

**AGENDA**

**SPECIAL**

**CITY COUNCIL MEETING**

**WEDNESDAY, AUGUST 11, 2021  
(RECESSED MEETING  
FROM AUGUST 4, 2021)**

**5:30 p.m.**

This meeting will be conducted by teleconference.

The public may listen into this meeting by calling the following conference line and then entering the conference code:

**Dial-In Number: (929) 436-2866  
Meeting ID: 381 083 245**

Prayer

Pledge of Allegiance

Roll Call

**ITEMS FOR IMMEDIATE CONSIDERATION:**

**107-20**

Communication from City Attorney re: Proposed Settlement of Pending Litigation concerning the City's Arena and the Proposed 2021 Amendment to the Operating Agreement dated as of July 25, 2000 by and between the City of Bridgeport and Service America Corporation, **FOR IMMEDIATE CONSIDERATION.**

*(This item regarding pending litigation is appropriate for and may be discussed, in whole or in part, in executive session)*

*(Special Note: Item can be found on the City Clerk's website: City Council Agendas/Minutes; City Council; 2020-2021; Full/Minutes/Size; 2021-08-02 pdf)*

**CITY OF BRIDGEPORT**  
**CITY COUNCIL SPECIAL MEETING**

**WEDNESDAY, AUGUST 11, 2021**  
**(RECESSED FROM AUGUST 4, 2021)**

**5:30 P.M.**

This meeting was conducted by Zoom/Teleconference.

**CALL TO ORDER**

Council President Nieves reconvened the Special Meeting of the City Council to order at 5:37 p.m.

**PRAYER**

Council President Nieves asked Council Member Newton to lead the Council in prayer.

**PLEDGE OF ALLEGIANCE**

Council President Nieves asked Council Member Burns to lead those present in reciting the Pledge of Allegiance.

MA said that Mr. Flatto had sent out an email earlier in the day with additional information

**ROLL CALL**

The City Clerk Lydia Martinez called the roll.

130th District:	Scott Burns, Matthew McCarthy
131st District:	Jorge Cruz, Denese Taylor-Moye
132nd District:	Marcus Brown, <i>M. Evette Brantley</i>
133rd District:	Jeanette Herron
134th District:	<i>Michelle Lyons, AmyMarie Vizzo-Paniccia</i>
135th District:	Rosalina Roman-Christy, <i>Mary McBride-Lee</i>
136th District:	Alfredo Castillo, Avelino Silva
137th District:	Maria Valle, Aidee Nieves
138th District:	Maria Pereira, Samia Suliman
139th District:	Eneida Martinez, Ernest Newton

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A quorum was present. During the roll call, there appeared to be no response from the individuals whose names are listed in italics.

Council President Nieves announced that Council Member Vizzo-Paniccia had an excused absence.

**ITEM FOR IMMEDIATE CONSIDERATION:**

**107-20 Communication from City Attorney re: Proposed Settlement of Pending Litigation concerning the City's Arena and the Proposed 2021 Amendment to the Operating Agreement dated as of July 25, 2000 by and between the City of Bridgeport and Service America Corporation, FOR IMMEDIATE CONSIDERATION.**

*(This item regarding pending litigation is appropriate for and may be discussed, in whole or in part, in executive session)*

**\*\* COUNCIL MEMBER HERRON MOVED TO ENTER INTO EXECUTIVE SESSION TO DISCUSS PENDING LITIGATION CONCERNING THE CITY'S ARENA AND THE PROPOSED 2021 AMENDMENT TO THE OPERATING AGREEMENT DATED AS OF JULY 25, 2000 BY AND BETWEEN THE CITY OF BRIDGEPORT AND SERVICE AMERICA CORPORATION.**

Council President Nieves announced that OPED Director Tom Gill, OPM Director Nestor Nkwo, Atty. Mark Anastasi, Atty. LeClerc and Atty. Berchem, would be included in the Executive Session as needed.

**\*\* COUNCIL MEMBER NEWTON SECONDED.**

Atty. Anastasi said that he was on a cell phone and did not know how to enter to Executive Session. Mr. Gaudett said that he would bring Attorney Anastasi in once Mr. Gaudett identified Atty. Anastasi's telephone number.

**\*\* THE MOTION PASSED UNANIMOUSLY.**

The Council entered into Executive Session at 5:45 p.m. They returned to Public Session at 7:27 p.m.

Council President Nieves said that Atty. Berchem would be giving the direction for two amendments.

Atty. Berchem said that Atty. LeClerc had drafted the four items from the discussion. He noted that the base line was Atty. Anastasi's draft motion that was sent out earlier. He said that everyone had the proposed amendment.

Atty. LeClerc introduced himself and then read the following four additional amendments.

1. Increase of \$50,000 to the license fee payment from \$250,000 to \$300,000 per year, Section 5.2 of the Operating Agreement.
2. Increase the ticket fee by .50¢ per ticket with such .50¢ increase going into the City's General Fund. Section 5.2.
3. Capping the R&R account at \$1 million dollars. Once there is a \$1 million dollar balance in the account, all of the ticket fees shall go into the City's General Fund. When the balance of the R&R account goes below \$1 million dollars, \$1.50 per ticket goes into the R&R account until the balance again reaches \$1 million dollars. Section 1.100
4. To reiterate and emphasize the right of the City of Bridgeport to conduct inspections of the premises. Section 7.4 of the original Operating Agreement.

Council Member Newton requested that they make it on a yearly basis. Atty. LeClerc suggested that "on a minimum of a yearly basis".

Council Member Pereira said that she did not have the resolution. Atty. LeClerc said that he believed the resolution was in the July 29th correspondence from Atty. Anastasi, which was sent to the entire Council.

Atty. Anastasi clarified that it was submitted to the City Clerk as part of the original Council package as part of the Executive Summary and the proposed motion was located on the last page of that summary in Subsection I.

**\*\* COUNCIL MEMBER NEWTON MOVED TO ACCEPT THE FOUR (4) AMENDMENTS TO THE CONTRACT WITH THE ISLANDERS.**

**\*\* COUNCIL MEMBER HERRON SECONDED.**

Council Member Burns then offered an amendment for Item 7 linked to Contract 5.7.5, the R&R funding. He requested that it be modified by \$500,000. He was told that the \$200,000 was a minimum and they were authorized to deposit more into the R&R account.

**\*\* COUNCIL MEMBER BURNS MOVED TO INCLUDE AN AMENDMENT TO INCREASE THE R&R FROM \$200,000 TO \$500,000.**

**\*\* COUNCIL MEMBER CRUZ SECONDED.**

Council Member Pereira asked where the money would be coming from. Council Member Burns said that he had discussed this with Nestor, the OPM Director, and the funding could come from

the \$1,750,000 in back rent. This would allow the City not to have to go out for a bond. Discussion followed.

**\*\* THE MOTION TO APPROVE AN ADDITIONAL AMENDMENT TO THE AGREEMENT TO INCREASE THE R&R FROM \$200,000 TO \$500,000 PASSED WITH SIXTEEN (16) IN FAVOR (BURNS, MCCARTHY, CRUZ, TAYLOR-MOYE, BROWN, BRANTLEY, HERRON, ROMAN-CHRISTY, MCBRIDE-LEE, CASTILLO, SILVA, VALLE, NIEVES, SULIMAN, MARTINEZ AND NEWTON) AND ONE (1) OPPOSED (PEREIRA).**

Council President Nieves said that the amendments for the original draft were for five items.

Council Member Pereira asked if the amendments had been sent to the Council Members in writing. Council President Nieves said that they had reviewed this in the Executive Session. The items that the Council were voting on were the ones discussed on the floor.

Ms. Ortiz reminded everyone that they needed to file the changes with the City Clerk.

**\*\* COUNCIL MEMBER BRANTLEY MOVED TO ACCEPT 107-20 COMMUNICATION FROM CITY ATTORNEY RE: PROPOSED SETTLEMENT OF PENDING LITIGATION CONCERNING THE CITY'S ARENA AND THE PROPOSED 2021 AMENDMENT TO THE OPERATING AGREEMENT DATED AS OF JULY 25, 2000 BY AND BETWEEN THE CITY OF BRIDGEPORT AND SERVICE AMERICA CORPORATION AS AMENDED WITH THE FIVE NEW AMENDMENTS.**

**\*\* COUNCIL MEMBER NEWTON SECONDED.**

**\*\* THE MOTION TO ACCEPT ALL FIVE AMENDMENTS AS STATED PASSED WITH SIXTEEN (16) IN FAVOR (BURNS, MCCARTHY, CRUZ, TAYLOR-MOYE, BROWN, BRANTLEY, HERRON, ROMAN-CHRISTY, MCBRIDE-LEE, CASTILLO, SILVA, VALLE, NIEVES, SULIMAN, MARTINEZ AND NEWTON) AND ONE (1) OPPOSED (PEREIRA).**

**\*\* COUNCIL MEMBER HERRON MOVED TO ACCEPT AGENDA ITEM 107-20 COMMUNICATION FROM CITY ATTORNEY RE: PROPOSED SETTLEMENT OF PENDING LITIGATION CONCERNING THE CITY'S ARENA AND THE PROPOSED 2021 AMENDMENT TO THE OPERATING AGREEMENT DATED AS OF JULY 25, 2000 BY AND BETWEEN THE CITY OF BRIDGEPORT AND SERVICE AMERICA CORPORATION AS AMENDED AS FOLLOWED:**

**NOW THEREFORE BE IT RESOLVED THAT**

- 1. THE MAYOR OR THE DIRECTOR OF OPED IS AUTHORIZED AND EMPOWERED TO FINALIZE AND EXECUTE A 2021 AMENDMENT TO**

**OPERATING AGREEMENT MATERIALLY AS SUBMITTED AND THE FINAL FORM SENT TO THE DIRECTOR OF OPED AND THE CITY ATTORNEY AND IS FURTHER AUTHORIZED AND EMPOWERED TO NEGOTIATE AND TO EXECUTE RELATED DOCUMENTS AND TAKE SUCH OTHER REASONABLE NECESSARY ACTIONS IN FURTHERANCE OF THIS MATTER CONSISTENT WITH THE RESOLUTION AND IN ACCORDANCE WITH THE SUBSTANTIVE TERMS OF THE OPERATING AGREEMENT AS AMENDED BY THE 2021 AMENDMENT AND AS HE/SHE MAY DEEM IT TO BE IN THE BEST INTEREST OF THE CITY OF BRIDGEPORT AND;**

- 2. THE CITY ATTORNEY AND/OR HIS DESIGNEE AND OUTSIDE LEGAL COUNSEL FOR THE CITY AND AUTHORIZING AND EMPOWERED SETTLE ANY AND ALL PENDING LITIGATION BETWEEN THE CITY AND THE ARENA TENANTS PENDING BEFORE AN AAA ARBITRATION PANEL OF THE CONNECTICUT SUPREME COURT AND TO EXECUTE THE DELIVERY OF ANY AND OR ALL DOCUMENTS REASONABLY NECESSARY TO ERADICATE SUCH SETTLEMENT.**

**\*\* COUNCIL MEMBER BRANTLEY SECONDED.**

Council Member Pereira said that her constituents regularly tell her about how overburdened they are. She has already knocked on over 1,000 doors during the past few weeks. They thank her for fighting for taxpayers.

The purpose of development is that it benefits the community collectively. Not just the developer, not just the taxpayers, not just the residents but everyone collectively. She added that she felt it was safe to say that over the 20 some odd years of existence, the Bridgeport taxpayers have invested millions of dollars into something that has never returned a dollar. The vast majority of Bridgeport residents, which is about 80%, are black and brown, and the vast majority of them have no interest in hockey games. That is just reality. The vast majority of people who come to watch the games are suburbanites and they don't benefit from it in any way. It has done nothing to generate revenue or to reduce the tax burden on residential homeowners and renters. Renters pay into the taxes.

This does not benefit the City of Bridgeport. It benefits the developer, it benefits the hockey team. It doesn't benefit her constituents and it doesn't benefit residential taxpayers. Because of this, Council Member Pereira said that she would be voting no. She added that she felt the taxpayers were consistently raped by the City.

Council Member Newton said that the City owns the facility, along with the ballpark. Council Member Newton said that he was in the State legislature when this project was being approved.

He fought to bring this to Bridgeport. The shows that were done at the amphitheater were packed to the max. This is an opportunity for Bridgeport and they have to generate revenue to reduce the burden on the taxpayer. The days of G&E and Remington Arms are over. More people went to the amphitheater for the three or four shows than the ball park. He thanked the Council Members who reviewed the contract to make it better for Bridgeport. That is the role of the Council. It is time to stop the conspiracy that everyone is corrupt or on the take. Council Member Newton gave an example of the conspiracy that happened around the WPCA.

It is time to bring businesses to the City. Those residents who don't want to go to the arena don't have to go. The last show was a hip hop show and thousands of children of all colors went and had a great time.

Council Member Newton thanked the Council Members and the attorneys for this. He'll be talking to his constituents about how the arenas will help the City. The Council Members represent just a small part of the City.

Council Member McCarthy said that when the issue first came up, he was skeptical and reluctant to put money into the building. The City would like to become an entertainment center. After being at the amphitheater on opening night, he changed his mind. However, the amphitheater can't do it alone, it needs the arena. The restaurants downtown open and close on a yearly basis. The people that come to the events will help keep the restaurants open. He said that he hoped it would be passed tonight to help the residents. The shows that can't be held in the amphitheater can be held in the arena.

Council Member Brantley said that she did not want to beat a dead horse and wished to encourage all her colleagues to support it. The arena has opened its doors to many entities and groups in the City. As the owners of the building, the City needs to do what it needs to do to fix it up. She asked her fellow Council Members to support the item.

Council Member Martinez said that she lives in Bridgeport and was here when the arena was built. The City has invested a lot of time and money in the arena. The City has neglected other City owned buildings at the Arena. The owners of Wonderland of Ice were presented with an eviction notice during the pandemic. The City of Bridgeport needs to support the business and fix the roof, the doors and other items. It is a shame that they provide funding for the arena but not for the Wonderland of Ice. The children do play hockey at the Wonderland of Ice. While she supported the Webster Arena, she will not be supporting this item tonight.

Council Member Cruz said that he has a day job and can't be out there knocking on doors all day. He agreed with Council Member Martinez about the issues at the skating rink. He noted that the amphitheater requested \$4.5 million dollars when he started on the Council. He did reach out to his constituents via a survey and the results were in support of the amphitheater. He is not on the Council to fight people and wants to work for the entire City of Bridgeport.

Council Member Cruz said that he agreed with Council Member Martinez and would like to see the same effort to get a new Police Station. Things are being held together by band aids. Council Member Cruz said that he was glad Mr. Gill mentioned the Congress Street Bridge. He would like to see the bridge fixed so people who walk and emergency responders don't have to go all the way around to get to the other side. Council Member Cruz said that he was not against entertainment and they have to put the same passion for the arena towards the Wonderland of Ice. No one called him to speak against the arena.

Council Member Herron said that she was glad that they were having the conversation about being slum lords and rectifying the problem, maintain the buildings that the City owns. Wonderland of Ice is a prime example. She said that she had been told that the administration was going to look into this on the Council's behalf.

Council Member Herron said she was concerned that people were talking about outsiders coming into the City to the amphitheater. That's the whole point of the entertainment. It brings other money into the City in order to revitalize it. The residents do go to these venues. The amphitheater is providing discounted tickets to Bridgeport residents just so they can attend the events on a consistent basis.

Trying to deter outsiders because black and brown people can't attend is insulting to Council Member Herron. If someone needs to go to an event, they will call. This is not just about attendance, this is about providing jobs in those facilities. The restaurants were packed during the last two weeks. Why would the Council say they don't want outsiders coming in? There are people who live in Bridgeport who were once outsiders, too. It's important to think about the words they say because they want the tax dollars coming into the City. They want the revenue regardless of whether it is from residents or from outsiders. And that money will help lessen the burden on the taxpayers.

**\*\* THE MOTION TO ACCEPT AGENDA ITEM 107-20 COMMUNICATION FROM CITY ATTORNEY RE: PROPOSED SETTLEMENT OF PENDING LITIGATION CONCERNING THE CITY'S ARENA AND THE PROPOSED 2021 AMENDMENT TO THE OPERATING AGREEMENT DATED AS OF JULY 25, 2000 BY AND BETWEEN THE CITY OF BRIDGEPORT AND SERVICE AMERICA CORPORATION AS AMENDED WITH ALL FIVE AMENDMENTS AS STATED PASSED WITH SIXTEEN (16) IN FAVOR (BURNS, MCCARTHY, CRUZ, TAYLOR-MOYE, BROWN, BRANTLEY, HERRON, ROMAN-CHRISTY, MCBRIDE-LEE, CASTILLO, SILVA, VALLE, NIEVES, SULIMAN, MARTINEZ AND NEWTON) AND ONE (1) OPPOSED (PEREIRA).**



**ADJOURNMENT**

- \*\* COUNCIL MEMBER BRANTLEY MOVED TO ADJOURN.**
- \*\* COUNCIL MEMBER HERRON SECONDED.**
- \*\* THE MOTION TO ADJOURN PASSED UNANIMOUSLY.**

The meeting adjourned at 8:13 p.m.

Respectfully submitted,

Telesco Secretarial Services



OFFICE OF THE CITY CLERK  
RESOLUTION FORM

**IMMEDIATE CONSIDERATION**

*Below to be used for processing of Immediate Consideration items only*

Log ID/Item number: 107-20  
Submitted by: Mark T. Anastasi, Esquire  
Councilmember(s): City Attorney's Office  
Subject: Proposed Settlement of Pending Litigation Concerning the City's Arena and Proposed 2021 Amendment to the Operating Agreement dated as of July 25, 2000 by and between the City of Bridgeport, Connecticut and Service America Corporation.  
Referred to Committee: Immediate Consideration  
City Council Date: August 2, 2021

**Attest:**

*Lydia N. Martinez*

Lydia N. Martinez, City Clerk

08/11/2021 (Special meeting)

Date

**Approved by:**

Joseph P. Ganim, Mayor

Date

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Please Note: Mayor Did Not Sign Report

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New message Delete Archive Junk Sweep Move to Cat

Arena

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AT Anastasi, Mark T  
Fri 8/13/2021 3:07 PM

Like Reply Reply all Forward ...

To: Ortiz, Frances; Martinez, Lydia; Nieves, Aidee  
Cc: Bryan LeClerc <bleclerc@berchemmoses.com>; rberchem@bmdlaw.com



2021 Amendment to Operati...  
58 KB

6 attachments (205 KB) Download all Save all to OneDrive - City of Bridgeport

Attached is the FINAL iteration of (both clean and red-lined versions) of the 2021 Amendment to the Arena Operating Agreement - as approved by the City Counsel on 8/11/21 and subsequently agreed to by the Arena Operator.

Please:

- file with your official records;
- provide a copy to the City's meeting stenographer; and
- distribute to all City Council Members.



Thanks for your assistance.



Sent from my iPhone



Begin forwarded Arena



Ok, will do. Thanks!    Please see attached.    Will do, thank you.



Reply    Reply all    Forward

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## 2021 Amendment to Operating Agreement

Amendment made as of August \_\_, 2021 ("Effective Date") to Operating Agreement (as amended, restated, supplemented, or otherwise modified from time to time, the "Operating Agreement") dated as of July 25, 2000 by and between the City of Bridgeport, Connecticut ("City") and Service America Corporation d/b/a Volume Services America ("VSA"), as predecessor in interest to Harbor Yard Sports and Entertainment, LLC ("HYSE"). Capitalized terms used and not defined herein shall have the meanings assigned to them in the Operating Agreement.

### RECITALS

- A. The City is a public body corporate and politic and a political subdivision of the State of Connecticut.
- B. The City is the owner of a multi-purpose civic arena at 600 Main Street, Bridgeport, CT known as the Webster Bank Arena ("Facility").
- C. On July 25, 2000, the City and VSA entered into the Operating Agreement granting VSA the authority to operate the Facility under the terms and conditions in the Operating Agreement.
- D. The Connecticut Islanders, LLC, formerly d/b/a Bridgeport Sound Tigers ("Sound Tigers") is a Connecticut limited liability company with an office and principal place of business at 600 Main Street, Bridgeport, CT. It is a franchise of the American Hockey League, and an affiliate of the New York Islanders Hockey Club, L.P., a franchise of the National Hockey League.
- E. The Operating Agreement was modified by certain correspondence dated June 22, 2004, a copy of which is attached hereto as Exhibit A, to address parking revenues for hockey operations at the Facility.
- F. The Operating Agreement was further modified by certain correspondence dated July 15, 2004, a copy of which is attached hereto as Exhibit B, to address Naming Rights revenue, the calculation of Direct Operating Costs, and parking revenues and operations at the Facility.
- G. On or about March 11, 2011, VSA, then known as Centerplate, Inc., assigned and transferred all of its rights, title, interest to, and obligations under, the Operating Agreement to the Sound Tigers.
- H. Under City Resolution 28-10, adopted on February 22, 2011, the City consented to the assignment of the Operating Agreement from Service America Corporation d/b/a Volume Services Corporation to Bridgeport Professional Sports, LLC (the predecessor in interest to the

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Sound Tigers), or an affiliate, thereby providing the City's written consent under section 15.2.8 of the Operating Agreement.

I. On or about March 30, 2011, the Sound Tigers assigned and transferred all of their rights, title, interest to, and obligations under, the Operating Agreement to Harbor Yard Sports and Entertainment, LLC ("HYSE"), a Delaware limited liability company with an office and principal place of business at 600 Main Street, Bridgeport, CT.

J. On and after March 30, 2011, the City and HYSE, despite the procedures in the Operating Agreement, did not strictly follow the procedures set forth in the Operating Agreement with regard to Additions and Capital Repairs to the Facility.

K. On or about June 30, 2016, the City served a written notice claiming an Event of Default under the Operating Agreement, alleging (i) non-payment of the License Fee, and (ii) a failure to provide "an adequate accounting of various revenues and expenditures."

L. On or about July 27, 2016, HYSE and the Sound Tigers commenced an action ("Action") against the City in the Superior Court of the State of Connecticut, Judicial District of Fairfield, seeking declaratory, injunctive, and monetary relief; and

M. On or about April 26, 2018, the Sound Tigers and HYSE served and filed a Demand for Arbitration against the City with the American Arbitration Association ("Arbitration").

N. The Sound Tigers, HYSE, and the City desire to: resolve all claims and causes of action each has against the other, address all pending issues relating to the Facility, formally amend the Operating Agreement, ensure a harmonious relationship between the City and the Sound Tigers and HYSE, and extend the term of that relationship, to benefit the residents of the City and the fans of the Sound Tigers.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby further amend the Operating Agreement, effective as of the Effective Date, as follows:

1. Article 1 of the Operating Agreement is hereby amended as follows:

(a) Section 1.4 is hereby amended and restated to provide as follows:

**Additions and Capital Repairs** means, collectively, any or all installations, alterations, improvements, and purchases of additional or replacement furniture, machinery, or equipment at the Facility, in one or a series of transactions having an aggregate cost in excess of \$5,000, with a depreciable life, according to generally accepted accounting principles, in excess of eighteen (18) months, and expenditures for maintenance or repairs, in one or a series of transactions having an aggregate cost in excess of \$5,000, that extend the useful life of the assets being maintained or repaired for a period in excess of eighteen (18) months.

Additions and Capital Repairs shall be paid from the Renewal and Replacement Account.

(b) Section 1.9 is hereby amended and restated to provide as follows:

**American Hockey League** or **AHL** means the American Hockey League or other professional hockey league, provided such professional hockey league is equal or superior to the American Hockey League.

(c) Sections 1.50 and 1.51 are hereby deleted and the following is substituted in their place:

“1.50. Reserved”

“1.51. Reserved”

(d) Section 1.61 is hereby deleted and the following is substituted in its place:

“1.61. Reserved”

(e) Section 1.79 is hereby amended and restated to provide as follows:

**Operations Start Date** has the meaning set forth in Section 2.6, and is stipulated and agreed by the City and HYSE to be October 9, 2001.

(f) Section 1.80 is hereby amended and restated to provide as follows:

**Operator** means HYSE or its Affiliate and its permitted successors and assigns.

(g) Section 1.85 is hereby deleted and the following is substituted in its place:

“1.85. Reserved”

(h) Section 1.100 is hereby amended and restated to provide as follows:

**Renewal and Replacement Contribution(s)** means the contributions into the Renewal and Replacement Account, to be deposited by the Operator on behalf of the parties, equal to (a) the sum of one dollar and fifty cents (\$1.50) per each ticket sold per Event (other than City Events and games and practices of the Team and its National Hockey League affiliate (currently the New York Islanders) in the Facility per Fiscal Year, and (b) the Billboard Revenues, subject to aggregate maximum annual billboard contributions (pro-rated for any partial Fiscal Year and for any Abatement Period) of \$250,000 for each of the remaining years of the Term. At any such time as the balance of the Renewal and Replacement Account is \$1,000,000 or more, the Event ticket fees of one dollar and fifty cents (\$1.50) per each ticket sold per Event (other than City Events and games and practices of

the Team and its National Hockey League affiliate (currently the New York Islanders) shall be forwarded to the City for deposit into its general fund.

(i) Section 1.107 is hereby deleted and the following is substituted in its place:

“1.107. Reserved.”

(j) Section 1.112 is hereby amended and restated to provide as follows:

1.112 **Team** means the AHL franchise of The Connecticut Islanders, LLC (currently known as the Bridgeport Islanders).

(k) Article 1 of the Operating Agreement is hereby further amended by inserting the following provisions at the end thereof:

Section 1.117 **Additional Definitions:**

(a) “**Back of House Renovations**” has the meaning set forth in Section 20.8.1 hereof.

(b) “**Billboard Revenues**” means the twenty-five percent (25%) share of the Rent, as defined in a certain “Billboard Lease” dated as of June 27, 2012 among the City, HYSE, and Independent Operator II, LLC, which was approved by City Council resolution on May 21, 2012, for the illuminated digital sign near the entrance to the Facility and the Intermodal Garage.

(c) “**Construction Manager**” means the individual or team selected by the City for the Renovations.

(d) “**Defects**” has the meaning set forth in Section 20.4.3 hereof.

(e) “**Design and Construction Meeting(s)**” has the meaning set forth in Section 20.2.3 hereof.

(f) “**Intermodal Garage**” has the meaning set forth in Section 18.13.3 hereof.

(g) “**Operator Funding**” has the meaning set forth in Section 20.9.2 hereof.

(h) “**Phase I Funding**” has the meaning set forth in Section 20.8.1 hereof.

(i) “**Phase I Renovations**” has the meaning set forth in Section 20.1 hereof.

(j) “**Phase I Renovations Schedule**” has the meaning set forth in Section 20.2.1 hereof.

- (k) “**Phase II Funding**” has the meaning set forth in Section 20.9.1 hereof.
- (l) “**Phase II Renovations**” has the meaning set forth in Section 20.1 hereof.
- (m) “**Phase II Renovations Schedule**” has the meaning set forth in Section 20.2.1 hereof.
- (n) “**Punch List**” has the meaning set forth in Section 20.4.3 hereof.
- (o) “**Renovations**” has the meaning set forth in Section 20.1 hereof.
- (p) “**Renovations Documents**” has the meaning set forth in Section 20.2.2 hereof.
- (q) “**Renovations Schedule**” has the meaning set forth in Section 20.2.1.
- (r) “**Surface Lots**” has the meaning set forth in Section 18.13.1 hereof.

2. Article III of the Operating Agreement is hereby amended and restated to provide as follows:

### 3.1 Commencement and Term

The Term (“Term”) of this Agreement shall commence on the date hereof (“Agreement Commencement Date”) and shall expire on the thirtieth (30<sup>th</sup>) anniversary of the Operations Start Date, unless earlier terminated pursuant to the terms of this Agreement; provided, however, that the Expiration Date shall be extended for a period equal to the aggregate of every Abatement Period or portion thereof having a duration of at least ninety (90) days.

### 3.2 Option to Extend

[Intentionally Deleted]

3. Section 4.1 of the Operating Agreement is hereby amended by adding the following sentence at the end thereof:

The City previously consented to the delegation of certain duties and responsibilities of the Operator to OVG Facilities, LLC.

4. Section 4.6.11 of the Operating Agreement is hereby amended and restated to provide as follows:

4.6.11 selling, licensing, or otherwise arranging for Advertising within or without the Facility; provided, however, that unless restricted by law, the Operator shall



not permit tobacco or firearms products to be sold, advertised, or marketed in or outside the Facility or to be visibly involved in any manner with any of the Events at the Facility. "Tobacco" or "tobacco products" means any product containing, made or derived from tobacco or nicotine, whether natural or synthetic, that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, snorted, sniffed, absorbed, dissolved, inhaled or injected by any other means, included, but not limited to cigarettes, e-liquids, cigars, little cigars, pipe tobacco, chewing tobacco, snuff, or snus. "Tobacco" or "tobacco products" also means electronic delivery systems, including any device that can be used to deliver aerosolized or vaporized nicotine or any other substance to the person inhaling from the device including, but not limited to, e-cigarettes, e-cigars, e-pipes, vapor products or e-hookahs. "Tobacco" or "tobacco products" also means any component or accessory used in the consumption of tobacco products, whether or not they contain nicotine including, but not limited to, filters, cartridges, pods, pens, rolling papers, or pipes. "Tobacco" or "tobacco products" does not include drugs, devices, or combination products offered as a tobacco cessation product approved by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act. Exterior signs may only be permitted in compliance with the City's signage ordinances. The City acknowledges that the current exterior advertising comprising a roof advertisement and all other exterior signage as of the Effective Date complies with the City's signage ordinances and may be maintained through the end of the Term.

5. Section 4.9 (Naming Rights) of the Operating Agreement is hereby amended by adding the following provision at the end thereof:

The provisions of this Section 4.9 and of Section 5.4 apply only to an agreement for Naming Rights where there is an express grant of Naming Rights to the Arena and do not apply to revenue or other consideration derived by the Operator from Sponsor Signs, Advertising, signage, billboards, message boards, scoreboards, social media, digital media, logos, product identification, sponsorships, and promotions. The City and Operator acknowledge that, as of the Effective Date, the only agreement for Naming Rights is the agreement between Service America Corporation and Webster Bank, N.A. dated December 6, 2010, as amended, and that agreements for Advertising and Sponsor Signs are not agreements for Naming Rights.

6. Section 5.2 of the Operating Agreement is hereby amended by adding the following provision:

5.2.4 Within fifteen (15) days of the execution of this Amendment, Operator shall pay the City all outstanding past-due License Fees, the annual amount of which was \$250,000, and the current outstanding balance of which is \$1,750,000 through June 30, 2021.

7. Section 5.2.1 of the Operating Agreement is amended and restated in its entirety to read as follows:

5.2.1 Operator shall, in all events and as a priority payment ahead of other creditors, pay the City, in lieu of real and personal property taxes, the sum of \$300,000.00 annually, commencing on the Effective Date and prorated for any portion of a Fiscal Year. The foregoing amount is the payment in lieu of real estate taxes ("PILOT") payable by the Operator.

8. Section 5.7 of the Operating Agreement is hereby amended by adding the following provision:

5.7.5 City's Obligation to Fund Renewal and Replacement Account. The City and the Operator stipulate and agree that the Renewal and Replacement Account balance is, as of the Effective Date, \$0, and that there is no outstanding credit due the Renewal and Replacement Account. Within fifteen (15) days of execution of this Amendment, the City shall fund the Renewal and Replacement Account with \$500,000 by payment of such amount to Operator, which Operator will deposit into the Renewal and Replacement Account. If, during the Term of this Agreement, the Renewal and Replacement Account balance falls below \$100,000, the City shall immediately fund an amount equal to the amount of any shortfall to cause the balance to be restored to \$100,000.

9. Article V of the Operating Agreement is hereby amended by adding the following provision:

5.9 Ticket Fee.

The Operator shall collect and transmit to the City the sum of fifty cents (\$0.50) per each ticket sold per Event (other than City Events and games and practices of the Team and its National Hockey League affiliate (currently the New York Islanders). This amount is in addition to the one dollar and fifty cents (\$1.50) ticket fee set forth in Section 1.100.

10. Article XI of the Operating Agreement is hereby amended by adding the following provision:

6.6 Public High School Graduation Ceremonies.

The Operator shall make the Facility available for annual graduation ceremonies for public high schools located in the City on a rent-free, expense-only basis, subject to priority scheduling of all other Events. The City shall provide reasonable advance notice of the requested dates for each such ceremony, and the Operator shall schedule each such ceremony provided they do not conflict with any other Events scheduled or tentatively scheduled for such dates.

Notwithstanding the foregoing, the Operator may reschedule any such ceremony, with at least two months' notice, if, in the Operator's reasonable judgment, it is necessary to avoid losing a commercial, revenue-producing Event at the Facility. The Operator and the City shall mutually agree on such rescheduled date for the ceremony.

11. Section 7.3.2 of the Operating Agreement is hereby amended by inserting the following provision at the end thereof:

(d) Notwithstanding any other provision of this Agreement, Operator shall, in satisfaction of its obligation under Section 7.3 of this Agreement, provide to the City, within fifteen (15) days of the Effective Date, unaudited financial reports and statements for each of the 2018, 2019, and 2020 Fiscal Years, prepared in accordance with generally accepted accounting principles. For the 2021 Fiscal Year through the end of the Term, the financial reports and statements required by this section shall be accompanied by an auditor's report containing an opinion of the independent certified public accountant preparing the report, which shall be a firm of national reputation selected by the Operator or another firm selected by the Operator and reasonably acceptable to the City.

12. Section 7.4 of the Operating Agreement is amended and restated in its entirety to read as follows:

7.4 Additional City Audits.

At the option of the City, in addition to the annual audit, the City may conduct an audit or examination of the Facility or the Records, at any time upon reasonable notice to the Operator, any such examination or audit to be made solely at the cost of the City. Such examination of the Facility by the City shall occur at a minimum of one time per year, provided that, it shall not be an Operator Event of Default if the City shall not conduct such annual Facility examination.

13. Section 15.1.8 of the Operating Agreement is hereby amended by adding the following sentence at the end thereof:

The Operator consents to the renovation of the existing ballpark adjacent to the Facility into a concert amphitheater ("Amphitheater"), and waives its rights under this Section 15.1.8 of the Operating Agreement as to such renovation and operation of the Amphitheater, provided that the manifested capacity for the Amphitheater does not exceed 7,000.

14. Section 15.2 of the of the Operating Agreement is hereby amended by inserting the following provision:

15.2.9 Team Commitment. The Operator agrees that it shall cause the Team to play substantially all of its home games at the Facility for the Term (the "Team

Commitment”), provided, however, that if the City has not (i) completed the Renovations by June 30, 2026, or (ii) expended \$30,000,000 (with funding as set forth in Section 20.9.2 of the Operating Agreement) for the Renovations by June 30, 2026, or (iii) fully authorized the total amount of \$30,000,000 (with funding as set forth in Section 20.9.2 of the Operating Agreement) for the Renovations by June 30, 2026 and expended such sum by June 30, 2027, the Operator shall be relieved of the Team Commitment. In the event the Operator is relieved of the Team Commitment, the City waives its rights under, and the Team is relieved of its obligations under, Article V of the License Agreement.

15. Section 15.3 of the Operating Agreement is hereby amended by inserting the following provision:

15.3.5 State Admission Tax. The City and the Operator shall, individually and collectively, make good-faith, reasonable efforts to exempt the Facility from, or reduce the amount of, all State entertainment taxes and surcharges applicable to the Facility.

16. Section 18.1 of the Operating Agreement is amended and restated in its entirety to read as follows:

18.1 Notice.

All notices and other communications pursuant to this Agreement shall be in writing and shall be deemed properly given upon delivery, or refusal of delivery, if sent by personal delivery, overnight courier service with guaranteed next day delivery or by certified United States mail, postage prepaid, return receipt requested, addressed as follows:

If to City:

Mayor, City of Bridgeport  
City Hall  
45 Lyon Terrace  
Bridgeport, CT 06604

and

City Attorney  
City of Bridgeport  
999 Broad Street  
Bridgeport, CT 06604

and

Director  
Office of Planning and Economic Development  
City of Bridgeport  
999 Broad Street

Bridgeport, CT 06604

with a copy to:

Robert L. Berchem, Esq.  
Berchem Moses, P.C.  
75 Broad Street  
Milford, CT 06460

If to Operator:

President  
Harbor Yard Sports and Entertainment, LLC  
600 Main Street  
Bridgeport, CT 06604

with a copy to:

Zachary H. Klein, Esq.  
General Counsel  
New York Islanders Hockey Club, L.P.  
15 Verbena Avenue  
Floral Park, NY 11001

Each party may, by written notice to the other in accordance with the procedure set forth in this Section, specify a different address for subsequent notice purposes.

17. Section 18.13.1 of the Operating Agreement is hereby amended and restated to provide as follows:

18.13.1 Surface Lots. The City shall be solely responsible for the provision of parking for the use of persons attending Events at the Facility and for users of the Facility. For Events at the Facility, the City shall make available to Operator, at no cost to Operator, for a period beginning two hours before each Event and ending two hours after each Event, the surface parking lots ("Surface Lots") adjacent to the Facility, comprising approximately 750 parking spots, and consisting of (a) parking lot P, designated as Block 507, Lot 14, comprising approximately 3.8 acres, and bounded by Allen Street, Lafayette Street, Frontage Road and Broad Street, and (b) parking lot D, designated as Block 506, Lot 1K and 1A, comprising approximately 2.7 acres and bounded by Allen Street, Broad Street, Railroad Avenue, and Lafayette Street. During this period for each Event, the Operator shall be the sole operator of the Surface Lots. In the event Operator charges a parking fee for use of the Surface Lots, it shall pay to the City thirty (30) percent of the gross parking fee revenues. If the Operator incorporates the parking fee into the cost of event tickets, the parties agree to negotiate a fair and equitable allocation in order to reflect the thirty (30) percent payment due the

City. The City shall at all times retain sole responsibility for the cleaning, clearing, and maintenance of the Surface Lots.

18. Section 18.13 of the Operating Agreement is hereby amended by inserting the following provisions:

18.13.3 Intermodal Garage. The City shall use its best efforts to continue to allow persons attending Events at the Facility and users of the Facility to have access to the Intermodal Transportation Center Garage adjacent to the Facility (the "Intermodal Garage").

18.13.4 Substitute Parking. In the event the City desires to utilize the Surface Lots for development or alternative purposes, prior to such use the City shall provide reasonable alternative parking in close proximity to the Facility, at no cost to the Operator, with at least as many new dedicated spaces as are included in the Surface Lots. This may include the Intermodal Garage, public parking facilities, including on-street parking spaces, metered parking spaces, surface parking lots, structured parking garages, parking spaces in privately or publicly owned parking garages, or parking accommodations in other areas within a one-half (1/2) mile radius of the front entrance of the Facility.

19. The following Article XX is hereby added to the Operating Agreement:

## **ARTICLE XX RENOVATION OF FACILITY**

20.1 City's Renovations Obligations.

The City shall cause the design, construction, and completion of the improvements and renovations to the Facility set forth in the schedule attached as Exhibit 20.1, which contains a narrative description of the improvements and renovations (collectively, the "Renovations"), and divides the Renovations into "Phase I Renovations" and "Phase II Renovations." The City acknowledges that the Renovations are estimated to cost \$30,000,000 and are solely the City's obligation to complete. In addition to the \$15,000,000 which the City has available for the Phase I Renovations as specified in Section 20.8.1 herein, the City shall use its best efforts to obtain funding for the Phase II Renovations. The parties agree the Renovations are intended to restore the Facility to a "like-new" condition. The City shall cause the Renovations to be performed in conformance with good engineering practices, in a timely manner, and in accordance with the requirements of this Agreement and the requirements of all applicable Laws. The City intends to act through its Office of Planning & Economic Development to fulfill the City's obligations set forth in this Article XX. Without limiting the generality of the foregoing, the City shall:

20.1.1 manage and direct the Renovations, at its expense, and coordinate the work of all Persons involved therein, including the preparation of all submissions necessary in connection with all necessary permits and approvals to be obtained by the City;

20.1.2 secure all such permits and approvals;

20.1.3 obtain, pay for, and maintain the insurance coverage required of the City pursuant to Article XI hereof;

20.1.4 enter into such contracts and subcontracts as it deems useful and advisable to cause the Renovations to be completed; and

20.1.5 cause the Renovations to be completed in a good and workman like manner in accordance with the Renovations Schedule and the Renovations Documents and in accordance with the terms of this Agreement.

20.2 Schedule of Completion and Renovations Documents.

20.2.1 The City shall begin designing, permitting (if required), and construction of the Phase I Renovations immediately upon execution of this Agreement, shall proceed diligently, and shall address such projects in the order listed in Exhibit 20.1 (the "Phase I Renovations Schedule"). Should the cost of any improvements and renovations set forth on the Phase I Renovations Schedule exceed the Phase I Funding, such improvements and renovations will become a part of the Phase II Renovations Schedule. The Phase II Renovations shall be addressed in the order of the projects listed in Exhibit 20.1 as funding becomes available as set forth below in Section 20.9.1 (the "Phase II Renovations Schedule", and together with the Phase I Renovations Schedule, the "Renovation Schedule").

20.2.2 The City shall promptly engage the Construction Manager. Except as set forth in Section 20.4.1 below, the City shall cause the Construction Manager to timely prepare and deliver to the City and the Operator complete and final documents, including drawings and specifications setting forth in detail all requirements for each component of the Renovations (the "Renovations Documents"), for the review and written approval of the parties (which approval shall not be unreasonably withheld, conditioned, or delayed).

20.2.3 The City shall cause the Operator to receive notice of all design and construction meetings ("Design and Construction Meeting(s)"), and copies of all proposed items to be discussed, sufficiently in advance to afford the Operator an opportunity to review such items and to attend and participate in the Design and Construction Meetings. The Operator shall use reasonable efforts to attend all Design and Construction Meetings. The City shall cause the Construction Manager to prepare minutes of each Design and Construction Meeting reflecting the decisions made, approvals given, and objections raised, and shall distribute copies thereof to the parties promptly after each Design and Construction Meeting. These minutes shall be reviewed, amended if necessary, and approved by the City and the Operator at the next Design and Construction Meeting following the distribution thereof.

20.2.4 The parties shall discuss any delays or anticipated delays in meeting the Renovations Schedule and the actual dates on which the various stages and construction indicated on the Renovations Schedule are started and completed at Design and Construction Meetings; provided, however, that no changes from previously-approved Renovations Documents or the Renovations Schedule shall occur unless the City agrees in writing to the change.

20.2.5 If, during construction, the City reasonably determines that any item of the Renovations is not constructed, being timely constructed, installed, or being timely installed, in accordance with the Renovations Documents approved by the parties, or the Operator makes such reasonable determination and provides the City with the reasons that led to the Operator's determination, and the City agrees with such determination or the Construction Manager confirms such nonconformance, the City shall cause any such non-conforming work to be re-executed unless the City and the Operator agree it would be inexpedient to require such re-execution and the City and the Operator agree on an alternate solution satisfying the City and the Operator equitably.

### 20.3 Change Orders.

20.3.1 The Operator may, at any time and from time to time, by a written change order request, request changes to the Renovations within the general scope of construction required by this Agreement. Such changes may include, but are not limited to, changes in the Renovations Documents. The City shall act in good faith in considering the Operator's request for changes and shall provide the Operator with an adequate opportunity to express its views. No such changes shall be made without the City's consent, which consent shall not be unreasonably withheld or delayed.

20.3.2 The City may, at any time and from time to time, by a written change order request, request changes to the Renovations within the general scope of construction required by this Agreement. Such changes may include, but are not limited to, changes to the Renovations Documents. The Operator's consent shall be required for any change that, as reasonably determined by the Operator, will have a financial, operational, or safety impact on the Operator and/or the operation of the Facility. The Operator shall have until the close of business on the fifth (5<sup>th</sup>) Business Day following receipt of such written change order request to reject or approve of such change. Failure by the Operator to respond in writing to the City within such five (5) Business Day period shall be deemed approval of the change. The Operator shall act in good faith in considering requests for changes made by the City. No such change shall be made if: the Operator's rejection of a change order request is related to a financial, operational, or safety impact; includes the Operator's basis for the rejection in reasonable detail; and is provided to the City within the five (5) Business Day period. The Operator may propose an alternative, provided, however, that unless the Operator and the City otherwise agree in writing, no such alternate proposal shall be considered by the City if it would create cost increases. The City may accept or reject any such alternate proposal by the Operator in the City's sole discretion.

20.3.3 Other than as expressly provided in Section 20.3.2 herein, the City may make changes to the Renovations, including, without limitation, changes to the Renovations Documents, at any time and from time to time, in its sole discretion and without the Operator's consent.

### 20.4 Completion of Renovations.

20.4.1 The City shall cause the Construction Manager to notify the Operator in writing not less than thirty (30) days prior to the date the City reasonably projects that a component of the Renovations will be substantially completed. The City shall promptly notify the Operator of changes to the schedule completion dates, as applicable.



20.4.2 The City shall cause the Construction Manager to complete the Renovations in compliance with the Renovations Documents, including the diligent prosecution of any construction warranties and guarantees as provided in Section 20.7.

20.4.3 Within thirty (30) days after completion of a component of the Renovations, the Operator shall prepare a list in writing ("Punch List") of any apparent defects, deficiencies, and/or discrepancies in said component of the Renovations ("Defects"). The City shall cause the Construction Manager to reasonably promptly correct any Defects.

20.4.4 If a Certificate of Occupancy is required for the Renovations or any component thereof, the City shall, no more than sixty (60), and no fewer than thirty (30), days prior to the completion of the Renovations or component thereof, inform the Operator of all items that are likely to cause the "temporary" status of such Certificate of Occupancy, and the City shall provide updates to the Operator whenever it becomes aware of any change in status of each such item. If a temporary Certificate of Occupancy is issued for the Renovations or component thereof, as applicable, the City shall work to obtain a permanent Certificate of Occupancy as diligently and promptly as possible.

20.4.5 As individual components of the Renovations are completed, the City shall deliver to the Operator (a) a certificate of the Construction Manager stating said component is substantially complete and that, if not finally completed, said component can reasonably be expected to be completed with no material disruption to the operations of the Facility, and (b) original or certified copies of all necessary governmental permits and approvals for the use and operation of the applicable component of the Renovations.

20.5 Reserved.

20.6 Delivery of Final Plans.

20.6.1 Promptly following the completion of the Phase I Renovations or the Phase II Renovations, as the case may be, the City shall deliver to Operator, to the extent available, all suppliers' and manufacturers' standards and warranty conditions, maintenance procedures, instructions, aids and other construction-related information required by the Operator to properly operate and maintain the Renovations or applicable component thereof.

20.6.2 The City shall deliver to Operator as soon as reasonably available, but no later than ninety (90) days after the completion of the Phase I Renovations and the Phase II Renovations, as the case may be, (a) up-to-date design specifications and plans and drawings, including all shop drawings and test reports and currently marked "as built" plans and drawings, for such Renovations, and (b) the items described in section 20.6.1 that were not available and delivered on or before the completion of the Phase I Renovations or the Phase II Renovations, as the applicable.

20.7 Construction and Other Warranties.

20.7.1 The City shall assign to the Operator, to the extent permitted (and, for those that cannot be assigned, the City hereby appoints the Operator as its agent to enforce the City's rights under), all construction warranties and guarantees obtained on the construction work

and on all material, equipment, workmanship, or design in connection with the construction and equipping of the Facility. This assignment excludes any warranties and guarantees from the Construction Manager to the City, which are addressed in Section 20.7.2. The City shall cooperate, at the City's expense, with the Operator in enforcing any warranties and guarantees. Notwithstanding anything herein to the contrary, the City shall correct or cause to be corrected all Defects on the Punch List, at the City's sole cost and expense, including, without limitation, the cost of enforcing all such warranties and guarantees relating to such Defects. The City shall retain rights under warranties and guarantees specifically relating to such Defects to enable the City to perform its obligations under the preceding sentence. Sums thereby obtained shall be applied by the City: first, to reimburse the City for reasonable attorneys' fees or reasonable out-of-pocket costs of pursuing the claim; and second, to pay for, or reimburse the Operator for, reasonable expenses incurred by the Operator in repairing, maintaining, or operating the Facility due to Defects in material, equipment, workmanship, or design triggering the warranty or guarantee claim and the Operator's reasonable, out-of-pocket costs incurred in cooperating with the City in any such claim; with the balance, if any, to be paid to the City. All of the Operator's reasonable costs and fees of prosecuting or maintaining any such other enforcement action shall constitute Facility Operating Expenses.

20.7.2 Notwithstanding any other provision in this Agreement to the contrary; the Operator may request in writing that the City enforce any of the warranties or guarantees from the Construction Manager. The City shall respond in writing to any such request. If the City does not respond to such request within ten (10) days of receipt, or responds within such period but does not expressly state it will promptly pursue the warranty or guarantee claims, then the Operator may enforce the warranties or guarantees identified in the request as the agent of the City and at the Operator's expense, and the City hereby appoints the Operator as its agent for such purpose.

20.7.3 All warranties and guarantees applicable to the Renovations shall be described in the Renovations Documents.

## 20.8 Phase I Funding.

20.8.1 The City represents it has \$15,000,000 available for disbursement of the costs of the Phase I Renovations. The City shall use these funds ("Phase I Funding") for the Phase I Renovations, and perform such Phase I Renovations in the order set forth on the Phase I Renovations Schedule. Should the cost of any improvements and renovations set forth on the Phase I Renovations Schedule exceed the Phase I Funding, such improvements and renovations will become a part of the Phase II Renovations Schedule. The Phase I Renovations include a maximum of \$3,300,000 allocated to the "Back of House Renovations", including for the Team campus, artist areas, ancillary locker rooms and related spaces. In the event any portion of the Phase I Funding is remaining after completing the Phase I Renovations, the City shall use such funds to immediately start the Phase II Renovations.

## 20.9 Phase II Funding.

20.9.1 The City shall use its best efforts to fund or cause to be funded, except as provided in Section 20.9.2, all costs of the Phase II Renovations ("Phase II Funding"), except as otherwise provided in Section 20.9.2 of this Agreement. In the event the City has not assembled

the full Phase II Funding by the completion of the Phase I Renovations, the City shall commence and complete the projects of the Phase II Renovations projects as funds become available, rather than wait for the full Phase II Funding to be assembled, and shall commence and complete the projects in the order provided in the Renovations Schedule, as such may be amended pursuant to Section 20.8.1.

20.9.2 The Operator shall contribute \$3,000,000 (“Operator Funding”) to the Phase II Funding, to be disbursed only after the City has paid \$12,900,000 for the Phase II Renovations. Thereafter, the City shall continue to fund the Phase II Renovations until they are completed. The Operator’s claimed existing unreimbursed expenditures of \$900,000 for Additions and Capital Repairs for the Facility shall be a credit against the Operator Funding. In the event that no Operator Funding shall occur, Operator shall not be entitled to payment of such claimed unreimbursed expenditures.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment as of the date and year first written above.

CITY OF BRIDGEPORT

By: \_\_\_\_\_  
Name:  
Title:

HARBOR YARD SPORTS AND  
ENTERTAINMENT, LLC

By: \_\_\_\_\_  
Name:  
Title:

THE CONNECTICUT ISLANDERS, LLC

By: \_\_\_\_\_  
Name:  
Title:

Exhibit 20.1

Renovations

[To be Added]

**2021 Amendment to Operating Agreement**

Amendment made as of August \_\_, 2021 ("Effective Date") to Operating Agreement (as amended, restated, supplemented, or otherwise modified from time to time, the "Operating Agreement") dated as of July 25, 2000 by and between the City of Bridgeport, Connecticut ("City") and Service America Corporation d/b/a Volume Services America ("VSA"), as predecessor in interest to Harbor Yard Sports and Entertainment, LLC ("HYSE"). Capitalized terms used and not defined herein shall have the meanings assigned to them in the Operating Agreement.

**RECITALS**

- A. The City is a public body corporate and politic and a political subdivision of the State of Connecticut.
- B. The City is the owner of a multi-purpose civic arena at 600 Main Street, Bridgeport, CT known as the Webster Bank Arena ("Facility").
- C. On July 25, 2000, the City and VSA entered into the Operating Agreement granting VSA the authority to operate the Facility under the terms and conditions in the Operating Agreement.
- D. The Connecticut Islanders, LLC, ~~formerly~~ d/b/a Bridgeport Sound Tigers ("Sound Tigers") is a Connecticut limited liability company with an office and principal place of business at 600 Main Street, Bridgeport, CT. It is a franchise of the American Hockey League, and an affiliate of the New York Islanders Hockey Club, L.P. (~~"Islanders"~~), a franchise of the National Hockey League.
- E. The Operating Agreement was modified by certain correspondence dated June 22, 2004, a copy of which is attached hereto as Exhibit A, to address parking revenues for hockey operations at the Facility.
- F. The Operating Agreement was further modified by certain correspondence dated July 15, 2004, a copy of which is attached hereto as Exhibit B, to address Naming Rights revenue, the calculation of Direct Operating Costs, and parking revenues and operations at the Facility.
- G. On or about March 11, 2011, VSA, then known as Centerplate, Inc., assigned and transferred all of its rights, title, interest to, and obligations under, the Operating Agreement to the Sound Tigers.
- H. Under City Resolution 28-10, adopted on February 22, 2011, the City consented to the assignment of the Operating Agreement from Service America Corporation d/b/a Volume Services Corporation to Bridgeport Professional Sports, LLC (the predecessor in interest to the

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Sound Tigers), or an affiliate, thereby providing the City's written consent under section 15.2.8 of the Operating Agreement.

I. On or about March 30, 2011, the Sound Tigers assigned and transferred all of their rights, title, interest to, and obligations under, the Operating Agreement to Harbor Yard Sports and Entertainment, LLC ("HYSE"), a Delaware limited liability company with an office and principal place of business at 600 Main Street, Bridgeport, CT.

J. On and after March 30, 2011, the City and HYSE, despite the procedures in the Operating Agreement, did not strictly follow the procedures set forth in the Operating Agreement with regard to Additions and Capital Repairs to the Facility.

K. On or about June 30, 2016, the City served a written notice claiming an Event of Default under the Operating Agreement, alleging (i) non-payment of the License Fee, and (ii) a failure to provide "an adequate accounting of various revenues and expenditures."

L. On or about July 27, 2016, HYSE and the Sound Tigers commenced an action ("Action") against the City in the Superior Court of the State of Connecticut, Judicial District of Fairfield, seeking declaratory, injunctive, and monetary relief; and

M. On or about April 26, 2018, the Sound Tigers and HYSE served and filed a Demand for Arbitration against the City with the American Arbitration Association ("Arbitration").

N. The Sound Tigers, HYSE, and the City desire to: resolve all claims and causes of action each has against the other, address all pending issues relating to the Facility, formally amend the Operating Agreement, ensure a harmonious relationship between the City and the Sound Tigers and HYSE, and extend the term of that relationship, to benefit the residents of the City and the fans of the Sound Tigers.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby further amend the Operating Agreement, effective as of the Effective Date, as follows:

I. Article 1 of the Operating Agreement is hereby amended as follows:

(a) Section 1.4 is hereby amended and restated to provide as follows:

**Additions and Capital Repairs** means, collectively, any or all installations, alterations, improvements, and purchases of additional or replacement furniture, machinery, or equipment at the Facility, in one or a series of transactions having an aggregate cost in excess of \$5,000, with a depreciable life, according to generally accepted accounting principles, in excess of eighteen (18) months, and expenditures for maintenance or repairs, in one or a series of transactions having an aggregate cost in excess of \$5,000, that extend the useful life of the assets being maintained or repaired for a period in excess of eighteen (18) months.

Additions and Capital Repairs shall be paid from the Renewal and Replacement Account.

(b) Section 1.9 is hereby amended and restated to provide as follows:

**American Hockey League or AHL** means the American Hockey League or other professional hockey league, provided such professional hockey league is equal or superior to the American Hockey League.

(c) Sections 1.50 and 1.51 are hereby deleted and the following is substituted in their place:

“1.50. Reserved”

“1.51. Reserved”

(d) Section 1.61 is hereby deleted and the following is substituted in its place:

“1.61. Reserved”

(e) Section 1.79 is hereby amended and restated to provide as follows:

**Operations Start Date** has the meaning set forth in Section 2.6, and is stipulated and agreed by the City and HYSE to be October 9, 2001.

(f) Section 1.80 is hereby amended and restated to provide as follows:

**Operator** means HYSE or its Affiliate and its permitted successors and assigns.

(g) Section 1.85 is hereby deleted and the following is substituted in its place:

“1.85. Reserved”

(h) Section 1.100 is hereby amended and restated to provide as follows:

**Renewal and Replacement Contribution(s)** means the contributions into the Renewal and Replacement Account, to be deposited by the Operator on behalf of the parties, equal to (a) the sum of one dollar and fifty cents (\$1.50) per each ticket sold per Event (other than City Events and games and practices of the Team Bridgeport Islanders and New York Islanders other events hosted by the Team and its National Hockey League affiliate (currently the New York Islanders)) in the Facility per Fiscal Year, and (b) the Billboard Revenues, subject to aggregate maximum annual billboard contributions (pro-rated for any partial Fiscal Year and for any Abatement Period) of \$250,000 for each of the remaining years of the Term. At any such time as the balance of the Renewal and Replacement Account is \$1,000,000 or more, the Event ticket fees of one dollar and fifty cents (\$1.50)



per each ticket sold per Event (other than City Events and games and practices of the Team and its National Hockey League affiliate (currently the Bridgeport Islanders and New York Islanders) shall be forwarded to the City for deposit into its general fund.

(i) Section 1.107 is hereby deleted and the following is substituted in its place:

“1.107. Reserved.”

(j) Section 1.112 is hereby amended and restated to provide as follows:

1.112 **Team** means the AHL franchise of The Connecticut Islanders, LLC (currently known as the Bridgeport Islanders).

(k) Article I of the Operating Agreement is hereby further amended by inserting the following provisions at the end thereof:

Section 1.117 **Additional Definitions:**

- (a) “**Back of House Renovations**” has the meaning set forth in Section 20.8.1 hereof.
- (b) “**Billboard Revenues**” means the twenty-five percent (25%) share of the Rent, as defined in a certain “Billboard Lease” dated as of June 27, 2012 among the City, HYSE, and Independent Operator II, LLC, which was approved by City Council resolution on May 21, 2012, for the illuminated digital sign near the entrance to the Facility and the Intermodal Garage.
- (c) “**Construction Manager**” means the individual or team selected by the City for the Renovations.
- (d) “**Defects**” has the meaning set forth in Section 20.4.3 hereof.
- (e) “**Design and Construction Meeting(s)**” has the meaning set forth in Section 20.2.3 hereof.
- (f) “**Intermodal Garage**” has the meaning set forth in Section 18.13.3 hereof.
- (g) “**Operator Funding**” has the meaning set forth in Section 20.9.2 hereof.
- (h) “**Phase I Funding**” has the meaning set forth in Section 20.8.1 hereof.
- (i) “**Phase I Renovations**” has the meaning set forth in Section 20.1 hereof.

- (j) "**Phase I Renovations Schedule**" has the meaning set forth in Section 20.2.1 hereof.
- (k) "**Phase II Funding**" has the meaning set forth in Section 20.9.1 hereof.
- (l) "**Phase II Renovations**" has the meaning set forth in Section 20.1 hereof.
- (m) "**Phase II Renovations Schedule**" has the meaning set forth in Section 20.2.1 hereof.
- (n) "**Punch List**" has the meaning set forth in Section 20.4.3 hereof.
- (o) "**Renovations**" has the meaning set forth in Section 20.1 hereof.
- (p) "**Renovations Documents**" has the meaning set forth in Section 20.2.2 hereof.
- (q) "**Renovations Schedule**" has the meaning set forth in Section 20.2.1.
- (r) "**Surface Lots**" has the meaning set forth in Section 18.13.1 hereof.

2. Article III of the Operating Agreement is hereby amended and restated to provide as follows:

3.1 Commencement and Term

The Term ("Term") of this Agreement shall commence on the date hereof ("Agreement Commencement Date") and shall expire on the thirtieth (30<sup>th</sup>) anniversary of the Operations Start Date, unless earlier terminated pursuant to the terms of this Agreement; provided, however, that the Expiration Date shall be extended for a period equal to the aggregate of every Abatement Period or portion thereof having a duration of at least ninety (90) days.

3.2 Option to Extend

[Intentionally Deleted]

3. Section 4.1 of the Operating Agreement is hereby amended by adding the following sentence at the end thereof:

The City previously consented to the delegation of certain duties and responsibilities of the Operator to OVG Facilities, LLC.

4. Section 4.6.11 of the Operating Agreement is hereby amended and restated to provide as follows:

4.6.11 selling, licensing, or otherwise arranging for Advertising within or without the Facility; provided, however, that unless restricted by law, the Operator shall not permit tobacco or firearms products to be sold, advertised, or marketed in or outside the Facility or to be visibly involved in any manner with any of the Events at the Facility. "Tobacco" or "tobacco products" means any product containing, made or derived from tobacco or nicotine, whether natural or synthetic, that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, snorted, sniffed, absorbed, dissolved, inhaled or injected by any other means, included, but not limited to cigarettes, e-liquids, cigars, little cigars, pipe tobacco, chewing tobacco, snuff, or snus. "Tobacco" or "tobacco products" also means electronic delivery systems, including any device that can be used to deliver aerosolized or vaporized nicotine or any other substance to the person inhaling from the device including, but not limited to, e-cigarettes, e-cigars, e-pipes, vapor products or e-hookahs. "Tobacco" or "tobacco products" also means any component or accessory used in the consumption of tobacco products, whether or not they contain nicotine including, but not limited to, filters, cartridges, pods, pens, rolling papers, or pipes. "Tobacco" or "tobacco products" does not include drugs, devices, or combination products offered as a tobacco cessation product approved by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act. Exterior signs may only be permitted in compliance with the City's signage ordinances. The City acknowledges that the current exterior advertising comprising a roof advertisement and all other exterior signage as of the Effective Date complies with the City's signage ordinances and may be maintained through the end of the Term.

5. Section 4.9 (Naming Rights) of the Operating Agreement is hereby amended by adding the following provision at the end thereof:

The provisions of this Section 4.9 and of Section 5.4 apply only to an agreement for Naming Rights where there is an express grant of Naming Rights to the Arena and do not apply to revenue or other consideration derived by the Operator from Sponsor Signs, Advertising, signage, billboards, message boards, scoreboards, social media, digital media, logos, product identification, sponsorships, and promotions. The City and Operator acknowledge that, as of the Effective Date, the only agreement for Naming Rights is the agreement between Service America Corporation and Webster Bank, N.A. dated December 6, 2010, as amended, and that agreements for Advertising and Sponsor Signs are not agreements for Naming Rights.

6. Section 5.2 of the Operating Agreement is hereby amended by adding the following provision:

5.2.4 Within fifteen (15) days of the execution of this Amendment, Operator shall pay the City all outstanding past-due License Fees, the annual amount of

which ~~wasis~~ \$250,000, and the current outstanding balance of which is \$1,750,000 through June 30, 2021.

~~7.~~ Section 5.2.1 of the Operating Agreement is amended and restated in its entirety to read as follows:

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~~5.2.1~~ Operator shall, in all events and as a priority payment ahead of other creditors, pay the City, in lieu of real and personal property taxes, the sum of \$300,000.00 annually, commencing on the Effective Date and prorated for any portion of a Fiscal Year. The foregoing amount is the payment in lieu of real estate taxes ("PILOT") payable by the Operator.

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~~7.8.~~ Section 5.7 of the Operating Agreement is hereby amended by adding the following provision:

5.7.5 City's Obligation to Fund Renewal and Replacement Account. The City and the Operator stipulate and agree that the Renewal and Replacement Account balance is, as of the Effective Date, \$0, and that there is no outstanding credit due the Renewal and Replacement Account. Within fifteen (15) days of execution of this Amendment, the City shall fund the Renewal and Replacement Account with ~~\$500,000~~200,000 by payment of such amount to Operator, which Operator will deposit into the Renewal and Replacement Account. If, during the Term of this Agreement, the Renewal and Replacement Account balance falls below \$100,000, the City shall immediately fund an amount equal to the amount of any shortfall to cause the balance to be restored to \$100,000.

~~97.~~ Article V of the Operating Agreement is hereby amended by adding the following provision: and restated in its entirety to read as follows:

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5.9 Ticket Fee.

~~The Operator shall collect and transmit to the City the sum of fifty cents (\$0.50) per each ticket sold per Event (other than City Events and games and practices of the Team and its National Hockey League affiliate (currently the Bridgeport Islanders and New York Islanders). This amount is in addition to the one dollar and fifty cents (\$1.50) ticket fee set forth in Section 1.100.~~

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~~8.~~ 10. Article XI of the Operating Agreement is hereby amended by adding the following provision:

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6.6 Public High School Graduation Ceremonies.

The Operator shall make the Facility available for annual graduation ceremonies for public high schools located in the City on a rent-free, expense-only basis, subject to priority scheduling of all other Events. The City shall provide

reasonable advance notice of the requested dates for each such ceremony, and the Operator shall schedule each such ceremony provided they do not conflict with any other Events scheduled or tentatively scheduled for such dates. Notwithstanding the foregoing, the Operator may reschedule any such ceremony, with at least two months' notice, if, in the Operator's reasonable judgment, it is necessary to avoid losing a commercial, revenue-producing Event at the Facility. The Operator and the City shall mutually agree on such rescheduled date for the ceremony.

9. ~~11.~~ Section 7.3.2 of the Operating Agreement is hereby amended by inserting the following provision at the end thereof:

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~~(d)~~ Notwithstanding any other provision of this Agreement, Operator shall, in satisfaction of its obligation under Section 7.3 of this Agreement, provide to the City, within fifteen (15) days of the Effective Date, unaudited financial reports and statements for each of the 2018, 2019, and 2020 Fiscal Years, prepared in accordance with generally accepted accounting principles. For the 2021 Fiscal Year through the end of the Term, the financial reports and statements required by this section shall be accompanied by an auditor's report containing an opinion of the independent certified public accountant preparing the report, which shall be a firm of national reputation selected by the Operator or another firm selected by the Operator and reasonably acceptable to the City.

~~127.~~ Section 7.4 of the Operating Agreement is amended and restated in its entirety to read as follows:

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#### 7.4 Additional City Audits.

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~~(d)~~ At the option of the City, in addition to the annual audit, the City may conduct an audit or examination of the Facility or the Records, at any time upon reasonable notice to the Operator, any such examination or audit to be made solely at the cost of the City. Such examination and inspection of the Facility by the City shall occur at a minimum of one time per year, provided that, it shall not be an Operator Event of Default if the City shall not conduct such annual Facility examination.

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10. ~~13.~~ Section 15.1.8 of the Operating Agreement is hereby amended by adding the following sentence at the end thereof:

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The Operator consents to the renovation of the existing ballpark adjacent to the Facility into a concert amphitheater ("Amphitheater"), and waives its rights under this Section 15.1.8 of the Operating Agreement as to such renovation and operation of the Amphitheater, provided that the manifested capacity for the Amphitheater does not exceed 7,000.

11. ~~14.~~ Section 15.2 of the of the Operating Agreement is hereby amended by inserting the following provision:

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15.2.9 Team Commitment. The Operator agrees that it shall cause the Team to play substantially all of its home games at the Facility for the Term (the "Team Commitment"), provided, however, that if the City has not (i) completed the Renovations by June 30, 2026, or (ii) expended \$30,000,000 (with funding as set forth in Section 20.9.2 of the Operating Agreement) for the Renovations by June 30, 2026, or (iii) fully authorized the total amount of \$30,000,000 (with funding as set forth in Section 20.9.2 of the Operating Agreement) for the Renovations by June 30, 2026 and expended such sum by June 30, 2027, the Operator shall be relieved of the Team Commitment. In the event the Operator is relieved of the Team Commitment, the City waives its rights under, and the Team is relieved of its obligations under, Article V of the License Agreement.

~~12.~~ 15. Section 15.3 of the Operating Agreement is hereby amended by inserting the following provision:

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15.3.5 State Admission Tax. The City and the Operator shall, individually and collectively, make good-faith, reasonable efforts to exempt the Facility from, or reduce the amount of, all State entertainment taxes and surcharges applicable to the Facility.

~~13.~~ 16. Section 18.1 of the Operating Agreement is amended and restated in its entirety to read as follows:

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18.1 Notice.

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—All notices and other communications pursuant to this Agreement shall be in writing and shall be deemed properly given upon delivery, or refusal of delivery, if sent by personal delivery, overnight courier service with guaranteed next day delivery or by certified United States mail, postage prepaid, return receipt requested, addressed as follows:

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If to City:

Mayor, City of Bridgeport  
City Hall  
45 Lyon Terrace  
Bridgeport, CT 06604

and

City Attorney  
City of Bridgeport  
999 Broad Street  
Bridgeport, CT 06604

and

Director

Office of Planning and Economic Development  
City of Bridgeport  
999 Broad Street  
Bridgeport, CT 06604

with a copy to:

Robert L. Berchem, Esq.  
Berchem Moses, P.C.  
75 Broad Street  
Milford, CT 06460

If to Operator:

President  
Harbor Yard Sports and Entertainment, LLC  
600 Main Street  
Bridgeport, CT 06604

with a copy to:

Zachary H. Klein, Esq.  
General Counsel  
New York Islanders Hockey Club, L.P.  
15 Verbena Avenue  
Floral Park, NY 11001

Each party may, by written notice to the other in accordance with the procedure set forth in this Section, specify a different address for subsequent notice purposes.

~~14.~~ 17. Section 18.13.1 of the Operating Agreement is hereby amended and restated to provide as follows:

18.13.1 Surface Lots. The City shall be solely responsible for the provision of parking for the use of persons attending Events at the Facility and for users of the Facility. For Events at the Facility, the City shall make available to Operator, at no cost to Operator, for a period beginning two hours before each Event and ending two hours after each Event, the surface parking lots ("Surface Lots") adjacent to the Facility, comprising approximately 750 parking spots, and consisting of (a) parking lot P, designated as Block 507, Lot 14, comprising approximately 3.8 acres, and bounded by Allen Street, Lafayette Street, Frontage Road and Broad Street, and (b) parking lot D, designated as Block 506, Lot 1K and 1A, comprising approximately 2.7 acres and bounded by Allen Street, Broad Street, Railroad Avenue, and Lafayette Street. During this period for each Event, the Operator shall be the sole operator of the Surface Lots. In the event Operator charges a parking fee for use of the Surface Lots, it shall pay to the City thirty (30) percent of the gross parking fee revenues. If the Operator incorporates the

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parking fee into the cost of event tickets, the parties agree to negotiate a fair and equitable allocation in order to reflect the thirty (30) percent payment due the City. The City shall at all times retain sole responsibility for the cleaning, clearing, and maintenance of the Surface Lots.

~~15-18.~~ Section 18.13 of the Operating Agreement is hereby amended by inserting the following provisions:

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18.13.3 Intermodal Garage. The City shall use its best efforts to continue to allow persons attending Events at the Facility and users of the Facility to have access to the Intermodal Transportation Center Garage adjacent to the Facility (the "Intermodal Garage").

18.13.4 Substitute Parking. In the event the City desires to utilize the Surface Lots for development or alternative purposes, prior to such use the City shall provide reasonable alternative parking in close proximity to the Facility, at no cost to the Operator, with at least as many new dedicated spaces as are included in the Surface Lots. This may include the Intermodal Garage, public parking facilities, including on-street parking spaces, metered parking spaces, surface parking lots, structured parking garages, parking spaces in privately or publicly owned parking garages, or parking accommodations in other areas within a one-half (1/2) mile radius of the front entrance of the Facility.

~~16-19.~~ The following Article XX is hereby added to the Operating Agreement:

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## ARTICLE XX RENOVATION OF FACILITY

### 20.1 City's Renovations Obligations.

The City shall cause the design, construction, and completion of the improvements and renovations to the Facility set forth in the schedule attached as Exhibit 20.1, which contains a narrative description of the improvements and renovations (collectively, the "Renovations"), and divides the Renovations into "Phase I Renovations" and "Phase II Renovations." The City acknowledges that the Renovations are estimated to cost \$30,000,000 and are solely the City's obligation to complete. In addition to the \$15,000,000 which the City has available for the Phase I Renovations as specified in Section 20.8.1 herein, the City shall use its best efforts to obtain funding for the Phase II Renovations. The parties agree the Renovations are intended to restore the Facility to a "like-new" condition. The City shall cause the Renovations to be performed in conformance with good engineering practices, in a timely manner, and in accordance with the requirements of this Agreement and the requirements of all applicable Laws. The City intends to act through its Office of Planning & Economic Development to fulfill the City's obligations set forth in this Article XX. Without limiting the generality of the foregoing, the City shall:

20.1.1 manage and direct the Renovations, at its expense, and coordinate the work of all Persons involved therein, including the preparation of all submissions necessary in



connection with all necessary permits and approvals to be obtained by the City;

20.1.2 secure all such permits and approvals;

20.1.3 obtain, pay for, and maintain the insurance coverage required of the City pursuant to Article XI hereof;

20.1.4 enter into such contracts and subcontracts as it deems useful and advisable to cause the Renovations to be completed; and

20.1.5 cause the Renovations to be completed in a good and workman like manner in accordance with the Renovations Schedule and the Renovations Documents and in accordance with the terms of this Agreement.

20.2 Schedule of Completion and Renovations Documents.

20.2.1 The City shall begin designing, permitting (if required), and construction of the Phase I Renovations immediately upon execution of this Agreement, shall proceed diligently, and shall address such projects in the order listed in Exhibit 20.1 (the "Phase I Renovations Schedule"). Should the cost of any improvements and renovations set forth on the Phase I Renovations Schedule exceed the Phase I Funding, such improvements and renovations will become a part of the Phase II Renovations Schedule. The Phase II Renovations shall be addressed in the order of the projects listed in Exhibit 20.1 as funding becomes available as set forth below in Section 20.9.1 (the "Phase II Renovations Schedule", and together with the Phase I Renovations Schedule, the "Renovation Schedule").

20.2.2 The City shall promptly engage the Construction Manager. Except as set forth in Section 20.4.1 below, the City shall cause the Construction Manager to timely prepare and deliver to the City and the Operator complete and final documents, including drawings and specifications setting forth in detail all requirements for each component of the Renovations (the "Renovations Documents"), for the review and written approval of the parties (which approval shall not be unreasonably withheld, conditioned, or delayed).

20.2.3 The City shall cause the Operator to receive notice of all design and construction meetings ("Design and Construction Meeting(s)"), and copies of all proposed items to be discussed, sufficiently in advance to afford the Operator an opportunity to review such items and to attend and participate in the Design and Construction Meetings. The Operator shall use reasonable efforts to attend all Design and Construction Meetings. The City shall cause the Construction Manager to prepare minutes of each Design and Construction Meeting reflecting the decisions made, approvals given, and objections raised, and shall distribute copies thereof to the parties promptly after each Design and Construction Meeting. These minutes shall be reviewed, amended if necessary, and approved by the City and the Operator at the next Design and Construction Meeting following the distribution thereof.

20.2.4 The parties shall discuss any delays or anticipated delays in meeting the Renovations Schedule and the actual dates on which the various stages and construction indicated on the Renovations Schedule are started and completed at Design and Construction Meetings; provided, however, that no changes from previously-approved Renovations

Documents or the Renovations Schedule shall occur unless the City agrees in writing to the change.

20.2.5 If, during construction, the City reasonably determines that any item of the Renovations is not constructed, being timely constructed, installed, or being timely installed, in accordance with the Renovations Documents approved by the parties, or the Operator makes such reasonable determination and provides the City with the reasons that led to the Operator's determination, and the City agrees with such determination or the Construction Manager confirms such nonconformance, the City shall cause any such non-conforming work to be re-executed unless the City and the Operator agree it would be inexpedient to require such re-execution and the City and the Operator agree on an alternate solution satisfying the City and the Operator equitably.

### 20.3 Change Orders.

20.3.1 The Operator may, at any time and from time to time, by a written change order request, request changes to the Renovations within the general scope of construction required by this Agreement. Such changes may include, but are not limited to, changes in the Renovations Documents. The City shall act in good faith in considering the Operator's request for changes and shall provide the Operator with an adequate opportunity to express its views. No such changes shall be made without the City's consent, which consent shall not be unreasonably withheld or delayed.

20.3.2 The City may, at any time and from time to time, by a written change order request, request changes to the Renovations within the general scope of construction required by this Agreement. Such changes may include, but are not limited to, changes to the Renovations Documents. The Operator's consent shall be required for any change that, as reasonably determined by the Operator, will have a financial, operational, or safety impact on the Operator and/or the operation of the Facility. The Operator shall have until the close of business on the fifth (5<sup>th</sup>) Business Day following receipt of such written change order request to reject or approve of such change. Failure by the Operator to respond in writing to the City within such five (5) Business Day period shall be deemed approval of the change. The Operator shall act in good faith in considering requests for changes made by the City. No such change shall be made if: the Operator's rejection of a change order request is related to a financial, operational, or safety impact; includes the Operator's basis for the rejection in reasonable detail; and is provided to the City within the five (5) Business Day period. The Operator may propose an alternative, provided, however, that unless the Operator and the City otherwise agree in writing, no such alternate proposal shall be considered by the City if it would create cost increases. The City may accept or reject any such alternate proposal by the Operator in the City's sole discretion.

20.3.3 Other than as expressly provided in Section 20.3.2 herein, the City may make changes to the Renovations, including, without limitation, changes to the Renovations Documents, at any time and from time to time, in its sole discretion and without the Operator's consent.

### 20.4 Completion of Renovations.

20.4.1 The City shall cause the Construction Manager to notify the Operator in

writing not less than thirty (30) days prior to the date the City reasonably projects that a component of the Renovations will be substantially completed. The City shall promptly notify the Operator of changes to the schedule completion dates, as applicable.

20.4.2 The City shall cause the Construction Manager to complete the Renovations in compliance with the Renovations Documents, including the diligent prosecution of any construction warranties and guarantees as provided in Section 20.7.

20.4.3 Within thirty (30) days after completion of a component of the Renovations, the Operator shall prepare a list in writing ("Punch List") of any apparent defects, deficiencies, and/or discrepancies in said component of the Renovations ("Defects"). The City shall cause the Construction Manager to reasonably promptly correct any Defects.

20.4.4 If a Certificate of Occupancy is required for the Renovations or any component thereof, the City shall, no more than sixty (60), and no fewer than thirty (30), days prior to the completion of the Renovations or component thereof, inform the Operator of all items that are likely to cause the "temporary" status of such Certificate of Occupancy, and the City shall provide updates to the Operator whenever it becomes aware of any change in status of each such item. If a temporary Certificate of Occupancy is issued for the Renovations or component thereof, as applicable, the City shall work to obtain a permanent Certificate of Occupancy as diligently and promptly as possible.

20.4.5 As individual components of the Renovations are completed, the City shall deliver to the Operator (a) a certificate of the Construction Manager stating said component is substantially complete and that, if not finally completed, said component can reasonably be expected to be completed with no material disruption to the operations of the Facility, and (b) original or certified copies of all necessary governmental permits and approvals for the use and operation of the applicable component of the Renovations.

20.5 Reserved.

20.6 Delivery of Final Plans.

20.6.1 Promptly following the completion of the Phase I Renovations or the Phase II Renovations, as the case may be, the City shall deliver to Operator, to the extent available, all suppliers' and manufacturers' standards and warranty conditions, maintenance procedures, instructions, aids and other construction-related information required by the Operator to properly operate and maintain the Renovations or applicable component thereof.

20.6.2 The City shall deliver to Operator as soon as reasonably available, but no later than ninety (90) days after the completion of the Phase I Renovations and the Phase II Renovations, as the case may be, (a) up-to-date design specifications and plans and drawings, including all shop drawings and test reports and currently marked "as built" plans and drawings, for such Renovations, and (b) the items described in section 20.6.1 that were not available and delivered on or before the completion of the Phase I Renovations or the Phase II Renovations, as the applicable.

20.7 Construction and Other Warranties.

20.7.1 The City shall assign to the Operator, to the extent permitted (and, for those that cannot be assigned, the City hereby appoints the Operator as its agent to enforce the City's rights under), all construction warranties and guarantees obtained on the construction work and on all material, equipment, workmanship, or design in connection with the construction and equipping of the Facility. This assignment excludes any warranties and guarantees from the Construction Manager to the City, which are addressed in Section 20.7.2. The City shall cooperate, at the City's expense, with the Operator in enforcing any warranties and guarantees. Notwithstanding anything herein to the contrary, the City shall correct or cause to be corrected all Defects on the Punch List, at the City's sole cost and expense, including, without limitation, the cost of enforcing all such warranties and guarantees relating to such Defects. The City shall retain rights under warranties and guarantees specifically relating to such Defects to enable the City to perform its obligations under the preceding sentence. Sums thereby obtained shall be applied by the City: first, to reimburse the City for reasonable attorneys' fees or reasonable out-of-pocket costs of pursuing the claim; and second, to pay for, or reimburse the Operator for, reasonable expenses incurred by the Operator in repairing, maintaining, or operating the Facility due to Defects in material, equipment, workmanship, or design triggering the warranty or guarantee claim and the Operator's reasonable, out-of-pocket costs incurred in cooperating with the City in any such claim; with the balance, if any, to be paid to the City. All of the Operator's reasonable costs and fees of prosecuting or maintaining any such other enforcement action shall constitute Facility Operating Expenses.

20.7.2 Notwithstanding any other provision in this Agreement to the contrary; the Operator may request in writing that the City enforce any of the warranties or guarantees from the Construction Manager. The City shall respond in writing to any such request. If the City does not respond to such request within ten (10) days of receipt, or responds within such period but does not expressly state it will promptly pursue the warranty or guarantee claims, then the Operator may enforce the warranties or guarantees identified in the request as the agent of the City and at the Operator's expense, and the City hereby appoints the Operator as its agent for such purpose.

20.7.3 All warranties and guarantees applicable to the Renovations shall be described in the Renovations Documents.

## 20.8 Phase I Funding.

20.8.1 The City represents it has \$15,000,000 available for disbursement of the costs of the Phase I Renovations. The City shall use these funds ("Phase I Funding") for the Phase I Renovations, and perform such Phase I Renovations in the order set forth on the Phase I Renovations Schedule. Should the cost of any improvements and renovations set forth on the Phase I Renovations Schedule exceed the Phase I Funding, such improvements and renovations will become a part of the Phase II Renovations Schedule. The Phase I Renovations include a maximum of \$3,300,000 allocated to the "Back of House Renovations", including for the Team campus, artist areas, ancillary locker rooms and related spaces. In the event any portion of the Phase I Funding is remaining after completing the Phase I Renovations, the City shall use such funds to immediately start the Phase II Renovations.

## 20.9 Phase II Funding.

20.9.1 The City shall use its best efforts to fund or cause to be funded, except as provided in Section 20.9.2, all costs of the Phase II Renovations (“Phase II Funding”), except as otherwise provided in Section 20.9.2 of this Agreement. In the event the City has not assembled the full Phase II Funding by the completion of the Phase I Renovations, the City shall commence and complete the projects of the Phase II Renovations projects as funds become available, rather than wait for the full Phase II Funding to be assembled, and shall commence and complete the projects in the order provided in the Renovations Schedule, as such may be amended pursuant to Section 20.8.1.

20.9.2 The Operator shall contribute \$3,000,000 (“Operator Funding”) to the Phase II Funding, to be disbursed only after the City has paid \$12,900,000 for the Phase II Renovations. Thereafter, the City shall continue to fund the Phase II Renovations until they are completed. The Operator’s claimed existing unreimbursed expenditures of \$900,000 for Additions and Capital Repairs for the Facility shall be a credit against the Operator Funding. In the event that no Operator Funding shall occur, Operator shall not be entitled to payment of such claimed unreimbursed expenditures.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment as of the date and year first written above.

CITY OF BRIDGEPORT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

HARBOR YARD SPORTS AND  
ENTERTAINMENT, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE CONNECTICUT ISLANDERS, LLC  
~~d/b/a BRIDGEPORT SOUND TIGERS~~

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit 20.1

Renovations

[To be Added]

**Comm. #107-20 Ref'd for IMMEDIATE CONSIDERATION  
On 8/2/2021**

**Mark T. Anastasi, Esq.  
25 Sullivan Place  
Bridgeport, CT 06610**

Office Contacts  
(203) 371-0383  
[martulana@aol.com](mailto:martulana@aol.com)

City of Bridgeport Contacts  
(203) 673-7218  
[mark.anastasi@bridgeportct.gov](mailto:mark.anastasi@bridgeportct.gov)

July 28, 2021

The Honorable City Council  
of the City of Bridgeport  
City Hall  
45 Lyon Terrace  
Bridgeport, CT 06604

**Re: Proposed Settlement of Pending Litigation Concerning the City's Arena and Proposed 2021 Amendment to the Operating Agreement dated as of July 25, 2000 by and between the City of Bridgeport, Connecticut and Service America Corporation / for IMMEDIATE CONSIDERATION**

**Dear Honorable City Council Members:**

On behalf of the Office of the Mayor and the Office of Planning & Economic Development (OPED) the Office of the City Attorney hereby respectfully submits the above-referenced matter **FOR IMMEDIATE CONSIDERATION** at the City Council's August 2, 2021 Regular monthly meeting.

Immediate Consideration is being requested for this matter (which involves litigation settlement, contract amendment approval and economic development initiatives) because the substance of this item is appropriate for referral to three (3) separate standing City Council committees (Miscellaneous Matters, Contracts and ECD&E). Since this matter involves settlement of pending litigation (before both a AAA arbitration panel and the CT Superior Court), those portions of the meeting concerning strategy, tactics and negotiations pertaining to resolution of the litigation are appropriate for Executive Session. In addition, resolution of the matter is time sensitive in terms of completing certain operational arrangements to accommodate the upcoming hockey seasons, including the hosting of New York Islanders exhibitions games.

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By hearing this matter before the full City Council all Members (not just members of certain committees) will be entitled to attend the Executive Session and be privy to the entire substantive discussions of this matter. For these reasons, it is respectfully recommended that under such unique circumstances, Immediate Consideration would be more suitable and the most appropriate manner for handling this matter.

**BELOW is the submission data required pursuant to City Council Rule XIII, Section 15:**

**a. Submission Title**

2021 Amendment to Operating Agreement dated as of July 25, 2000 by and between the City of Bridgeport, Connecticut and Service America Corporation.

**b. Submitting Entity**

Office of the City Attorney - on behalf of the Mayor's Office and OPED

**c. Contact Person**

Mark T. Anastasi, Esq.  
cellphone and text messages: (203) 673-7218  
email: [Mark.Anastasi@bridgeportct.gov](mailto:Mark.Anastasi@bridgeportct.gov)

**d. Approval Deadline**

ASAP - in order to accommodate Arena construction activity and the upcoming season's hockey schedule for the Bridgeport Islanders and the New York Islanders.

**e. Matter Summary**

The parties to the Operating Agreement for the Webster Bank Arena propose an amendment of the Operating Agreement in connection with the settlement of pending claims, counterclaims and special defenses asserted by the parties in both pending arbitration and court proceedings (the "Legal Proceedings"). This proposed settlement would resolve all outstanding issues and the Legal Proceedings between the parties, as well as provide for and ensure the continued use of the Arena for professional ice hockey and other events.

A summary of the terms of the amended agreement entitled "Narrative-Webster Bank Arena (WBA) Settlement", has been drafted by OPED Dir. Thomas Gill and Attorneys Robert Berchem and Bryan LeClerc of Berchem Moses PC and will be provided to the City Council. These three (3) individuals, along with representatives of the City Attorney's Office, will be attending the

August 2, 2021 City Council meeting to present this matter to the Council Members and to answer questions pertaining thereto, both in public session and Executive Session as appropriate.

**SUPPORTING DOCUMENTATION will be submitted separately for the City Council's review of this matter not later than Friday, July 30, 2021 by Berchem & Moses, PC and will include at a minimum the following documents:**

- 1. 2021 Amendment to Operating Agreement.**
- 2. Narrative-Webster Bank Arena (WBA) Settlement**
- 3. Arena Operating Agreement as previously amended**

**f. City Council Action Requested**

Approval of the proposed 2021 Amendment to Operating Agreement and authorization for the City's attorneys to settle all pending Arena litigation.

**g. Financial Impact Analysis**

The positive financial impact to the City from this Amendment will be:

- (a) full payment to City of \$1,750,000 in past-due License Fees within fifteen (15) days of execution of Agreement;
- (b) revised additional funding to City for ticket sales and parking;
- (c) extension of Operating Agreement for ten (10) years;
- (d) ten (10) year commitment for professional hockey at the Arena;
- (e) annual License Fee payment to the City of \$250,000;
- (f) ensuring the City achieves the ancillary "spin-off" indirect economic benefits projected from this major regional entertainment and economic development initiative sited in the heart of downtown Bridgeport;
- (g) avoidance of the financial risks of the pending Arena litigation and the substantial future attorneys' fees and costs associated with such litigation.

In accordance with this Amendment, the City will commit funds for major repairs and capital improvements to the City owned Arena. \$15,000,000 has already been allocated in the City's Capital Plan; and the City is committed to using its best efforts to obtain not less than an additional \$15,000,000 to ensure the twenty (20) year old Arena structure complies with State

and local building codes and is upgraded / modernized to maximize its functionality and to serve as a major economic engine for the City of Bridgeport.

**For further details, see the Narrative-Webster Bank Arena (WBA) Settlement.**

**h. Funding Budget-Line**

To date, \$15,000,000 has been approved for the repairs and improvements pursuant to the City's Capital Plan for FY19 and FY20. Further State and/or local grant and/or budget authorizations will be required for the balance of the City provided funding (see section g. (g) above).

**i. Proposed Motion**

**“NOW THEREFORE BE IT RESOLVED** that:

1. The Mayor and/or the Director of OPED is authorized and empowered to finalize and execute a 2021 Amendment to Operating Agreement materially as submitted and in final form satisfactory to the Director of OPED and the City Attorney, and is further authorized and empowered to negotiate and to execute related documentation and to take such other reasonably necessary actions in furtherance of this matter, consistent with this resolution and in accordance with the substantive terms of the Operating Agreement as amended by this 2021 Amendment, as he/she may deem to be in the best interests of the City of Bridgeport; and
  
2. The City Attorney and/or his designee and outside legal counsel for the City are authorized and empowered to settle any and all pending litigation between the City and the Arena Tenants pending before a AAA arbitration panel and CT Superior Court, and to execute and deliver any and all documentation reasonably necessary to effectuate such settlement.

Thank you for your assistance in this matter.

Very truly yours,

/s/ Mark T. Anastasi

Mark T. Anastasi, Esq.

Cc: Joseph P. Ganim, Mayor  
Janene Hawkins, CAO  
Daniel Shamas, Chief of Staff  
Thomas Gill, OPED Dir.  
R. Christopher Meyer, City Attorney  
Kenneth Flatto, Finance Dir.

Nestor Nkwo, OPM Dir.  
Thomas Gaudett, Mayor's Office  
Ronald J. Pacacha, Esq.  
Robert Berchem, Esq.  
Bryan LeClerc, Esq.

**Pettway, Lonnelle**

---

**From:** Anastasi, Mark T  
**Sent:** Thursday, July 29, 2021 11:15 AM  
**To:** Pettway, Lonnelle  
**Subject:** Fw: Proposed Arena Litigation Settlement and Operating Agreement Amendment  
**Attachments:** July 2021 REVISED Arena Referral Letter including Executive Summary.docx

Lonnelle:

Please see below email and attached document - I submitted late yesterday to Lydia and Frances. Kindly confirm your receipt. Thanks.

---

**From:** Anastasi, Mark T  
**Sent:** Wednesday, July 28, 2021 4:23 PM  
**To:** Martinez, Lydia <lydia.martinez@Bridgeportct.gov>; Ortiz, Frances <Frances.Ortiz@Bridgeportct.gov>; Nieves, Aidee <Aidee.Nieves@Bridgeportct.gov>  
**Cc:** Gill, Thomas <Thomas.Gill@Bridgeportct.gov>; rberchem@bmdlaw.com <rberchem@bmdlaw.com>; Bryan LeClerc <bleclerc@berchemmoses.com>; Gaudett, Thomas <Thomas.Gaudett@Bridgeportct.gov>; Shamas, Daniel <Daniel.Shamas@Bridgeportct.gov>; Hawkins, Janene <Janene.Hawkins@Bridgeportct.gov>; Meyer, RChristopher <RChristopher.Meyer@Bridgeportct.gov>  
**Subject:** Proposed Arena Litigation Settlement and Operating Agreement Amendment

Lydia / Frances:

**Kindly place this matter on the Agenda for IMMEDIATE CONSIDERATION at Monday's August 2nd City Council meeting.**

Note - as referenced in my attached Submission Letter there will be supporting documents filed (not later than Friday, July 30th) by attorneys for the law firm of Berchem & Moses, PC, the City's outside legal counsel in this matter. Thanks.

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Ira W. Bloom  
Jonathan D. Berchem ♦  
Michelle C. Laubin ♦  
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Bryan L. LeClerc ♦  
Brian A. Lema  
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Peter V. Gelderman ◊  
Warren L. Holcomb  
Eugene M. Kimmel  
Paul A. Testa \* ▶

Nicholas R. Bamonte  
Carolyn Mazanec Dugas  
Rebecca E. Goldberg  
Kyle G. Roseman  
Justin Stanko  
Matthew L. Studer  
Tyler I. Williams

\* - Also Admitted in FL  
◊ - Also Admitted in IL  
▶ - Also Admitted in MA  
♦ - Also Admitted in NJ  
◆ - Also Admitted in NY  
\* - Also Admitted in PA

PLEASE REPLY TO  
MILFORD OFFICE

June 30, 2021

VIA MESSENGER

Attention: Ms. Althea Williams  
Office of the City Clerk  
CITY OF BRIDGEPORT  
45 Lyon Terrace, Room 204 (second floor)  
Bridgeport, CT 06604

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RE: City of Bridgeport - Webster Bank Arena  
Documents for Distribution to City Council Members

Dear Ms. Williams:

At the directive of Lonnette Pettway, please find enclosed twenty-three (23) copies each of the following documents, to be distributed to the City Council members:

1. Operating Agreement Dated as of July 25, 2000 by and between the City of Bridgeport, Connecticut and Service America Corporation d/b/a Volume Services America;
2. 2021 Amendment to Operating Agreement;
3. Narrative – Webster Bank Arena Settlement; and
4. Mark Anastasi, Esq. correspondence dated July 28, 2021.

As always, thank you for your assistance.

Sincerely yours,

Robert L. Berchem

RLB:db  
enclosures

**CITY OF BRIDGEPORT  
CIVIC ARENA**

**OPERATING AGREEMENT**

**DATED AS OF JULY 25, 2000**

ATTEST  
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**BY AND BETWEEN**

**THE CITY OF BRIDGEPORT, CONNECTICUT**

**THE "CITY"**

**AND**

**SERVICE AMERICA CORPORATION D/B/A  
VOLUME SERVICES AMERICA**

**THE "OPERATOR"**

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) EXHIBITS:

EXHIBIT 1.11	ARENA SEATING CAPACITY
EXHIBIT 1.85	OPERATOR PARKING AREA
EXHIBIT 1.95	PROJECT SITE
EXHIBIT 2.2.1(a)	CONSTRUCTION SCHEDULE
EXHIBIT 2.2.1(b)	EXISTING PLANS
EXHIBIT 2.4	PROCUREMENT AGENT AGREEMENT
EXHIBIT 15.1.7	ENVIRONMENTAL AND HISTORIC CONDITIONS
EXHIBIT 16.4	AGREEMENT AND CONSTRUCTION PERIOD GUARANTY

## OPERATING AGREEMENT

This Operating Agreement ("**Agreement**"), is dated as of July 25, 2000 and entered into by and between the City of Bridgeport, Connecticut, a public body corporate and politic and a political subdivision of the State (defined in Section 1.17 of this Agreement as the "**City**"), and Service America Corporation d/b/a Volume Services America, a Delaware corporation (defined in Section 1.81 of this Agreement as the "**Operator**").

### RECITALS:

A. The City and the Operator have for some time discussed the outline of terms and conditions under which the City expeditiously would design, develop and construct, by the fall of 2001, a new multi-purpose civic arena facility to be owned by the City and operated by the Operator. The Facility would have as a principal user for its home games and general occupancy an expansion franchise in the American Hockey League.

B. The City desires to grant to the Operator, and the Operator desires to accept, the exclusive right to manage and operate the Facility after completion of construction, pursuant to the terms and conditions stated herein.

C. The parties expect that the Operator will enter into a use agreement with the Team for a term of at least ten years, providing for at least 40 home games, with use payments comparable to other American Hockey League agreements at similar arenas, and on terms otherwise negotiated between the Operator and the Team, and that the City will enter into an agreement with the Team providing certain rights to the City in the event that the Operator defaults in its performance under the use agreement or the Team expresses its intent to relocate.

D. The health, safety and general welfare of the people of the City are directly dependent upon the continual encouragement, development, growth and expansion of business, commerce and tourism. The development of a regional multipurpose sports and entertainment complex and accessory uses is most appropriate in the City which, because of its location and size, is capable of retaining and supporting professional as well as amateur sports teams and attracting major national sporting and musical, cultural, family and community events; and that attraction of business and tourism to the City as a result of the development of such a facility and its accessory uses will be an important factor in the continued encouragement, promotion, attraction, stimulation, development, growth and expansion of business, commerce and tourism within the City. The development and promotion of a multipurpose sports and entertainment complex on public property will provide significant benefits to the general public.

F. In view of the foregoing, the City has determined that the operation of the Facility and the performance of this Agreement are in the best interests of the City and the welfare of its residents, and in accord with valid public purposes.

NOW, THEREFORE, intending to be legally bound, for valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

ARTICLE I  
DEFINITIONS

As used in this Agreement, capitalized terms shall have the meanings set forth below unless otherwise defined herein.

**1.1 Abatement Period(s)** means any period for which performance under this Agreement is prevented by reason of Force Majeure, casualty (as set forth in Article XII) or Taking.

**1.2 Account(s)** means the Operating Fund and the Renewal and Replacement Account. The funds from all of such accounts shall be maintained in separate bank accounts and not commingled in any manner.

**1.3 ADR** has the meaning set forth in Section 17.1.

**1.4 Additions and Capital Repairs** means, collectively, any or all installations, alterations, improvements, and purchases of additional or replacement furniture, machinery or equipment at the Facility, the depreciable life of which, according to generally accepted accounting principles, is in excess of one (1) year and expenditures for maintenance or repairs which extend the useful life of the assets being maintained or repaired for a period in excess of one (1) year. Additions and Capital Repairs shall be paid for from the Renewal and Replacement Account.

**1.5 Advertising** means all announcements, acknowledgments, banners, signs, show bills and other audio or visual commercial messages displayed, announced or otherwise presented in the Facility including video messages, but excluding Sponsor Signs.

**1.6 Affiliate** of a specified person means a person who (a) is directly or indirectly controlled by, or under common control with, the specified person; (b) owns directly or indirectly thirty-five percent (35%) or more of the equity interests of the specified person; (c) is a general partner, officer, director, non-financial institution trustee or fiduciary of the specified person or of any person described in (a) or (b); or (d) is a son, daughter, spouse, parent, sibling or in-law of the specified person.

**1.7 Agreement** means this Operating Agreement.

**1.8 Agreement Commencement Date** has the meaning set forth in Section 3.1.

**1.9 AHL** means the American Hockey League.

**1.10 Architect** means Kasper Group, Inc.

**1.11 Arena** means an approximately 200,000 square foot multipurpose flexible performance facility with seating capacity specified on Exhibit 1.11, all as is constructed in accordance with the Construction Documents approved by the parties.

**1.12 Arena Management Firm** means a third party or an Affiliate of the Operator, designated by the Operator from time to time, that specializes in the management of public assembly facilities similar to the Facility.

**1.13 Building Budget** means the all-inclusive cost total for design, construction and development and fit-up of the Facility in accordance with the Construction Documents approved by the parties.

**1.14 Business Days** means Monday, Tuesday, Wednesday, Thursday or Friday, excluding City holidays.

**1.15 Certificate of Occupancy** means a temporary or permanent certificate issued for occupancy of the Facility under Connecticut law, provided that all conditions or incomplete items of work resulting in the issuance of a "temporary" certificate (a) are normal and customary for projects similar to the Facility in size and type; (b) are capable of being satisfied or completed by the City within a reasonable time period; (c) will not cause any material interference with the Operator's use and operation of the Facility (including, without limitation, the Operator's full and uninterrupted use of all Concessions Areas for Events); and (d) will not have a material adverse effect on the generation of Facility Operating Revenues.

**1.16 City** means the City of Bridgeport, a public body corporate and politic operating under a home rule charter and a political subdivision of the State, and any of its administrative departments, divisions and functions and its successors and assigns.

**1.17 City Event Revenue** has the meaning set forth in Section 6.1 of this Agreement.

**1.18 City Events** means non-commercial Events conducted, sponsored or co-sponsored by the City pursuant to Section 6.1 of this Agreement.

**1.19 City Indemnitees** has the meaning set forth in Section 10.1.

**1.20 City Representative** means the individual authorized to issue and receive notices on behalf of City with respect to this Agreement and shall have the rights, duties and responsibilities described in Section 4.4 of this Agreement.

**1.21 Claims** has the meaning set forth in Section 10.1.

**1.22 Concession(s)** means the business of selling or otherwise furnishing foods, beverages, apparel, game programs, sporting equipment, goods, novelties or merchandise in, at, from or in connection with the operation of the Facility, whether sold, furnished or rented from shops, kiosks or anywhere within the Facility or by individual vendors circulating through the Facility, including, without limitation, catering services and facilities and any restaurant (whether open to the public or restricted to members thereof), club, membership dining room or other facility therein for sale of food or beverages, and including sales to fill orders for any such items received by any Concessionaire, by mail, facsimile, telephone, internet or other medium of communication, if Concessionaire elects to take orders through any such medium.

**1.23 Concession Areas** are the locations in the Arena in which Concessions are prepared or sold.

**1.24 Concessionaire(s)** means the Operator or any Person engaged by the Operator to operate a Concession.

**1.25 Construction Documents** has the meaning set forth in Section 2.2.2 hereof.

**1.26 Construction Manager** means C.R. Klewin Northeast LLC or such other general contractor(s) or construction manager(s) as may be selected by the City with respect to the construction of the Facility.

**1.27 Construction Meetings** has the meaning set forth in Section 2.2.3 hereof.

**1.28 Construction Period Guaranty** means that certain guaranty entered into by Guarantor as defined in Section 16.4 of this Agreement.

**1.29 Contract** means one or more construction contracts entered into by the City relating to the construction of the Facility.

**1.30 Contractors** mean the contractors selected and engaged by the City to construct the Facility.

**1.31 Contrary Party** has the meaning set forth in Section 4.7.3 hereof.

**1.32 Council** means the City Council acting in its legislative capacity.

**1.33 Defects** has the meaning set forth in Section 2.5.3.

**1.34 Deficit Loans** means loans made to the Facility by the Operator pursuant to Section 5.6 (for Facility Operating Expenses, in the event of an Operating Fund shortfall); Section 8.1.2 (for Necessary Additions and Capital Repairs, other than Emergency Expenditures, in the event of a Renewal and Replacement Account shortfall); Section 8.2.2 (for Emergency Expenditures); Section 12.2 (for restoration following a casualty); and Section 13.2.2 (for restoration following a Taking) and shall include interest, computed daily from the date each such Deficit Loan was made, at the interest rate that the Operator is charged for funds under its primary financing vehicle from time to time while the Deficit Loan is outstanding.

**1.35 Destruction Date** has the meaning set forth in Section 12.2.

**1.36 Direct Operating Costs** means the following expenses or obligations made or incurred by the Operator or its designee or the Arena Management Firm for Events: (i) commissions or a percentage of revenues paid or owed to the Team, any Professional Team, Concessionaires or promoters or co-promoters of Events; (ii) ticket commissions or brokerage fees relating to the sale of tickets; (iii) commissions or fees paid or owed to advertising agencies or the like to purchase Advertising, including the cost of such advertising for promoting specific Events; (iv) commissions, fees or other expenses paid or owed to market or sell Premium Seating

or Advertising before or after the Operations Start Date, including, without limitation, that portion of the salaries, wages and benefits paid to personnel of the Operator who market or sell Premium Seating or Advertising ("Marketers") which portion is in direct relation to the percentage of the Marketers' time spent in performing such duties for the Facility, and that portion of the salaries, wages and benefits paid to personnel of Operator who provide administrative or technical support to the Marketers, which portion is in direct relation to the percentage of time spent by such personnel in performing such support functions for the Marketers; (v) amounts paid or owed to third parties for Concessions Merchandise handled by the Operator on a consignment basis; (vi) Sales Taxes; and (vii) for each of the first three Fiscal Years during the Term, one-third of the Pre-Operating Expenses.

**1.37 Discounted Payment** has the meaning set forth in Section 5.2.1.

**1.38 Discretionary Additions and Capital Repairs** has the meaning set forth in Section 8.1.3.

**1.39 Dispute** has the meaning set forth in Section 17.1.

**1.40 Emergency** means any condition or situation which threatens (or if not promptly acted upon will threaten) the health, safety or welfare of users of the Facility or the structure or systems of the Facility itself or any portion thereof, including, without limitation, the Arena and the Facility's use of the Parking Areas, and the immediacy of which threat to health, safety or welfare does not, in the Operator's reasonable judgment, permit sufficient time for the Operator to inform the City of such condition or situation prior to making an Emergency Expenditure.

**1.41 Emergency Expenditure** means any expenditure for Additions and Capital Repairs undertaken because of an Emergency.

**1.42 Environmental Condition** means any current or future condition that results in, or could result in, a violation of Environmental Laws or the release, threatened release, or presence of Hazardous Materials at, upon, under, generated by, emanating or having emanated from, or emitting or having been emitted from the Project Site in violation of Environmental Laws.

**1.43 Environmental Laws** means any and all current or future federal, state, local or municipal written and published laws, rules, orders, regulations, statutes, ordinances, codes or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common laws) concerning air, water, solid waste, Hazardous Materials, community right-to-know, radioactive material, resource protection, inland wetlands and watercourses, and other environmental and local government concerns.

**1.44 Event of Default** has the meaning set forth in Section 16.1.

**1.45 Event Related Expenses** means those costs and expenses that will be incurred by Operator in connection with, and directly attributable to, each Event in the Arena or at the Facility and that (i) will be reimbursed by the user or promoter out of its ticket sales for such

Event, or (ii) will otherwise be paid by the user or promoter in addition to any other charges for the use of the Arena or the Facility for such Event. Event Related Expenses include, but are not limited to, expenses for personnel (including ticket takers, ushers, internal and external security, police, maintenance and cleanup personnel, emergency medical technicians, concierge, restroom assistants, stagehands, box office personnel and other maintenance personnel, utilities and insurance) necessary for the conduct of an Event.

**1.46 Event(s)** means all sports, entertainment, cultural, civic and other activities, performances and events which are conducted at the Facility, whether or not revenue is generated therefrom.

**1.47 Existing Plans** has the meaning set forth in Section 2.2.1.

**1.48 Expenses** has the meaning set forth in Section 10.1.

**1.49 Expiration Date** means the date of expiration of the Agreement, which is twenty (20) years after the Operations Start Date, as extended by the Extension Term, if any, and by Abatement Periods having a duration of at least ninety (90) days.

**1.50 Extension Option** has the meaning set forth in Section 3.2.

**1.51 Extension Term** has the meaning set forth in Section 3.2.

**1.52 FF&E** means the furniture, fixtures and equipment identified on Schedule A to Exhibit 2.4, to be purchased by the Operator on the City's behalf pursuant to Section 2.4 herein, and to be funded by the City from the Building Budget.

**1.53 Facility** means the Project Site and the Arena with all improvements, additions, facilities, fixtures, furniture, machinery and equipment, attachments and appurtenances attaching thereto (but excluding Parking Areas).

**1.54 Facility Funding** has the meaning set forth in Section 2.11.

**1.55 Facility Operating Expenses** means and includes (a) Direct Operating Costs and (b) all other expenses or obligations incurred by the Operator or the Arena Management Firm and which are not Direct Operating Costs but which are otherwise incurred in connection with the operation and management of the Facility, as determined on an accrual basis, and including, without limitation, License Fee; Incentive Fee (if any); Impositions; labor, training and development expenses; maintenance and repairs; water, sewer, gas, oil, cable television, electricity and other utilities; deposits for utilities; telephone expenses; expenses incurred under use agreements with licensees or other users at the Facility; telescreen, video and/or scoreboard operation expenses; dues, memberships and subscriptions; security expenses; the Operator's accounting, audit and attorneys' fees; refuse removal expenses; cleaning expenses; building supplies; insurance premiums; data processing expenses; expenses and losses incurred in the production and promotion of Events at the Facility where Operator acts as promoter or co-promoter; all Event Related Expenses, pest control; office supplies; employment fees; freight and

delivery expenses; expenses for leasing of equipment; Master Card, VISA and other credit and debit facilities and telecheck fees and expenses; all damages, losses or expenses suffered or paid by Operator in the operation, maintenance or management of the Facility or as the result of any and all uninsured claims, demands, suits, causes of action, proceedings, judgments and liabilities, including reasonable attorneys' fees incurred in litigation or otherwise, assessed, incurred or sustained by or against any of them, other than litigation against the City.

**1.56 Facility Operating Revenues** means all revenues from or related to the operation of the Facility, as determined on an accrual basis, and including, without limitation, revenues from: (i) the sale and/or licensing of Premium Seating (including non-refundable deposits); (ii) the sale or licensing of personal seat licenses (including non-refundable deposits); (iii) the sale of sponsorships (including so called "pouring rights"); (iv) Advertising; (v) box office and ticket revenues (other than for City Events); (vi) the sale of Concessions; (vii) rent and other fees under the Use Agreement and all other licensing and user fee agreements; (viii) interest income (including interest on any deposits, but excluding interest earned on funds deposited in the Renewal and Replacement Account); (ix) forfeited security deposits; (x) ticket convenience fees; (xi) equipment rental fees; and (xii) Seat Use Charges, if any; *but Facility Operating Revenues excludes, in all events,* (x) Renewal and Replacement Contributions, (y) Naming Rights revenues, and (z) any sums received by the Operator as reimbursement for Event Related Expenses incurred by the Operator.

**1.57 Fiscal Year** means a twelve (12) month period commencing September 1 and ending on August 31 of the immediately following year, *except that* the first Fiscal Year shall commence on the Operations Start Date and end on the August 31 immediately following, and the last Fiscal Year shall commence on September 1 and shall end on the effective date of the expiration or termination of this Agreement.

**1.58 Force Majeure** has the meaning set forth in Section 18.4.

**1.59 General Manager** means the Operator's on-site manager for the Facility who is authorized to make the Operator's day-to-day decisions regarding normal management and operation of the Facility.

**1.60 General Seating** means all of the other seats at the Facility that are not Premium Seating.

**1.61 Guarantor** means Volume Services America, Inc.

**1.62 Hazardous Materials** means any petroleum, petroleum products, fuel oil, waste oil, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, pollutants, toxic pollutants, herbicides, fungicides, rodenticides, insecticides, contaminant, or pesticides and including, but not limited to, any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.



**1.63 Impositions** means all governmental assessments, franchise fees, excises, license and permit fees, levies, charges and taxes, general and special, ordinary and extraordinary, of every kind and nature whatsoever, whether controlled by public law or similar agreement (irrespective of the nature thereof, including, without limitation, all such charges based on the fact of a transaction, irrespective of how measured) which at any time during the Term hereof may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on: (a) all or any part of the Facility; (b) 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; or (c) this transaction or any document to which the Operator is a party which creates or transfers rights with respect to all or any part of the Facility. Notwithstanding the foregoing, Impositions shall not include any such assessments, fees, taxes or levies assessed or imposed (a) by the City (including, without limitation, under the PILOT program); (b) by another governmental authority as a replacement or substitute for those that would otherwise have been assessed or imposed by the City; or (c) by another governmental authority which has agreed to provide the City with some direct economic benefit from such assessments, fees, taxes or levies.

**1.64 Incentive Fee** has the meaning set forth in Section 5.3.

**1.65 Indemnified Party** has the meaning set forth in Section 10.4.

**1.66 Indemnifying Party** has the meaning set forth in Section 10.4.

**1.67 Insurance Deficiency** has the meaning set forth in Section 12.2.

**1.68 Insurance Proceeds** has the meaning set forth in Section 12.1.

**1.69 Insurance Program** has the meaning set forth in Section 11.12.

**1.70 Laws** means applicable statutes, rules and regulations of the United States of America, the State, the City, or of any other state or municipality or agency having jurisdiction over and with respect to the transactions contemplated in and by this Agreement, and shall include Environmental Laws.

**1.71 License Agreement** means the License Agreement between the Team and the City regarding the City's license to the Team of the use of the Facility.

**1.72 License Fee** means the License Fee paid to the City by the Operator for its rights under this Agreement, as set forth in Section 5.2 herein.

**1.73 License Fee Advance** has the meaning set forth in Section 5.2.1.

**1.74 Liens** means all encumbrances, liens, security interests, pledges and claims in, to, against or in any way applicable to any portion of the Facility or the Accounts.

**1.75 Naming Rights** has the meaning set forth in Section 4.9.

1.76 **Necessary Additions and Capital Repairs** has the meaning set forth in Section 8.1.1.

1.77 **Net Operating Income** means, as to each Fiscal Year during the Term, the net of Facility Operating Revenue for such Fiscal Year, less Direct Operating Costs for such Fiscal Year. No Facility Operating Expenses, except for Direct Operating Costs, shall be deducted from Facility Operating Revenue or otherwise impact Net Operating Income, which is the basis for determining Incentive Fees pursuant to Section 5.3 herein.

1.78 **Operating Fund** means the account of the Operator into which all Facility Operating Revenues shall be deposited and from all Facility Operating Expenses required by this Agreement shall be paid and License Fees, Incentive Fees and other distributions shall be made. The Operator shall establish the Operating Fund in a bank or other financial institution located in Bridgeport.

1.79 **Operations Start Date** has the meaning set forth in Section 2.6.

1.80 **Operator** means Service America Corporation d/b/a Volume Services America or its Affiliate and its permitted successors and assigns.

1.81 **Operator Funding** has the meaning set forth in Section 2.11.2.

1.82 **Operator Indemnitees** has the meaning set forth in Section 10.2.

1.83 **Operator Parking Area** has the meaning set forth in Section 18.13.2 and is shown on Exhibit 1.84 hereto.

1.84 **Operator Representative** means a senior officer of the Operator who is designated to the City by the Operator in writing and who is authorized to issue and receive notices on behalf of Operator with respect to this Agreement and to assume the rights, duties and responsibilities set forth in Section 4.5.1.

1.85 **Parking Areas** means the areas of the Bridgeport Regional Sports and Entertainment District designated for parking, and dedicated to or shared by the Arena, excluding the Operator Parking Area, and specifically identified on Exhibit 1.85 hereto.

1.86 **Person** means any Affiliate, individual, trust, estate, partnership, joint venture, company, corporation, association, or any other legal entity or business or enterprise.

1.87 **PILOT** has the meaning set forth in Section 5.2.1.

1.88 **Pre-Opening Period** means the period from the Agreement Commencement Date through the day immediately preceding the Operations Start Date.

1.89 **Pre-Opening Expense(s)** means that portion of the Direct Operating Costs that the Operator incurs from the Agreement Commencement Date to the Operations Start Date.

**1.90 Premium Rate** means a rate of interest equal to two percent (2%) in excess of the Prime Rate.

**1.91 Premium Seating** means the skybox seats, suites and club or other premium designated seats at the Facility designated by the Operator and the City which have exclusive access for patrons in a separate and exclusive manner and are or may be serviced by separate catering, service and maintenance support. Premium Seating shall not include any of the General Seating.

**1.92 Prime Rate** means the rate of interest announced from time to time by The Chase Manhattan Bank, or by any other national bank located in the City and designated by the Operator and the City, as the "prime rate" of interest.

**1.93 Procurement Agent Agreement** has the meaning set forth in Section 2.4.1 and is in the form attached as Exhibit 2.4 hereto.

**1.94 Professional Team** means any sports or entertainment team, franchise or other entity, other than the Team, that uses the Facility for regularly scheduled sports or entertainment performances as part of a league or other competition schedule.

**1.95 Project Site** means Lot No. 2 as shown on Exhibit 1.95, on which the Arena is located.

**1.96 Quality Arena Standard** means an overall operations quality for a family-oriented public arena, comparable to similar arenas in Lowell, Massachusetts; Merrimack, New Hampshire; Fort Myers, Florida; Trenton, New Jersey; and Grand Rapids, Michigan (or to such other arenas as the parties may agree in writing from time to time).

**1.97 R & R Budget** has the meaning set forth in Section 5.7.4.

**1.98 Records** means records and data collected in all media pertaining to financial records of the Operator relating to Facility Operating Revenues, Direct Operating Costs and the Renewal and Replacement Account. Records may be created and maintained electronically, provided that they are accompanied by a paper copy.

**1.99 Renewal and Replacement Account** means the Account established for funds deposited pursuant to, and which may be used as specified in, Section 5.7.

**1.100 Renewal and Replacement Contribution(s)** means the contributions into the Renewal and Replacement Account, to be deposited by the Operator on behalf of the parties, equal to the sum of twenty-five cents (\$0.25) per each ticket sold per Event (other than City Events) in the Facility per Fiscal Year, subject to maximum annual contributions (pro-rated for any partial Fiscal Year and for any Abatement Period) of \$150,000 for each of the first five (5) years during the Term, \$200,000 for each of the next five (5) successive years during the Term, and \$250,000 for each of the remaining years during the Term.

) **1.101 Request** with respect to this Agreement has the meaning set forth in Section 17.1 thereof.

**1.102 Sales Taxes** means sales, use, seat, admission, amusement, occupancy, gross receipts or similar taxes added to the sale price of goods or services and payable to any taxing authority.

**1.103 Schedule** has the meaning set forth in Section 2.2.1 hereof.

**1.104 Seat Use Charge** means the amount that (i) the user of each seat in the Arena shall be charged for use of such seat and (ii) Operator shall collect from each such user. Such amount shall be determined by Operator in its discretion. The Seat Use Charge shall be in addition to, and not in lieu of admission or ticket charges and any taxes that may be payable on such Seat Use Charge.

**1.105 Sponsor Signs** means banners, signs and other temporary or non-temporary, moveable or non-movable displays, or audio or video messages, in the Facility which identify the Team or sponsors and which may be installed before and removed after each home game so as to be visible or transmitted during the home games but may be covered or otherwise not visible during other Events.

) **1.106 State** means the State of Connecticut.

**1.107 Substantial Completion** or **Substantially Complete** means the completion of the Facility to the extent that a Certificate of Occupancy is issued for the Arena and such that the Facility complies with all applicable Laws, has been constructed in accordance with all related AHL requirements and can be operated by the Operator for the purposes for which it was intended.

**1.108 Substantial Portion** means a portion of the Facility that will result in a reduction in seating capacity of more than ten percent (10%) or a reduction in the Concession Areas of any percentage which will reduce or restrict Concessionaire's ability to serve patrons such that Facility Operating Revenues from Concession Areas will be reduced by more than ten percent (10%).

**1.109 Substantial Taking** has the meaning set forth in Section 13.1.

**1.110 Taking** has the meaning set forth in Section 13.1.

**1.111 Temporary Advertising** means Advertising in connection with any Event which is to be removed or terminated at the conclusion of such Event.

**1.112 Team** means the AHL expansion franchise granted for Bridgeport, Connecticut.

) **1.113 Term** has the meaning set forth in Section 3.1.

**1.114 Title Exceptions** has the meaning set forth in Section 15.1.5.

**1.115 Use Agreement** means the agreement between the Operator and the Team for a term of at least ten (10) years, under which the Team is obligated to play all of its home games (of which there shall be at least 40) and playoff games at the Facility, with use payments to the Operator that are comparable to other agreements with other AHL teams in similar arenas, and on such other terms as the Operator and the Team shall mutually agree.

**1.116 Work** means the construction of the Facility to completion in conformance with the Construction Documents, as the same shall be amended from time to time as provided herein, and to be reflected in the City's final as-built drawings.

## ARTICLE II CONSTRUCTION OF FACILITY

### 2.1 City's Construction Obligation.

The City shall cause the completion of construction of the Facility in conformance with good engineering practices, and in accordance with the requirements of this Agreement and the requirements of all applicable Laws. Without limiting the generality of the foregoing, the City shall:

2.1.1 manage and direct the Work, at its expense, and coordinate the work of all Persons involved therein, including the preparation of all submissions necessary in connection with all necessary permits and approvals to be obtained by the City;

2.1.2 secure all such permits and approvals;

2.1.3 obtain, pay for and maintain throughout the Pre-Opening Period the insurance coverage required of the City pursuant to Article XI hereof;

2.1.4 enter into such Contracts and subcontracts as it deems useful and advisable to cause the Facility to be completed; and

2.1.5 cause the Work to be completed in accordance with the Schedule and the Construction Documents, so that the Facility is equipped, furnished and completed in a good and workmanlike manner and in accordance with the terms of this Agreement.

### 2.2 Schedule of Completion and Construction Documents.

2.2.1 Attached hereto as Exhibits 2.2.1(a) and (b), respectively, are a schedule for completing the permitting, design and construction of the Facility (the "**Schedule**") and Construction Documents which are one hundred percent (100%) complete (the "**Existing Plans**"). The Schedule and Existing Plans have been approved by the City and the Operator.

2.2.2 The City shall cause the Architects to timely prepare and deliver to the City and the Operator, but in no event later than the appropriate date set forth in the Schedule, unless otherwise approved in writing by the parties (which approval shall not be unreasonably

) withheld, conditioned or delayed), complete and final documents, including drawings and specifications setting forth in detail all requirements for the construction of the Facility (the "**Construction Documents**"), for the review and written approval of the parties (which approval shall not be unreasonably withheld, conditioned or delayed). Until the final Construction Documents have been approved in writing by both parties, the Existing Plans shall serve as the approved Construction Documents and shall be the basis of the Work.

2.2.3 The City shall cause the Operator to receive notice of all construction meetings (the "**Construction Meeting(s)**"), and copies of all proposed items to be discussed, sufficiently in advance to afford the Operator an opportunity to review such items and to attend and participate in Construction Meetings. The Operator shall use reasonable efforts to attend all Construction Meetings. The City shall cause the Architects to prepare minutes of each Construction Meeting reflecting the decisions made, approvals given and objections raised at the Construction Meeting, and shall distribute copies thereof to the parties promptly after each Construction Meeting. Such minutes shall be reviewed, amended if necessary, and approved by the City and the Operator at the next Construction Meeting following the distribution thereof.

) 2.2.4 The parties shall discuss any delays or anticipated delays in meeting the Schedule and the actual dates on which the various stages and construction indicated on the Schedule are started and completed at Construction Meetings; provided, however, that no changes from previously approved Construction Documents or Schedule shall occur unless the City agrees in writing to the change.

2.2.5 If, during construction, the City reasonably determines that any item of Work is not constructed, being timely constructed, installed or being timely installed in accordance with the Construction Documents approved by the parties or the Operator makes such reasonable determination and provides the City with the reasons that led to the Operator's determination and the City agrees with such determination or the Architect confirms such non-conformance, the City shall cause any such non-conforming Work to be re-executed by the Person responsible, unless the City and the Operator agree that it would be inexpedient to require such re-execution and the City and the Operator agree on an alternate solution which satisfies the City and the Operator equitably.

### 2.3 Change Orders.

2.3.1 The Operator may, at any time and from time to time, by a written change order request, request changes in the Work within the general scope of construction required by this Agreement. Such changes may include, but are not limited to, changes in the Construction Documents. The City shall act in good faith in considering the Operator's request for changes and shall provide the Operator with an adequate opportunity to express its views. No such changes shall be made without the City's consent, which it may withhold in its sole discretion.

) 2.3.2 The City may, at any time and from time to time, by a written change order request, request changes in the Work within the general scope of construction required by this Agreement. Such changes may include, but are not limited to, changes in the Construction Documents. The Operator's consent shall be required for any change which, as reasonably

determined by the City, will have a financial, operational or safety impact on the Operator. The Operator shall have until the close of business on the second Business Day following receipt of such written change order request to reject or approve of such change. Failure by the Operator to respond in writing to the City within such two business-day period shall be deemed approval of the change. The Operator shall act in good faith in considering requests for changes made by the City. No such change shall be made if the Operator's rejection of a change order request is related to a financial, operational or safety impact, includes the Operator's basis for the rejection in reasonable detail and is provided to the City within the two-business-day period. The Operator may propose an alternative, provided, however, that unless the Operator and the City otherwise agree in writing, no such alternate proposal shall be considered by the City if to do so would create delays or cost increases. The City may accept or reject any such alternate proposal by the Operator in the City's sole discretion.

2.3.3 Other than as expressly provided in Section 2.3.2 herein, the City may make changes to the Work, including, without limitation, changes to the Construction Documents, at any time and from time to time, in its sole discretion and without the Operator's consent.

## 2.4 Operator's Duties during Pre-Opening Period.

2.4.1 The Operator and the City shall enter into an agency agreement (the "**Procurement Agent Agreement**") substantially in the form as set forth as Exhibit 2.4 hereto, with regard to the specification, selection and purchase of FF&E by the Operator on the City's behalf and at the City's expense. The Operator shall use all reasonable efforts to fulfill its duties under the Procurement Agent Agreement in a manner and time period consistent with the Schedule. The City acknowledges that allowing the Operator to be the purchaser of the FF&E on the City's behalf is in the best interest of the City and otherwise constitutes compliance with Section 3.08.080 of the City's Municipal Code of Ordinances. Any cost savings under the Procurement Agent Agreement shall inure to the benefit of the City.

2.4.2 During the Pre-Opening Period, the Operator shall be authorized to take all steps that it deems appropriate, in its reasonable judgment, to prepare for operations of the Facility and to market Advertising, Premium Seating and other sources of Facility Operating Revenues. The Operator will submit a pre-opening plan to City detailing its pre-opening actions at least 12 months prior to the Operations Start Date and shall update such plan at monthly intervals until the Operations Start Date.

2.4.3 The City shall cause the Construction Manager to coordinate the delivery and installation of the FF&E. The installation cost for the FF&E is included in the FF&E provisions in the Building Budget.

## 2.5 Completion of Work

2.5.1 The City shall cause the Architect to notify the Operator in writing not less than 60 days prior to the date the City reasonably projects that the Operations Start Date shall occur. The City shall promptly notify the Operator of changes to such projected date.

2.5.2 The City shall cause the Construction Manager and Architect to complete the Work in compliance with the Construction Documents, including the diligent prosecution of any construction warranties and guarantees as provided in Section 2.8.

2.5.3 Within sixty (60) days after the Operations Start Date, the Operator shall prepare a list in writing ("**Punch List**") of any apparent defects, deficiencies and/or discrepancies in the Work ("**Defects**"). The City agrees to cause the Construction Manager to reasonably promptly correct any Defects.

2.5.4 No more than sixty (60), and no fewer than thirty (30), days prior to the Operations Start Date, the City shall inform Operator of all items that are likely to cause the "temporary" status of the Certificate of Occupancy, and the City shall provide updates to Operator whenever it becomes aware of any change in status of any such item. In the event that a temporary Certificate of Occupancy is issued for the Facility, the City shall work to obtain a permanent Certificate of Occupancy as diligently and promptly as possible.

## 2.6 Operations Start Date.

The Operator shall assume the obligation to operate the Facility commencing on the Operations Start Date. The parties agree and acknowledge that there may be a sixty (60) day period after the Operations Start Date during which the Operator shall test and ready the Arena for service and use. "**Operations Start Date**" means the date that all of the following conditions have been satisfied:

(a) delivery to the Operator of a certificate of the Architect stating that the Facility is Substantially Complete and any Work that has not been finally completed can reasonably be expected to be completed without any material disruption to or unavailability of the Facility for the purposes for which it is intended;

(b) delivery to the Operator of the original or certified copies of all necessary governmental permits and approvals for the occupancy, use and operation of the Facility as Substantially Complete; and

(c) delivery to the Operator of a certificate by the City restating its representations and warranties made in Section 15.1 as true and correct as of the Operations Start Date (with the exception of any changes that do not have a material adverse impact on the Operator's rights or performance obligations under this Agreement and do not subject the Operator to any material increase in liability hereunder).

## 2.7 Delivery of Final Plans. The City shall deliver to Operator the following:

(a) on or prior to the Operations Start Date, (i) working drawings for the Arena and (ii) to the extent available, all suppliers' and manufacturers' standards and warranty conditions, maintenance procedures, instructions, aids and other construction-related information required by the Operator to properly operate the Facility; and



(b) as soon as reasonably available, but no later than 150 days after the Operations Start Date, (i) up-to-date design specifications for the Facility, (ii) plans and drawings, including all shop drawings and test reports and currently marked "as built" plans and drawings, for the Facility and (iii) the items described in subsection (a)(ii) above that were not available and delivered on or prior to the Operations Start Date.

## 2.8 Construction and Other Warranties.

2.8.1 Effective on the Operations Start Date, the City shall assign to the Operator, to the extent permitted (and, for those that cannot be assigned, the City hereby appoints the Operator as its agent to enforce the City's rights under) all construction warranties and guarantees obtained on the construction work and on all material, equipment, workmanship or design in connection with the construction and equipping of the Facility. Such assignment excludes any warranties and guarantees from the Construction Manager to the City, which shall be handled pursuant to Section 2.8.2. Such appointment of the Operator as the City's agent shall be under terms and conditions that will permit the Operator to enforce such warranties and guarantees. The City shall cooperate, at the City's expense, with the Operator in enforcing any warranties and guarantees. Notwithstanding anything herein to the contrary, the City shall correct or cause to be corrected all Defects on the Punch List, at the City's sole cost and expense, including, without limitation, the cost of enforcing all such warranties and guarantees relating to such Defects. The City shall retain rights under warranties and guarantees specifically relating to such Defects to enable the City to perform its obligations under the preceding sentence. Sums thereby obtained shall be applied by the City (i) first, to reimburse the City for reasonable attorneys' fees or reasonable out-of-pocket costs of pursuing the claim; (ii) second, to pay for, or reimburse the Operator for, reasonable expenses incurred by the Operator in repairing, maintaining or operating the Arena on account of the Defects in material, equipment, workmanship or design that triggered the warranty or guarantee claim and the Operator's reasonable, out-of-pocket costs incurred in cooperating with the City in any such claim, and (iii) the balance, if any, shall be paid to the City. All of the Operator's reasonable costs and fees of prosecuting or maintaining any such other enforcement action shall constitute Facility Operating Expenses.

2.8.2 Notwithstanding any other provision in this Agreement to the contrary, the Operator may request in writing that the City enforce any of the warranties or guarantees from the Construction Manager. The City shall respond in writing to any such request advising the Operator whether the City will enforce any such warranty or guarantee claims against the Construction Manager. If the City does not respond to such request within ten (10) days after receipt of the Operator's notice or responds within such period and elects not to pursue the warranty or guarantee claims itself, then the Operator may enforce the warranties or guarantees provided in the notice as the agent of the City and at the Operator's expense, and the City hereby appoints the Operator as its agent for such purpose.

2.8.3 All warranties and guarantees applicable to the Facility and the Work are described in the Construction Documents.

2.9 Construction Expenses. The parties acknowledge that Food Service Resources, Inc. has been engaged by the City to provide certain consulting services in connection with the design and construction of the Concessions Areas, and the City acknowledges that the Operator shall bear no responsibility for such contractor. Other than Food Service Resources, Inc., the Operator shall bear the cost and expenses of any employees, agents and contractors the Operator may use or employ in connection with the Work. The Operator shall not be obligated to pay for the cost or expense of any work related to designing, constructing, insuring, furnishing and equipping of the Facility prior to the Operations Start Date, including costs arising from delays, overruns and changes of the Work. The Operator shall not engage any agents or contractors prior to the Operations Start Date without the City's consent, which consent may be conditioned on the Operator bearing the cost of such agent or contractor.

2.10 Access. Upon reasonable prior notice to the City, the Operator may enter upon the Project Site as reasonably necessary to prepare the Facility for operations and the management of the Facility as contemplated under this Agreement and to verify that the design, construction, furnishing and equipping of the Facility is being undertaken in accordance with this Agreement.

#### 2.11 Funding the Facility.

2.11.1 The City will fund or cause to be funded all costs of the Work in accordance with the Construction Documents (the "**Facility Funding**") and shall be solely responsible for any overruns in the cost thereof, except as otherwise provided in Section 2.11.2 of this Agreement.

2.11.2 The Operator shall contribute the sum of \$8,000,000 (the "**Operator Funding**") to the Facility Funding upon Substantial Completion, provided the City has secured at least \$35,000,000 of financing for the Facility Funding. Guarantor shall guaranty the obligations of the Operator in respect of the Operator Funding pursuant to the Construction Period Guaranty in the form of Exhibit 16.4 hereto. The Operator Funding shall be amortized beginning on the Operations Start Date over a period of twenty (20) years, monthly on a straight-line basis. In the event of a termination of this Agreement, the City shall, or shall cause a successor operator to, pay to the Operator an amount equal to the unamortized portion of the Operator Funding and any portion of the License Fee Advance which has not yet been credited to the Operator pursuant to Section 5.2.2.

### ARTICLE III TERM

#### 3.1 Commencement and Term.

The term (the "**Term**") of this Agreement shall commence on the date hereof (the "**Agreement Commencement Date**") and shall expire (the "**Expiration Date**") on the anniversary date twenty (20) years after the Operations Start Date, unless earlier terminated pursuant to the terms of this Agreement; provided, however, that the Expiration Date shall be

) extended for a period equal to the aggregate of every Abatement Period or portion thereof having a duration of at least 90 days and for the period of the Extension Term.

### 3.2 Option to Extend.

Unless there has occurred an Event of Default by the Operator which remains uncured at the time of Operator's notice or on the Expiration Date, the Operator shall have the option and right (the "**Extension Option**") to extend the Term of this Agreement upon the same terms and conditions, for one (1) additional term (the "**Extension Term**") of ten (10) years commencing on the Expiration Date. The Operator shall exercise the Extension Option by delivering written notice to the City not less than eighteen (18) months, nor more than thirty (30) months, prior to the Expiration Date.

## ARTICLE IV ENGAGEMENT OF OPERATOR; AUTHORITY; CONTACTS

### 4.1 Engagement of Operator.

) The City hereby appoints the Operator as the sole and exclusive manager and operator of the Facility during the Term hereof and authorizes the Operator to exercise such powers as may be necessary and appropriate for the management of the Facility consistent with the terms and conditions set forth herein. The Operator hereby accepts the appointment upon the terms and conditions set forth in this Agreement. The Operator shall have the right to delegate duties and responsibilities hereunder to an Arena Management Firm and/or to subcontractors or agents with the consent of the City, which shall not be unreasonably withheld, conditioned or delayed; provided that the Operator shall at all times be responsible for maintaining the Quality Arena Standard of the Facility. Notwithstanding the foregoing, no consent shall be required for delegation to Affiliates of the Operator, and nothing herein shall restrict or limit the Operator's rights of assignment under Section 14.1 hereof.

### 4.2 Authority of Operator.

) The Operator shall have the exclusive right and authority to exercise, or delegate the exercise of, all rights, powers and duties conferred or imposed on the Operator in this Agreement. The powers of the Operator with respect to the Facility shall be subject only to the limitations expressly set forth in this Agreement, and shall include, but not be limited to, the right to enter into contracts for, or otherwise provide for: the licensing of Premium seating; the sale or license of Advertising; the granting of Naming Rights; the operation of Concessions; the licensing of the Facility for Events, including licensing at below-market or subsidized rental rates to charitable, educational or civic groups for Events, in the reasonable discretion of the Operator; the promotion or co-promotion of Events; the repair, maintenance and improvement of the Facility; the provision of security and ushering services; the distribution or sale of tickets; the printing of programs and other printed materials; the purchase of insurance; and any and all other activities related, in the reasonable judgment of the Operator, to the operation, maintenance and improvement of the Facility. Throughout the Term (both during and after the Pre-Opening

) Period) the Operator, and only the Operator, shall have the sole and exclusive authority to negotiate and enter into agreements and arrangements relating to the use, occupancy or operation of the Facility. No party shall be required to inquire into the authority of the Operator to enter into any of the aforesaid agreements.

#### 4.3 Duty to City.

The Operator shall owe to City a duty to perform its obligations under this Agreement in accord with the Quality Arena Standard and to conduct the management and operation of the Facility at all times with integrity and good faith.

#### 4.4 City Representative.

) Prior to the Operations Start Date the City's Director of Office of Planning and Economic Development shall be the City's authorized representative ("**City Representative**") who shall act as liaison and contact between the City and Operator in administering and implementing the terms of this Agreement. After the Operations Start Date the City Representative shall be the City's Chief Administrative Officer. Any notice required to be given to the City Representative under Article II shall simultaneously be delivered to the City's Director of Construction Management Services. The City shall have the right to designate a substitute authorized representative by providing written notice thereof to Operator. The City Representative, or his authorized designee, shall respond to requests for review, consents or waivers within ten (10) business days after submission. After the Operations Start Date if the Operator also delivers any such notice to the parties set forth in Section 18.1 and clearly states in such notice that if the City fails to respond with a notice of disapproval within such ten business day period the request shall be deemed approved or the consent shall be deemed granted, then failing a written notice of disapproval within such period, the request shall be deemed approved or the consent granted. All administrative and ministerial consents shall be given by the City Representative on behalf of the City. The Operator may rely and shall be fully protected in relying upon the authority of the City Representative or any such designee to act for and bind City in any such matter.

#### 4.5 Operator Representative and General Manager.

) 4.5.1 The Operator Representative shall act as liaison and contact person between the City and the Operator and have the sole authority to act for the Operator in all matters concerning this Agreement, including requesting and responding to requests for consents and waivers, giving and receiving notices, and amending or otherwise making decisions hereunder on the Operator's behalf. The Operator shall have the right to designate a substitute authorized representative, who shall also be a senior officer of the Operator, by providing written notice thereof to City. The Operator Representative, or such authorized designee, shall respond to requests for review, consents or waivers within ten (10) business days after submission. After the Operations Start Date if the City also delivers any such notice to the parties set forth in Section 18.1 and clearly states in such notice that if the Operator fails to respond with a notice of disapproval within such ten business day period the request shall be deemed approved or the consent shall be deemed granted, then failing a written notice of disapproval within such period,

) the request shall be deemed approved or the consent granted. The City may rely and shall be fully protected in relying upon the authority of the Operator Representative or any such designee to act for and bind Operator in any such matter.

4.5.2 The General Manager shall act as the Operator's day-to-day contact and liaison with the City for the normal management and operations of the Facility, such as handling Concessions management and Event scheduling. The General Manager shall have no authority, and the City expressly agrees not to request the General Manager, to take the actions or assume any responsibilities of the Operator Representative set forth in Section 4.5.1 above.

#### 4.6 Management.

During the Pre-Opening Period, the Operator shall have only those duties specifically set forth in Article II hereof. From and after the Operations Start Date, the Operator shall be the exclusive manager and operator of the Facility during the Term. The Operator shall perform its duties and responsibilities with such attention and care as is reasonably consistent with the Quality Arena Standard. The Operator's services and obligations shall consist generally of the management and operation of the Facility, including, without limitation:

) 4.6.1 planning and administering the operation of the Facility, including, but not limited to, establishing, maintaining procedures for and paying when due all Facility Operating Expenses, receiving Facility Operating Revenues, preparing and delivering budgets and related materials, including, but not limited to the R&R Budget, developing and implementing accounting, employment and other policies for the Facility, maintaining Records and providing Records for audits, coordinating work of any Person performing services at the Facility, monitoring actual and projected costs of operations, and furnishing services, personnel and materials necessary to operate the Facility and furnishing to the City such reports and other information concerning the physical plant and the operation thereof as may be reasonably requested from time to time by the City, excluding Operator's proprietary information and financial information that is not specifically included in the Records.

4.6.2 commencing, defending (including selecting and retaining legal counsel) and settling in good faith such legal actions or proceedings concerning the operation of the Facility (other than defense of the City in legal actions or proceedings in which the City is a defendant, which defense shall be assumed by the City Attorney) as are necessary or required in the opinion of the Operator;

4.6.3 purchasing and maintaining, after the Operations Start Date, all materials, tools, machinery, equipment and supplies necessary for the operation of this Agreement consistent with the Quality Arena Standard, subject to the provisions of Sections 2.4.1, 5.6, 5.7, 5.8 and Article VIII hereof;

) 4.6.4 repairing, maintaining and operating the Facility in accordance with the terms of this Agreement, and maintaining and operating the Facility in compliance with all requirements imposed upon any Professional Team, unless such requirements would be financially or operationally impracticable;

4.6.5 maintaining or causing to be maintained all necessary licenses, permits and authorizations for the operation of the Facility;

4.6.6 operating all Concessions at the Facility, or, at the Operator's election, procuring and negotiating contracts with Concessionaire(s) for the operation of Concessions (in this regard Operator shall advise City of the status of such negotiations and permit City to review and comment upon any such contract and Operator, in its discretion and after consultation with the City, shall conclude such contracts and upon execution of any Concession agreement, Operator shall deliver a copy to City);

4.6.7 negotiating, executing and performing use agreements, licenses and other agreements: (i) with Persons who desire to schedule Events, telecasts, broadcasts or other transmissions in, from or to the Facility, or any part thereof, or who desire otherwise to license the use of or to occupy the Facility or any part thereof; or (ii) that otherwise pertain to the use, operation and occupancy of the Facility or any part thereof. Notwithstanding the above, no basketball team or other Professional Team that plays at least a forty-game regular season at the Arena other than the Team shall use the Facility without the City's consent, which shall not be unreasonably withheld. In the case of a basketball team or such other Professional Team, the Operator will use its best efforts to obtain rights for the City that are substantially similar to those between the City and the Team, including providing reasonable time and advance notice for the City to participate in the negotiations in order to acquire such rights, but the Operator's failure to obtain such substantially similar rights after using such efforts shall not be grounds for the City to withhold its consent unless the City has presented, and the Operator has rejected, a viable alternative Professional Team on substantially similar terms to the Operator and which alternate team has agreed to provide rights to the City that are substantially similar to those between the City and the Team. It is understood that the use agreement for such basketball team or such other Professional Team need not be on the same economic terms as those under the Use Agreement and that the Team shall be the "primary tenant" of the Arena for as long as the Team Use Agreement is in effect. The parties agree that the Operator shall give scheduling preference to the varsity men's basketball team of Fairfield University during its regular season, at the request of the University, for up to ten (10) home games to be played at the Facility

4.6.8 negotiating and entering into co-promotion agreements with users of the Facility for Events which Operator and such user agree to co-promote; provided that each of these co-promotion contracts specifically sets forth the arrangement between the Facility and the co-promoter in respect to sharing of revenues and expenses attributable to user's use of the Facility in connection with the Event.

4.6.9 scheduling and booking all Events, and controlling all ticketing for Events, at the Facility.

4.6.10 planning and executing public relations and other promotional programs for the Facility, including entering into contracts for Facility promotions. The Operator shall use reasonable efforts to coordinate Event marketing and planning with the management of the Bridgeport Bluefish Professional Baseball Club, LLC in order to minimize, to the extent

possible, conflicting dates and events. In no event shall Operator be required to cancel or reschedule an Event unless it determines that such cancellation or rescheduling is in the best interests of the Facility in furtherance of Facility Operating Revenue.

4.6.11 selling, licensing or otherwise arranging for Advertising within the Facility; provided, however, that (a) unless restricted by law, the Operator shall not permit tobacco or firearm products to be sold, advertised or marketed in the Facility or to be visibly involved in any manner with any of the Events at the Facility, and (b) the Operator shall not have any right to exhibit or display any Advertising or signage on or visible from the exterior of the Arena, except for (i) in connection with a marquee affixed to the Facility, (ii) in connection with Naming Rights, and (iii) a "Home of" sign for the Team and any other Professional Team at the Operator's sole cost, located in proximity to the main entrance to the Arena. Exterior signs may only be permitted in compliance with the City's signage ordinances and with the prior written consent of the City, which consent may be withheld in the City's reasonable judgment.

All such services shall be conducted in the manner deemed reasonably appropriate or advisable by the Operator, and shall be paid for or reimbursed as hereinafter provided in this Agreement. The services of the Operator shall be of a scope not less than those generally performed by professional managers of other similarly situated arenas and consistent with the Quality Arena Standard. The Operator shall operate, manage and maintain the Facility and perform the Operator's obligations under this Agreement in a diligent, careful and vigilant manner in order to maintain the condition and character of the Facility in accordance with the Quality Arena Standard and to maximize Net Operating Income. The Operator shall apply reasonable business practices in operating, renting and managing the Facility, in granting complimentary use with respect to all or any portion of the Facility as is customary in the arena industry; and in taking measures to provide for the security of the Facility and its guests. The Operator shall use its best reasonable efforts to promote the maximum possible amount of trade, commerce and business for the Facility.

#### 4.7 Affiliate Contracts.

4.7.1 The Operator shall have the right to enter into contracts or transact business with Affiliates to the extent such contract is on commercially reasonable terms and negotiated on an arms-length basis. In advance of entering into any agreement with an Affiliate concerning the Facility with a value greater than Fifty Thousand Dollars (\$50,000.00) in any Fiscal Year, the Operator shall provide a copy of such agreement (which may be subject to confidentiality, if proprietary) to the City for its approval, which approval shall not be unreasonably withheld, conditioned or delayed.

4.7.2 On or prior to the Operations Start Date the Operator shall provide the City with a list of all parties with which it intends to enter into an agreement concerning the Facility for the first Fiscal Year. On or prior to the end of each Fiscal Year the Operator shall provide to the City a list of the parties with whom it entered into agreements concerning the Facility its agreements concerning the Facility in such Fiscal Year.

4.7.3 The Operator shall not, without the City's reasonable consent, enter into any agreement concerning the Facility with any Person whom the Operator knows (a) is adverse to the City in a material dispute in which the City is a party in litigation; (b) has been convicted of any felony; or (c) is seriously in arrears in tax payments to the City (a "Contrary Party"). The Operator shall use commercially reasonable efforts to determine whether any Person is a Contrary Party prior to entering into any agreement with such Person. The City shall provide the Operator with a written list, from time to time, of Contrary Parties. Notwithstanding anything in this Section to the contrary:

(a) The foregoing restrictions shall not apply in the event that compliance with such restrictions would conflict with other existing contractual arrangements binding upon the Operator;

(b) The Operator shall be entitled to rely on the representations and warranties made by a Person with whom the Operator contracts, unless the Operator has actual knowledge to the contrary; and

(c) In the event that the Operator acquires actual knowledge that a Person is a Contrary Party during the term of an existing agreement with the Operator, the Operator shall nonetheless be entitled to honor the terms of such existing agreement.

#### 4.8 Shared Security; Traffic Control Responsibilities.

4.8.1 The parties recognize the public police power obligations of the City. The City shall take all necessary action to determine the police, security and on-site and off-site traffic control benefits necessary for safe operation of the Facility. The parties shall cooperate in good faith to develop a traffic management plan to facilitate the ingress and egress of vehicular traffic to and from events at the Facility. Notwithstanding the foregoing, the City shall be solely responsible for parking control pursuant to Section 18.14 herein and shall provide all measures as are reasonably necessary to manage crowds and direct patrons to and from Events at the Facility.

4.8.2 Traffic control on all public streets around the Facility shall be the responsibility of the City. The City, exercising its discretionary police powers, shall provide officers of the Bridgeport Police Department when necessary to assure traffic control before and after events in the Facility and will additionally be available to respond to security problems in all Parking Areas as required.

4.8.3 The Operator shall hire uniformed off-duty City police department officers, or other appropriate security officers or firms, for security services at all Events at the Facility. There shall be at least six (6) such security officers employed at each Event held at the Facility, which number may be reduced by the Operator to a minimum of four (4) police officers at any Event at which the Operator reasonably anticipates using less than half of the Arena. The number of officers provided at Events shall be adequate, in the Operator's reasonable judgment, for the security of those persons attending the particular Event and the provision of security for the Facility and its contents. When it is necessary or appropriate, in the reasonable judgment of the Operator, the Operator or its designated security representative shall consult with the Chief of



Police of the City or the Chief's designee to determine the adequacy of intended security for Events at the Facility. Officers shall be directed to be at the Facility no later than one-half hour prior to its opening to the public and until at least one-half hour after the Facility is closed to the public. Any private security personnel utilized by the Operator shall be considered as employees or independent contractors of the Operator and in no manner considered or construed to be employees or agents of the City. Off-duty City police officers, however, shall remain employees of the City, acting on behalf of the City, and shall be provided to the Operator by the City on an independent contractor basis at hourly rates equal to the officers' then-current basic hourly wages (without mark-up for benefits costs). By way of example, the current hourly wages of off-duty City police officers as of July 1, 2000 is \$37.28 (inclusive of the City surcharge of \$8.00 per hour), minimum four hour shift.

#### 4.9 Naming Rights.

The Operator shall have the exclusive right to sell, license or otherwise grant the naming rights to the Facility, including Arena concourses, the rink or any other part of the Facility, on such commercially viable terms and conditions as the Operator shall determine (the "**Naming Rights**"). The City and the Operator shall share equally any revenue generated from such sale, license or grant of the Naming Rights in excess of \$2,000,000, after deducting the parties' direct, out-of-pocket expenses in connection therewith, not to exceed ten (10%) percent of the aggregate value of all Naming Rights revenues, but in no event exceeding \$500,000. Such expense deduction shall not include the cost or value of any barter or in kind goods or services used to sell or market the Naming Rights. Naming Rights revenues shall be excluded from Facility Operating Revenues. Upon request by the City, the Operator shall use commercially reasonable efforts to assist the City in its effort to obtain financing for construction of the Facility secured by the City's portion of such future Naming Rights revenues.

#### 4.10 Non-Discrimination and Hiring.

4.10.1 The Operator agrees not to discriminate, nor permit discrimination, against any person in the performance of this Agreement on the grounds of race, color, national origin, religion, sex, disability, marital status, sexual orientation, mental retardation or physical disability, unless it can be shown that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State, and further agrees to provide the Commissioner of Human Rights and Opportunities with information which may be requested from time to time by the Commission concerning the employment practices and procedures of both parties as they relate to the provisions of Section 4a-60 of the Connecticut General Statutes and any amendments thereto.

4.10.2 This Agreement is subject to the provisions of the Governor's Executive Order No. 3 promulgated June 16, 1971, and as such, this Agreement may be canceled, terminated, or suspended by the State Labor Commission for violation of, or noncompliance with, Executive Order No. 3, or any State or Federal Law concerning nondiscrimination, notwithstanding that the Labor Commissioner is not a party to this Agreement. The parties to this Agreement, as part of the consideration hereof, agree that Executive Order No. 3 is

incorporated herein and made a part hereof. The parties agree to abide by Executive Order No. 3 and agree that State Labor Commissioner shall have continuing jurisdiction in respect to contract performance in regard to nondiscrimination, until the Agreement is completed or terminated prior to completion. The parties agree as part of the consideration hereof that this Agreement is subject to the Guidelines and Rules issued by the State Labor Commissioner to implement Executive Order No. 3 and that they will not discriminate in employment practices or policies, will file reports as required, and will fully cooperate with the State and the State Labor Commissioner.

4.10.3 The Operator shall use all reasonable efforts, including newspaper and other advertising, contacting of local minority agencies and the like, to solicit, contract for and employ the services of minority, women's and disadvantaged business enterprises where appropriate in performing the terms of this Agreement, and the Operator acknowledges the strong interest of the City in promoting equal opportunities for all of its residents. On or before the Operations Start Date, the Operator shall present a plan to the Compliance Office to implement the goals of this Section 4.10, which plan shall be reasonably acceptable to the Compliance Office and any approval shall not be unreasonably withheld, conditioned or delayed. The Operator acknowledges and agrees that a good faith outreach effort will consist of the following activities:

(a) utilize minority-owned media outlets (such as Umoja, Northeast Minority News, Radio Cumbre and Inner-City News or successor entities) where feasible and appropriate;

(b) utilize the services of the disadvantaged business lists prepared by reputable government and private agencies such as those compiled by the State Department of Administrative Services and the Department of Transportation, the Connecticut Minority Supplier Development Council, and the federal government Small Business Administration (SBA-8a list);

(c) develop a target database with profiles and relevant historical performance information for direct mailing and direct contact purposes;

(d) maintain a list of strategic resource partners to publicize contract opportunities to groups of disadvantaged business network support organizations and technical assistance providers; and

(e) organize workshops, seminars and informational forums to publicize the availability of contract opportunities;

4.10.4 The Operator shall comply with the requirements of Chapter 3.12 of the City's Municipal Code of Ordinances and use reasonable best efforts to favor qualified residents and businesses of the City of Bridgeport in its hiring and procurement practices.

4.11 Menu and Price List.

To ensure that the menu and price list for Concessions is comparable to the menu and price list for Concessions at the Hartford Civic Center, the menu and price list of Concessions to be sold in the Arena shall be submitted to the City for review prior to September 15 of each year during the Term and Extension Term. After such submission, the Operator shall provide the City a reasonable opportunity to comment upon and have input into the menu and pricing of Concessions.

ARTICLE V  
FINANCIAL OBLIGATIONS

5.1 Facility Operating Revenue.

The Operator shall promptly and diligently attempt to collect all Facility Operating Revenues, and, upon collection, the Operator shall deposit all Facility Operating Revenues into the Operating Fund.

5.2 License Fee to City.

5.2.1 Operator shall, in all events and as a priority payment ahead of other creditors, pay the City, in lieu of real and personal property taxes, the sum of \$250,000.00 annually, commencing on the Operations Start Date and prorated for any portion of a Fiscal Year. The foregoing amount is the payment in lieu of real estate taxes ("PILOT") payable by the Operator. Upon the City's written request, the Operator shall advance the sum of \$100,000 per year of this annual payment (the "License Fee Advance"), discounted to present value using an eight percent (8%) discount rate necessary to equal \$1,000,000 on the Operations Start Date (the "Discounted Payment"). The Discounted Payment shall be paid to the City on the Operations Start Date.

5.2.2 License Fee shall be payable in equal monthly installments, no later than the 10<sup>th</sup> day of any month for the prior month, in accordance with the terms of this Agreement. If the Operator has made a Discounted Payment applicable to the Fiscal Year in question, each monthly installment of License Fee for such period shall be reduced by one-twelfth of the full License Fee Advance (prior to being discounted to the Discounted Payment amount) applicable to such Fiscal Year.

5.2.3 Notwithstanding anything herein to the contrary, the Operator shall have no obligation to pay License Fee with respect to any Abatement Period. In the event of any resulting overpayment of License Fee by the Operator, the amount of such overpayment shall be applied as a credit against the Operator's next succeeding monthly installment(s) of License Fee.

5.3 Incentive Fee to City.

5.3.1 Within ninety (90) days following the close of each Fiscal Year during the Term or the Expiration Date (or other date of termination in accordance with the terms hereof), as the case may be, the Operator shall pay to the City an amount consisting of six percent (6%) of Net Operating Income for the immediately preceding Fiscal Year, reduced by the sum of the License Fee Advance, if any, applicable to such Fiscal Year (prior to being discounted to the Discounted Payment amount) and all other License Fees paid for such Fiscal Year ("Incentive Fee").

5.3.2 Prior to the end of the first Fiscal Year, the Operator shall notify the City of its calculation of Pre-Opening Expenses, which Pre-Opening Expenses shall be amortized over a three-year period and included in Direct Operating Costs.

5.4 Naming Rights Revenue.

The Operator shall be entitled to retain the first Two Million Dollars (\$2,000,000.00) in Naming Rights revenue received by it in connection with Section 4.9 hereof. Thereafter, the Operator and the City shall be entitled to fifty percent (50%) of Naming Rights revenues received by the Operator, after deducting the parties' expenses in connection therewith as set forth in Section 4.9. Naming Rights revenues shall not be included in Facility Operating Revenues. The City's share of Naming Rights revenues shall be paid to the City within thirty (30) days after receipt thereof by the Operator.

5.5 Distribution of Funds from Operating Fund.

The Operator shall distribute funds from the Operating Fund in the following order of priority, and at the following times:

5.5.1 First, to the payment of License Fees pursuant to Section 5.2 hereof.

5.5.2 Second, to the payment of Facility Operating Expenses (except for the License Fee and Incentive Fee to City) payable by the Operator in the ordinary course of business, as and when they become due.

5.5.3 Third, in payment of the Renewal and Replacement Contributions to the Renewal and Replacement Account, payable annually within thirty (30) days following the end of the Fiscal Year commencing with the first Fiscal Year of the Term, except that the payment shall be prorated for any partial Fiscal Year.

5.5.4 Fourth, in the repayment to the Operator of all outstanding Deficit Loans, other than Deficit Loans made pursuant to Sections 5.6 and 8.1.2 herein.

5.5.5 Fifth, in the payment of the Incentive Fee, if any, as and when payable to the City.

5.5.6 Sixth, repayment to the Operator of all outstanding Deficit Loans made pursuant to Section 5.6 herein.

5.5.7 Except as expressly set forth above, all funds in the Operating Fund shall be for the account and benefit of the Operator and may be withdrawn and used by the Operator at its discretion, provided the Operator retains reserves in the Operating Fund that are adequate, in the Operator's reasonable judgment, to comply with its obligations hereunder. If there are insufficient funds in the Operating Fund to pay any portion of Incentive Fees, such unpaid Incentive Fees shall bear interest at the prime rate as set forth in the *The Wall Street Journal* or a successor publication and shall be paid to the City with interest thereon as soon as there are sufficient funds in the Operating Fund to make such payment.

#### 5.6 Availability of Funds in Operating Fund.

The Operator shall have the absolute obligation to pay any funds for Facility Operating Expenses at the time payment is required. In the event that the Operating Fund does not contain sufficient funds in any partial or full Fiscal Year to pay any such Facility Operating Expenses, Operator shall make a Deficit Loan to the Facility from its own funds in an amount sufficient to pay any remaining due and unpaid Facility Operating Expenses. Deficit Loans made pursuant to this Section shall be repaid to the Operator pursuant to Section 5.5.6 herein.

#### 5.7 Renewal and Replacement Account.

5.7.1 Establishment of Account; Payments. The Operator shall establish a Renewal and Replacement Account and the Operator shall make subsequent deposits on behalf of the City and the Operator to such account in the amount of the Renewal and Replacement Contribution in accordance with Section 5.5.3.

5.7.2 Fund Investment. The Renewal and Replacement Account shall be in a bank located in Bridgeport approved by the City and the Operator. Funds in such account shall bear interest in amounts authorized by law and all interest earned thereon shall accrue to the benefit of such Account and shall not be included in Facility Operating Revenues.

5.7.3 Use of Renewal and Replacement Account. The Renewal and Replacement Account shall be used for Additions and Capital Repairs in accordance with Article VIII and for the purposes described in Articles XII and XIII.

5.7.4 Renewal and Replacement Budget. Not later than three (3) months prior to the beginning of each Fiscal Year the Operator shall deliver to the City a detailed proposed budget (the "R & R Budget") governing the use of the Renewal and Replacement Account for the upcoming Fiscal Year. The R&R Budget shall include the basis for including each item as set forth in Section 8.1.1. The Operator shall obtain the City's approval of the R & R Budget prior to the start of each Fiscal Year, which approval shall not be unreasonably withheld, conditioned or delayed.

## 5.8 Deficit Loans.

Prior to incurring any Deficit Loan pursuant to Section 8.1.2 (for Additions and Capital Repairs, other than Emergency Expenditures, in the event of a Renewal and Replacement Account shortfall), Section 12.2 (for restoration following a casualty) and Section 13.2.2 (for restoration following a Taking) the Operator shall notify the City whether the Operator intends to create a Deficit Loan. Within thirty (30) days following receipt of such notice, the City may elect to fund such proposed expenditure itself, provided that within such 30-day period it notifies the Operator of such election and the proposed means by which it will fund such expenditure. If the City elects not to fund a proposed expenditure or fails to provide the required notice to the Operator within the 30-day period, the Operator shall be free to create such Deficit Loan. If the City elects to fund a proposed Deficit Loan and provides the required notice within such 30-day period, the City shall have an additional one hundred eighty (180) days in which to complete such funding. If the Operator reasonably determines that the work necessitating the Deficit Loan must be commenced prior to the end of such 180-day period, the Operator may create such Deficit Loan and the City shall promptly pay off such Deficit Loan after the City's financing is consummated. If the City fails to complete such transaction within such 180-day period, the Operator shall be free to create such Deficit Loan and shall be entitled to add to the Deficit Loan all reasonable costs incurred by the Operator as a result of the City's delay or failure to complete such funding within such period. The City may pay off any Deficit Loan at any time after prior written notice to the Operator. The terms of any such Deficit Loan payoff shall be negotiated by the parties.

## ARTICLE VI CITY USE AND ACCESS RIGHTS

### 6.1 City Use.

(a) The City, as owner of the Facility, reserves the exclusive, non-assignable right to use the Facility for up to ten (10) days in each Fiscal Year (which shall be prorated in any partial Fiscal Year) for City Events, subject to priority scheduling of all other Events. Any dates not used by City for City Events within the Fiscal Year shall terminate and shall not accrue for use during successive Fiscal Years. The City shall give reasonable advance notice to the Operator of its requested date for a City Event, and the Operator shall schedule such City Event provided that it does not conflict with any other Events scheduled or tentatively scheduled for such date. Notwithstanding the foregoing, the Operator may reschedule any such City Event, with at least two months' notice to the City, if, in the Operator's reasonable judgment, it is necessary to avoid losing a commercial, revenue-producing Event at the Facility. The Operator and the City shall mutually agree on such rescheduled date for the City Event. Notwithstanding the foregoing, the City shall have the right to designate one City Event per Fiscal Year which cannot be rescheduled without the City's consent.

(b) All revenue derived in connection with City Events from Concessions and permitted Temporary Advertising shall be included in Facility Operating Revenue. The Operator shall permit Temporary Advertising that, in the Operator's reasonable judgment, does not conflict

) with existing Advertising. The City shall direct all Temporary Advertising requests to the Operator. The Operator shall coordinate the solicitation, use and placement of Temporary Advertising.

(c) Ticket revenue derived from City Events ("**City Event Revenue**") shall not be included in Facility Operating Revenues and may be collected by Operator and distributed to City upon City's payment in full to Operator of Event Related Expenses incurred in connection with such City Event. The Operator shall be reimbursed from City funds (or Operator shall have the right to set-off against any amounts otherwise owing to the City) for the Event Related Expenses incurred in connection with a City Event on the date of the Event or as specified in any applicable use agreement between the Operator and the City Event sponsor, but in no event later than thirty (30) days following the Operator's notice to the City of Event Related Expenses.

(d) The City or the City Event sponsor shall maintain such insurance for City Events as provided in Article XI. The City shall ensure that City Events do not, in the City's reasonable determination, compete in any way with other Events at the Facility. All programming at City Events shall be non-commercial in nature.

#### 6.2 City Access.

) The City, through appropriate designees, which may change from time to time, reserves the right to enter the Facility during regular business hours to conduct fire, safety and health inspections or to exercise City's normal police powers provided (a) the City shall not interfere with the normal operations of the Facility (b) the City shall not disturb the license or concession rights of others except in compliance with applicable Laws and the terms of any such concession or license. Additionally the City may enter the Facility in the Case of an Emergency to the extent necessary to make Additions and Capital Repairs in accordance with Section 8.2.3.

#### 6.3 City Sky Box.

One (1) Sky Box, in a location agreed by the parties and shown on the Construction Documents, shall be for the City's use for all Events held in the Facility, at no cost to the City. Use of the Sky Box designated by the City shall be determined by a method mutually agreed to by the City Council and the City administration. The City may permit third parties to use its Sky Box. The City may sell, assign or sublease its Sky Box for use by third parties with the Operator's consent, which shall not be unreasonably withheld. Such consent shall not be required if such transfer is accomplished in an arm's length manner at fair market value and there are no remaining Sky Boxes marketed by the Operator.

#### 6.4 City Tickets.

) In addition to the City's Sky Box, the Operator shall provide the City with twenty (20) complimentary tickets in reserved General Seating areas for each Event at the Facility; provided, however, that in the event that an Event is designated as a "no-comp" Event by the promoter or user, such that the Operator is not entitled to complimentary tickets, then the City shall pay for such tickets at the Operator's actual cost. The Operator shall hold all

) complimentary tickets at the Arena box office until one hour before the start of each Event, after which the same may be sold in the ordinary course.

#### 6.5 City Promotion.

) The Operator grants to the City, pursuant to the Use Agreement, the right to display advertising on two (2) average-sized dashboards for hockey, equivalent average-sized advertising locations for basketball and other Events that do not make use of the dashboards and on four (4) permanent, full-sized, prominently displayed interior advertisement locations in the Arena, all consistent with adjacent or comparable commercial ads, at no cost to the City. In the event of a material reduction in the Advertising areas in the Facility, the City's advertising rights hereunder shall be reduced proportionately. The Operator agrees that, to the extent that it is in the Operator's control, it shall make available to the City two 30-second public service messages over the Arena's public address system during each Event at no charge for the City's promotion of tourism or other economic opportunities or promotions in and around the City. Such advertising and promotion rights are for the sole use of the City. The City shall not be permitted to resell, sublicense, assign or transfer any such advertising or promotion. The Operator acknowledges that the City may share any of the advertising or promotional benefits described in this Section 6.5 with the State. All advertising hereunder shall be solely to promote the City (or the State, as the case may be) and shall be non-commercial, non-partisan and of public service in nature and shall not conflict with other advertising in the Arena. The City shall produce its own Advertising at no cost to the Operator.

### ARTICLE VII RECORDS AND AUDITS

#### 7.1 Records.

Within a reasonable period following the end of the Fiscal Year to which they pertain, the Operator shall provide to the City originals or copies of complete and accurate Records for the Facility and non-proprietary records pertaining to the repair and physical operation of the Facility, and the City shall acknowledge receipt thereof in writing. From and after the City's receipt of such Records, the City shall assume all responsibility for the maintenance of such Records.

#### 7.2 Accounting Procedures.

) It is the intention of the parties to eliminate distortions in the stream of Net Operating Income, so that the exercise of discretion in the timing of receipts and expenditures from year to year is minimized. Accordingly, the accounting system of the Operator shall always be maintained in accordance with generally accepted accounting principles, on an accrual basis, consistently applied.



### 7.3 Financial Reports.

7.3.1 Audited Reports. Operator shall cause to be prepared financial reports with information pertaining to the Records at such times as required by this Section 7.3. Each financial report shall be prepared in accordance with generally accepted accounting principles. Operator's independent certified public accountant shall be one of the nationally recognized public accounting firms or another firm determined by Operator and reasonably acceptable to the City.

7.3.2 Financial Reports. The Operator shall furnish to the City the following financial statements:

(a) As soon as practicable and in any event by the twentieth (20<sup>th</sup>) day of each calendar month during the Fiscal Year, a statement setting forth the prior month's Facility Operating Revenue and Direct Operating Costs and a calculation of License Fee, expenditures for Additions and Capital Repairs and such other information related to such matters as may be reasonably requested by the City.

(b) As soon as practicable and in any event within forty-five (45) days after the end of each of the first three (3) quarters of each Fiscal Year, a statement pertaining to the items referred to in subsection (a) above for the period commencing at the end of the previous Fiscal Year and ending with the end of such quarter.

(c) As soon as practicable and in any event within ninety (90) days after the end of each Fiscal Year, a statement pertaining to the items referred to in subsection (a) above for such Fiscal Year, prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an opinion of the independent certified public accountant preparing the report, which shall be a firm of national reputation selected by Operator or another firm determined by Operator and reasonably acceptable to the City.

### 7.4 Additional City Audits.

At the option of the City, in addition to the annual audit, the City may conduct an audit or examination of the Facility or the Records, at any time upon reasonable notice to the Operator, any such examination or audit to be made solely at the cost of the City.

### 7.5 Underreporting of Facility Operating Revenue from Team.

In the course of the preparation of the annual audited financial statements for the Facility, in the event that the City, the Operator or either party's accountant determines that an underreporting of Facility Operating Revenue occurred during the previous Fiscal Year in an amount in excess of 2%, then in such event Operator shall diligently pursue reconciliation of such discrepancy. In such event, the Operator shall, promptly upon becoming aware of such discrepancy, notify the City of such discrepancy. In the event of a dispute between the parties

regarding the existence or amount of any discrepancy, the matter shall be resolved by ADR pursuant to Article XVII herein.

#### 7.6 Confidentiality.

All Records and other financial information pertaining to the Operator to which the City may have access hereunder shall be held by the City in the strictest confidence and not disclosed to third parties without the prior, written consent of the Operator. If requested by the Operator, the City (on behalf of itself and its agents, accounts and attorneys) will sign a confidentiality agreement in a form reasonably satisfactory to the Operator reflecting the City's covenant under this Section 7.6.

### ARTICLE VIII ADDITIONS AND CAPITAL REPAIRS; EMERGENCY

#### 8.1 Additions and Capital Repairs.

8.1.1 "Necessary Additions and Capital Repairs" shall mean Additions and Capital Repairs to the Facility which are (a) necessary to comply with governmental requirements; (b) required for the safe operation of the Facility; (c) required by any agreement approved by the City, or (d) required to maintain and operate the Facility in compliance with the Quality Arena Standard or otherwise required to comply with the terms of this Agreement. If Necessary Additions and Capital Repairs were anticipated and therefore included in the R&R Budget that was approved by the City pursuant to Section 5.7.4, the Operator may make Necessary Additions and Capital Repairs without any further consent or approval of the City and the funds in the Renewal and Replacement Account shall be used for such expenditures.

8.1.2 If Necessary Additions and Capital Repairs were not anticipated and therefore not included in the approved R&R Budget for the Fiscal Year in which they arise, the Operator may make a Deficit Loan to the Facility for such expenditures, subject to Section 5.8 and the reasonable consent of the City after delivery by the Operator to the City of a detailed explanation of the cost of any such item, the basis for considering such item as Necessary Additions and Capital Repairs as set for this Section 8.1.1 and the reason that such item was not included in the R&R Budget. In the event that the Operator makes a Deficit Loan for such purpose, the Operator shall be entitled to repayment of such Deficit Loan from any excess funds in the Renewal and Replacement Account at the end of any subsequent Fiscal Year. At the end of the Term, if any Deficit Loan made under this Section 8.1.2 has not been repaid to the Operator, such Deficit Loan shall be repaid in accordance with Section 16.3.2.

8.1.3 "Discretionary Additions and Capital Repairs" shall mean, in the Operator's opinion, Additions and Capital Repairs that will update and improve the Facility, maximize Facility Operating Revenues or reduce Facility Operating Expenses, but that are not Necessary Additions and Capital Repairs. The Operator may, at its election, suggest Discretionary Additions and Capital Repairs to the City at any time during the Term, but neither

) party is obligated to make or fund any such Discretionary Additions and Capital Repairs under this Agreement.

8.1.4 Upon installation, all Additions and Capital Repairs shall become a part of the Facility and the property of the City, as applicable. The City shall have the right to review and comment upon the construction plans and specifications for any Additions and Capital Repairs made by the Operator with a cost in excess of \$50,000.00 and, upon completion of any Additions and Capital Repairs, the City shall be provided a copy of the "as built" construction plans. Necessary Additions and Capital Repairs made by the Operator under Section 8.1.2 (other than Emergency Expenditures, which are handled pursuant to Section 8.2.1 herein) with an estimated cost in excess of \$100,000 shall be subject to the City's prior approval, which shall not be unreasonably withheld, conditioned or delayed.

8.1.5 Amounts remaining, if any, in the Renewal and Replacement Account at the end of each Fiscal Year shall be carried forward and available for use in the next succeeding Fiscal Year(s).

## 8.2 Emergency Expenditures.

8.2.1 The Operator. The Operator may make Emergency Expenditures from any Account to the extent the Operator deems such Emergency Expenditures necessary, in its reasonable discretion. Promptly after making any Emergency Expenditure, the Operator shall provide to the City a detailed accounting of the Emergency Expenditure. Not later than thirty (30) days after the Emergency, the Operator shall provide to the City the Operator's explanation of the Emergency and the Operator's detailed plan for preventing any such similar Emergency.

8.2.2 Funding. If the funds in any such account are insufficient for the Emergency Expenditures, the Operator may make a Deficit Loan to the Facility the Operator's own funds in order to effect such Emergency Expenditures.

8.2.3 The City. The City shall have no obligation to make Additions and Capital Repairs or other repairs to the Facility unless an Emergency exists and, in the City's reasonable discretion, the Operator has not taken action necessary to preserve the Facility. To the extent time is available, City shall contact Operator prior to the City's making any expenditure pursuant to this Section, to discuss Operator's actions taken or to be taken with respect to the Emergency and to attempt to avoid duplication of efforts. Any Emergency Expenditure made by the City for Necessary Additions and Capital Repairs pursuant to this Section shall be reimbursed by the Operator to the City payable from the Renewal and Replacement Account and, to the extent the Renewal and Replacement Account funds are insufficient, from a Deficit Loan by the Operator. All other expenditures for repairs made by the City with respect to an Emergency in accordance with this Section 8.2.3 shall be Facility Operating Expenses payable from the Operating Fund.

) 8.3 Changes in Law. Notwithstanding anything to the contrary in Section 8.1, in the event that Necessary Additions and Capital Repairs are required as a result of a change in Law during the Term or Extension Term and have not been included in the approved R&R Budget for

) the period in which they are required, the City and the Operator shall share the cost of such Necessary Additions and Capital Repairs according to the following formula: The Operator's share of each item of Necessary Additions and Capital Repairs shall equal a fraction, the numerator of which is the number of years remaining in the Term or the Extension Term, as the case may be, and the denominator of which is number of years of useful life of such item (or the number of years such item's useful life will be extended). The City's share is the balance remaining, if any. Necessary Additions and Capital Repairs required under this Section 8.3 shall not be paid from the Renewal and Replacement Account, but shall be paid directly by the parties, using their own funds. If Necessary Additions and Capital Repairs are made pursuant to this cost-sharing formula during the Term before the Operator has exercised its Extension Option, and thereafter the Operator exercises its option for the Extension Term, the parties will agree on an equitable adjustment to compensate the City for its portion of the cost of such Necessary Additions and Capital Repairs for such period.

) 8.4 End of Term. Notwithstanding anything to the contrary in Section 8.1, in the event that Necessary Additions and Capital Repairs are required during the last 5 years of the Term or Extension Term and have not been included in the approved R&R Budget for the period in which they are required, the City and the Operator shall share the cost of such Necessary Additions and Capital Repairs according to the following formula: The Operator's share of each item of Necessary Additions and Capital Repairs shall equal a fraction, the numerator of which is the number of years remaining in the Term or the Extension Term, as the case may be, and the denominator of which is number of years of useful life of such item (or the number of years such item's useful life will be extended). The City's share is the balance remaining, if any. Necessary Additions and Capital Repairs required under this Section 8.4 shall not be paid from the Renewal and Replacement Account, but shall be paid directly by the parties, using their own funds. If Necessary Additions and Capital Repairs are made pursuant to this cost-sharing formula during the Term before the Operator exercises its option for the Extension Term, and thereafter the Operator exercises its option for the Extension Term, the parties will agree on an equitable adjustment to compensate the City for its portion of the cost of such Necessary Additions and Capital Repairs for such period.

## ARTICLE IX IMPOSITIONS

### 9.1 General.

) Subject to the City's obligations under Sections 9.3 and 9.4, and the availability of funds as described in 5.5, the Operator shall pay or cause to be paid any and all Impositions that accrue during the Term of this Agreement, as and when they become due and payable, and before any fine, penalty, interest or cost may be added thereto or become due or be imposed by operation of law for the nonpayment thereof. Any Imposition that includes a period of time prior to the Expiration Date (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or become a lien upon the Facility, or shall become payable, during the Term

hereof) shall be prorated between the City and the Operator so that the City shall pay the portion of Imposition applicable to the period after the Expiration Date.

#### 9.2 Permitted Contests.

Notwithstanding Section 9.1, the Operator may contest, at its own expense, the legal validity or amount of any Imposition for which the Operator is wholly or partially responsible hereunder and may institute such proceedings as it considers necessary therefore without undue delay and shall prosecute such proceedings to a final determination with reasonable dispatch. If the Operator contests any Imposition, the Operator shall notify the City.

#### 9.3 Real and Personal Property Tax Exemptions.

It is acknowledged by the parties that the City and the Operator have based their financial projections and assumptions hereunder on the basis that there will be no levy of City real property or personal property taxes (or substitutions therefore) on the real and personal property owned by the City within or at the Facility. All FF&E purchased by the Operator, whether during or after the Pre-Opening Period, shall be the City's property. The Operator agrees that it will not use any of the City's personal property outside the Facility. The Operator acknowledges that it is obligated to pay any and all personal property taxes on personal property owned by the Operator.

#### 9.4 Admissions Taxes.

It is acknowledged by the parties that the City and Team have based their financial projections and assumptions hereunder on the fact that the State Admissions Tax under Connecticut General Statutes §12-541(5) will be a Direct Operating Cost.

### ARTICLE X INDEMNIFICATION

#### 10.1 Indemnification of City.

The Operator shall defend, indemnify and hold harmless the City and its elected officials, agents, officers and employees (collectively, "**City Indemnitees**") from and against any and all demands, losses, judgments, damages, suits, claims, actions, and liabilities, in law or in equity, of every kind and nature whatsoever (collectively, "**Claims**") and the reasonable costs and expenses thereof, including, without limitation, reasonable attorneys' fees (collectively, "**Expenses**") which any City Indemnitees may suffer or sustain or which may be asserted or instituted against any of the City Indemnitees in connection with the Facility or this Agreement and resulting from, arising out of or in connection with (i) injury to or death of any individual person or damage to or destruction of property related to the Facility (or any portion thereof) due to any negligence of the Operator, its officers, directors and employees from and after the Operations Start Date, (ii) the existence of any Environmental Condition relating to the Facility or violation or alleged violation of any Environmental Laws to the extent that the Operator, or its

) employees, agents, representatives, users, licensees, contractors or subcontractors, has been finally determined, through ADR as set forth in Article XVII herein, to have caused such Environmental Condition or violation by its negligent acts or omissions or by its willful misconduct; (iii) the breach by the Operator of any warranty, representation or covenant made in this Agreement, (iv) any violation of any copyright, patent, service mark, trade name or trademark by the Operator, or (v) any claim, action or proceeding made or brought by the Operator, including, but not limited to, enforcement of any agreement or any proceedings brought pursuant to Section 9.2, but excluding any claim, action or proceeding against the City.

#### 10.2 Indemnification of Operator.

) The City shall defend, indemnify and hold harmless the Operator and its parent, subsidiaries and Affiliates and their respective directors, officers, employees and agents (collectively, "**Operator Indemnitees**") from and against any and all Claims and Expenses which any Operator Indemnitees may suffer or sustain or which may be asserted or instituted against any of the Operator Indemnitees in connection with the Facility or this Agreement and resulting from, arising out of or in connection with (i) the Work; (ii) City Events; (iii) the "temporary" nature of the Certificate of Occupancy; (iv) injury to or death of any individual person or damage to or destruction of property related to the Facility (or any portion thereof) prior to the Operations Start Date, (v) the existence of any Environmental Condition relating to the Facility or violation or alleged violation of any Environmental Laws, including, without limitation, that condition set forth in Schedule 15.1.7, except to the extent that the Operator has been finally determined, through ADR as set forth in Article XVII herein, to have caused such Condition or violation by its negligent acts or omissions or its willful misconduct; (vi) the breach by the City of any warranty, representation or covenant made in this Agreement; (vii) any violation of any copyright, patent, service mark, trade name or trademark by the City, or (viii) any claim, action or proceeding made or brought by the City, but excluding any claim, action or proceeding against the Operator.

#### 10.3 Insurance.

Each party acknowledges that it shall look first to the proceeds of any insurance policies maintained by such party pursuant to Article XI for recovery in respect of the obligations of the indemnifying party under this Article X and, if such proceeds are insufficient, then to the indemnifying party.

#### 10.4 Claims.

) A party seeking indemnification hereunder (the "**Indemnified Party**") shall, upon obtaining knowledge of facts giving rise to a Claim hereunder, give prompt notice of the Claim to the other party (the "**Indemnifying Party**"). The Indemnifying Party shall, at its expense, defend by all appropriate legal proceedings (and reasonably contest, at its election) any Claim with respect to which it is called upon to provide indemnification hereunder, by attorneys for the Indemnifying Party's insurance carrier (if the Claim is covered by insurance) or by attorneys selected by the Indemnifying Party who are reasonably acceptable to the Indemnified Party. The

Indemnified Party may engage its own legal counsel, at its sole expense, and the Indemnifying Party and such counsel shall have the right to be present at all such proceedings and consult with, and shall at all times cooperate with, the Indemnifying Party and its counsel; provided, however, that the Indemnifying Party shall at all times have the full authority to determine all action to be taken with respect to the Claim, including any settlement thereof.

#### 10.5 Survival.

The provisions of this Article X shall survive the termination or expiration of this Agreement.

### ARTICLE XI INSURANCE

#### 11.1 Operator's Insurance.

11.1.1 Casualty. Commencing on the Operations Start Date, the Operator shall obtain and maintain insurance against loss or damage to the Facility resulting from fire, earthquake, windstorm, hail, lightning, vandalism, malicious mischief, flood and such other perils ordinarily included in special all-risk extended coverage insurance policies. Such insurance shall be maintained in an amount not less than the then full replacement cost of the Facility and the FF&E therein. Full replacement cost shall be determined at reasonable intervals by the Operator's insurer or other appraiser mutually acceptable to the Operator and the City.

11.1.2 Business Interruption. Commencing on the Operations Start Date, the Operator shall obtain and maintain use and occupancy or business interruption or lost income insurance against the perils of fire, earthquake, windstorm, hail, lightning, vandalism, malicious mischief, flood and such other perils ordinarily included in "special all-risk extended coverage" insurance policies, in an amount equal to not less than estimated gross Facility Operating Revenues less non-continuing expenses (assuming for the purposes of such estimate that no business interruption occurred), for the period of time estimated to repair or rebuild the Facility after substantial damage to the Facility.

11.1.3 Liability. Commencing on the Operations Start Date, the Operator shall obtain and maintain commercial general liability insurance with a broad form general liability endorsement which shall provide coverage against claims for personal injury, death and property damage resulting directly or indirectly from any act or activities (in connection with the Facility) of the City, the Operator, any of their respective invitees, officers, partners, shareholders of partners, officers, employees, agents, independent contractors or any other person acting for the City or the Operator or under their respective control or direction (including liabilities for injuries or damages alleged to have resulted from the Operator's sale and/or preparation or dispensing of food or alcoholic beverages). Such insurance shall be maintained in full force and effect during the term of this Agreement in an amount of at least Twenty Million Dollars (\$20,000,000) (provided that the Operator shall be entitled to maintain a lesser amount if such lesser amount is

) maintained in comparable facilities at which AHL teams play and the City is notified of such lesser amount and fails within twenty (20) Business Days after receipt of such notice to object and submit to ADR the adequacy of such lesser amount) combined single limit, naming the City, and its officers, the Operator, and their respective invitees, licensees, employees, agents, independent contractors or any other person acting for the City or the Operator or under their respective control or direction, as additional insureds. This Section 11.3 shall not limit in any way the extent to which the Operator may be held responsible for the payment of damages to persons or property resulting from the Operator's activities, the activities of its invitees, employees, licensees, agents or independent contractors, or the activities of any other person or persons for whom the Operator otherwise is legally responsible.

11.1.4 Workers Compensation. The Operator shall obtain and maintain workers' compensation insurance complying with the statutory requirements of the State to insure all persons employed by the Operator in connection with the Facility. The Operator shall also purchase and maintain employer's liability coverage for no less than \$1,000,000 each accident, \$1,000,000 disease each employee and \$1,000,000 disease policy aggregate.

) 11.1.5 Builder's Risk or Installation Floater. During construction of Additions and Capital Repairs from and after the Operations Start Date, the Operator shall maintain, in addition to (but not in duplication of) the other insurance coverages required under this Article, standard "all risk" builder's risk or installation floater insurance written on a completed value basis and including comprehensive liability insurance, in an amount not less than the projected total cost of construction of the Additions and Capital Repairs and reasonably estimated by the Operator not more than sixty (60) days prior to commencement of construction and as thereafter revised from time to time by the Operator during the course of such construction.

11.1.6 Other Operator Insurance Coverage. From and after the Operations Start Date, the Operator shall obtain and maintain such other insurance coverages and in such amounts as from time to time may be reasonably requested by the City, or may be reasonably desired by the Operator, in each case as necessary to insure against such other insurable hazards as are customarily insured against in the case of similar multipurpose sports and entertainment facilities.

## 11.2 City's Insurance.

) 11.2.1 Prior to scheduling a City Event, City shall obtain (or, at the City's request upon reasonable advance notice to the Operator, Operator shall purchase for the City as a City Event Related Expense) comprehensive general liability insurance which shall provide coverages against claims for personal injury, bodily injury, death and property damages arising from the conduct of the City Event at the Facility or the negligence or misconduct of City, its employees, agents, independent contractors, co-promoters or any other person acting on behalf of City. The policy shall have minimum limits of liability of \$2,000,000 combined single limit each occurrence, \$4,000,000 aggregate. The insurance required under this Section 11.2.1 shall in all events comply with the requirements of this Article XI.



11.2.2 On the Agreement Commencement Date, the City shall include the Facility in its owner controlled insurance program ("**Insurance Program**"), including the Operator as an additional insured with respect to the Facility, the amount of \$100,000,000 in general liability and excess liability coverage, for all bodily injury and property damage claims made in connection with or arising from the construction of the Facility, whether or not such claims are made during or after the completion of construction.

11.2.3 Commencing on the Agreement Commencement Date, the City shall obtain and maintain, or shall cause to be obtained and maintained, standard "all risk" builder's risk insurance in an amount not less than Forty Million Dollars (\$40,000,000) and including comprehensive liability insurance.

11.2.4 The City shall obtain and maintain workers' compensation insurance complying with the statutory requirements of the State to insure all persons employed by the City in connection with the Work.

11.2.5 The City shall obtain and maintain or shall cause the operator of the Parking Areas to obtain and maintain commercial general liability insurance with minimum limits of liability of \$1,000,000 combined single limit per occurrence and \$2,000,000 general aggregate and worker's compensation insurance complying with the statutory requirements of the State.

### 11.3 General Provisions.

11.3.1 All required insurance shall be primary coverage and shall be for the benefit of the Operator and the City.

11.3.2 All required insurance shall be reviewed periodically by the Operator and the City, and in any event at least every three years, for the purpose of determining whether to increase or decrease the minimum limits and deductibles of such insurance to amounts which may be reasonable and customary for facilities of like size and operation to the Facility.

11.3.3 All required insurance shall be obtained from financially sound insurance companies, rated not less than A - VII in Best's Rating Guide, authorized to do business in the State.

11.3.4 All required insurance shall provide that the waiver of recovery (subrogation) provided in Section 11.4 shall not invalidate or have any adverse effect on the liability of the insurer.

### 11.4 Waiver of Recovery.

Neither the Operator nor the City shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to property or injury to persons, or any resulting loss of income, or losses under workers' compensation laws and benefits, even though such loss or damage might have been occasioned

by the negligence of such party, its agents or employees, if and to the extent any such loss or damage is covered by insurance benefiting the party suffering such loss or damage.

#### 11.5 Failure to Maintain Insurance.

If the Operator fails or refuses to procure or maintain the insurance required by this Article, after notice to the Operator, the City shall have the right, at its election, to procure and maintain such insurance, in which event, any reasonable premium paid by the City, plus interest at the Prime Rate computed from the date such premium is paid by the City, shall be due and payable by the Operator as a Facility Operating Expense to the City on the first day of the month following the date on which such premium was paid. If the City fails or refuses to procure or maintain the insurance required by it hereunder, the Operator shall have the right, at its election, to procure and maintain such insurance, in which event, any reasonable premium paid by the Operator, plus interest at the Prime Rate computed from the date such premium is paid by the Operator, shall be due and payable by the City as a City Event Related Expense within one month of the date on which such premium was paid.

#### 11.6 Proceeds Disposition.

All insurance proceeds with respect to loss or damage to the Facility shall be payable, under the provisions of the policy of insurance, into the Renewal and Replacement Account and disbursed pursuant to Article XII herein or, upon termination of the Agreement, distributed in accordance with Section 16.3. All insurance proceeds from any other insurance policies maintained hereunder shall be payable into the Operating Fund.

### ARTICLE XII DAMAGE OR DESTRUCTION

#### 12.1 Adequately Insured Damage.

Subject to the provisions of Section 12.2 and Section 12.3, if the Facility is damaged or otherwise destroyed and such damage or destruction was caused by a casualty covered under an insurance policy maintained by the Operator as required hereunder, all insurance proceeds with respect to loss or damage to the Facility paid under such insurance policies ("**Insurance Proceeds**") shall be deposited into the Renewal and Replacement Account and, if such proceeds are sufficient to restore the Facility in the reasonable estimation of the City, shall be used by the Operator to repair such damage or destruction as soon as reasonably possible, and this Agreement shall continue in full force and effect, subject to Section 12.5. Such restoration shall be in compliance with applicable governmental requirements. All such restoration shall be performed under the joint supervision of the City and the Operator.

#### 12.2 Insurance Deficiency and Termination.

Subject to the provisions of Sections 12.3 and 12.4, if the Facility is damaged or otherwise destroyed by a casualty not covered under an insurance policy or, if so covered, the

Insurance Proceeds are insufficient, in the reasonable estimation of Operator and the City, to pay the costs of restoration (the "**Insurance Deficiency**"), and if there are funds in the Renewal and Replacement Account in an amount sufficient, in the reasonable mutual estimation of Operator and the City, to pay the Insurance Deficiency, the Operator shall repair, or cause to be repaired, the damage or destruction as provided in Section 12.1 with such funds. If Renewal and Replacement Account funds are insufficient to pay the Insurance Deficiency, then, within thirty (30) days after the date such damage or destruction occurred (the "**Destruction Date**") the Operator shall provide the City written notice of the Operator's election either (a) to utilize the Insurance Proceeds and such funds as are available in the Renewal and Replacement Account, and to make a Deficit Loan to the Facility, pursuant to Section 5.8, for the remainder of the restoration costs from the Operator's own funds (and not Facility Operating Revenue) to pay the restoration costs; or (b) to terminate this Agreement. In the event the Operator elects to utilize Insurance Proceeds, funds as are available in the Renewal and Replacement Account and a Deficit Loan to restore the Facility to the state in which it existed prior to such damage or destruction, the Term of this Agreement shall be suspended during such restoration, as provided in Section 12.5, and the Operator shall be entitled to a priority payment from Facility Operating Revenues to reimburse it for such Deficit Loan, in accordance with Section 5.5.4. In the event the Operator is entitled to and does elect to terminate this Agreement, the City shall have the right (within sixty (60) days after receipt of such notice of the Operator's election to terminate) to issue notice to the Operator of the City's intention to pay the Insurance Deficiency and to commit in writing to deposit the amount of the Insurance Deficiency into the Renewal and Replacement Account within one hundred twenty (120) days of such written notice and shall deposit such amount into the Renewal and Replacement Account within one hundred twenty (120) days of its written notice. Thereafter, the Operator's election to terminate shall be deemed rescinded and void, and the Operator shall effect the restoration of the Facility as provided in Section 12.1. If the City does not issue such notice of its intention to pay such Insurance Deficiency within sixty (60) days after receipt of the Operator's election to terminate, this Agreement shall be terminated at the expiration of such sixty (60)-day period, and the Insurance Proceeds, if any, shall be deposited into the Renewal and Replacement Account for distribution as provided in Section 12.4.

### 12.3 End of Term.

If the Facility is destroyed during the last two Fiscal Years of the Term hereof (or of the Extension Term, if exercised), then notwithstanding any contrary provision of this Article, by notice to the City within thirty (30) days after the Destruction Date, the Operator may terminate this Agreement, whereupon the Insurance Proceeds, if any, shall be deposited into the Renewal and Replacement Account and shall be distributed pursuant to Section 12.4.

### 12.4 Distribution.

In the event this Agreement is terminated pursuant to Section 12.2 or 12.3, any funds in the Renewal and Replacement Account after the deposit of any Insurance Proceeds therein pursuant to this Article shall be distributed to the parties pursuant to Section 16.3.2(e).

12.5 Abatement.

In the event of any damage or destruction rendering a Substantial Portion of the Facility unusable, the period during which a Substantial Portion of the Facility remains unusable shall be an Abatement Period. Notwithstanding the foregoing sentence, any revenue received during an Abatement Period shall be included in Facility Operating Revenues.

ARTICLE XIII  
EMINENT DOMAIN

13.1 Substantial Taking.

If the Facility is taken by right of eminent domain, with or without litigation, or transferred in lieu of or under threat of such action (any such action to be referred to herein as a "**Taking**"), and the Taking is a "Substantial Taking," the Operator and the City shall have the right, at either party's option, exercisable at any time within the ninety (90) days after the official written notice of the Taking and its scope is issued by the condemnor and received by the Operator and the City (the "**Taking Date**"), to terminate this Agreement, in which event, the parties shall be released from all future liability hereunder (such release to be effective upon the termination of this Agreement pursuant to this Section, provided, however, that no party shall be released from any liability hereunder that has accrued on or before such termination.) The payment or other award from the condemnor attributable to the value of any improvements on the Project Site ("**Award**") shall be deposited into the Renewal and Replacement Account. As used in this Section, "**Substantial Taking**" means a Taking of a Substantial Portion of the Facility.

13.2 Partial Taking.

13.2.1 If the Facility is the subject of a Taking which is not a Substantial Taking or if a Substantial Taking occurs but this Agreement is not terminated as provided in Section 13.1, then as soon as reasonably possible, the Operator shall restore the remainder of the Facility using the proceeds available from the Award, and this Agreement shall continue in effect, subject to Section 13.5. Such restoration shall be in accordance with plans reasonably approved by the City and in compliance with then applicable governmental requirements. All such restoration shall be performed under the joint supervision of the City and the Operator.

13.2.2 If (a) the Facility is to be restored as provided in Section 13.2.1, (b) the Award proceeds are insufficient to pay the costs of such restoration in the reasonable estimation of Operator (the "**Condemnation Deficiency**") and (c) funds in the Renewal and Replacement Account are sufficient, in the reasonable estimation of the Operator and the City, to pay the amount by which such costs of restoration exceed the Condemnation Deficiency, the Operator shall restore the Facility using such funds. If such funds are insufficient to pay the Condemnation Deficiency, within ninety (90) days after the Taking Date the Operator shall provide the City written notice of the Operator's election either (a) to utilize the Award and such funds as are available in the Renewal and Replacement Account and to make a Deficit Loan to

the Facility, pursuant to Section 5.8, for the remainder of the restoration costs from the Operator's own funds (and not Facility Operating Revenues) to pay the restoration costs; or (b) to terminate this Agreement. In the event the Operator is entitled to and does elect to terminate this Agreement, the City shall have the right (within ten (10) days after receipt of such notice of the Operator's election to terminate) to issue notice to the Operator of the City's intention to pay the Condemnation Deficiency and to commit in writing to deposit the amount of the Condemnation Deficiency within ten (10) days of such notice and shall deposit such amount into the Renewal and Replacement Account within ten (10) days of such notice. Thereafter, the Operator's election to terminate shall be deemed rescinded and void, and the Operator shall effect the restoration as provided in Section 13.2.1. If the City does not give such notice of its intention to pay such Condemnation Deficiency within ten (10) days after receipt of the Operator's election to terminate, or does not deposit the Condemnation Deficiency into the Renewal and Replacement Account within the time period described above, this Agreement shall be terminated at the expiration of such ten-day period, or after the time required for the deposit of the Condemnation Deficiency, as applicable, and the Award shall be deposited into the Renewal and Replacement Account for distribution pursuant to Section 13.4. The Operator shall have the right to a priority payment from Facility Operating Revenues to reimburse it for any such Deficit Loan made pursuant to this Section, in accordance with Section 5.5.4.

### 13.3 End of Term.

If a Substantial Taking occurs during the last two Fiscal Years of the Term, then notwithstanding any provision of this Article to the contrary, by notice to the City within thirty (30) days after the date of the Taking, the Operator or the City may terminate this Agreement whereupon the Award shall be deposited into the Renewal and Replacement Account and shall be distributed pursuant to Section 13.4.

### 13.4 Distribution.

In the event this Agreement is terminated pursuant to Section 13.1, 13.2 or 13.3, any funds in the Renewal and Replacement Account after the deposit of the Award pursuant to this Article XIII shall be distributed in accordance with Section 16.3.2(e).

### 13.5 Abatement.

In the event of a Taking rendering a Substantial Portion of the Facility unusable, the period during which a Substantial Portion of the Facility remains unusable shall be an Abatement Period.

### 13.6 No Condemnation by City.

Notwithstanding the foregoing or any provision of this Agreement, the City covenants, warrants, represents and agrees that it shall not at any time during the Term initiate, engage in, undertake, attempt, support, encourage or pursue a condemnation proceeding by right of eminent domain of any portion of the Facility.

ARTICLE XIV  
ASSIGNMENT AND TRANSFER

14.1 Operator's Right to Assignment.

If there is not an Operator Event of Default, the Operator shall have the right to assign this Agreement to an Affiliate or to a successor to all or a substantial portion of the Operator's business. Any transferee of the Agreement shall take subject to and must assume all of the obligations of the Operator under this Agreement. Any such transfer shall conform to the terms and restrictions of the Use Agreement and this Agreement. Any such transfer shall not release the Operator from its obligations hereunder, unless the transferee has executed and delivered to the City an assignment and assumption agreement in such form and content as is reasonably acceptable to the City and which shall not impose any greater obligations on the transferee than exist under this Agreement, in which event the Operator shall be released from further obligations under this Agreement.

Except for the foregoing paragraph, the Operator shall not assign or transfer its rights or interests in this Agreement without the prior written consent of City, which may not be unreasonably withheld. It shall be reasonable for the City to withhold its consent only (a) if there is an Operator Event of Default, or (b) if the Operator's proposed assignee (i) has a net worth of less than Ten Million Dollars (\$10,000,000.00) as determined in accordance with generally accepted accounting principles; (ii) is an opposing party in any pending or imminently threatened litigation or arbitration involving the City; (iii) is not engaged in the management and operation of at least three (3) facilities of at least the same size as the Facility and after said assignment the Operator will not continue to function as a separate operating unit which will manage the Facility; or (iv) is not recognized by the industry or industry trade publications as having a national or regional presence or is not otherwise, in the City's reasonable determination, an operator with a comparable reputation to that of the Operator.

14.2 City's Right to Assignment.

The City shall have the right to assign this Agreement to another municipal entity, subject to the Operator's consent, which shall not be unreasonably withheld, conditioned or delayed. Any assignment shall not release the City from its obligations in this Agreement.

ARTICLE XV  
REPRESENTATIONS AND COVENANTS

15.1 City Representations.

The City represents, warrants and covenants to the Operator the following:

15.1.1 Organization and Authority. The City is a public body corporate and politic and a political subdivision of the State and has full power and authority to enter into this

Agreement, and the execution, delivery, and performance of this Agreement by the City have been duly authorized.

15.1.2 No Conflicts or Violation of Other Agreements. The execution, delivery and performance of this Agreement will not conflict with and do not and will not violate or result in the breach of or constitute a default under any other agreements, instruments, judgments or decrees to which the City is a party or is otherwise subject. All consents and approvals of any Person required in connection with this Agreement have been obtained.

15.1.3 Litigation. No suit is pending against the City relating to the Facility and there are no outstanding judgments against the City which prevent or hinder the City's performance under this Agreement or have a material adverse effect upon the Facility.

15.1.4 No Payments. The City has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

15.1.5 Project Site Possession and Title. The rights of the Operator pursuant to this Agreement, and the Operator's peaceful use and quiet enjoyment of the Facility as provided in this Agreement, shall not be diminished, impaired or disturbed in any way by any Lien, encumbrance, easement, right-of-way, covenant, condition, restriction, defect, invalidity or any other matter adversely affecting the City's rights of possession in, or title to, the Project Site, or by any other insufficiency, limitation, restriction or defect in the rights of the City to possess and reasonably use the Project Site or its ownership or title thereto, except such that may be created, caused or incurred by the Operator in violation of Laws or this Agreement (collectively "**Title Exceptions**"). The City shall pay and be responsible for all liabilities, losses, damages, costs, expenses and charges including, without limitation, reasonable attorneys' fees and costs, that may be incurred or suffered by the Operator as a result of any Title Exceptions, none of which shall be treated as Facility Operating Expenses.

15.1.6 Compliance with Laws. Neither the execution, delivery nor performance of this Agreement by the City violates any Laws; and the City is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other governmental authority which is in any respect material to the transactions contemplated hereby. The City shall, at its expense, comply with all Laws in connection with the performance of its obligations under this Agreement, including, without limitation, all Laws affecting the development and construction of the Facility to completion. The City knows of no events or conditions that will or are likely to result in a change of Laws affecting the Facility, and the City covenants that, on the Operations Start Date, the Facility will (a) comply with all applicable Laws enacted as of the date hereof or at any time prior to the Operations Start Date applicable to the construction of the Facility except for building, zoning and other laws or permits which create rights or exceptions to Laws which may be preserved; and (b) be constructed to at least the same level of quality as those arenas used herein to measure the Quality Arena Standard.

15.1.7 Environmental and Historical Conditions.

(a) Except as set forth on Schedule 15.1.7, the City represents that, as of the Agreement Commencement Date to the best of the City's knowledge, after due diligence, there are no violations of Environmental Laws applicable to the Facility. Until the Operations Start Date, the City shall maintain, keep current and comply in full with any and all permits, consents and approvals required by the Environmental Laws and the City shall comply with all Environmental Laws and shall not conduct or allow any use of or activity on or under the Project Site that violates any Environmental Laws or creates an Environmental Condition. The City shall promptly provide written notice to the Operator if the City has actual knowledge of any material noncompliance with any Environmental Laws or receives any written notification from any Governmental Authority or any third party regarding any inquiry, investigation or administrative, judicial or other proceeding regarding Hazardous Materials or any material noncompliance or any request for information pursuant to any Environmental Laws. The City shall not cause or permit, as the result of any intentional or unintentional act or omission on the part of the City, its agents, employees, contractors, licensees, or invitees, to store, use, possess, dispose or release Hazardous Materials in violation of Environmental Laws in, on or from any portion of the Facility. The City shall not cause or permit, as the result of any intentional or unintentional act or omission on the part of the City, its agents, employees, contractors, licensees or invitees, any violation of any Environmental Laws.

(b) Notwithstanding anything in this Agreement to the contrary, the City shall be liable for all Environmental Conditions relating to the Facility and for all violations of Environmental Laws in connection therewith, whenever and however they occur or have occurred, except to the extent that the Operator or its employees, agents, representatives, users, licensees, contractors or subcontractors, has been finally determined, through ADR as set forth in Article XVII hereof, to have caused, through its negligent acts or omissions or willful misconduct, such violation or Environmental Condition. Nothing in this Section 15.1.7 shall in any way alter, change or affect the City's indemnification obligations set forth in Section 10.2.

15.1.8 Non-Competition. The City covenants that it will not construct or agree to construct any facility (excluding a convention center and/or conference center and a replacement of an existing facility that is in existence on the Agreement Commencement Date and which replacement does not materially increase such facility's seating capacity) that would compete with the Facility for Events and would have a material adverse effect on the Facility's revenue generation. Provided that there is not an Operator Event of Default, if the City constructs or agrees to construct a convention center and/or a conference center, the Operator shall have an exclusive right of first opportunity to negotiate an agreement to operate such facility for ninety (90) days from the date that the City notifies the Operator that the City intends to construct such facility, which 90-day period may be extended by the mutual agreement of the City and the Operator. During such period, the parties shall negotiate the terms of such an agreement in good faith. The foregoing rights are not transferable to any assignees of the Operator, other than to Affiliates of the Operator.



15.2 Operator Representations, Warranties and Covenants.

The Operator represents, warrants and covenants to the City the following:

15.2.1 Organization and Authority. The Operator is a corporation duly incorporated and validly existing under the laws of the State of Delaware; and it has all requisite power and authority to enter into this Agreement. The execution, delivery and performance by the Operator of this Agreement have been duly authorized by all necessary action.

15.2.2 No Conflicts or Violation of Other Agreements. The execution, delivery and performance of this Agreement will not conflict with and do not and will not violate or result in the breach of or constitute a default under any other agreements, instruments, judgments or decrees to which the City is a party or is otherwise subject. All consents and approvals of any Person required in connection with this Agreement have been obtained.

15.2.3 Litigation. No suit is pending against the Operator and there are no outstanding judgments against the Operator which prevent or hinder the Operator's performance under this Agreement or have a material adverse effect upon the Facility or the financial condition or business of the Operator.

15.2.4 No Payments. The Operator has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

15.2.5 Compliance with Laws. The Operator has received no notice asserting any noncompliance in any material respect by the Operator with applicable Laws in connection with its obligations under this Agreement; and the Operator is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other Governmental Authority which is in any respect material to the transactions contemplated hereby. From and after the Operations Start Date, (a) the Operator shall comply with all Laws affecting the Facility or any part thereof, or the use or occupancy thereof, except as provided in Section 15.2.6 (b) herein, and (b) the Operator shall, at its expense, comply with the requirements of all insurance policies in order to avoid loss of coverage required herein to be maintained by the Operator with respect to the Facility, and (c) the Operator shall procure, maintain and comply with all licenses and other authorizations required for the operation of the Facility, subject to Section 15.2.6(b) hereof.

15.2.6 Environmental and Historical Conditions.

(a) From and after the Operations Start Date, the Operator shall promptly provide written notice to the City if the Operator has actual knowledge of any material noncompliance with any Environmental Law or receives any written notification from any Governmental Authority or any third party regarding any inquiry, investigation or administrative, judicial or other proceeding regarding Hazardous Materials or any material noncompliance with or any request for information pursuant to any Environmental Law.

Operator shall not, and shall not knowingly permit its employees, contractors, licensees or users to, store, use, possess, dispose or release Hazardous Materials in violation of Environmental Laws in, on or from any portion of the Facility.

(b) Notwithstanding anything in this Agreement to the contrary, the Operator shall have no liability for, and shall be indemnified and held harmless by the City from, all Environmental Conditions relating to the Facility and for all violations of Environmental Laws in connection therewith, whenever and however they occur or have occurred, unless and except to the extent that the Operator or its employees, agents, representatives, users, licensees, contractors or subcontractors, has been finally determined, through ADR as set forth in Article XVII hereof, to have caused, through its negligent acts or omissions or willful misconduct, such violation or Environmental Condition.

15.2.7 Quality Arena Standard. Operator covenants that it shall operate the Facility in such manner as to satisfy the Quality Arena Standard at all times during the Term and Extension Term, if any.

15.2.8 No Equity in Team. The Operator covenants that it shall not purchase or obtain an equity interest in any limited liability company, partnership or other entity which owns or controls the Team without the prior written consent of the City.

### 15.3 Mutual Covenants.

15.3.1 Additional Documents and Approval. The City and the Operator, whenever and as often as each shall be reasonably requested to do so by the other party, shall execute or cause to be executed any further documents, take any further actions and grant any further approvals as may reasonably be necessary or expedient in order to consummate the transactions provided for in, and to carry out the purpose and intent hereof and of the Use Agreement.

15.3.2 Good Faith. In exercising its rights and fulfilling its obligations hereunder, the City and the Operator shall act in good faith. Each party acknowledges that this Agreement contemplates cooperation between the Operator and the City. Each party further acknowledges that the terms and conditions of this Agreement have been negotiated on the basis of certain projections and assumptions, including the assumption that the City and the Operator will act to advance, and not unreasonably interfere with, the public purposes to be served by the Facility.

15.3.3 Connecticut Transfer Act. The parties are of the opinion that this Agreement does not constitute a "lease of twenty-five years or more" under the Connecticut Transfer Act, Connecticut General Statutes Section 22a-134 et seq. (the "Transfer Act") and is not a "transfer of establishment," as that term is defined in the Transfer Act. By entering into this Agreement, both parties waive any potential claims they might have against each other pursuant to the Transfer Act. Notwithstanding the foregoing, in the event the Project Site or Facility is or becomes subject to the Transfer Act for any reason, the City agrees to undertake and proceed with the activities as required by, and in accordance with, the Transfer Act and to

) pay any fines or penalties imposed as a result of any failure to comply with the Transfer Act. The City acknowledges and agrees that it will submit the appropriate Transfer Act forms to the Connecticut Department of Environmental Protection ("DEP") and sign any such forms as the certifying party. The City shall be solely responsible for all investigation, remediation and monitoring required pursuant to the Transfer Act, and will so certify to the DEP. However, to the extent that the costs of complying with the Transfer Act are increased as a direct result of the negligent acts or omissions or willful misconduct of the Operator or its employees, contractors or agents, as finally determined through ADR as set forth in Article XVII hereof, the Operator shall reimburse the City for the amount of such increase.

15.3.4 Liens. Each party shall keep the Facility free from all Liens incurred or permitted by it or its contractors or agents. If within thirty (30) days following the filing or other assertion of any such Lien, the party responsible for such Lien does not cause such Lien to be released in a manner satisfactory to the other party (such as by posting a bond or other acceptable security), then such other party shall have the right, but not the obligation, to cause the Lien to be released by any means it deems proper including, without limitation, payment of the Lien, and all reasonable sums paid and expenses incurred by such party in connection therewith, including, without limitation, reasonable attorneys' fees and costs, shall be payable to it by the responsible party upon demand, plus interest at the Premium Rate computed from the date any such sum was paid.

) 15.4 Actual Knowledge. As used in Sections 5.1.7 and 15.2.6 herein, "actual knowledge" of a party shall mean receipt of information, in writing, in any medium (including, without limitation, electronically), by the Mayor, Chief Administrative Officer or City Attorney of the City or an elected corporate officer of the Operator.

## ARTICLE XVI DEFAULTS, REMEDIES AND TERMINATIONS

### 16.1 Events of Default.

Each of the following events shall constitute an Event of Default:

16.1.1 If any material representation or warranty made by the City or by the Operator herein shall at any time prove to have been incorrect in any material respect as of the time made, and if the party making such representation or warranty fails to cause such representation or warranty to become correct within thirty (30) days after written notice from the other party that such representation or warranty was incorrect; provided, however, that if it is not reasonably possible to cause such representation or warranty to become correct within such thirty-day period, such cure period shall be for an unlimited period of time if within thirty (30) days after such written notice the curing party commences diligently and thereafter continues to cause such representation or warranty to become correct.

16.1.2 If the City or the Operator shall materially breach any of the other covenants or provisions in this Agreement, and such failure is not cured within 30 days after

) written notice from the other party; provided, however, that if it is not reasonably possible to cure such failure within such 30 day period, such cure period shall be for an unlimited period of time if within 30 days after such written notice the curing party commences diligently and thereafter continues to cure.

16.1.3 If bankruptcy, reorganization, insolvency or liquidation proceedings, or any other proceedings of any kind or nature for relief under any bankruptcy or similar law for the relief of debtors, are instituted by or against the Operator or the City, and, if instituted against the Operator or the City, are consented to or allowed by the Operator or the City or are not dismissed within ninety (90) days after commencement thereof, an Event of Default shall be deemed to have occurred with respect to the party subject to such proceedings.

## 16.2 Rights and Remedies are Cumulative.

) Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, (including, without limitation, ADR as defined in Article XVII hereof) the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Event of Default or any other Event of Default by the other party. The parties acknowledge and agree that this Agreement is not a lease, and that in the event of a breach by Operator, damages shall be measured in accordance with general contract law and not in accordance with the principles of landlord/tenant law. Should an Event of Default occur under this Agreement, the party not in default shall use all reasonable efforts to mitigate any damages suffered by it.

## 16.3 Termination.

In addition to any other rights of termination set forth in this Agreement, either party may terminate this Agreement if an Event of Default has occurred with respect to the other party.

16.3.1 Termination by Operator. The Operator shall also have the right to terminate this Agreement, upon written notice to the City in any of the following events:

(a) the Operations Start Date has not occurred or, in the reasonable estimation of the parties, is likely not to occur, on or before June 30, 2002; or

(b) Despite the exercise of reasonable commercial efforts, Operator has not been successful in negotiating and executing the Use Agreement by July 31, 2000;

(c) The Use Agreement entered into by the Operator and the Team terminates at any time for any reason other than a breach of the Use Agreement by the Operator or the Use Agreement expires and, despite the exercise of reasonable commercial efforts after negotiating in good faith for a period of sixty (60) days, the Operator has been unsuccessful in negotiating (i) an agreement with the City pursuant to the City's rights under the License

) Agreement and (ii) an agreement on similar terms as the Use Agreement with another AHL team for the balance of the Term; or

(d) The City has not obtained a permanent certificate of occupancy for the Facility within twelve (12) months after the Operations Start Date and the City has not promptly commenced and continuously sought to cure the conditions required in a temporary certificate of occupancy to obtain a permanent certificate of occupancy.

16.3.2 Rights and Duties After Termination of Agreement. The following provisions shall apply in the event of a termination of this Agreement for any reason whatsoever, including, without limitation, a termination by either party after an Event of Default of the other party or upon the expiration of the Term.

(a) The City shall pay to the Operator an amount equal to the Operator's unamortized portion of the Operator Funding under Section 2.11.2 hereof.

(b) If the termination occurs prior to the expiration of ten years from the Operations Start Date, the City shall refund to the Operator a pro rata portion of any License Fee Advance paid under Section 5.2 hereof (prior to being discounted to the Discounted Payment amount), with such pro rata portion to be determined as follows: multiply the amount of the undiscounted License Fee Advance by a fraction, the numerator of which is the number of months which are remaining in the ten-year period from the Operations Start Date, and the denominator of which is 120.

(c) The Operator shall pay to the City any License Fees that have accrued and are owing as of the date of the termination (prorated for any partial month).

(d) The Operator shall pay any Facility Operating Expenses that have accrued and are owing as of the date of the termination (prorated for any partial month).

(e) Any amount remaining in the Renewal and Replacement Account shall be paid to the City; provided, however, that (i) any outstanding Deficit Loans created pursuant to Section 5.8, excluding any Deficit Loans for Facility Operating Expenses, shall first be repaid to Operator, and (ii) to the extent Sections 16.3.2(a) and (b) have not been satisfied, any Insurance Proceeds or Award proceeds remaining in such Account shall be paid to the Operator and the City proportionately, based on their respective contributions to the Facility Funding under Section 2.11 hereof.

(f) The Operator shall pay to the City the Incentive Fee and interest thereon as provided in Section 5.5.7, if any, that has accrued and is owing as of the date of termination (pro-rated for any partial month).

(g) The City shall purchase (or cause a replacement operator to purchase) Operator's in date food, beverage, merchandise and supply inventory for the invoice cost thereof.

(h) The Operator shall deliver to the City, within thirty (30) days after the date of termination, a final accounting setting forth any amounts due to the City and shall remit to the City all such amounts owned to the City, after setting off any amounts owed by the City to the Operator.

(i) After the Operator has been paid any amount owing to it pursuant to subsections (a) through (g) above, the Operator shall remove any of its personal property from the Facility and shall vacate the Facility.

#### 16.4 Construction Period Guaranty.

From the Agreement Commencement Date until the earlier of (a) eighteen (18) months following the Agreement Commencement Date and (b) the Operations Start Date, the Operator's obligations to make the Operator Funding under Section 2.11.2 of this Agreement shall be guaranteed by Guarantor, which guaranty shall be secured by a sight draft letter of credit issued by a bank acceptable to the City with an office in Bridgeport, Connecticut, which guaranty and letter of credit shall be in the amount of Eight Million Dollars (\$8,000,000.00) and in the form set forth in Exhibit 16.4, for a term of no more than eighteen (18) months and otherwise reasonably acceptable to the City, naming the City as benefited party. The original of such letter of credit shall be delivered to the Department of Finance of the City of Bridgeport with a certified copy delivered to the Office of the City Attorney on the Agreement Commencement Date.

#### 16.5 Right to Perform Defaulting Party's Obligations.

If a party to this Agreement has committed an Event of Default which is not the subject of a proceeding pursuant to Article XVII, and the defaulting party thereafter fails to perform any of its obligations under this Agreement, the non-defaulting party may perform any such obligation at the expense of the defaulting party (a) immediately and without notice in the case of an Emergency and (b) in any other case, if such failure continues after thirty (30) days from the date of the receipt of notice by the defaulting party of the non-defaulting party's intention to perform such obligation or, in the case of a failure which, for causes beyond the defaulting party's control, cannot with due diligence be cured within such 30-day period, such 30-day period shall be deemed extended if the defaulting party (i) shall within thirty (30) days of receipt of such notice, advise the non-defaulting party of the defaulting party's intention to institute all steps necessary to cure such failure and (ii) shall diligently institute such steps, such extension to continue only for so long as the defaulting party diligently prosecutes such steps to completion and cure.

#### 16.6 State Security Interest

The Operator acknowledges that a portion of the Facility Funding is made available to the City by the State. The Operator shall promptly execute any documents in order to provide the State with an appropriate security interest in this Agreement, which security

interest shall be subordinate only to any portion of the Facility Funding made available to the City by People's Bank. The Operator hereby acknowledges and consents to the foregoing based on the State's agreement, provided there is not an Operator Event of Default, not to disturb the possession of the Operator or its rights under this Agreement should the State succeed to the rights of the City under this Agreement.

## ARTICLE XVII DISPUTE RESOLUTION

### 17.1 Mediation.

In the event of any default, breach or other dispute between the parties in connection with this Agreement (collectively, the "**Dispute**"), the parties shall comply with the following procedures (all of which shall collectively be referred to as "**ADR**"). Within seven (7) business days after written request (the "**Request**") by either party, the parties promptly shall hold an initial meeting to attempt in good faith to negotiate a settlement of the Dispute. No Request concerning a Dispute may be made at any time after two (2) years following the occurrence of the event giving rise to the Dispute. If within ten (10) days after the Request, the parties have not negotiated a settlement of the Dispute, the parties jointly shall appoint a mutually acceptable neutral person who is not affiliated with either of the parties (the "**Neutral**"). If the parties are unable to agree upon the appointment of the Neutral within fourteen (14) days after the Request, the parties shall proceed to Arbitration under Section 17.2. If the parties agree on a Neutral, the parties shall develop a non-binding alternative dispute resolution procedure such as mediation or facilitation (the "**Mediation**") with the assistance of the Neutral. The Neutral shall make the decision as to how, when and where the Mediation will be conducted if the parties have been unable to agree on such matters by the earlier of seven (7) business days after the appointment of the Neutral or twenty-one (21) days after the Request. The parties shall actively participate in good faith in the Mediation to its conclusion. If the parties resolve their Dispute through their own negotiations or in the Mediation, the resolution shall be reduced to the form of a written settlement agreement which shall be binding upon both parties and shall preclude any litigation with respect to such Dispute.

### 17.2 Arbitration.

If the parties have not resolved the Dispute through the Mediation within sixty (60) days after the Request, then at any time thereafter, and prior to resolution of the Dispute by the Mediation, upon written demand by either party, the Mediation shall cease, and the Dispute shall be submitted to arbitration (the "**Arbitration**") in accordance with the applicable rules of the American Arbitration Association ("**AAA**"). The arbitration shall be held in Stamford, Connecticut before a panel of three arbitrators selected in accordance with Section R-13 of the AAA Commercial Arbitration Rules, provided, that each of the City and the Operator will have the opportunity to reject within five business days any arbitrator proffered and in no event will the AAA have the power to make the appointment of an arbitrator unless the procedures in Rule R-13(a) and (b) (but for the last sentence of R-13(b)) have failed to yield a panel of three arbitrators after submissions of three lists. The parties covenant that they will participate in the

Arbitration in good faith. Subject to Section 17.4, the parties shall share equally the cost of Arbitration, but each party shall be liable for its own attorneys' fees and costs of proof.

#### 17.3 Damages; Remedies.

If Arbitration results in a determination by the arbitrator(s) that an Event of Default has occurred, the provisions of Article XVI hereof shall govern the damages and other remedies which may be implemented or ordered by the arbitrators. These ADR procedures require the City and the Operator to use these ADR procedures exclusively rather than litigation as a means of resolving their disputes under this Agreement or to determine the validity or consequences of an alleged Event of Default and the implementation of the remedies therefore as provided in Article XVI.

#### 17.4 Miscellaneous.

The parties agree that any disputes which arise out of such a written settlement agreement or award during the Term shall be resolved exclusively by the procedures set forth in this Article, provided that any party may institute legal proceedings in a court of competent jurisdiction to enforce judgment upon an Arbitration award or challenge any Arbitration award in accordance with the limited bases for challenging such awards under applicable law. The arbitrators may, in their discretion, assess costs and expenses (including the reasonable legal fees and expenses of the prevailing party) against any party to a proceeding. Any party refusing to comply with an award of the arbitrators will be liable for costs and expenses, including reasonable attorneys' fees, incurred by the other party in enforcing an award.

### ARTICLE XVIII GENERAL PROVISIONS

#### 18.1 Notice.

All notices and other communications pursuant to this Agreement shall be in writing and shall be deemed properly given upon delivery, or refusal of delivery, if sent by personal delivery, overnight courier service with guaranteed next day delivery or by certified United States mail, postage prepaid, return receipt requested addressed as follows:

If to City:

Mayor, City of Bridgeport  
City Hall  
45 Lyon Terrace  
Bridgeport, CT 06604



and

City Attorney  
City of Bridgeport  
999 Broad Street  
Bridgeport, CT 06604

and

Director  
Office of Planning and Economic Development  
City of Bridgeport  
999 Broad Street  
Bridgeport, CT 06604

with a copy to:

Frank L. Baker, Esquire  
Robinson & Cole LLP  
695 E. Main Street  
Stamford, CT 06904

If to Operator:

Chief Executive Officer  
Volume Services America  
300 First Stamford Place  
Stamford, CT 06902

with a copy to:

General Counsel  
Volume Services America  
300 First Stamford Place  
Stamford, CT 06902

Each party may, by written notice to the other in accordance with the procedure set forth in this Section, specify a different address for subsequent notice purposes.

#### 18.2 Relationship of Parties.

No partnership, joint venture, landlord-tenant or other business relationship is established between the City and the Operator under this Agreement or any other agreement referred to in this Agreement other than the relationship of the City as the owner of the Facility and the Operator as an independent contractor of the City. Except as expressly provided in the

Agreement, the Operator, its employees, agents, independent contractors and licensees shall not be considered employees or agents of the City or to have been authorized to incur any expense on behalf of the City or to act for or to bind the City. The City, its elected officials, officers, employees, agents and independent contractors shall not be considered employees or agents of the Operator or to have been authorized to incur any expense on behalf of the Operator or to act for or to bind the Operator. Neither the City nor the Operator shall be liable for any acts, omissions or negligence on the part of the other party, its employees, agents, independent contractors and licensees resulting in either personal injury or property damages. The relationship created hereby is solely that of owner and independent contractor.

### 18.3 Severability.

If any provision of this Agreement shall be adjudged invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law, provided that no such severance shall serve to deprive any of the parties of the enjoyment of its substantial benefits under this Agreement.

### 18.4 Force Majeure.

Failure in performance by either party hereunder shall not be deemed an Event of Default, and the non-occurrence of any condition hereunder (other than the failure to cause Substantial Completion to occur by the date set forth in Section 16.3.1(a), which shall be absolute) shall not give rise to any right otherwise provided herein, when such failure or non-occurrence is due to war; insurrection; strikes; lock-outs; riots; floods; windstorms; fires; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargos; lack of transportation; governmental restrictions; unusually severe weather; inability (when both parties are faultless) of any contractor, subcontractor or supplier; acts or the failure to act, of any public or governmental agency or entity (except acts or failures to act by the City) or any other causes beyond the control and without the fault of the party claiming an extension of time to perform ("**Force Majeure**"). An extension of time for any such cause shall be limited to the period of delay due to such cause, which period shall be deemed to commence from the time of the commencement of the cause, provided that, if notice by the party claiming such extension is sent to the other party more than thirty (30) days after the commencement of the cause, the period shall be deemed to commence thirty (30) days prior to the giving of such notice. The period of the delay due to any such cause, shall be an Abatement Period. Times of performance under this Agreement may also be extended as mutually agreed upon in writing by the City and the Operator. However, failure to agree to a proposed extension of time for performance shall not be deemed grounds for delay or failure to timely cure an Event of Default hereunder.

### 18.5 Interpretations.

To the extent permitted by the context in which used, (a) words in the singular number shall include the plural, words in the masculine gender shall include the feminine and neuter, and vice versa, and (b) reference to "persons" or "parties" in this Agreement shall be

deemed to refer to natural persons, corporations, general partnerships, limited partnerships, trusts and other entities.

#### 18.6 Binding Effect.

This Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

#### 18.7 Captions.

Captions and paragraph headings used herein are for convenience only and are not a part of this Agreement and shall not be deemed to limit or alter any provisions hereof and shall not be deemed relevant in construing this Agreement.

#### 18.8 Entire Agreement.

This Agreement is executed in six (6) duplicates each of which is deemed to be an original. This Agreement and the referenced Exhibits, each of which is incorporated herein, together with the Use Agreement, to the extent applicable, constitutes the entire understanding and agreement of the parties with respect to the subject matter of this Agreement. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

#### 18.9 Amendment.

This Agreement may not be changed, modified or rescinded except in writing by the City Representative and the Operator Representative, and any attempt at oral modification of this Agreement shall be void and of no effect.

#### 18.10 Waiver.

No consent or waiver given by either party under this Agreement to or of the performance of a duty or obligation of another party shall be construed as a continuing waiver of or consent as to any further or subsequent breach of a duty or obligation. Failure to object to a continuing breach or delay in asserting a right shall not constitute a waiver of such breach or right. Waivers and consents shall only be effective if they are in writing and signed by the party against which the consent or waiver is to be enforced.

#### 18.11 Applicable Law.

The laws of the State shall govern the interpretation and enforcement of this Agreement.

18.12 Reasonableness.

Whenever in this Agreement the consent or approval of the City or the Operator is required, unless expressly stated to the contrary, the granting of such consent or approval shall be governed by a standard of reasonableness. If either party contends that the standard has not been met, the matter shall be resolved as provided in Article XVII.

18.13 Parking.

18.13.1 During the Term, the City shall be solely responsible for the provision of parking for the use of persons attending Events at the Facility and users of the Facility and for the control, operation and maintenance of all Parking Areas. The Operator acknowledges that the City may not own or have complete control over all of the Parking Areas. Without limiting the generality of the foregoing, the City shall provide parking in amounts sufficient to prevent any material adverse effect on the use or attractiveness of the Facility to users or patrons. Without limiting the generality of the foregoing, the City shall use its best efforts to provide the following parking arrangements in the Parking Areas:

(a) 130 parking spaces for luxury seating patrons located in the garage in the area which is closest and most convenient to the Facility, at a cost of \$2.00 per space, subject to commercially reasonable increases;

(b) 300 parking places for club seating patrons located in the garage in the area which is next closest and most convenient to the Facility, at a cost of \$2.00 per space, subject to commercially reasonable increases; and

(c) 200 parking places for Event workers anywhere in the Parking Areas.

At the beginning of each hockey season during the Term, the Operator shall advise the City how many of the aforementioned parking spaces may be released to the general public, based on a reasonable proportion of unsold tickets. All such parking spaces shall be sold for the sole benefit of the City at the same rate as similarly situated spaces in the Parking Areas. For the convenience of the Operator, the Operator may collect the parking fees and promptly pay such fees to the City. All revenue from fees for Parking Areas shall be the sole property of the City. The Operator acknowledges that the City has the sole right to engage the services of a professional parking management company to operate all Parking Areas, provided that such engagement shall not affect the City's obligations hereunder in any way.

18.13.2 The City shall deliver to the Operator, at no cost to the Operator (other than as specified in the next sentence), a paved, striped and lighted parking area ("**Operator Parking Area**") of no less than seventy-five (75) parking spaces directly adjacent to the Arena on the Project Site, as shown on Exhibit 1.84 hereto. After delivery by the City, the Operator Parking Area shall be controlled, operated and maintained by the Operator at its sole expense. The Operator Parking Area shall be for use by Operator's employees, the Team and Facility patrons, as designated by the Operator.

18.14 No Smoking.

The Facility shall be designated and operated as a no smoking facility.

18.15 Counterparts.

This Agreement may be executed in any number of counterparts, provided each of the parties hereto executes at least one counterpart. Each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

ARTICLE XIX  
LIABILITY LIMITATION

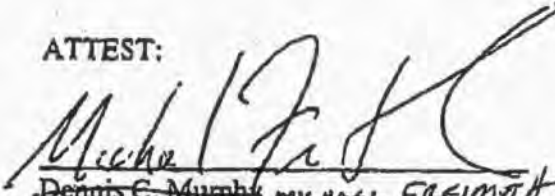
19.1 City and Operator Personnel.

Notwithstanding and prevailing over any contrary provision or implication in this Agreement, no elected official, official, employee, agent, or consultant of the City or limited partner, member, shareholder of partner, officer, director, employee or agent of the Operator shall be liable to either of the parties hereto, or any successors in interest thereof, in the event of any default or breach by the City or the Operator, or for any amount which may become due to either party or any successors in interest thereof, or for performance of any other obligation under the terms of this Agreement, except any such obligations which result from their criminal acts with respect hereto (i.e., acts which would constitute crimes were they prosecuted therefore and convicted thereof).

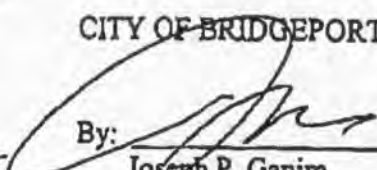
IN WITNESS WHEREOF, the parties have hereunto executed this Agreement by and through their lawfully authorized officers, as of the date first written above.

ATTEST:

CITY OF BRIDGEPORT

  
Dennis C. Murphy  
Chief Administrative Officer,  
City of Bridgeport


By:

  
Joseph P. Ganim  
As Mayor

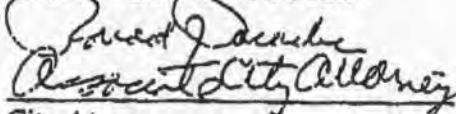
OPERATOR

SERVICE AMERICA CORPORATION  
D/B/A VOLUME SERVICES AMERICA

By:

  
Name: John T. Dee  
Title: Chairman + CEO

APPROVED AS TO FORM:

  
Robert J. Deane  
City Attorney

**EXHIBIT 1.11**

**ARENA SEATING CAPACITY**

)

**EXHIBIT 1.85**

**OPERATOR PARKING AREA**

Outlined on attached Site Plan  
South Site, SP-3, dated 08-02-99



EXHIBIT 1.95

PROJECT SITE

EXHIBIT 2.2.1(a)

CONSTRUCTION SCHEDULE

**EXHIBIT 2.2.1(b)**

**EXISTING PLANS**

Plans sealed and signed by the Operator are on file in the City's Construction Management Services office, 999 Broad Street, Bridgeport, Connecticut.

## EXHIBIT 2.4

### PROCUREMENT AGENT AGREEMENT

THIS PROCUREMENT AGENT AGREEMENT ("Agreement") is made this 25<sup>th</sup> day of July, 2000, by and between the City of Bridgeport, Connecticut, (the "City") a municipal political subdivision of the State and Service America Corporation d/b/a Volume Services America ("VSA"), a Delaware corporation with offices at 300 Stamford Place, 4<sup>th</sup> Floor, Stamford, Connecticut 06902.

WHEREAS, the City and VSA are parties to a certain Operating Agreement dated of even date herewith (the "Operating Agreement") relating to the new municipal arena facility to be constructed in the City of Bridgeport;

WHEREAS, the project budget relating to the construction and equipping of the arena facility includes certain line items and expenses in the category of "Furniture, Fixtures and Equipment" ("FF&E"), all as currently itemized on Schedule A attached hereto;

WHEREAS, the City and VSA have determined that VSA's skill, experience, and purchasing power with regard to the FF&E is greater than that of the City, and the City is relying upon VSA to use its commercially reasonable efforts to acquire the FF&E at a lower aggregate cost than the budget amount set forth in Schedule A;

WHEREAS, the City wishes to designate VSA as its procurement agent, with all powers and exemptions, including the City's exemption from certain taxes relating to the purchase of goods and services;

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged by the City and VSA, each agrees with the other as follows:

1. The City hereby designates and appoints VSA as its agent for the purpose of arranging for purchase and acquisition, on the City's behalf, of the FF&E identified on the attached Schedule as the same may be amended by the parties from time to time, with all powers and exemptions, including the City's exemption from certain taxes relating to the purchase of goods and services.
2. The City agrees, through its Department of Public Purchases to provide sales tax exemption certificates for VSA's use in dealing with vendors and service providers in connection with the fulfillment of its duties and obligations hereunder, in order to reflect the City's purchases through its agent as exempt from State sales tax on such of the FF&E as would otherwise be subject to such taxes.

3. VSA shall use commercially reasonable efforts to obtain the lowest possible prices for each item of FF&E and VSA agrees to advise each vendor and service provider that the City is the purchaser and VSA is acting hereunder as the City's agent for the limited purpose described herein.

4. VSA shall pay vendors and service providers and invoice the City not more than once every two weeks. Each invoice shall include reasonably detailed invoices from such vendors and service providers and a summary of FF&E payments to date. The City shall pay such invoices within fifteen (15) days of receipt thereof.

5. Each party shall implement the intent of this Agreement by executing such further documents and taking such actions as are reasonably required to give full effect to the benefits flowing from this relationship to each party. Third parties may rely on the agency created herein and, provided that VSA has notified the City of VSA's commitments made in accordance with this Agreement, the City agrees to assume all responsibility for all commitments made to third parties by VSA under the terms of this Agreement.

6. VSA is obligated to keep complete and accurate records with all backup documentation of its activities as agent for the City under this Agreement, which records shall be promptly provided to the City's Department of Public Purchases with a copy to the Division of Construction Management Services for placement into the arena project file.

7. This Agreement may be executed in any number of counterparts, provided each of the parties hereto executes at least one counterpart. Each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

IN WITNESS WHEREOF, the City and VSA have hereunto set their respective hands and seals the day and year first above written.

CITY OF BRIDGEPORT

\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

Its:  
Duly Authorized

SERVICE AMERICA CORPORATION  
d/b/a VOLUME SERVICES AMERICA

\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

Its:  
Duly Authorized

)

**Schedule A**

**List of FF&E**

)

)

## EXHIBIT 15.1.7

### ENVIRONMENTAL AND HISTORIC CONDITIONS

At the time that the City acquired the Project Site, the City filed Form IIIs with the Commissioner of Environmental Protection ("Commissioner") for certain parcels that constitute part of the Project Site pursuant to the Connecticut Transfer Act, C.G.S. §§ 22a-134 *et seq.*, whereby they agreed to investigate and remediate the Property Site in accordance with the Remediation Standard Regulations, R.C.S.A. §§ 22a-133k-1 *et seq.* ("RSRs"). The Commissioner has since determined that a licensed environmental professional ("LEP") is authorized to oversee the investigation and remediation of these parcels that constitute part of the Project Site. The City is currently remediating or has remediated Environmental Conditions at the Project Site under the supervision of an LEP. Because the RSRs require at least one year of groundwater monitoring following certain remediation, the City expects that the LEP will not be in a position to issue a verification that the Project Site has been investigated and remediated in accordance with the RSRs by either the Agreement Commencement Date or the Operations Start Date. By disclosing this information on this Exhibit 15.1.7, the City does not acknowledge or admit that it indicates a violation or threatened violation of Environmental Laws.

## EXHIBIT 16.4

### AGREEMENT AND CONSTRUCTION PERIOD GUARANTY

WHEREAS, the City of Bridgeport ("**City**"), a public body corporate and politic and a political subdivision of the State of Connecticut, having an office at 45 Lyon Terrace, Bridgeport, Connecticut, has been requested by Service America Corporation d/b/a Volume Services America ("**Operator**"), a Delaware corporation, having an office at 300 First Stamford Place, Stamford, Connecticut, to enter into a proposed operating agreement ("**Operating Agreement**"), whereby City would license unto Operator, and Operator would operate on behalf of City, the multipurpose civic arena ("**Facility**"), in the City of Bridgeport, Connecticut, which Operating Agreement is hereby incorporated in this instrument by reference; and

WHEREAS, Volume Services America, Inc. ("**Guarantor**"), a Delaware corporation having an office c/o Volume Services America, 300 First Stamford Place, Stamford, Connecticut, is the owner of all of Operator and is willing to fully guaranty the obligation of Operator to make Operator Funding under Section 2.11.2 of the Operating Agreement; and

WHEREAS, Guarantor acknowledges that City would not enter into the Operating Agreement unless this Agreement and Construction Period Guaranty (as defined in the Operating Agreement) accompanied the execution and delivery of the Operating Agreement.

NOW, THEREFORE, in consideration of the execution and delivery of the Operating Agreement and of other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged by Guarantor, Guarantor agrees as follows:

1. All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Operating Agreement.
2. Guarantor does hereby:
  - (a) Guaranty to City the full and prompt payment of the Operator Funding as required under, and pursuant to, the terms of Section 2.11.2 of the Operating Agreement, and Guarantor covenants to and agrees with City that if Operator, or its successors or assigns, shall default in the performance of its obligation under Section 2.11.2 of the Operating Agreement beyond the applicable grace period provided in the Operating Agreement for the curing of such default, if any, then Guarantor will, without notice or demand, forthwith well and truly observe and perform said terms, covenants and conditions and pay to City the Operator Funding under Section 2.11.2 of the Operating Agreement and all damages, reasonable costs and reasonable expenses incurred by the City as a result of such default of Section 2.11.2 by Operator.



- (b) Covenant to and agree with City that Guarantor may, at City's option, without prior notice or demand, be joined in any action, suit or proceeding commenced by City against Operator in connection with or based upon the Operator Funding under Section 2.11.2 of the Operating Agreement, that recovery may be had against Guarantor in such action or proceeding or in any independent action or proceeding against Guarantor without City, its successors or assigns, first asserting, prosecuting, or exhausting any remedy or claim against Operator, its successors or assigns, or against any security of Operator held by City under the Operating Agreement, and that Guarantor will be conclusively bound in any jurisdiction by the judgment in any such action by City against Operator as if Guarantor were a party to such action even though Guarantor is not joined as a party in such action;
- (c) Covenant to and agree with City that this Agreement and Construction Period Guaranty shall be a continuing guaranty and shall remain in full force and effect notwithstanding any modifications, amendments or extensions of the Operating Agreement, any releases or discharges of Operator (other than full release and complete discharge of all of Operator's obligations under the Operating Agreement), any extension of time that may be granted by City to Operator, any assignment (whether entered into with or without City's consent), any changed or different use of the Facility, any other dealings or matters occurring between City and Operator, the taking by City of any additional guaranties from other persons or entities, the releasing by City of any other guarantor, the taking of any legal action by City against Operator, or City's failure to perfect or realize upon any security interest provided in the Operating Agreement or any lien provided by law, to all of which foregoing matters Guarantor hereby consents in advance;
- (d) Waive notice of the acceptance of this Agreement and Construction Period Guaranty and of any and all defaults by Operator under Section 2.11.2 of the Operating Agreement and of any and all notices or demands which may be given by City to Operator, whether or not required to be given to Operator under the terms of the Operating Agreement;
- (e) Waive (i) trial by jury of any and all issues arising in any action or proceeding between the parties, upon, under or in connection with this Agreement and Construction Guaranty or any and all negotiations and agreements in connection therewith, (ii) any defenses of Operator to payment under Section 2.11.2 of the Operating Agreement that may be available to Guarantor and (iii) the benefit of any statute of limitations affecting Guarantor's liability under this Agreement and Construction Guaranty;

- (f) Acknowledge that this Agreement and Construction Guaranty is an absolute and unconditional guaranty of payment and not of collection in respect to any obligations which may accrue to City from Operator under the provisions of Section 2.11.2 of the Operating Agreement, and that this Agreement and Construction Guaranty shall be enforceable against Guarantor without the necessity of any suit or proceedings on the part of City of any kind or nature whatsoever against Operator, its successors and assigns, without the necessity of resorting to any security of Operator held by City and without the necessity of any notice of nonpayment, nonperformance or nonobservance or any notice of acceptance of this Agreement and Construction Guaranty or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives in advance; and
- (g) Covenant to and agree with City that the validity of this Agreement and Construction Period Guaranty shall in no way be terminated, affected or otherwise impaired by reason of any assignment or transfer of all or any part of Operator's interest in the Operating Agreement, unless such assignee assumes all of the Guarantor's obligations under the Agreement and Construction Period Guaranty in an assignment and assumption agreement reasonably satisfactory to the City.
3. The parties agree that this Agreement and Construction Period Guaranty shall terminate eighteen months following the Agreement Commencement Date, unless earlier terminated pursuant to Section 4 hereof.
4. (a) This Guaranty shall terminate immediately upon payment in full of the Operator Funding under Section 2.11.2 of the Operating Agreement or the City's drawing on the Letter of Credit in the full amount of the Operator Funding, whichever occurs first, except as provided in Section 4(b) hereof.
- (b) Notwithstanding the foregoing, Guarantor shall indemnify and save the City harmless from all losses, liability, damage and reasonable costs and expenses, including, but not limited to, reasonable counsel fees and disbursements, which may arise by reason of Operator's default under Section 2.11.2 of the Operating Agreement (whether as a result of insolvency or otherwise) or by reason of enforcing this Agreement and Construction Guaranty.
5. Except as set forth in Sections 3 and 4 hereof, the validity of this Agreement and Construction Guaranty shall in no way be terminated, modified, affected, diminished or impaired by reason of (a) any action which City may take or fail to take against Operator, or by reason of any waiver of, or failure to enforce, any of the rights or remedies of City under the Operating Agreement or otherwise, or by release of Operator from any of Operator's obligations under the Operating

Agreement or otherwise, or (b) the release or discharge of Operator in any creditors' proceedings, receivership, bankruptcy or other proceedings, (c) the impairment, limitation or modification of the liability of Operator or the estate of Operator in bankruptcy, or any remedy for the enforcement of Operator's said liability under the Operating Agreement, resulting from the operation of any present or future provision of The Bankruptcy Reform Act of 1978, as amended, or other statute, or from the decision of any court, or (d) the rejection or disaffirmance of the Operating Agreement in any such proceedings.

6. Guarantor and City agree to submit any dispute concerning this Guaranty to ADR pursuant to the terms of Article XVII of the Operating Agreement.
7. Guarantor represents that this Agreement and Construction Guaranty has been duly authorized, executed and delivered by Guarantor, and that this Agreement and Construction Guaranty constitutes a valid and binding agreement enforceable against Guarantor in accordance with its terms;
8. Guarantor represents that Guarantor owns all of Operator;
9. As collateral security for the payment and performance of the covenants, terms, conditions and obligations described herein, this Agreement and Construction Period Guaranty is secured by a letter of credit in the manner set forth in the attached Construction Letter of Credit Agreement described as Exhibit 16.7A.
10. The provisions, covenants and guaranties of this Agreement and Construction Guaranty shall be binding upon Guarantor, its successors, assigns and legal representatives, and shall inure to the benefit of City, its successors, assigns and legal representatives, and shall not be deemed waived or modified unless specifically set forth in writing, executed by both parties.
11. The provisions of this Agreement and Construction Guaranty shall be governed by and interpreted in accordance with the laws of the State, without giving effect to the principles of conflicts of law.

IN WITNESS WHEREOF, the undersigned Guarantor has signed and sealed this Agreement and Construction Guaranty as of this 25<sup>th</sup> day of July, 2000.

In Witness Whereof:

VOLUME SERVICES AMERICA, INC.

By \_\_\_\_\_  
Its:  
Duly Authorized

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## CONSTRUCTION PERIOD LETTER OF CREDIT AGREEMENT

THIS AGREEMENT made as of the 25<sup>th</sup> day of July, 2000, by and between Volume Services America, Inc., a Delaware corporation (the "**Guarantor**"), and the City of Bridgeport, Connecticut, including any instrumentality thereof, such as a sports and entertainment board, commission, whether created by act of the Connecticut legislature or otherwise (the "**City**").

### WITNESSETH, THAT WHEREAS:

A. City and Service America Corporation d/b/a Volume Services America (the "**Operator**") have entered into that certain agreement (the "**Operating Agreement**") dated as of July 25, 2000, providing in part, for the Operating of certain arena property under construction (the "**Property**") and located in Bridgeport Connecticut. Capitalized terms not defined herein shall be as defined in the Operating Agreement.

B. The Operating Agreement is guaranteed by Guarantor and the capital investment to be provided pursuant to Section 16.4 therein by Operator is to be secured by an irrevocable standby letter of credit.

C. Preliminary funding for the construction of the Property is intended to be provided by People's Bank in the form of an interim loan (the "**Loan**").

D. The Operating Agreement requires the execution and delivery of this Agreement to govern the delivery, the maintenance, the right to draw upon, the application and the release of such letter of credit.

NOW, THEREFORE, in consideration of the Operating Agreement and the respective undertakings of the parties hereinafter set forth, it is hereby agreed as follows:

#### 1. Certain Definitions.

A. Except as otherwise provided, all capitalized terms used herein shall have the meanings specified for the same in the Operating Agreement.

B. "**Bank**" means such major Connecticut or national bank with an office in Bridgeport, Connecticut, as shall be acceptable to City.

C. "**Guaranteed Obligations**" means the performance of all of the Operator's obligations under Section 2.11.2 of the Operating Agreement.

D. "**Letter of Credit**" means the letter of credit delivered to City pursuant to paragraph 2 hereof as the same may be modified, extended or replaced in accordance with this Agreement.

2. Delivery and Maintenance of Letter of Credit.

A. Initial Delivery. On or before the Agreement Commencement Date, Guarantor shall deliver to City, and deliver a copy to the office of the City Attorney, an original irrevocable standby letter of credit in the form of Exhibit "A", hereunto annexed and made a part hereof, issued by the Bank, in the principal amount of \$8,000,000.00 having an expiration date no sooner than eighteen months from the Agreement Commencement Date or in the event Bank shall only issue such irrevocable letter of credit for a shorter period of time, such irrevocable standby letter of credit being self renewable to eighteen months from the Agreement Commencement Date or renewed pursuant to paragraph 2C hereof, and providing in substance that upon City's written demand, which written demand is accompanied by City's statement, that it is entitled to the sum demanded, the Bank shall, without requiring anything further of any party or person and regardless of any contrary claims, demands or instructions, immediately pay over to City, as City requests, the amount (up to the scheduled principal amount of such letter of credit then in effect by its terms and the terms of the Operating Agreement) demanded by City in its written demand.

B. Replacement. In the event that the issuer of the letter of credit encounters financial difficulties, or other events or circumstances occur which, in the judgment of City, bring into question the issuer's ability or willingness to honor the letter of credit delivered to City pursuant to subparagraph A above (or any subsequent replacement thereof) in accordance with the terms thereof, then City shall have the right to require that the letter of credit be replaced in accordance with the following provisions of this Subparagraph B. Within forty-five (45) days of City's written request, Guarantor shall cause the letter of credit delivered to City pursuant to subparagraph A above (or any subsequent replacement thereof) to be replaced by a substitute letter of credit which shall be in the form of the Exhibit "A" hereto, shall be in the principal amount of the then balance of the letter of credit that it will be replacing, and shall have an expiration date of the unexpired term of the letter of credit being replaced and being so renewable to eighteen months from the Agreement Commencement Date or renewed pursuant to Paragraph 2C. Such replacement letter of credit shall be issued by a major Connecticut or national bank acceptable to City that has offices in Bridgeport, Connecticut. Upon receipt by City of such replacement letter of credit, City shall deliver to Guarantor the letter of credit being replaced.

C. Renewal. Guarantor shall cause the letter of credit delivered to City pursuant to subparagraph A above (as the same may have been replaced pursuant to subparagraph B above) to be maintained in effect until drawn upon or released as herein provided. Without limitation on the foregoing, in the event the letter of credit shall expire prior to eighteen months from the Agreement Commencement Date no later than thirty (30) days prior to the then expiration date of such letter of credit (as the same may have theretofore been extended), Guarantor shall cause such expiration date to be extended for the maximum period permitted by the Bank and renewable to eighteen months from the Agreement Commencement Date. The principal amount of such renewed letter of credit shall be in the amount then in effect by the terms of the Operating Agreement, which amount shall be determined by the City, in its reasonable discretion, pursuant to the terms of the Operating Agreement.

3. Drawing Upon Letter of Credit. In addition to, and not in limitation of, its other rights provided in this Agreement or otherwise, City, provided Substantial Completion has occurred and the City has secured at least \$35,000,000 of financing for the Facility Funding, may require that the Bank deliver to it, in cash equivalent funds, at any time and from time to time, all or any part of the scheduled principal amount of any of the letters of credit as provided in the Operating Agreement upon the occurrence of the following (a) the occurrence of a default or breach under Section 2.11.2 of the Operating Agreement (b) a breach or default by Operator, or failure of compliance by Guarantor, with any of Guarantor's obligations hereunder; including without limitation: (i) Guarantor's failure to extend the expiration date of any such letter of credit in accordance with paragraph 2C hereof within 30 days prior to the then expiration date thereof (as the same may have theretofore been extended), (ii) Guarantor's failure to replace the letter of credit in accordance with paragraph 1B hereof within 30 days of City's request or (iii) Guarantor's failure to take such action as may be reasonably requested by City within 30 days after City's request in order to assign the Letter of Credit and City's rights hereunder to an assignee of the Operating Agreement. The cash delivered to City pursuant to this paragraph 3 shall continue to be held by City for the purposes herein stated until released, used, applied or credited pursuant to the provisions herein set forth.

4. Application of Proceeds of Letter of Credit. In the event of any occurrence of the conditions set forth in Paragraph 3 above, and not in limitation of, its other rights and remedies (including, but not limited to, those provided by law and those provided by any other agreement), City may apply or credit any sum delivered to it pursuant to any such letter of credit against the Loan or any sum to which City becomes entitled under the Operating Agreement. City shall have the right and option at any time and from time to time to determine which portions of the Letter of Credit (or proceeds thereof) shall be reduced as a result of any application or crediting of the Letter of Credit (or proceeds thereof) to or for the benefit of City pursuant to this Agreement.

5. Release of Letter of Credit. If the Operator has paid the Operator Funding to the City prior to the expiration of the Letter of Credit, the City shall promptly cause the Letter of Credit to be returned to the Operator at which time the Operator shall have no further obligations hereunder.

6. Successors and Assigns. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties. Within 30 days of City's written request, Operator shall take such action as may be reasonably required by City in such request in order to assign the Letter of Credit and City's rights under this Agreement.

7. Miscellaneous. This Agreement and the Operating Agreement contain the entire agreement between the parties hereto respecting the matters herein set forth and supersedes all prior agreements between the same respecting such matters. Time is of the essence of this Agreement. Paragraph headings shall not be used in construing this Agreement. If any party obtains a judgment against any other party by reason of breach of this Agreement, a reasonable attorneys' fee as fixed by the court may be included in such

judgment. No remedy conferred upon a party in this Agreement is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Except as herein expressly provided, no waiver by a party of any obligation under or breach of this Agreement or of any warranty or representation hereunder by the other party shall be deemed to be a waiver of any other obligation under or breach of this Agreement or of any representation or warranty hereunder by such other party (whether preceding or succeeding and whether or not of the same or similar nature) and no acceptance of payment or performance by a party after any breach by the other party shall be deemed to be a waiver of any obligation under or breach of this Agreement or of any representations or warranty hereunder by such other party whether or not the first party knows of such obligation or breach at the time it accepts such payment or performance. No failure or delay by a party to exercise any right it may have by reason of the default of any other party shall operate as a waiver of default or modification of this Agreement or shall prevent the exercise of any right by the first party while the other party continues to be so in default. It is understood that any and all letters of credit delivered to City pursuant to this Agreement are the obligation of the issuing bank solely for the benefit of City and that such letters of credit do not constitute property of Guarantor, and nothing herein shall be construed in a manner that is inconsistent with the foregoing. This Agreement shall be construed and enforced in accordance with the laws of the State of Connecticut.

8. Limitation of Liability. No officer, agent, contractor or employee of City shall have any personal liability, directly or indirectly, under or in connection with or pursuant to the provisions of this Agreement or any agreement or instrument executed pursuant hereto or in connection herewith, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter, and City hereby waives any and all such personal liability.

9. Notices. Any notice that either party is required or may desire to give the other shall be in writing and shall be sent by personal delivery or by mail (either (a) by United States registered or certified mail, return receipt requested, postage prepaid, or (b) by Federal Express or similar generally recognized overnight carrier regularly providing proof of delivery), addressed as follows (subject to the right of a party to designate a different address for itself by notice similarly given):

If to City:

Mayor, City of Bridgeport  
City Hall  
45 Lyon Terrace  
Bridgeport, CT 06604

and

City Attorney  
City of Bridgeport  
999 Broad Street  
Bridgeport, CT 06604

and

Director  
Office of Planning and Economic Development  
City of Bridgeport  
999 Broad Street  
Bridgeport, CT 06604

with a copy to:

Frank L. Baker, Esquire  
Robinson & Cole LLP  
695 E. Main Street  
Stamford, CT 06904

If to Operator:

Chief Executive Officer  
Volume Services America  
300 First Stamford Place  
Stamford, CT 06902

with a copy to:

General Counsel  
Volume Services America  
300 First Stamford Place  
Stamford, CT 06902

Any notice so given by mail shall be deemed to have been given as of the date of delivery (whether accepted or refused) established by U.S. Post Office return receipt or the overnight carrier's proof of delivery, as the case may be, but in no event later than three days after mailing. Any such notice not so given shall be deemed given upon receipt of the same by the party to whom the same is to be given.

10. Counterparts. This Agreement may be executed in any number of counterparts, provided each of the parties hereto executes at least one counterpart; each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

CITY OF BRIDGEPORT

Attest:

\_\_\_\_\_

By: \_\_\_\_\_  
Its  
Duly Authorized

VOLUME SERVICES AMERICA, INC.

Attest:

\_\_\_\_\_

By: \_\_\_\_\_  
Its  
Duly Authorized

This document has built-in macros to position your cursor. Use **Ctrl+Z** to move forward to the next place to type text. Use **Ctrl+A** to move back to a previous position. **Do not** type inside the curly braces. **This red text will not show up in your printout.**

**EXHIBIT A**  
**TO CONSTRUCTION PERIOD LETTER OF AGREEMENT**

**CHASE MANHATTAN BANK USA, N.A.**  
LETTER OF CREDIT DEPARTMENT  
1201 MARKET STREET / P.O. BOX 8840, RODNEY SQUARE, WILMINGTON  
DELAWARE 19899

**DATE: JULY**      , 2000

<b>IRREVOCABLE STANDBY LETTER OF CREDIT</b>	<b>OUR NO.</b>  XXXXX	
<b>ADVISING BANK</b>	<b>APPLICANT</b> VOLUME SERVICES AMERICA 201 EAST BROAD STREET SPARTANBURG, SC 29306	
<b>BENEFICIARY</b>  DIRECTOR OF FINANCE CITY OF BRIDGEPORT 45 LYON TERRACE BRIDGEPORT, CT 06604	<b>AMOUNT</b>  US \$8,000,000.00*****	
	<b>EXPIRY</b>  JULY      , 2001*****	

GENTLEMEN:

BY ORDER OF OUR CLIENT, VOLUME SERVICES AMERICA ("OPERATOR"), WE HEREBY ESTABLISH THIS CLEAN, IRREVOCABLE AND UNCONDITIONAL LETTER OF CREDIT NO. XXXX IN FAVOR OF THE CITY OF BRIDGEPORT, CONNECTICUT (THE "CITY"), FOR DRAWINGS UP TO BUT NOT EXCEEDING THE AGGREGATE SUM OF U.S. \$8,000,000.00 (EIGHT MILLION U.S. DOLLARS), EFFECTIVE IMMEDIATELY. THIS LETTER OF CREDIT IS ISSUED, PRESENTABLE AND PAYABLE AT OUR OFFICE AT 1201 MARKET STREET, 8TH FLOOR, WILMINGTON, DELAWARE 19801, AND EXPIRES WITH OUR CLOSE OF BUSINESS ONE YEAR FROM THE DATE OF ISSUANCE, UNLESS RENEWED AS HEREINAFTER PROVIDED.

FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO YOU AGAINST PRESENTATION TO US OF YOUR SIGHT DRAFT(S), DRAWN ON US TOGETHER WITH YOUR WRITTEN CERTIFICATE IN THE FORM OF A LETTER ON YOUR LETTERHEAD PURPORTEDLY SIGNED BY THE MAYOR OF THE CITY IN THE FORM OF EXHIBIT 1 ATTACHED HERETO.

IT IS A CONDITION OF THIS CREDIT THAT IT SHALL BE AUTOMATICALLY EXTENDED FOR AN ADDITIONAL PERIOD OF SIX MONTHS FROM THE EXPIRY DATE HEREOF UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO SUCH DATE WE SEND YOU NOTICE IN WRITING BY CERTIFIED MAIL, OR COURIER AT THE ABOVE ADDRESS, THAT WE ELECT NOT TO RENEW THIS LETTER OF CREDIT FOR ANY SUCH ADDITIONAL PERIOD. ANY SUCH NOTICE SHALL BE EFFECTIVE WHEN SENT BY US AND UPON RECEIPT BY YOU OF SUCH NOTICE, YOU MAY DRAW DRAFTS

ON US AT SIGHT FOR AN AMOUNT NOT TO EXCEED THE BALANCE REMAINING IN THIS LETTER OF CREDIT WITHIN THE THEN APPLICABLE EXPIRY DATE ACCOMPANIED BY A WRITTEN STATEMENT PURPORTEDLY SIGNED BY THE MAYOR OF THE CITY READING AS FOLLOWS: "WE HAVE RECEIVED CHASE MANHATTAN BANK USA, N.A.'S NOTICE OF NON-RENEWAL OF LETTER OF CREDIT NO. \_\_\_\_\_, AND THE AMOUNT OF THIS DRAWING REPRESENTS THE AMOUNT DUE US FROM VOLUME SERVICES AMERICA THAT IS STILL OUTSTANDING AND VOLUME SERVICES AMERICA HAS FAILED TO PROVIDE SUBSTITUTE LETTER OF CREDIT IN OUR FAVOR WITHIN 30 DAYS OF HAVING RECEIVED SUCH NOTICE."

WE HEREBY AGREE WITH THE DRAWERS, ENDORSERS, AND BONA FIDE HOLDERS OF ALL DRAFTS DRAWN IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT THAT SUCH DRAFTS WILL BE DULY HONORED UPON PRESENTATION AND DELIVERY OF THE DOCUMENT SPECIFIED ABOVE, IF PRESENTED AS AFORESAID, AND WE HEREBY WAIVE ANY RIGHT TO DEFER HONOR OF SUCH DRAFTS, OR REQUIRE ANYTHING FURTHER OF ANY PERSON OR PARTY AND REGARDLESS OF ANY CONTRARY CLAIMS, DEMANDS OR INSTRUCTIONS.

THIS LETTER OF CREDIT IS TRANSFERABLE IN ITS ENTIRETY (BUT NOT IN PART) TO ANY TRANSFEREE WHO HAS SUCCEEDED THE CITY HEREUNDER, PROVIDED, HOWEVER, THAT THIS CREDIT MAY NOT BE TRANSFERRED TO ANY PERSON WITH WHICH U.S. PERSONS ARE PROHIBITED FROM DOING BUSINESS UNDER THE U.S. FOREIGN ASSETS CONTROL REGULATIONS OR OTHER FOREIGN SANCTIONS REGULATIONS ADMINISTERED BY THE U.S. OFFICE OF FOREIGN ASSETS CONTROL. HOWEVER, TRANSFER OF THIS LETTER OF CREDIT TO A TRANSFEREE SHALL BE EFFECTED ONLY UPON THE PRESENTATION TO US OF THE ORIGINAL OF THIS LETTER OF CREDIT ACCOMPANIED BY A CERTIFICATE IN THE FORM OF EXHIBIT 2 ATTACHED HERETO. UPON SUCH PRESENTATION, WE SHALL FORTHWITH ISSUE AN IRREVOCABLE LETTER OF CREDIT IN FAVOR OF THE TRANSFEREE IN THE FORM OF THIS LETTER OF CREDIT.

THIS LETTER OF CREDIT IS SUBJECT TO UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS OF THE INTERNATIONAL CHAMBER OF COMMERCE (PUBLICATION NO. 500) ("UCP") AND, AS TO MATTERS NOT GOVERNED BY THE UCP, BY THE UNIFORM COMMERCIAL CODE OF THE STATE OF CONNECTICUT.

SHOULD YOU HAVE OCCASION TO COMMUNICATE WITH US REGARDING THIS CREDIT, KINDLY DIRECT YOUR COMMUNICATIONS TO THE ATTENTION OF OUR LETTER OF CREDIT DEPARTMENT, MAKING SPECIFIC REFERENCE TO OUR LETTER OF CREDIT NO. XXXX.

VERY TRULY YOURS,  
CHASE MANHATTAN BANK USA, N.A.

BY: \_\_\_\_\_  
NAME: MICHAEL P. HANDAGO  
TITLE: VICE PRESIDENT

**EXHIBIT 1**

**CERTIFICATE FOR PAYMENT UNDER  
CHASE MANHATTAN BANK USA, N.A.  
IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_**

THE UNDERSIGNED, \_\_\_\_\_, HEREBY CERTIFIES AS FOLLOWS WITH RESPECT TO THE IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_ (THE "LETTER OF CREDIT") RELATING TO THE OPERATING AGREEMENT BETWEEN THE CITY OF BRIDGEPORT, CONNECTICUT, (THE "CITY"), AND SERVICE AMERICA CORPORATION D/B/A VOLUME SERVICES AMERICA (THE "OPERATOR") DATED AS OF \_\_\_\_\_, 2000 (THE "OPERATING AGREEMENT") IN THE PRINCIPAL AMOUNT OF \$ \_\_\_\_\_ A PHOTOSTAT OF WHICH LETTER OF CREDIT IS ATTACHED HERETO:

THE UNDERSIGNED, MAYOR OF THE CITY OF BRIDGEPORT, IS MAKING DEMAND FOR PAYMENT UNDER THE LETTER OF CREDIT OF \$ \_\_\_\_\_ REPRESENTING FUNDS DUE AND OWING THE CITY OF BRIDGEPORT UNDER THE OPERATING AGREEMENT.

IN WITNESS WHEREOF, THE UNDERSIGNED HAS CAUSED THIS CERTIFICATE TO BE AS OF THE \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.

CITY OF BRIDGEPORT

BY: \_\_\_\_\_  
JOSEPH P. GANIM, MAYOR

**EXHIBIT 2**

**INSTRUCTION TO TRANSFER LETTER OF CREDIT**

IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_

[ADDRESS OF ISSUING BANK]

GENTLEMEN:

FOR VALUE RECEIVED, THE UNDERSIGNED BENEFICIARY HEREBY IRREVOCABLY TRANSFERS TO:

\_\_\_\_\_  
(NAME OF TRANSFEREE)

\_\_\_\_\_  
(ADDRESS)

ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY TO DRAW UNDER THE ABOVE LETTER OF CREDIT (THE "LETTER OF CREDIT") IN ITS ENTIRETY.

BY THIS TRANSFER, ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY IN THE LETTER OF CREDIT ARE TRANSFERRED TO THE TRANSFEREE AND THE TRANSFEREE SHALL HEREAFTER HAVE THE SOLE RIGHTS AS BENEFICIARY THEREOF; PROVIDED, HOWEVER, THAT NO RIGHTS SHALL BE TRANSFERRED TO A TRANSFEREE UNLESS SUCH TRANSFER COMPLIES WITH THE REQUIREMENTS OF THE LETTER OF CREDIT PERTAINING TO TRANSFERS.

YOUR TRANSFER FEE IN THE AMOUNT OF \_\_\_\_\_ UNDER THE LETTER OF CREDIT IS PAID HEREWITH.

THE LETTER OF CREDIT IS RETURNED HEREWITH AND IN ACCORDANCE THEREWITH WE ASK YOU TO ISSUE A NEW IRREVOCABLE LETTER OF CREDIT IN FAVOR OF THE TRANSFEREE CONTAINING THE SAME TERMS AND PROVISIONS AS THE LETTER OF CREDIT EXCEPT THAT THE PARTY ENTITLED TO SIGN THE CERTIFICATE WHICH MUST ACCOMPANY ANY DRAWINGS UNDER THE LETTER OF CREDIT SHALL NO LONGER BE THE CITY OF BRIDGEPORT, CONNECTICUT BUT SHALL BE \_\_\_\_\_.

VERY TRULY YOURS,

CITY OF BRIDGEPORT, CONNECTICUT

BY: \_\_\_\_\_  
ITS MAYOR

## 2021 Amendment to Operating Agreement

Amendment made as of August \_\_, 2021 ("Effective Date") to Operating Agreement (as amended, restated, supplemented, or otherwise modified from time to time, the "Operating Agreement") dated as of July 25, 2000 by and between the City of Bridgeport, Connecticut ("City") and Service America Corporation d/b/a Volume Services America ("VSA"), as predecessor in interest to Harbor Yard Sports and Entertainment, LLC ("HYSE"). Capitalized terms used and not defined herein shall have the meanings assigned to them in the Operating Agreement.

### RECITALS

- A. The City is a public body corporate and politic and a political subdivision of the State of Connecticut.
- B. The City is the owner of a multi-purpose civic arena at 600 Main Street, Bridgeport, CT known as the Webster Bank Arena ("Facility").
- C. On July 25, 2000, the City and VSA entered into the Operating Agreement granting VSA the authority to operate the Facility under the terms and conditions in the Operating Agreement.
- D. The Connecticut Islanders, LLC d/b/a Bridgeport Sound Tigers ("Sound Tigers") is a Connecticut limited liability company with an office and principal place of business at 600 Main Street, Bridgeport, CT. It is a franchise of the American Hockey League, and an affiliate of the New York Islanders Hockey Club, L.P. ("Islanders"), a franchise of the National Hockey League.
- E. The Operating Agreement was modified by certain correspondence dated June 22, 2004, a copy of which is attached hereto as Exhibit A, to address parking revenues for hockey operations at the Facility.
- F. The Operating Agreement was further modified by certain correspondence dated July 15, 2004, a copy of which is attached hereto as Exhibit B, to address Naming Rights revenue, the calculation of Direct Operating Costs, and parking revenues and operations at the Facility.
- G. On or about March 11, 2011, VSA, then known as Centerplate, Inc., assigned and transferred all of its rights, title, interest to, and obligations under, the Operating Agreement to the Sound Tigers.
- H. Under City Resolution 28-10, adopted on February 22, 2011, the City consented to the assignment of the Operating Agreement from Service America Corporation d/b/a Volume Services Corporation to Bridgeport Professional Sports, LLC (the predecessor in interest to the

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Sound Tigers), or an affiliate, thereby providing the City's written consent under section 15.2.8 of the Operating Agreement.

I. On or about March 30, 2011, the Sound Tigers assigned and transferred all of their rights, title, interest to, and obligations under, the Operating Agreement to Harbor Yard Sports and Entertainment, LLC ("HYSE"), a Delaware limited liability company with an office and principal place of business at 600 Main Street, Bridgeport, CT.

J. On and after March 30, 2011, the City and HYSE, despite the procedures in the Operating Agreement, did not strictly follow the procedures set forth in the Operating Agreement with regard to Additions and Capital Repairs to the Facility.

K. On or about June 30, 2016, the City served a written notice claiming an Event of Default under the Operating Agreement, alleging (i) non-payment of the License Fee, and (ii) a failure to provide "an adequate accounting of various revenues and expenditures."

L. On or about July 27, 2016, HYSE and the Sound Tigers commenced an action ("Action") against the City in the Superior Court of the State of Connecticut, Judicial District of Fairfield, seeking declaratory, injunctive, and monetary relief; and

M. On or about April 26, 2018, the Sound Tigers and HYSE served and filed a Demand for Arbitration against the City with the American Arbitration Association ("Arbitration").

N. The Sound Tigers, HYSE, and the City desire to: resolve all claims and causes of action each has against the other, address all pending issues relating to the Facility, formally amend the Operating Agreement, ensure a harmonious relationship between the City and the Sound Tigers and HYSE, and extend the term of that relationship, to benefit the residents of the City and the fans of the Sound Tigers.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby further amend the Operating Agreement, effective as of the Effective Date, as follows:

1. Article 1 of the Operating Agreement is hereby amended as follows:

(a) Section 1.4 is hereby amended and restated to provide as follows:

**Additions and Capital Repairs** means, collectively, any or all installations, alterations, improvements, and purchases of additional or replacement furniture, machinery, or equipment at the Facility, in one or a series of transactions having an aggregate cost in excess of \$5,000, with a depreciable life, according to generally accepted accounting principles, in excess of eighteen (18) months, and expenditures for maintenance or repairs, in one or a series of transactions having an aggregate cost in excess of \$5,000, that extend the useful life of the assets being maintained or repaired for a period in excess of eighteen (18) months.

Additions and Capital Repairs shall be paid from the Renewal and Replacement Account.

(b) Section 1.9 is hereby amended and restated to provide as follows:

**American Hockey League** or **AHL** means the American Hockey League or other professional hockey league, provided such professional hockey league is equal or superior to the American Hockey League.

(c) Sections 1.50 and 1.51 are hereby deleted and the following is substituted in their place:

“1.50. Reserved”

“1.51. Reserved”

(d) Section 1.61 is hereby deleted and the following is substituted in its place:

“1.61. Reserved”

(e) Section 1.79 is hereby amended and restated to provide as follows:

**Operations Start Date** has the meaning set forth in Section 2.6, and is stipulated and agreed by the City and HYSE to be October 9, 2001.

(f) Section 1.80 is hereby amended and restated to provide as follows:

**Operator** means HYSE or its Affiliate and its permitted successors and assigns.

(g) Section 1.85 is hereby deleted and the following is substituted in its place:

“1.85. Reserved”

(h) Section 1.100 is hereby amended and restated to provide as follows:

**Renewal and Replacement Contribution(s)** means the contributions into the Renewal and Replacement Account, to be deposited by the Operator on behalf of the parties, equal to (a) the sum of one dollar and fifty cents (\$1.50) per each ticket sold per Event (other than City Events and games and other events hosted by the Team) in the Facility per Fiscal Year, and (b) the Billboard Revenues, subject to aggregate maximum annual billboard contributions (pro-rated for any partial Fiscal Year and for any Abatement Period) of \$250,000 for each of the remaining years of the Term.

(i) Section 1.107 is hereby deleted and the following is substituted in its place:



“1.107. Reserved.”

(j) Section 1.112 is hereby amended and restated to provide as follows:

1.112 **Team** means the AHL franchise of The Connecticut Islanders, LLC.

(k) Article 1 of the Operating Agreement is hereby further amended by inserting the following provisions at the end thereof:

Section 1.117 **Additional Definitions:**

- (a) “**Back of House Renovations**” has the meaning set forth in Section 20.8.1 hereof.
- (b) “**Billboard Revenues**” means the twenty-five percent (25%) share of the Rent, as defined in a certain “Billboard Lease” dated as of June 27, 2012 among the City, HYSE, and Independent Operator II, LLC, which was approved by City Council resolution on May 21, 2012, for the illuminated digital sign near the entrance to the Facility and the Intermodal Garage.
- (c) “**Construction Manager**” means the individual or team selected by the City for the Renovations.
- (d) “**Defects**” has the meaning set forth in Section 20.4.3 hereof.
- (e) “**Design and Construction Meeting(s)**” has the meaning set forth in Section 20.2.3 hereof.
- (f) “**Intermodal Garage**” has the meaning set forth in Section 18.13.3 hereof.
- (g) “**Operator Funding**” has the meaning set forth in Section 20.9.2 hereof.
- (h) “**Phase I Funding**” has the meaning set forth in Section 20.8.1 hereof.
- (i) “**Phase I Renovations**” has the meaning set forth in Section 20.1 hereof.
- (j) “**Phase I Renovations Schedule**” has the meaning set forth in Section 20.2.1 hereof.
- (k) “**Phase II Funding**” has the meaning set forth in Section 20.9.1 hereof.
- (l) “**Phase II Renovations**” has the meaning set forth in Section 20.1 hereof.

- (m) **“Phase II Renovations Schedule”** has the meaning set forth in Section 20.2.1 hereof.
- (n) **“Punch List”** has the meaning set forth in Section 20.4.3 hereof.
- (o) **“Renovations”** has the meaning set forth in Section 20.1 hereof.
- (p) **“Renovations Documents”** has the meaning set forth in Section 20.2.2 hereof.
- (q) **“Renovations Schedule”** has the meaning set forth in Section 20.2.1.
- (r) **“Surface Lots”** has the meaning set forth in Section 18.13.1 hereof.

2. Article III of the Operating Agreement is hereby amended and restated to provide as follows:

3.1 Commencement and Term

The Term (“Term”) of this Agreement shall commence on the date hereof (“Agreement Commencement Date”) and shall expire on the thirtieth (30<sup>th</sup>) anniversary of the Operations Start Date, unless earlier terminated pursuant to the terms of this Agreement; provided, however, that the Expiration Date shall be extended for a period equal to the aggregate of every Abatement Period or portion thereof having a duration of at least ninety (90) days.

3.2 Option to Extend

[Intentionally Deleted]

3. Section 4.1 of the Operating Agreement is hereby amended by adding the following sentence at the end thereof:

The City previously consented to the delegation of certain duties and responsibilities of the Operator to OVG Facilities, LLC.

4. Section 4.6.11 of the Operating Agreement is hereby amended and restated to provide as follows:

4.6.11 selling, licensing, or otherwise arranging for Advertising within or without the Facility; provided, however, that unless restricted by law, the Operator shall not permit tobacco or firearms products to be sold, advertised, or marketed in or outside the Facility or to be visibly involved in any manner with any of the Events at the Facility. “Tobacco” or “tobacco products” means any product containing, made or derived from tobacco or nicotine, whether natural or synthetic, that is intended for human consumption or is likely to be consumed, whether smoked,

heated, chewed, snorted, sniffed, absorbed, dissolved, inhaled or injected by any other means, included, but not limited to cigarettes, e-liquids, cigars, little cigars, pipe tobacco, chewing tobacco, snuff, or snus. "Tobacco" or "tobacco products" also means electronic delivery systems, including any device that can be used to deliver aerosolized or vaporized nicotine or any other substance to the person inhaling from the device including, but not limited to, e-cigarettes, e-cigars, e-pipes, vapor products or e-hookahs. "Tobacco" or "tobacco products" also means any component or accessory used in the consumption of tobacco products, whether or not they contain nicotine including, but not limited to, filters, cartridges, pods, pens, rolling papers, or pipes. "Tobacco" or "tobacco products" does not include drugs, devices, or combination products offered as a tobacco cessation product approved by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act. Exterior signs may only be permitted in compliance with the City's signage ordinances. The City acknowledges that the current exterior advertising comprising a roof advertisement and all other exterior signage as of the Effective Date complies with the City's signage ordinances and may be maintained through the end of the Term.

5. Section 4.9 (Naming Rights) of the Operating Agreement is hereby amended by adding the following provision at the end thereof:

The provisions of this Section 4.9 and of Section 5.4 apply only to an agreement for Naming Rights where there is an express grant of Naming Rights to the Arena and do not apply to revenue or other consideration derived by the Operator from Sponsor Signs, Advertising, signage, billboards, message boards, scoreboards, social media, digital media, logos, product identification, sponsorships, and promotions. The City and Operator acknowledge that, as of the Effective Date, the only agreement for Naming Rights is the agreement between Service America Corporation and Webster Bank, N.A. dated December 6, 2010, as amended, and that agreements for Advertising and Sponsor Signs are not agreements for Naming Rights.

6. Section 5.2 of the Operating Agreement is hereby amended by adding the following provision:

5.2.4 Within fifteen (15) days of the execution of this Amendment, Operator shall pay the City all outstanding past-due License Fees, the annual amount of which is \$250,000, and the current outstanding balance of which is \$1,750,000 through June 30, 2021.

7. Section 5.7 of the Operating Agreement is hereby amended by adding the following provision:

5.7.5 City's Obligation to Fund Renewal and Replacement Account. The City and the Operator stipulate and agree that the Renewal and Replacement Account balance is, as of the Effective Date, \$0, and that there is no outstanding credit due the Renewal and Replacement Account. Within fifteen (15) days of execution of this Amendment, the City shall fund the Renewal and Replacement Account with \$200,000 by payment of such amount to Operator, which Operator will deposit into the Renewal and Replacement Account. If, during the Term of this Agreement, the Renewal and Replacement Account balance falls below \$100,000, the City shall immediately fund an amount equal to the amount of any shortfall to cause the balance to be restored to \$100,000.

8. Article XI of the Operating Agreement is hereby amended by adding the following provision:

6.6 Public High School Graduation Ceremonies.

The Operator shall make the Facility available for annual graduation ceremonies for public high schools located in the City on a rent-free, expense-only basis, subject to priority scheduling of all other Events. The City shall provide reasonable advance notice of the requested dates for each such ceremony, and the Operator shall schedule each such ceremony provided they do not conflict with any other Events scheduled or tentatively scheduled for such dates. Notwithstanding the foregoing, the Operator may reschedule any such ceremony, with at least two months' notice, if, in the Operator's reasonable judgment, it is necessary to avoid losing a commercial, revenue-producing Event at the Facility. The Operator and the City shall mutually agree on such rescheduled date for the ceremony.

9. Section 7.3.2 of the Operating Agreement is hereby amended by inserting the following provision at the end thereof:

(d) Notwithstanding any other provision of this Agreement, Operator shall, in satisfaction of its obligation under Section 7.3 of this Agreement, provide to the City, within fifteen (15) days of the Effective Date, unaudited financial reports and statements for each of the 2018, 2019, and 2020 Fiscal Years, prepared in accordance with generally accepted accounting principles. For the 2021 Fiscal Year through the end of the Term, the financial reports and statements required by this section shall be accompanied by an auditor's report containing an opinion of the independent certified public accountant preparing the report, which shall be a firm of national reputation selected by the Operator or another firm selected by the Operator and reasonably acceptable to the City.

10. Section 15.1.8 of the Operating Agreement is hereby amended by adding the following sentence at the end thereof:

The Operator consents to the renovation of the existing ballpark adjacent to the Facility into a concert amphitheater (“Amphitheater”), and waives its rights under this Section 15.1.8 of the Operating Agreement as to such renovation and operation of the Amphitheater, provided that the manifested capacity for the Amphitheater does not exceed 7,000.

11. Section 15.2 of the of the Operating Agreement is hereby amended by inserting the following provision:

15.2.9 Team Commitment. The Operator agrees that it shall cause the Team to play substantially all of its home games at the Facility for the Term (the “Team Commitment”), provided, however, that if the City has not (i) completed the Renovations by June 30, 2026, or (ii) expended \$30,000,000 (with funding as set forth in Section 20.9.2 of the Operating Agreement) for the Renovations by June 30, 2026, or (iii) fully authorized the total amount of \$30,000,000 (with funding as set forth in Section 20.9.2 of the Operating Agreement) for the Renovations by June 30, 2026 and expended such sum by June 30, 2027, the Operator shall be relieved of the Team Commitment. In the event the Operator is relieved of the Team Commitment, the City waives its rights under, and the Team is relieved of its obligations under, Article V of the License Agreement.

12. Section 15.3 of the Operating Agreement is hereby amended by inserting the following provision:

15.3.5 State Admission Tax. The City and the Operator shall, individually and collectively, make good-faith, reasonable efforts to exempt the Facility from, or reduce the amount of, all State entertainment taxes and surcharges applicable to the Facility.

13. Section 18.1 of the Operating Agreement is amended and restated in its entirety to read as follows:

18.1 Notice.

All notices and other communications pursuant to this Agreement shall be in writing and shall be deemed properly given upon delivery, or refusal of delivery, if sent by personal delivery, overnight courier service with guaranteed next day delivery or by certified United States mail, postage prepaid, return receipt requested, addressed as follows:

If to City:

Mayor, City of Bridgeport  
City Hall  
45 Lyon Terrace  
Bridgeport, CT 06604

and

City Attorney  
City of Bridgeport  
999 Broad Street  
Bridgeport, CT 06604

and

Director  
Office of Planning and Economic Development  
City of Bridgeport  
999 Broad Street  
Bridgeport, CT 06604

with a copy to:

Robert L. Berchem, Esq.  
Berchem Moses, P.C.  
75 Broad Street  
Milford, CT 06460

If to Operator:

President  
Harbor Yard Sports and Entertainment, LLC  
600 Main Street  
Bridgeport, CT 06604

with a copy to:

Zachary H. Klein, Esq.  
General Counsel  
New York Islanders Hockey Club, L.P.  
15 Verbena Avenue  
Floral Park, NY 11001

Each party may, by written notice to the other in accordance with the procedure set forth in this Section, specify a different address for subsequent notice purposes.

14. Section 18.13.1 of the Operating Agreement is hereby amended and restated to provide as follows:

18.13.1 Surface Lots. The City shall be solely responsible for the provision of parking for the use of persons attending Events at the Facility and for users of the Facility. For Events at the Facility, the City shall make available to Operator, at no cost to Operator, for a period beginning two hours before each Event and ending two hours after each Event, the surface parking lots ("Surface Lots") adjacent to the Facility, comprising approximately 750 parking spots, and consisting of (a) parking lot P, designated as Block 507, Lot 14, comprising approximately 3.8 acres, and bounded by Allen Street, Lafayette Street, Frontage

Road and Broad Street, and (b) parking lot D, designated as Block 506, Lot 1K and 1A, comprising approximately 2.7 acres and bounded by Allen Street, Broad Street, Railroad Avenue, and Lafayette Street. During this period for each Event, the Operator shall be the sole operator of the Surface Lots. In the event Operator charges a parking fee for use of the Surface Lots, it shall pay to the City thirty (30) percent of the gross parking fee revenues. If the Operator incorporates the parking fee into the cost of event tickets, the parties agree to negotiate a fair and equitable allocation in order to reflect the thirty (30) percent payment due the City. The City shall at all times retain sole responsibility for the cleaning, clearing, and maintenance of the Surface Lots.

15. Section 18.13 of the Operating Agreement is hereby amended by inserting the following provisions:

18.13.3 Intermodal Garage. The City shall use its best efforts to continue to allow persons attending Events at the Facility and users of the Facility to have access to the Intermodal Transportation Center Garage adjacent to the Facility (the "Intermodal Garage").

18.13.4 Substitute Parking. In the event the City desires to utilize the Surface Lots for development or alternative purposes, prior to such use the City shall provide reasonable alternative parking in close proximity to the Facility, at no cost to the Operator, with at least as many new dedicated spaces as are included in the Surface Lots. This may include the Intermodal Garage, public parking facilities, including on-street parking spaces, metered parking spaces, surface parking lots, structured parking garages, parking spaces in privately or publicly owned parking garages, or parking accommodations in other areas within a one-half (1/2) mile radius of the front entrance of the Facility.

16. The following Article XX is hereby added to the Operating Agreement:

## **ARTICLE XX RENOVATION OF FACILITY**

20.1 City's Renovations Obligations.

The City shall cause the design, construction, and completion of the improvements and renovations to the Facility set forth in the schedule attached as Exhibit 20.1, which contains a narrative description of the improvements and renovations (collectively, the "Renovations"), and divides the Renovations into "Phase I Renovations" and "Phase II Renovations." The City acknowledges that the Renovations are estimated to cost \$30,000,000 and are solely the City's obligation to complete. In addition to the \$15,000,000 which the City has available for the Phase I Renovations as specified in Section 20.8.1 herein, the City shall use its best efforts to obtain funding for the Phase II Renovations. The parties agree the Renovations are intended to restore the Facility to a "like-new" condition. The City shall cause the Renovations to be performed in conformance with good engineering practices, in a timely manner, and in accordance with the requirements of this Agreement and the requirements of all

applicable Laws. The City intends to act through its Office of Planning & Economic Development to fulfill the City's obligations set forth in this Article XX. Without limiting the generality of the foregoing, the City shall:

20.1.1 manage and direct the Renovations, at its expense, and coordinate the work of all Persons involved therein, including the preparation of all submissions necessary in connection with all necessary permits and approvals to be obtained by the City;

20.1.2 secure all such permits and approvals;

20.1.3 obtain, pay for, and maintain the insurance coverage required of the City pursuant to Article XI hereof;

20.1.4 enter into such contracts and subcontracts as it deems useful and advisable to cause the Renovations to be completed; and

20.1.5 cause the Renovations to be completed in a good and workman like manner in accordance with the Renovations Schedule and the Renovations Documents and in accordance with the terms of this Agreement.

## 20.2 Schedule of Completion and Renovations Documents.

20.2.1 The City shall begin designing, permitting (if required), and construction of the Phase I Renovations immediately upon execution of this Agreement, shall proceed diligently, and shall address such projects in the order listed in Exhibit 20.1 (the "Phase I Renovations Schedule"). Should the cost of any improvements and renovations set forth on the Phase I Renovations Schedule exceed the Phase I Funding, such improvements and renovations will become a part of the Phase II Renovations Schedule. The Phase II Renovations shall be addressed in the order of the projects listed in Exhibit 20.1 as funding becomes available as set forth below in Section 20.9.1 (the "Phase II Renovations Schedule", and together with the Phase I Renovations Schedule, the "Renovation Schedule").

20.2.2 The City shall promptly engage the Construction Manager. Except as set forth in Section 20.4.1 below, the City shall cause the Construction Manager to timely prepare and deliver to the City and the Operator complete and final documents, including drawings and specifications setting forth in detail all requirements for each component of the Renovations (the "Renovations Documents"), for the review and written approval of the parties (which approval shall not be unreasonably withheld, conditioned, or delayed).

20.2.3 The City shall cause the Operator to receive notice of all design and construction meetings ("Design and Construction Meeting(s)"), and copies of all proposed items to be discussed, sufficiently in advance to afford the Operator an opportunity to review such items and to attend and participate in the Design and Construction Meetings. The Operator shall use reasonable efforts to attend all Design and Construction Meetings. The City shall cause the Construction Manager to prepare minutes of each Design and Construction Meeting reflecting the decisions made, approvals given, and objections raised, and shall distribute copies thereof to the parties promptly after each Design and Construction Meeting. These minutes shall be reviewed, amended if necessary, and approved by the City and the Operator at the next Design



and Construction Meeting following the distribution thereof.

20.2.4 The parties shall discuss any delays or anticipated delays in meeting the Renovations Schedule and the actual dates on which the various stages and construction indicated on the Renovations Schedule are started and completed at Design and Construction Meetings; provided, however, that no changes from previously-approved Renovations Documents or the Renovations Schedule shall occur unless the City agrees in writing to the change.

20.2.5 If, during construction, the City reasonably determines that any item of the Renovations is not constructed, being timely constructed, installed, or being timely installed, in accordance with the Renovations Documents approved by the parties, or the Operator makes such reasonable determination and provides the City with the reasons that led to the Operator's determination, and the City agrees with such determination or the Construction Manager confirms such nonconformance, the City shall cause any such non-conforming work to be re-executed unless the City and the Operator agree it would be inexpedient to require such re-execution and the City and the Operator agree on an alternate solution satisfying the City and the Operator equitably.

### 20.3 Change Orders.

20.3.1 The Operator may, at any time and from time to time, by a written change order request, request changes to the Renovations within the general scope of construction required by this Agreement. Such changes may include, but are not limited to, changes in the Renovations Documents. The City shall act in good faith in considering the Operator's request for changes and shall provide the Operator with an adequate opportunity to express its views. No such changes shall be made without the City's consent, which consent shall not be unreasonably withheld or delayed.

20.3.2 The City may, at any time and from time to time, by a written change order request, request changes to the Renovations within the general scope of construction required by this Agreement. Such changes may include, but are not limited to, changes to the Renovations Documents. The Operator's consent shall be required for any change that, as reasonably determined by the Operator, will have a financial, operational, or safety impact on the Operator and/or the operation of the Facility. The Operator shall have until the close of business on the fifth (5<sup>th</sup>) Business Day following receipt of such written change order request to reject or approve of such change. Failure by the Operator to respond in writing to the City within such five (5) Business Day period shall be deemed approval of the change. The Operator shall act in good faith in considering requests for changes made by the City. No such change shall be made if: the Operator's rejection of a change order request is related to a financial, operational, or safety impact; includes the Operator's basis for the rejection in reasonable detail; and is provided to the City within the five (5) Business Day period. The Operator may propose an alternative, provided, however, that unless the Operator and the City otherwise agree in writing, no such alternate proposal shall be considered by the City if it would create cost increases. The City may accept or reject any such alternate proposal by the Operator in the City's sole discretion.

20.3.3 Other than as expressly provided in Section 20.3.2 herein, the City may make changes to the Renovations, including, without limitation, changes to the Renovations

Documents, at any time and from time to time, in its sole discretion and without the Operator's consent.

#### 20.4 Completion of Renovations.

20.4.1 The City shall cause the Construction Manager to notify the Operator in writing not less than thirty (30) days prior to the date the City reasonably projects that a component of the Renovations will be substantially completed. The City shall promptly notify the Operator of changes to the schedule completion dates, as applicable.

20.4.2 The City shall cause the Construction Manager to complete the Renovations in compliance with the Renovations Documents, including the diligent prosecution of any construction warranties and guarantees as provided in Section 20.7.

20.4.3 Within thirty (30) days after completion of a component of the Renovations, the Operator shall prepare a list in writing ("Punch List") of any apparent defects, deficiencies, and/or discrepancies in said component of the Renovations ("Defects"). The City shall cause the Construction Manager to reasonably promptly correct any Defects.

20.4.4 If a Certificate of Occupancy is required for the Renovations or any component thereof, the City shall, no more than sixty (60), and no fewer than thirty (30), days prior to the completion of the Renovations or component thereof, inform the Operator of all items that are likely to cause the "temporary" status of such Certificate of Occupancy, and the City shall provide updates to the Operator whenever it becomes aware of any change in status of each such item. If a temporary Certificate of Occupancy is issued for the Renovations or component thereof, as applicable, the City shall work to obtain a permanent Certificate of Occupancy as diligently and promptly as possible.

20.4.5 As individual components of the Renovations are completed, the City shall deliver to the Operator (a) a certificate of the Construction Manager stating said component is substantially complete and that, if not finally completed, said component can reasonably be expected to be completed with no material disruption to the operations of the Facility, and (b) original or certified copies of all necessary governmental permits and approvals for the use and operation of the applicable component of the Renovations.

#### 20.5 Reserved.

#### 20.6 Delivery of Final Plans.

20.6.1 Promptly following the completion of the Phase I Renovations or the Phase II Renovations, as the case may be, the City shall deliver to Operator, to the extent available, all suppliers' and manufacturers' standards and warranty conditions, maintenance procedures, instructions, aids and other construction-related information required by the Operator to properly operate and maintain the Renovations or applicable component thereof.

20.6.2 The City shall deliver to Operator as soon as reasonably available, but no later than ninety (90) days after the completion of the Phase I Renovations and the Phase II Renovations, as the case may be, (a) up-to-date design specifications and plans and drawings,

including all shop drawings and test reports and currently marked “as built” plans and drawings, for such Renovations, and (b) the items described in section 20.6.1 that were not available and delivered on or before the completion of the Phase I Renovations or the Phase II Renovations, as the applicable.

## 20.7 Construction and Other Warranties.

20.7.1 The City shall assign to the Operator, to the extent permitted (and, for those that cannot be assigned, the City hereby appoints the Operator as its agent to enforce the City's rights under), all construction warranties and guarantees obtained on the construction work and on all material, equipment, workmanship, or design in connection with the construction and equipping of the Facility. This assignment excludes any warranties and guarantees from the Construction Manager to the City, which are addressed in Section 20.7.2. The City shall cooperate, at the City's expense, with the Operator in enforcing any warranties and guarantees. Notwithstanding anything herein to the contrary, the City shall correct or cause to be corrected all Defects on the Punch List, at the City's sole cost and expense, including, without limitation, the cost of enforcing all such warranties and guarantees relating to such Defects. The City shall retain rights under warranties and guarantees specifically relating to such Defects to enable the City to perform its obligations under the preceding sentence. Sums thereby obtained shall be applied by the City: first, to reimburse the City for reasonable attorneys' fees or reasonable out-of-pocket costs of pursuing the claim; and second, to pay for, or reimburse the Operator for, reasonable expenses incurred by the Operator in repairing, maintaining, or operating the Facility due to Defects in material, equipment, workmanship, or design triggering the warranty or guarantee claim and the Operator's reasonable, out-of-pocket costs incurred in cooperating with the City in any such claim; with the balance, if any, to be paid to the City. All of the Operator's reasonable costs and fees of prosecuting or maintaining any such other enforcement action shall constitute Facility Operating Expenses.

20.7.2 Notwithstanding any other provision in this Agreement to the contrary; the Operator may request in writing that the City enforce any of the warranties or guarantees from the Construction Manager. The City shall respond in writing to any such request. If the City does not respond to such request within ten (10) days of receipt, or responds within such period but does not expressly state it will promptly pursue the warranty or guarantee claims, then the Operator may enforce the warranties or guarantees identified in the request as the agent of the City and at the Operator's expense, and the City hereby appoints the Operator as its agent for such purpose.

20.7.3 All warranties and guarantees applicable to the Renovations shall be described in the Renovations Documents.

## 20.8 Phase I Funding.

20.8.1 The City represents it has \$15,000,000 available for disbursement of the costs of the Phase I Renovations. The City shall use these funds (“Phase I Funding”) for the Phase I Renovations, and perform such Phase I Renovations in the order set forth on the Phase I Renovations Schedule. Should the cost of any improvements and renovations set forth on the Phase I Renovations Schedule exceed the Phase I Funding, such improvements and renovations will become a part of the Phase II Renovations Schedule. The Phase I Renovations include a

maximum of \$3,300,000 allocated to the “Back of House Renovations”, including for the Team campus, artist areas, ancillary locker rooms and related spaces. In the event any portion of the Phase I Funding is remaining after completing the Phase I Renovations, the City shall use such funds to immediately start the Phase II Renovations.

20.9            Phase II Funding.

20.9.1            The City shall use its best efforts to fund or cause to be funded, except as provided in Section 20.9.2, all costs of the Phase II Renovations (“Phase II Funding”), except as otherwise provided in Section 20.9.2 of this Agreement. In the event the City has not assembled the full Phase II Funding by the completion of the Phase I Renovations, the City shall commence and complete the projects of the Phase II Renovations projects as funds become available, rather than wait for the full Phase II Funding to be assembled, and shall commence and complete the projects in the order provided in the Renovations Schedule, as such may be amended pursuant to Section 20.8.1.

20.9.2            The Operator shall contribute \$3,000,000 (“Operator Funding”) to the Phase II Funding, to be disbursed only after the City has paid \$12,900,000 for the Phase II Renovations. Thereafter, the City shall continue to fund the Phase II Renovations until they are completed. The Operator’s claimed existing unreimbursed expenditures of \$900,000 for Additions and Capital Repairs for the Facility shall be a credit against the Operator Funding. In the event that no Operator Funding shall occur, Operator shall not be entitled to payment of such claimed unreimbursed expenditures.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment as of the date and year first written above.

CITY OF BRIDGEPORT

By: \_\_\_\_\_  
Name:  
Title:

HARBOR YARD SPORTS AND ENTERTAINMENT, LLC

By: \_\_\_\_\_  
Name:  
Title:

THE CONNECTICUT ISLANDERS, LLC  
d/b/a BRIDGEPORT SOUND TIGERS

By: \_\_\_\_\_  
Name:  
Title:

Exhibit 20.1

Renovations

[To be Added]

# EXHIBIT A



JOHN M. FABRIZI  
Mayor

OFFICE OF THE MAYOR  
CITY OF BRIDGEPORT, CONNECTICUT

999 BROAD STREET  
BRIDGEPORT, CONNECTICUT 06604  
TELEPHONE (203) 576-7201  
FAX (203) 576-3913

June 22, 2004

Ms. Lynn Carlotto  
Centerplate  
600 Main Street  
Bridgeport, CT 06604

Re: Operating Agreement dated July 24, 2000  
Between City of Bridgeport and Centerplate (formerly  
Service America Corporation d/b/a Volume Services  
America) Concerning the Arena at Harboryard  
Subject: Changes to the Operating Agreement to  
Benefit Hockey Operations of the Bridgeport  
Sound Tigers

Dear Lynn:

This letter follows the telephone conversations we had with you yesterday morning in response to the Sound Tiger's request for financial assistance. Because the City of Bridgeport has a direct contractual relationship only with Centerplate concerning the Arena and, necessarily, can only deal with Centerplate on the subject matter of your request, the City is willing to facilitate certain indirect, voluntary financial assistance to the Sound Tigers via an amendment to the City's Operating Agreement with Centerplate.

Subject to Centerplate's agreement and approval by the City Council, the City will effectuate the following changes to the Operating Agreement, which will result in a share of parking revenues being paid to Centerplate to benefit the marketing activities of hockey operations<sup>1</sup>:

---

<sup>1</sup> Based on the projections that Centerplate provided utilizing last season's attendance figures, this would amount to about \$177,000 that Centerplate would use to provide financial relief to hockey operations.

As part of this arrangement, the City expects that a marketing team will be put together that would include the City, Centerplate, the Sound Tigers, Fairfield University, the Bluefish, business leaders and other professionals, which team would oversee the marketing of the various venues within the City and may be able to pool media purchasing to receive a better advertising rate.



Since the City controls the parking at the Arena, the City has considered Centerplate's recommendation to increase the parking fees charged to the public. The increases are:

1. an increase in parking fees for flat shows and private events from \$2 to \$3 per car;
2. an increase in parking fees from \$2 to \$3 per car for Fairfield University events; and
3. an increase in parking fees from \$2 to \$5 per car for all Sound Tiger events and all other events, including, concerts, ice shows, family shows, and the like;

These increased revenues will be turned over to Centerplate to allow the following relief for hockey operations:

- the use of 100% of the increase in parking fees from \$2 to \$5 per car for all Sound Tiger events; and
- 50% of the increase in parking fees from all other Arena events.

The City acknowledges Centerplate's need to hold the parking fees for its VIP parking at \$2 per car.

The City is willing, again with Centerplate's consent and City Council approval, to provide these funds to Centerplate in order that it may provide some financial relief for hockey operations.

Very truly yours,

  
John M. Fabrizi, Mayor

# EXHIBIT B



JOHN M. FABRIZI  
Mayor

OFFICE OF THE MAYOR  
CITY OF BRIDGEPORT, CONNECTICUT  
999 BROAD STREET  
BRIDGEPORT, CONNECTICUT 06604  
TELEPHONE (203) 576-7201  
FAX (203) 576-3913

July 15, 2004

Ms. Lynn Carlotta,  
Executive Director  
Centerplate  
600 Main Street  
Bridgeport, CT 06604

Re: Agreement in Support of City and Centerplate  
Assurances Given to the New York Islanders  
Relative to the Acquisition of the Bridgeport  
Sound Tigers Hockey Team and the Retention  
Of the Team in Bridgeport

Dear Lynn:

This letter follows the meeting yesterday with you, City representatives, and Mike Picker, Senior Vice President of the New York Islanders, in my office and our follow-up meeting today with you and Don Saleski to discuss the Islanders' impending acquisition of the Bridgeport Sound Tigers hockey club. Those discussions have focused on the Islanders' request for financial and other considerations deemed critical to future hockey success, which assistance forms the basis for the Islanders retaining the Sound Tigers franchise in Bridgeport.

Subject to the approval by the City Council, which I feel confident can be secured, the City agrees to work with Centerplate to implement the following changes to the Operating Agreement:

1. The City agrees that Centerplate is entitled to retain one hundred percent (100%) of the first \$2.4 million in Naming Rights revenue;
2. The City agrees to reduce its 50% share of increased parking fees from Arena events other than Sound Tigers events as set forth in my letter to Centerplate dated June 22, 2004, to \$30,000. When paid attendance at the Arena exceeds 625,000 patrons per year, and thereafter until annual paid attendance drops below that level, the sharing of such parking fee increases shall return to a 50-50 split between Centerplate and the City.

3. The City agrees that the following items will be deemed Direct Operating Costs for purposes of calculating the Incentive Fee:

- The sum of \$100,000 representing a reduction in base rent payable by the Sound Tigers under the Use Agreement
- The sum of \$150,000 representing an increase in concession income payable to the Sound Tigers
- The sum of \$30,000 representing a reduction in the profit to Centerplate from an Islanders' exhibition hockey game in Bridgeport

4. Parking revenues received by the City, Centerplate and the hockey team shall not be considered "Gross Revenues" for purposes of calculating Incentive Rent.

5. In addition, the City will consider in good faith a Centerplate proposal to operate the City's surface parking lots serving HarborYard at an appropriate date in the future.

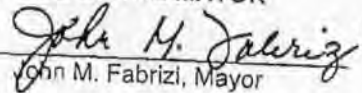
The City is willing to provide these adjustments in the Operating Agreement to Centerplate in conjunction with Centerplate's agreements with the Islanders to ensure the retention of the Sound Tigers franchise in the Arena.

As you requested, I convened a meeting of the leadership of the City Council in my office this afternoon to discuss all of the above and attach a summary of what transpired at that meeting.

As part of these transactions, we have shared our mutual need that the Islanders, as the new owners of the Sound Tigers, affirm its commitment to retain the hockey franchise in Bridgeport for the duration of the Use Agreement. The City will need Centerplate to provide a copy of its final executed agreement with the Islanders and will require Centerplate to notify the City if such agreement with the Islanders, or its successor, is modified in the future.

Very truly yours,

OFFICE OF THE MAYOR

  
John M. Fabrizi, Mayor

JMF:ra  
Encl.

## NARRATIVE- WEBSTER BANK ARENA (WBA) SETTLEMENT

The Connecticut Islanders, LLC, a/k/a Bridgeport Islanders, f/k/a Bridgeport Sound Tigers (the "Sound Tigers"), is a Connecticut LLC and professional hockey team franchise of the American Hockey League. Harbor Yard Sports & Entertainment, LLC ("HYSE") is also a Connecticut LLC with a New York Islanders entity as its principal. HYSE is the operator of the Webster Bank Arena (the "Arena").

On or about July 25, 2000, the City and Service America Corporation d/b/a Volume Services America ("VSA") entered into a written Operating Agreement (the "Operating Agreement").

The Operating Agreement granted VSA the right to operate the Arena for a period of twenty years. On or about March 11, 2011 VSA (then known as "Centerplate"), with the City's consent, assigned all of its rights and obligations under the Arena Operating Agreement to the Sound Tigers. The Sound Tigers, in turn, assigned all of these rights and obligations to HYSE, as permitted under the Operating Agreement.

The Operating Agreement requires HYSE, as the Arena Operator, to pay the City, in lieu of real and personal property taxes, the annual sum of \$250,000 (the "License Fee").

The Operating Agreement states HYSE can make Additions and Capital Repairs to the Arena, comprising both (i) Necessary Additions and Capital Repairs, and (ii) Discretionary Additions and Capital Repairs. Necessary Additions and Capital Repairs are additions and repairs "(a) necessary to comply with governmental requirements; (b) required for the safe operation of the [Arena]; (c) required by any agreement approved by the City; or (d) required to maintain and operate the [Arena] in compliance with the Quality Arena Standard or otherwise required to comply with the terms of this Agreement." Discretionary Additions and Capital Repairs are additions and capital repairs that "will update and improve the Facility, maximize Facility Operating Revenues or reduce Facility Operating Expenses."

The Operating Agreement provides for a fund into which all Arena operating revenues shall be deposited and from which all Arena operating expenses shall be paid. It also provides for a Renewal and Replacement Account (the "R&R Account") for payment of the aforesaid Additions and Capital Repairs. If the funds in the R&R Account are insufficient to pay for the Additions and Capital Repairs, the Operating Agreement states that HYSE, as Operator, may advance the moneys for the expenditure, described as a Deficit Loan, subject to reimbursement by the City. HYSE asserts it is entitled to reimbursement of \$896,649, as of April 20, 2018, for unreimbursed Additions and Capital Repairs to the Arena, plus interest.

Under the prior City administration, the City and HYSE, despite the procedures set forth in the Operating Agreement, followed an informal procedure for Additions and Capital Repairs. HYSE and the City would discuss and reach agreement on various projects for the Arena. Once the projects were approved by the City, and the work began, HYSE would pay vendor invoices for the work. HYSE would then debit on its books the R&R Account. When the City made payments toward the R&R Account, the account would be credited.

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As of May, 2013, there was a deficit balance in the R& R Account for moneys advanced by HYSE for Additions and Capital Repairs. In June, 2013, the Sound Tigers suspended the payment of the License Fee to the City and instead applied the License Fee payments to the R&R Account deficit balance. This practice was followed by the City and HYSE for three years until the current City administration objected to and stopped the practice. It should be noted that, absent this practice, the amount owed by the City to HYSE for Additions and Capital Repairs would be correspondingly higher. The current amount of past-due License fees owed by HYSE to the City is \$1,750,000.

Beginning in the summer of 2015 under the prior administration and continuing through June, 2016 under the current administration, the City and HYSE discussed HYSE's request for reimbursement of the moneys HYSE advanced for Additions and Capital Repairs. During these discussions the City questioned whether some of the work for which HYSE sought reimbursement included unreimbursable maintenance and operating costs rather than reimbursable Additions and Capital Repairs.

On June 30, 2016, the City served a written notice claiming there was an Event of Default under the Operating Agreement due to (i) non-payment of the License Fee, and (ii) an alleged failure to provide an adequate accounting of various revenues and expenditures. On July 27, 2016, the Hon. Barbara Bellis of the Superior Court of the State of Connecticut issued an injunction, *pendente lite*, tolling the time for HYSE to cure the claimed default under the Arena Operating Agreement pending the outcome of the Dispute Resolution procedure in the Arena Operating Agreement.

On July 22, 2016, HYSE served a written notice of an Event of Default under the Arena Operating Agreement due to the alleged City default in reimbursing HYSE for Additions, Capital Repairs, and Emergency Expenditures.

Beginning in August, 2016 and extending through October, 2017, with Superior Court Judge Bellis acting as a mediator, the parties attempted to resolve their disputes. These efforts were unsuccessful. During the course of the mediation, the parties agreed that the mediation before Judge Bellis satisfied the mediation obligations of the parties under the Dispute Resolution provision in the Arena Operating Agreement.

Subsequent thereto the parties engaged in further discussions and negotiations in an effort to resolve the outstanding issues, as well as extend the Operating Agreement which, by its terms, has now expired. These discussions included, in addition to the above issues, additions and capital repairs during the final five years of the Operating Agreement's term, the Seat Ticket Fee and parking revenues and parking lot operation.

Because the Arena has been in operation for over 20 years, both HYSE and the City commissioned independent analyses of the building, and agree that there are structural, roof, safety, and operational systems that require correction at this time.

The parties have reached a tentative resolution of all outstanding matters with HYSE and the Sound Tigers. Three documents reflect the terms of the parties agreement: (i) the Settlement Agreement; (ii) 2021 Amendment to Operating Agreement; and (iii) Procurement Agent Agreement. The following is an outline of the core terms of these documents:

1. parties mutually release each other from all existing claims;
2. extends term of Operating Agreement to October, 2031 (by execution of the 10 year extension option in the original Agreement);
3. "Team" defined as the AHL or other professional hockey league franchise of The Connecticut Islanders, LLC, provided such franchise is equal or superior to the AHL;
4. HYSE to pay City \$1,750,000 in settlement of past-due License Fees (the annual amount of such fees is \$250,000), due within 15 days of execution of Agreement;
5. funding of renovations and capital improvements: total cost estimated to be \$30 million; \$15 million already available for Phase I; City OPED to use best efforts to obtain Phase II funding;
6. \$3.3 million of the Phase I funding is for "back of house" improvements;
7. HYSE to contribute the final \$3 million to the Phase II funding as operator funding, with such funding allocated to HYSE's hockey requirements, but reduced by \$900,000 in agreed upon unreimbursed expenditures for Additions and Capital repairs- thus, HYSE to contribute net \$2.1 million, to be disbursed after the City contributes its \$12.9 million in Phase II funding;
8. if the City fails to fund the final \$12.9 million, HYSE shall not be entitled to payment of such claimed unreimbursed expenses;
9. HYSE commits to the Team playing substantially all of its home games at the Arena for 10 years, except that should the City not complete the renovations by June 30, 2026, expend a total of \$30 million (less operator funding set forth above) for the renovations by June 30, 2026, or obtain authorization for the \$30 million (less operator funding set forth above) by June 30, 2026 and complete the renovations by June 30, 2027, the Team is relieved of its commitment and financial obligations under the Operating Agreement.
10. Procurement Agent agreement for the \$3.3 million "back of house" improvements; HYSE is the City's agent for these improvements; prevailing wage law and City ordinances regarding minority businesses and employment of local residences to be followed;
11. revised parking provisions: City to make available the surface lots adjacent to the Arena, comprising approximately 750 spaces; HYSE to pay the City 30% of gross parking fee revenues collected for the surface lots; provision for substitute parking in the event the surface lot(s) are developed or used by the City for alternate purposes;
12. revised funding for Renewal and Replacement account: \$1.50 per ticket sold, plus billboard revenue sharing (to a yearly maximum of \$250,000 for billboard contributions);
13. Balance of Renewal and Replacement account stipulated to be \$0. Within 15 days of execution of Agreement the City shall fund the account with \$200,000;

14. Amphitheater: HYSE confirms that renovation and operation of existing ballpark adjacent to the Arena into a concert amphitheater does not violate the terms of the Operating Agreement;
15. rent-free graduation ceremonies for Bridgeport public high schools; and
16. HYSE to provide periodic audited financial reports to the City.