limitation licensees, security personnel and concessionaires,

provide to Manager certificates of insurance evidencing insurance appropriate for the types of activities such user is engaged in. If Manager subcontracts any of its obligations under this Agreement, Manager shall require each subcontractor not so covered to secure insurance that will protect against applicable hazards or risks of loss as and in the minimum amounts designated herein, and name Manager and the Foundation as additional insureds.

Section 14.3 Waiver of Subrogation. The parties release each other, their respective contract administrators, and the Foundation Indemnitees and Manager Indemnitees, as applicable, from any claims for Losses and from any right of recovery to any person, the Facility or any fixtures, personal property, improvements and alterations of either party in or about the Facility that are caused by or result from risks insured against under any insurance policies carried by the parties under this Agreement, whether or not the cause thereof results from the negligence (whether ordinary or gross) of any party to this Agreement, the Foundation Indemnitees or Manager Indemnitees, as applicable. The parties agree to cause the issuers of the insurance policies required to be maintained by them hereunder to include waivers of the rights of recovery and subrogation.

ARTICLE 15

MATERIAL CONTRACTS AND COMMITMENTS

Section 15.1 Material Contracts. Manager shall have the authority to enter into any and all contracts relating or pertaining to the Facility and their operations, except that:

(a) Manager shall have no authority to enter into Material Contracts without the prior written consent of the Foundation, which consent shall not be unreasonably withheld;

(b) the Manager or its designated representative shall have the exclusive right to negotiate and enter into all Commercial Rights Contracts and Concession Contracts. The Foundation acknowledges the importance of entering into Commercial Rights Contracts and Concession Contracts with qualified parties as it deems appropriate as soon as commercially practicable and will use reasonable commercial efforts to diligently pursue consummation of such matters; and

(c) all contracts entered into by Manager shall provide that the same are terminable by Manager or the Foundation without penalty and are assignable to the Foundation or its designee without the other contracting party's prior consent, and the Foundation agrees that, upon termination of this Agreement or assignment of such contracts to the Foundation or its designee for any reason, the Foundation or its designee shall assume in writing all such assigned contracts.

Section 15.2 Purchase of Supplies and Services. In connection with the purchase by Manager of equipment, materials, goods, supplies and inventories for the Facility, Manager shall (i) make all such purchases in accordance with all applicable bidding laws and (ii) endeavor to make all such purchases at the best price available to Manager, considering the quantities required and the quality desired, at the time available for the delivery and the sources of supply

whenever possible as part of a volume purchase by Manager. Manager shall pass on to the Facility the full amount of any volume discounts available to Manager.

Section 15.3 Settlement of Claims. Manager agrees to comply with such reasonable procedures regarding the settlement of claims involving the operations of the Facility as the Foundation notifies Manager in writing are in effect from time to time. Manager and the Foundation agree to cause their respective legal counsel to coordinate with one another in connection with the settlement of claims involving the Facility, and all reasonable costs and expenses thereof, including a settlement itself, shall be deemed an Operating Expense in accordance with the terms and provisions of this Agreement. The Foundation must pre-approve all final settlement claims.

ARTICLE 16 MISCELLANEOUS

Section 16.1 Public Disclosure Act. Manager shall cooperate, coordinate with and assist the Foundation in the disclosure, or non-disclosure in the event of an exemption to such disclosure, of any information requested under the Public Disclosure Act, as determined by the Foundation, in its sole discretion.

Section 16.2 No Discrimination. Manager agrees that it will not discriminate against any patron, user, vendor or employee or applicant for employment for work under this Agreement because of race, religion, color, sex, disability, national origin, ancestry, physical handicap, or age. Furthermore, Manager will take affirmative steps to ensure that applicants are employed, and employees are treated during employment, without regard to race, religion, color, sex, disability, national origin, ancestry, physical handicap, or age.

Section 16.3 Use of Facility Names and Logos. Manager shall have the right to use throughout the Term (and permit others to use in furtherance of Manager's obligations hereunder), at no charge, the name and all logos of the Facility, on Manager's stationary, in its advertising of the Facility, and whenever conducting business of the Facility; provided, that Manager shall, and shall cause others permitted to use such names and logos to, (i) take all prudent and appropriate measures to protect the intellectual property rights of the Foundation relating to such names and logos and (ii) use such names and logos in a prudent manner that will not adversely affect the reputation of the Facility. All intellectual property rights in any Facility trade names, trademarks, service marks and logos developed by the Manager or the Foundation shall be and at all times remain the sole and exclusive property of the Foundation. Manager agrees to execute any documentation requested by the Foundation from time to time to establish, protect or convey to the Foundation any such intellectual property rights.

Section 16.4 Force Majeure.

(a) Except as otherwise provided herein, a party shall be excused from performing its obligations under the Agreement for the term of an event of Force Majeure, and such party shall not be deemed to be in default of its performance, to the extent the event of Force Majeure causes the party's inability to perform such obligation

and it provides the other party with written notice within ten (10) days of actual knowledge of the event of Force Majeure and of its inability to perform.

(b) In the event of a delay in performance excused by the operation of this section, such delay shall only be for the period, which the party claiming the delay was actually delayed in the performance of its obligation by the event outside of its reasonable control.

Section 16.5 Gratuities and Kickbacks. It shall be a breach of Manager's obligations hereunder to offer, give, or agree to give any person, entity or any employee of the Foundation or (or former employee of the Foundation) a gratuity, tickets, success fee, commission, anything else of value or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of any purchase request, influence in the consent of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity, in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to or solicitation of any contract or proposal therefor by the Manager from the Foundation.

★ Section 16.6 Assignment.

- (a) Manager may assign, transfer or encumber all or any portion of this Agreement without the prior written consent of the Foundation. *However said assignee transferee shall be legally bound to uphold all Manager responsibilities as*
- (b) The Foundation shall not assign its interest in this Agreement without first obtaining Manager's written consent, which shall not be unreasonably withheld, delayed or conditioned.

Section 16.7 Notices. All notices required or permitted to be given pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, or by generally recognized, prepaid, overnight air courier services, to the address and individual set forth below. All such notices to either party shall be deemed to have been provided when delivered, if delivered personally, three (3) days after mailed, if sent by registered or certified mail, or the next business day, if sent by generally recognized, prepaid, overnight air courier services.

If to the Foundation:

Aaron Broussard

Executive Director

If to Manager:

FMsquared, LLC

C/o Bryan Blaum

*Jaeger clause
instruments
agreement
and I
will be
held
liable
of this agreement
as would the
original manager
undersigned hereto.*

With a copy to:

With a copy to:

and:

Aaron Broussard Foundation

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

Section 16.8 Severability. If a court of competent jurisdiction or an arbitrator determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement (and the application of this Agreement to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

Section 16.9 Prior Agreements. This Agreement (and the exhibits and schedules referenced herein) incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings concerning the subject matter hereof. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations, agreements or understandings, whether oral or written. In the event of a conflict between the terms of this Agreement and the Operations Manual, the terms of this Agreement shall govern and control for all purposes in resolving such conflict.

Section 16.10 Governing Law. This Agreement calls for performance and shall be performable in New Orleans, Louisiana, and is to be construed and enforceable in accordance with the laws of the State of Louisiana, without regard to its conflict of laws principles. Venue for any dispute arising hereunder shall lie exclusively in the State courts of Louisiana. The prevailing party in any litigation or other similar proceeding relating hereto shall be entitled to recover the reasonable attorneys' fees and costs incurred by the prevailing party in such action.

Section 16.11 Mediation. In the event of a dispute between the parties hereunder, the parties shall attempt to resolve such dispute as set forth in Exhibit F.

Section 16.12 Amendments. Neither this Agreement nor any of its terms may be changed or modified, waived, or terminated (unless as otherwise provided hereunder) except by an instrument in writing signed by an authorized representative of the party against whom the enforcement of the change, waiver, or termination is sought.

Section 16.13 Waiver; Remedies. No failure or delay by a party hereto to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent to a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder shall affect or alter the remaining terms of this

Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. Except as may otherwise be expressly limited in this Agreement, the remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity.

Section 16.14 Relationship of Parties. Manager is engaged by the Foundation hereunder as an independent contractor to perform the services described herein, and nothing contained in this Agreement shall be deemed to create, whether express or implied, a partnership, joint venture, employment, or agency relationship between the Foundation and Manager, except as otherwise expressly set forth in this Agreement.

Section 16.15 Compliance with Laws, Policies and Guidelines. Manager, its officers, directors, agents and employees shall comply with all applicable federal, state, local and municipal laws, rules, regulations, ordinances relating to the use and operation of the Facility, including, without limitation, Title III of the American with Disabilities Act ("ADA") and the provision of such auxiliary aids or alternate services as may be required by the ADA; provided, that Manager shall include the costs of such compliance in the Operating Budgets. Furthermore, Manager, its officers, agents and employees shall follow all policies and guidelines of the Foundation currently or hereafter established or modified by the Foundation that the Foundation notifies Manager in writing are applicable to the Facility.

Section 16.16 Liens. Manager shall take all steps necessary to prevent mechanic's or material man's or any other lien from attaching to the Facility, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any mechanic or material man, so long as the work, labor or material was provided at Manager's discretion and the Foundation has supplied funds for the payment or charges thereof in accordance with this Agreement. If any such liens have attached to the Facility, or any part or parcel thereof, Manager shall take all steps necessary to terminate and remove such liens.

Section 16.17 Subordination; Attornment. This Agreement is subject and subordinate to all of the Financial Documents and all other mortgages, deeds of trust or indentures (collectively "**Debt Instruments**") which may now or at any time hereafter affect the Facility in whole or in part. This clause shall be self-operating, and no further instrument of subordination shall be required. In confirmation thereof, upon the Foundation's request, Manager agrees to promptly execute such further assurances as may be reasonably required by any beneficiary or holder of any such Debt Instruments. Notwithstanding the foregoing, if required by any such beneficiary or holder, Manager shall execute, upon demand of the Foundation, any such beneficiary or holder, a subordination to such Debt Instruments. If required by such beneficiary or holder, Manager agrees to sign a modification of this Agreement to comply with the requirements of such beneficiary or holder, but said modification shall not affect in any material adverse manner the rights and liabilities of Manager hereunder. In the event the liens of any such Debt Instruments are foreclosed for any reason or in the event the Foundation's rights shall be terminated such that Foundation cannot or will not perform the Foundation's obligations under this Agreement and any such beneficiary or holder (or purchaser of the interests thereof) (each a "**Successor**") succeeds to the interest of the Foundation under this Agreement, then, Manager shall be bound to such Successor under all of the terms of this Agreement for the balance of the Term remaining with the same force and effect as if such Successor was the Foundation under

the Agreement, and Manager hereby agrees to and does hereby attorn to such Successor, such attornment to be effective and self-operative, without the execution of any further instrument on the part of the parties hereto, or their successors or assigns, immediately upon the Successor succeeding to the interests, rights and obligations of the Foundation hereunder.

Section 16.18 Limitation Liability; No Consequential Damages. Under no circumstance shall the Manager or the Foundation be liable to the other party hereto or any third party for any consequential, speculative, indirect, incidental, punitive or other exemplary damages or for loss of profits or business revenues.

Section 16.19 Approvals and Consents. Unless expressly provided otherwise in this Agreement, any approvals or consents required of either party hereunder may be held or granted in such party's sole discretion. To the extent an approval or consent for a contract or other matter is requested from the Foundation and such approval is not received within ten (10) business days following the Foundation's receipt of such request for approval, such approval shall be deemed to have been denied by the Foundation.

Section 16.20 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document.

Section 16.21 No Third-Party Beneficiaries. Any agreement to perform any obligation or pay any amount and any assumption of liability herein contained, express or implied, shall be only for the benefit of Manager and the Foundation, and their respective successors and permitted assigns, and such agreements and assumptions shall not inure to the benefit of any obligee, whomever, it being the intention of the undersigned parties that no one shall be or be deemed to be a third-party beneficiary of this Agreement, except with respect to the Indemnitees contemplated in Article 13 and as expressly provided for in this Agreement.

Section 16.22 Survivability. All clauses of this Agreement that require performance beyond the expiration or termination of the Agreement shall survive such termination or expiration.

ARTICLE 17 DEFINITIONS

As used in this Agreement, capitalized terms shall have the meanings indicated below unless a different meaning is specifically provided or unless the context otherwise requires.

"**Appropriation Deficiency Notice**" shall have the meaning set forth in Section 8.3(a).

"**Bonds**" shall have the meaning set forth in Section 4.6.

"**Capital Expenditures**" shall mean all expenditures for building additions, alterations, or improvements and for purchases of additional or replacement furniture, machinery, or equipment, where the cost of such expenditure is greater than \$10,000.

"Change of Control" will be deemed to have taken place if more than fifty-one percent (51%) of the beneficial ownership or voting securities of Manager or any surviving entity (including any entity that is a permitted transferee of Manager) is held by any one or more parties that do not own a fifty-one percent (51%) beneficial ownership in or voting securities of Manager as of the Effective Date.

"" shall have the meaning set forth in the Recitals.

"Commercial Rights" shall mean the commercial rights for (i) pouring and branding of food and beverage products for resale; (ii) naming rights, advertising signage and sponsorships (including event sponsorships); (iii) premium seating (including suites, club suites and party suites) and (iv) memorial gifts.

"Commercial Rights Contract" shall mean a contract for any Commercial Rights.

"Comparable Facilities" shall mean one or more indoor theaters in which professional events are planned and events (such as concerts, family shows, conventions and other public events) are held that (i) are comparable in size and use to the Facility, (ii) have been constructed within the time period extending from the date that is five (5) years before the Opening Date until the date that is five (5) years after the Opening Date, and (iii) are located in the United States.

"Concessions" shall mean the business of selling, furnishing or renting, as applicable, of foods, beverages, confections, apparel, programs, sporting equipment, goods, pay-for-play entertainment, novelties or merchandise in, at, from or in connection with the operation of the Facility, no matter the manner in which the same are sold or offered for sale.

"Concessions Contract" shall mean a contract for any Concessions.

"Continuing Contracts" shall have the meaning set forth in Section 4.3(b).

"Debt Instruments" shall have the meaning set forth in Section 17.18.

"Foundation Indemnites" shall have the meaning set forth in Section 13.1.

"Equitable Litigation" shall have the meaning set forth in Exhibit F.

"Event Operating Account" shall have the meaning set forth in Section 9.1.

"Facility" shall have the meaning set forth in the Recitals.

"Facility Operating Account" shall have the meaning set forth in Section 9.2.

"Financial Documents" shall have the meaning set forth in Section 4.3(a).

"First Class Condition" means the condition satisfying each of the following: (a) being in compliance with applicable law as set forth in Section 17.16, (b) being in compliance with the

terms and obligations of any Major User contracts, (c) being in good condition and repair, and (d) meeting the Quality Operating Standard.

"Fixed Management Fee" shall have the meaning set forth in Section 2.1.

"Force Majeure" shall include (a) fire, earthquake, hurricane, wind, flood, act of God, riot, or civil commotion occurring at the Facility, or (b) any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities, war, terrorism, or governmental law and regulation, or (c) labor dispute which results in a strike or work stoppage affecting the Facility or services described in this Agreement or (d) any other cause whether of the kind enumerated above or otherwise which is not reasonably within the control of the parties hereto and which by the exercise of due diligence could not be reasonably prevented or overcome.

"General Manager" shall have the meaning set forth in Section 5.2(a).

"Incentive Fee" shall have the meaning set forth in Section 2.2.

"Indemnitee" shall have the meaning set forth in Section 13.3.

"Indemnitor" shall have the meaning set forth in Section 13.3.

"Initial Term" shall have the meaning set forth in Section 3.1.

"Losses" shall have the meaning set forth in Section 13.1.

"Maintenance" means all work (including all labor, supplies, materials and equipment) ~~which is of a routine, regular, and predictable nature and reasonably necessary for the cleaning~~ and routine upkeep of any property, structures, surfaces, facilities, fixtures (including, but not limited to, media plug-ins and cable and all wiring attendant thereto), equipment or furnishings, or any other component of the Facility in order to preserve such items in a manner reasonably consistent with the Quality Operating Standard. Maintenance shall include, but not be limited to, the following: (i) preventive or routine maintenance that is stipulated in the operating manuals for the components as regular, periodic maintenance procedures; (ii) periodic testing of building systems, such as mechanical, card-key security, fire alarm, lighting, and sound systems; (iii) ongoing trash removal; (iv) regular maintenance procedures for HVAC, plumbing, and electrical and structural systems such as periodic cleaning, lubrication, and changing air filters; (v) touch up painting and removal of graffiti; (vi) cleaning of all areas prior to, during and following all home games of Major Users and other events held at the Facility, including, without limitation, restrooms; (vii) changing of standard, isolated light bulbs, fuses and circuit breakers, as they burn out; and (viii) any other work of a routine, regular and generally predictable nature that is reasonably necessary to keep the Facility in a First Class Condition. Maintenance shall not include any work included within the term "Capital Expenditures" whether or not predictable in nature.

"Major User(s)" shall mean any arts organization, which uses the Facility more than 15 engagements in any one (1) fiscal year.

"Manager Indemnitees" shall have the meaning set forth in Section 13.2.

"Material Contracts" shall mean (a) all contracts with Major Users; (b) all contracts that require payments in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) in any given calendar year, for the design, engineering or construction of improvements, for maintenance or repair of structures, fixtures, furniture or equipment, or for any goods, services or Capital Expenditures; (c) any contracts that permit, or grant to any vendor or other party any right, to advertise or market its role as an exclusive or official provider of goods or services for the Facility; (d) all other contracts which permit the same or a related or similar user or promoter (i) to utilize the Facility for more than eight (21) event days under a single contract in any Operating Year or (ii) that have a term in excess of the Initial Term (excluding renewal options exercisable by Manager or the Foundation) and that may not be canceled by Manager or the Foundation without penalty or premium; (e) contracts for events that are promoted or co-promoted by the Manager or any of its affiliates, or wherein the revenues generated by an event are otherwise shared with Manager or any of its affiliates; (f) any contracts between Manager and any of its affiliates; (g) Commercial Rights Contracts, provided that the Foundation may, in its discretion, approve in advance the form of contract and the financial parameters to be used by Manager in licensing suites and club seats, the execution of which shall not require any further approvals from the Foundation, unless Manager deviates in any material respect from the approved form of contract or financial parameters; (h) Concessions Contracts; and (i) all other contracts that have a term in excess of three (3) years (excluding renewal options exercisable by Manager or the Foundation) and that may not be canceled by Manager or the Foundation without premium or penalty.

"Opening Date" shall have the meaning set forth in the Recitals.

"Operating Budget" shall have the meaning set forth in Section 7.1(a).

"Operating Expenses" shall include, but not be limited to, the Facility expenses incurred by Manager during the Term which are believed by Manager in good faith to be within the scope of its authority and responsibility under this Agreement, on a line item basis, all of which shall be deemed to be expenses of the Facility, including: (1) employee salaries, benefits, bonus and related costs, (2) relocation costs for the General Manager only, provided that if the funds budgeted for the relocation of the General Manager exceed the actual costs of such relocation, then the excess budgeted funds may be used to pay for other relocation costs, (3) cost of operating supplies (including general office supplies), (4) advertising, marketing, group sales, and public relations costs, (5) cleaning expenses, (6) data processing costs, (7) dues, subscriptions and membership costs, (8) printing and stationary costs, (9) postage and freight costs, (10) equipment rental costs, (11) minor repairs, Maintenance, and equipment servicing, not including expenses relating to performing capital improvements, (12) security expenses, (13) telephone and communication charges, (14) travel and entertainment expenses of employees of the Facility for Facility-related business purposes only (all air fares shall be booked as far in advance as possible and shall be coach fare), (15) cost of employee uniforms and identification, (16) exterminator, snow and trash removal costs, if applicable (17) computer, software, hardware and training costs, (18) parking expenses, if any, for full-time employees of the Facility and for part-time employees to the extent such expenses are pre-approved in writing by the Foundation, (19) utility expenses, (20) office expenses, (21) audit, accounting and legal fees, (22) all fidelity

bond and insurance costs, including but not limited to personal property, liability, and worker's compensation insurance, (23) commissions and all other fees payable to third parties (e.g., commissions relating to food and beverage and merchandise concessions services, if applicable), but excluding any expenses that such third parties may be responsible for assuming or paying, (24) performance bond premiums expressly approved by the Foundation, (25) Taxes (as hereafter defined), and (26) travel expenses of non-Facility employees of Manager for Facility-related business purposes specifically requiring an employee's presence at the Facility (all air fares shall be booked as far in advance as possible and shall be coach fare); but Operating Expenses shall expressly exclude, (1) expenses contained in the Pre-Opening Expense Budget, (2) Capital Expenditures, (3) Fixed Management Fees, (4) Incentive Fees and (5) any losses or damages suffered by any party (including Manager) as a result of (a) any act or omission of Manager not taken in good faith or involving Manager's negligence or intentional misconduct; (b) a violation of law by Manager; (c) any transaction from which Manager derives an improper benefit; (d) any uncured breach of this Agreement on the part of Manager; (e) indemnification costs for which Manager is responsible; and (6) the costs of any services (a) that are provided to Manager by FMsquared, LLC or any of its affiliates, including, without limitation, payroll, accounting and computer services, or (b) that Manager may have to obtain from a third party, or develop internally for its own use, to replace any services previously provided to it by FMsquared, LLC or any of its affiliates. The Manager represents and warrants to the Foundation that the Operating Budgets shall not contain any expenses that are unrelated to the Facility or that constitute overhead, general or other administrative expenses attributable to Manager's or its affiliates corporate offices.

"Operating Revenues" shall mean, subject to the exclusions and exceptions set forth herein, all revenues actually received or collected by Manager, as determined on a cash basis under generally accepted accounting principles consistently applied, by Manager's operation of ~~the Facility, including but not limited to (1) event ticket proceeds income, (2) rental income,~~ (3) merchandise income, (4) concessionaire income, (5) advertising sales income, (6) sponsorship income, (7) equipment rental fees, (8) box office income, (9) miscellaneous operating income, (10) parking income, other than parking taxes and (11) any admissions tax proceeds payable to the Foundation; but Operating Revenues shall expressly exclude any amounts received or collected (1) for the benefit of and paid to any third parties (for example, users of the Facility and event promoters); (2) by or for the account of a party other than the Foundation under any Major Contract, whether in connection with rents, royalties, concessions, advertising or otherwise; (3) from the sale of personal seat licenses at the Facility; (4) from any settlements, judgments or awards benefiting the Facility or the Foundation; (5) any portion of ticket sales payable to the performers in or promoters of any event in the Facility or the portion of such ticket sales, if any, payable as a commission to any entity or person providing ticket distribution services, for and on behalf of and actually paid to a user of the Facility; (6) applicable excise, sales, occupancy and use taxes, or similar government taxes, duties, levies, or charges collected directly from patrons or guests, or as a part of the sales price of any goods, services or displays, such as gross receipts, admission, cabaret, parking or similar or equivalent taxes, (7) receipts from financing, receipts from the sale or other disposition of capital assets and other items not in the ordinary course of the Facility's operations and income derived from securities and other property acquired and held for investment; (8) receipts from awards or sales in connection with any taking, from other transfers in lieu of and under the threat of any taking, and other receipts in connection with any taking; (9) proceeds of any insurance, including the

proceeds of any business income insurance (provided that the proceeds of business income insurance shall be included to the extent the same reimburse the Foundation for Facility revenues actually lost); (10) proceeds of advances made by the Foundation to fund net operating deficits from the operation of the Facility and funds advanced for Capital Expenditures; and (11) rebates (including tax rebates from the Foundation, State of Louisiana or other governmental authorities and any interdepartmental funding from other departments of the Foundation in the nature of reimbursements or otherwise), discounts or credits of a similar nature.

"Operating Year" shall have the meaning set forth in Section 3.1.

"Operations Manual" shall have the meaning set forth in Exhibit A-1.

"Pre-Opening Period" shall have the meaning set forth in Section 3.1.

"Pre-Opening Expense Budget" shall have the meaning set forth in Section 6.1.

"Quality Operating Standard" means the standard of quality or performance with respect to the ongoing Maintenance, operation and management provided at Comparable Facilities.

"Senior Management" shall mean the General Manager, Director of Sales and Marketing, Director of Operations.

"Successor" shall have the meaning set forth in Section 17.18.

"Taxes" shall have the meaning set forth in Exhibit A-2.

~~**"Term"** shall have the meaning set forth in Section 3.1.~~

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
WITH SIGNATURE PAGE TO FOLLOW]

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

ATTEST:

Aaron Broussard Foundation

Name:

By: _____
Name: _____
Its: _____

ATTEST:

FMsquared, LLC

By: FMsquared, LLC

Name:

By: _____
Bryan T. Blaum, President

EXHIBIT A-1
PRE-OPENING DUTIES

During the Pre-Opening Period, Manager shall perform, subject to the terms of the Agreement, the following duties:

(a) Develop an operations manual for the Facility (the "**Operations Manual**"), which shall contain recommended terms with respect to the management and operation of the Facility following the Opening Date, including policies and procedures to be implemented in operating the Facility.

(b) Establish prices, rates and rate schedules for user, license, concessions, occupancy, and advertising agreements, and booking commitments, at the Facility. Manager shall cooperate with any third party as may be required in such Continuing Contracts or Material Contracts in establishing such schedules and commitments and evaluate comparable charges for similar goods and services at similar and/or competing facilities.

(c) Select providers of Commercial Rights and Concessions at the Facility, subject to approval of Foundation, and prepare RFPs or RFQs in connection with the bidding for such services.

(d) Subject to the terms of Section 1.5 and Article 16, as agent for the Foundation, procure, negotiate, execute (as agent on behalf of the Foundation), administer and assure compliance with service contracts with respect to the Facility, including without limitation contracts for ticketing, engineering services, electrical, steam, gas, fuel, maintenance, telephone, staffing personnel including guards and ushers, extermination and other services which are deemed by Manager to be either necessary or useful in operating the Facility following the Opening Date. All such agreements shall provide for termination in the event the Facility is not constructed or completed for any reason.

(e) Subject to the terms of Section 1.5 and Article 16, as agent for the Foundation, procure, negotiate, execute (as agent on behalf of the Foundation), administer and assure compliance with vendor, concessions and merchandising agreements, user/rental agreements, booking commitments, licenses, and all other contracts or agreements required in the ordinary course of business in operating the Facility. All such agreements shall provide for termination in the event the Facility is not completed for any reason.

(f) Require that all material vendor/license agreements entered into by Manager during the Term contain standard indemnification, insurance, assignment and termination provisions in form reasonably acceptable by Manager, and provide the Foundation with a copy of all such agreements within five (5) business days of their date of execution.

(g) Develop and recommend a proposed inventory of furniture, fixtures and equipment to be used at the Facility, and assist the Foundation with its procurement of such furniture, fixture and equipment. To the extent the Foundation request that Manager procure such items, they shall be purchased by Manager for the Facility with no mark-up.

(h) Prepare and submit to the Foundation a list of operating supplies necessary for the start-up of the Facility, and assist the Foundation with its procurement of such operating supplies. To the extent the Foundation request that Manager procure such items, they shall be purchased by Manager for the Facility with no mark-up.

(i) Advise the Foundation as soon as possible on any construction and operational issues with respect to the Facility that may arise during the Term. The Foundation acknowledges that Manager's employees, agents and subcontractors are not, nor do they purport to be, certified architects, engineers or general contractors, and that any advice concerning construction will be limited to the operational aspects of such construction.

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

(k) Develop, a pre-opening and operational sales, marketing, public relations, advertising, promotion, and event booking strategies and plans aimed at maximizing Operating Revenues from the Facility.

(l) Plan, promote and execute, in conjunction with the Foundation, "grand opening" events at or for the Facility.

(m) Engage, supervise and direct all personnel at the Facility that Manager deems necessary to perform the pre-opening services described herein, and conduct staff planning, retention and training programs with respect to such personnel as determined to be necessary by Manager in its sole discretion.

~~(n) Maintain detailed, accurate and complete financial and other records of all its activities under this Agreement in accordance with generally accepted accounting principles, which records shall be made available to the Foundation, and their respective representatives upon request in accordance with Article 10 of the Agreement.~~

(o) Submit to the Foundation in a timely manner financial and other reports detailing Manager's activities in connection with the Facility, as required in the Agreement.

(p) Subject to the terms of the Agreement, the Operating Budgets and the scope of Manager's authority under the Agreement, cause such other acts and things to be done with respect to the Facility, as determined by Manager in its reasonable discretion, to be necessary for the management and operation of the Facility prior to the Opening Date.

**EXHIBIT A-2
POST-OPENING DUTIES**

Manager's duties following the Opening Date, all of which are subject to the terms of the Agreement, shall include the following:

(a) Manage all aspects of the Facility in accordance with the Operations Manual and the terms of this Agreement, including but not limited to managing purchasing, payroll, fire prevention, security, crowd control, routine repairs, preventative maintenance, janitorial services, promotions, advertising, energy conservation, security, box office, admission procedures, parking, and general user services.

(b) Establish and adjust prices, rates and rate schedules for user, license, concessions, occupancy, and advertising agreements, and booking commitments, at the Facility, which shall be consistent with the terms of any Continuing Contracts or Material Contracts. Manager shall cooperate with any third party as may be required in such Continuing Contracts or Material Contracts in establishing such schedules and commitments and evaluate comparable charges for similar goods and services at similar and/or competing facilities.

(c) Subject to the terms of Section 1.5 and Article 16, as agent for the Foundation, procure, negotiate, execute (as agent on behalf of the Foundation), administer and assure compliance with service contracts with respect to the Facility, including without limitation contracts for ticketing, engineering services, electrical, steam, gas, fuel, maintenance, telephone, staffing personnel including guards and ushers, extermination and other services which are deemed by Manager to be either necessary or useful in operating the Facility.

(d) Subject to the terms of Section 1.5 and Article 16, as agent for the Foundation, ~~procure, negotiate, execute (as agent on behalf of the Foundation), administer and assure~~ compliance with vendor, concessions and merchandising agreements, user/rental agreements, booking commitments, licenses, and all other contracts or agreements required in the ordinary course of business in operating the Facility.

(e) Require that all material vendors and licensees of the Facility execute vendor/license agreements containing standard indemnification, insurance, assignment and termination provisions in form, and provide the Foundation with a copy of all such agreements within five (5) business days of their date of execution.

(f) Provide standard form user/rental agreements and license agreements for use at or with respect to the Facility. The Foundation acknowledges that such form contracts will require review by the Foundation counsel or other local counsel, and that, other than as set forth in Section (n) below, Manager's sole responsibility with regard to providing legal advice or assistance hereunder shall be to provide such standard form contracts.

(g) Operate and maintain the Facility, including the equipment utilized in connection with its operation and any improvements made during the Term, in the condition and manner specified in Section 1.4.

(h) Arrange for and otherwise book events at the Facility in accordance with a booking schedule to be developed by Manager. Manager shall cooperate with any third party as may be required in such Continuing Contracts or Material Contracts in establishing such booking schedules.

(i) Hire or otherwise engage, pay, supervise, and direct all personnel Manager deems necessary for the operation of the Facility in accordance with Article 5 of the Agreement, and conduct staff planning, retention and training programs as determined to be necessary by Manager in its sole discretion.

(j) Maintain detailed, accurate and complete financial and other records of all its activities under this Agreement in accordance with generally accepted accounting principles, which records shall be made available to the Foundation, the State Auditor's Office and their respective representatives upon request in accordance with Article 10 of the Agreement.

(k) Submit to the Foundation in a timely manner financial and other reports detailing Manager's activities in connection with the Facility as set forth in the Agreement.

(l) Prepare a proposed Operating Budget and Capital Expenditures budget and submit such proposed plans and budgets to the Foundation, both in accordance with Articles 7, 10 and 11 of the Agreement.

(m) Pay in a timely fashion when due all Operating Expenses in the Operating Budget and other expenses approved by the Foundation that are incurred in connection with the operation, Maintenance, supervision and management of the Facility from the Facility Operating Account.

~~(n) After consultation with the Foundation's legal counsel, if requested by the Foundation and at the Foundation's reasonable cost and expense, institute, defend, and settle (subject to the terms of Section 16.3) in good faith any and all legal actions or proceedings concerning the operation of the Facility, including without limitation actions or proceedings to collect charges, rentals or other income generated by the Facility and due to the Foundation, or to cancel or terminate any agreement pertaining to the Facility, pursuant to the terms thereof, for the breach or default thereunder by the other party.~~

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

(p) Collect, deposit and hold in escrow in the Event Operating Account any ticket sale revenues which it receives in the contemplation of or arising from an event pending the completion of the event, as more fully described in Section 9.1 of the Agreement.

(q) Collect in a timely manner and deposit in the Facility Operating Account all Operating Revenues, subject to any monthly sweeps, and disburse to accounts designated by Foundation all other revenues that do not constitute Operating Revenues.

(r) Timely pay from the Facility Operating Fund any and all governmental assessments, franchise fees, excises, license and permit fees, levies, charges and taxes, of every kind and nature whatsoever, which at any time during the Term may be assessed, levied, or imposed on, or become due and payable out of or in respect of, (i) activities conducted on behalf of the Foundation at the Facility, including without limitation the sale of concessions, the sale of tickets, and the performance of events (such as any applicable sales and/or admissions taxes, use taxes, excise taxes, occupancy taxes, employment taxes, and withholding taxes), or (ii) any payments received from any holders of a leasehold interest or license in or to the Facility, from any guests, or from any others using or occupying all or any part of the Facility (collectively, "Taxes").

(s) Establish and maintain an ongoing relationship with various local boards and committees.

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

(u) Prepare, maintain and implement on a regular basis, a marketing plan for the advertising and promotion of the Facility and Facility events.

(v) Manager shall coordinate with third parties to sell, license, or otherwise grant any of the Commercial Rights or Concessions at or in connection with the Facility.

(w) Immediately prior to the Opening Date, cause a written inventory to be taken of all furniture, fixtures, office equipment, supplies, tools and vehicles at the Facility, and deliver a written report of the foregoing to the Foundation. Manager shall document all major damage to, or loss in, such inventory during the Term as soon as such damage or loss is discovered by Manager, and Manager shall promptly notify the Foundation of such damage or loss and the cost for replacement of such items.

(x) Subject to the terms of Article 16, purchase, on behalf of the Foundation and with Foundation funds, and maintain during the Term all materials, tools, machinery, equipment and supplies necessary for the operation of the Facility.

(y) Make and be responsible for all routine and minor repairs, Maintenance, preventative Maintenance, and equipment servicing. Any replacement of an item in inventory, or any new item added to the inventory, which is paid for with Foundation funds or as an Operating Expense or Capital Expenditure, shall be deemed the property of the Foundation.

(z) Subject to the terms of the Agreement, the Operating Budgets and the scope of Manager's authority under the Agreement, cause such other acts and things to be done in and about the Facility as determined by Manager in its reasonable discretion to be necessary for the operation, control, supervision, direction and maintenance of the Facility.

**EXHIBIT B
INCENTIVE FEE**

* * * *

**ATTACHMENT 1
PRO FORMA FINANCIAL STATEMENTS**

EXHIBIT C
PRE-OPENING EXPENSE BUDGET

**EXHIBIT D
INSURANCE**

- At all times during the Term, Manager shall:

(a) maintain commercial general liability insurance, including products and completed operations, bodily injury and property damage liability, contractual liability, independent contractors' liability and personal and advertising injury liability against claims occurring on, in, or about the Facility, or otherwise arising under this Agreement;

(b) maintain umbrella or excess liability insurance over all liability policies;

(c) maintain commercial automobile liability insurance, including coverage for the operation of owned, leased, hired and non-owned vehicles;

(d) maintain appropriate workers compensation and employer's liability insurance as shall be required by and be in conformance with the laws of the State of Louisiana; and

(e) maintain professional liability insurance and employment practices liability coverage;

- Such liability insurance shall be maintained in the following minimum amounts throughout the Term:

Commercial General Liability

\$1,000,000 per occurrence

~~\$1,000,000 personal and advertising injury~~

\$1,000,000 products-completed operations aggregate

Automobile Liability

\$1,000,000 per accident (PI and PD combined single limit)

\$1,000,000 uninsured/underinsured motorist

Umbrella or Excess Liability Over all Liability Policies

\$2,000,000 per occurrence and aggregate

Workers Compensation

Workers Compensation: Statutory

Employer's Liability: \$100,000 each accident-bodily injury by accident

\$500,000 policy limit-bodily injury by disease

\$100,000 each employee-bodily injury by disease

Professional Liability/Errors & Omissions (Claims Made)

\$1,000,000 each occurrence/aggregate

EXHIBIT E
DISPUTE RESOLUTION PROCEDURES

In the event of a dispute involving any of the terms of, or performance under, the Agreement, the parties shall follow the procedures below:

(a) The parties desire to cooperate with each other in the management and operation of the Facility pursuant to the terms hereof. In keeping with this cooperative spirit and intent, any dispute arising hereunder will first be referred to the parties' respective agents or representatives prior to either party initiating a legal suit, who will endeavor in good faith to resolve any such disputes within the limits of their authority and within forty-five (45) 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 paragraphs (b) and (c) below.

(b) If any dispute between the parties has not been resolved pursuant to paragraph (a) above, the parties will endeavor to settle the dispute by non-binding mediation under the then current Commercial Mediation Rules of the American Arbitration Association 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 paragraph (a) above, the Foundation shall select a neutral third party mediator, who shall be subject to the reasonable approval of Manager. 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.

(c) The parties agree that any mediation proceeding (as well as any discussion pursuant to paragraph (a) above) will constitute settlement negotiations for purposes of the federal and state rules of evidence and will, to the fullest extent permitted by law, 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 herein, 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 therefor in the event such proceeding continues for more than forty-five (45) 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 paragraph (b).

(f) 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. Despite such action, the parties will continue to participate in good faith in the procedures specified in this Exhibit.

(g) All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this Exhibit 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.