
**AGREEMENT FOR MANAGEMENT OF
CLEVELAND STATE UNIVERSITY CONVOCATION CENTER**

by and between

CLEVELAND STATE UNIVERSITY

and

SMG

Dated June 21, 2000

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**AGREEMENT FOR MANAGEMENT OF
CLEVELAND STATE UNIVERSITY CONVOCATION CENTER**

THIS AGREEMENT is made and entered into as of June 21, 2000 by and between Cleveland State University (hereinafter the "University"), having its principal office at Rhodes Tower, Room 1206, Euclid Avenue at East 24th Street, Cleveland, Ohio 44115, and SMG, a Pennsylvania general partnership, having its principal offices at 701 Market Street, 4th Floor, Philadelphia, PA 19106 (hereinafter "SMG").

In consideration of the mutual promises and agreements of the parties hereto, it is mutually agreed as follows:

**ARTICLE I
DEFINITIONS**

For purposes of this Agreement, the following terms shall have the following meanings:

"Annex Excluded Area" means the board room on the fourth floor of such conference center annex.

"Annual Statement" means an Operating Statement for any Fiscal Year, which shall contain a calculation of the Incentive Fee (if any) payable to SMG in respect of such Fiscal Year.

"Basic Fee" means an annual fixed fee of \$140,000, which amount shall be adjusted upward on the first day of each Fiscal Year, other than the first Fiscal Year ending June 30, 2001, during the term hereof by the percentage change in the Consumer Price Index – All Urban Consumers (CPI-U) – U.S. City Average – All Items, during the one year period ending immediately preceding such Fiscal Year, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or of any revised or successor urban index hereafter published by the Bureau of Labor Statistics or other agency of the United States Government succeeding to its functions ("CPI").

"Basketball Games" means University men's or women's intercollegiate basketball games played in the Convocation Center.

"Concession Income" means the excess of (i) the net receipts (after deduction of all costs and expenses of sales) received or retained by the University and/or SMG from concessionaires (it is acknowledged that, the concessionaire will be an SMG/Executive Caterers joint venture, as described in Section 15.1 below) handling Convocation Center Event concessions arising from the sale at such Events of food and beverages (including catering, programs, novelties, souvenirs and other concessions) after deducting any payments made to such concessionaires or the Cleveland "Crunch" indoor soccer league team out of the Operating Account for the dashboards used by such team in the Convocation Center, over (ii) the University Basketball Concession Share. Concession Income shall not include Parking Income.

"Convocation Center" means the arena and conference facility known as the "Cleveland State University Convocation Center," located at the University's main campus at 2000 Prospect

Avenue, Cleveland, Ohio; provided, however, that the term “Convocation Center” shall not include the Annex Excluded Area.

“Effective Date” means November 1, 2000.

“Event” means a sporting event, show, concert, festival, meeting or other activity presented in the Convocation Center which is subject to the provisions of this Agreement.

“Fiscal Year” means each successive period of twelve (12) months beginning on July 1, 2000 and ending on June 30 next following the date of this Agreement expires or is otherwise terminated.

“Gross Revenue” means all receipts by SMG from the operation of the Convocation Center, including cash, good checks, credits or receivables (to the extent actually collected), generated from the use, or the right to use, the Convocation Center. The term Gross Revenue shall include, but not be limited to, Parking Income, Concession Income, receipts from promotions, the net receipts from building sponsorship (after any sales commissions of up to 15%), Ticket Income (excluding gross ticket sales), service income, promoters’ fees, broadcast royalties, rentals, fees, rebates, equipment rentals, display space rentals, television rights, fees paid to the University or SMG (except rights fees paid in connection with the television broadcast of University Events and Cleveland “Crunch” game), and further including interest earned on the Operating Account.

“Incentive Fee” means a percentage management fee payable to SMG based on Gross Revenue for each Fiscal Year, and calculated as follows: SMG’s Incentive Fee will equal 35% of any excess Gross Revenue (net of Event expenses) over \$1.3 million; provided, however, that such Incentive Fee shall at no time exceed the Basic Fee for such Fiscal Year.

“Operating Account” means the University bank account or accounts established jointly by SMG and the University in which shall be deposited all Gross Revenue and from which shall be paid all Operating Expenses.

“Operating Budget” means an annual budget listing all the projected Gross Revenue and Operating Expenses for a Fiscal Year submitted by SMG and approved by the University in the manner set forth in Section 16.3 hereof.

“Operating Expenses” means, in respect of any Fiscal Year, the aggregate of (i) the portion of the Basic Fee paid in respect of such Fiscal Year, (ii) the portion of the University Reimbursement Amount paid in respect of such Fiscal Year and (iii) any and all ordinary and necessary costs and expenses incurred by SMG in the operation of the Convocation Center for such Fiscal Year, including, but not limited to, those costs and expenses to be incurred by SMG as set forth on the Operating Budget for such Fiscal Year, payments made to the Cleveland “Crunch” for the carpet and goals used by such team, and any expense normally paid by the promoter of an Event if and to the extent not payable by such promoter because of the type of rental arrangement utilized (*i.e.*, a so-called “flat charge”). Operating Expenses shall include the costs incurred by SMG in performing the SMG Responsibilities but shall not include travel expenses of SMG executive personnel to Cleveland. Operating Expenses shall also not include the costs and expenses incurred by the University in performing the University Responsibilities,

but shall include any payments made to the University on account of services performed by the University at the request of SMG to the extent such services are not a part of the University Responsibilities.

“Operating Statement” means, for any accounting period, a statement of operations of the Convocation Center for such accounting period setting forth in reasonable detail the Gross Revenue and Operating Expenses of the Convocation Center for such accounting period. The Operating Statement shall be prepared in accordance with generally accepted accounting principles.

“Operating Year” means each successive period of twelve (12) months during the term hereof, commencing on the Effective Date.

“Parking Income” means (i) the net receipts (which shall be not less than 50% of the gross receipts less expenses) of the University from the operation of the Parking Lots and other parking areas in connection with the presentation of Events (other than Basketball Games), after deducting the reasonable personnel costs incurred by the University in such operation, and (ii) in respect of Basketball Games, fifty percent (50%) of the net receipts of the University referred to in clause (i) of this definition.

“Parking Lots” means the following parking areas located on or about the University campus: Lot Z and Lot D).

“SMG Responsibilities” means those activities to be undertaken by SMG in the management of the Convocation Center which are set forth in Article VII hereof.

“Ticket Income” means the gross receipts from the sale of tickets and admissions to Events, including the University’s share of service charges imposed by any ticket selling agency on tickets sold for Events, or on tickets sold for non-Convocation Center Events from outlets located on the University. There shall not be included in Ticket Income (i) the value of complimentary tickets to Events or (ii) any sales or amusement taxes that may be included in the price of a ticket to an Event, or (iii) a ticket-selling agency’s share of the service charges referred to above in this definition. In addition, there shall be deducted from Ticket Income any “inside charges” paid by the University to a ticket-selling agency in connection with the sale of tickets to Events.

“University Basketball Concession Share” means fifty percent (50%) of the University Basketball Concession Income from a Basketball Game. For purposes of this definition, the term “University Basketball Concession Income” means the University’s portion of the concession income from a Basketball Game determined in accordance with the concession contract between SMG and the concessionaire; and the term “University Basketball Food and Beverage Concession Income” means the University Basketball Concession Income derived from the sale of food and beverages (but not novelties, souvenirs, programs and like items). The University Basketball Concession Share shall be retained by the University and shall not be a part of Gross Revenue.

“University Reimbursement Amount” means (i) during the first Fiscal Year of the term, an amount not to exceed \$439,000 (“First Fiscal Year Reimbursement”) and (ii) during succeeding Fiscal Year, increases over the First Fiscal Year Reimbursement, based on the CPI.

“University Responsibilities” means those activities to be undertaken by the University in connection with its ownership of the Convocation Center, as set forth in Article VI hereof.

ARTICLE II **PURPOSE**

2.1 General Purpose. The general purpose of this Agreement is to assure that the management of the Convocation Center is efficient and that the Convocation Center, though not directly managed by the University, is used for Events which, in the judgment of the University, are appropriate to the University’s mission.

2.2 Specific Purpose. The University hereby engages SMG, for the term of this Agreement, to operate, schedule, and manage the Convocation Center. Such operation, scheduling, and management shall extend to the scheduling of Events, and any other activities normally found in a spectator arena with conference/ meeting rooms of the Convocation Center’s size and nature, subject to the terms and conditions herein. The University grants to SMG all necessary authority to perform those functions for which SMG is engaged, subject always to the University’s reservation of rights under this Agreement. SMG warrants that it will use its best efforts to maximize attendance at Events and to manage the Convocation Center during the term of this Agreement so that the Convocation Center will:

- (a) enhance the stature, reputation, and quality of the University’s athletic program and of the University;
- (b) provide the greater Cleveland, Ohio area with a viable, recognized venue for spectator Events;
- (c) accommodate a variety of suitable educational and entertainment Events;
- (d) contribute financially to the University budget;
- (e) contribute to the quality of life within the University and the surrounding community;
- (f) and maximize contributions to the University.

SMG will use its best efforts to provide a highly qualified, responsible manager and management staff, and maintain open communication with the University on a regular, continuing basis to assist in meeting the above goals. Meetings among representatives of the University, the manager of the Convocation Center and a senior official of SMG will take place not less often than monthly.

ARTICLE III
TERM

3.1 Term. The Management Term of this Agreement shall commence on the Effective Date and end at midnight on October 31, 2005, unless earlier terminated by the University in its sole discretion on October 31, 2003 by giving not less than one hundred eighty (180) days prior written notice of termination pursuant to the provisions of this Agreement. The term hereof shall be extended on the same terms and conditions for an additional one (1) year period upon not less than one hundred eighty (180) days prior written notice of such extension by the University; provided, however, that the term shall not extend past October 31, 2010.

ARTICLE IV
SCOPE OF AUTHORITY

4.1 Authority of SMG. SMG shall have the right to continue all businesses and work it is presently conducting (including the management of sports arenas and other types of arenas and places of public gathering), and to conduct any other business for its own benefit, and to engage in other work at other locations. SMG will, nevertheless, at all times, manage the Convocation Center in a responsible manner. Notwithstanding the foregoing, SMG agrees that it nor will not, directly or indirectly, during the term of this Agreement, manage a sports arena located in the Cleveland, Ohio area without the prior written permission of the University.

4.2 Authority of University. (a) The University at all times during the term of this Agreement retains its right, as owner, to determine the times at which, the extent to which, and the manner in which, the Convocation Center is used. The University reserves the right to exclude any Event or Events from the Convocation Center, regardless of the prior scheduling of the Event in accordance with Section 5.1 by SMG as manager, where the University reasonably determines that the Event will adversely affect the University or the surrounding community. Upon the occurrence of such exclusion of a previously approved Event by the University, the University shall, at its expense, pay all costs incurred by SMG in connection with the scheduling, promoting, preparing for and canceling the Event, and any other costs reasonably incurred by SMG resulting from such exclusion.

(b) The University shall not have the right to enter into contracts after the date hereof relating to the operation of the Convocation Center (except for those currently under negotiation and of which SMG has knowledge) without the prior written approval of SMG, which shall not be unreasonably withheld.

ARTICLE V
SCHEDULING

5.1 University Consent. The University as owner of the Convocation Center and as a governmental instrumentality of the State of Ohio retains final and exclusive authority to approve and to reject Events proposed to be booked in the Convocation Center by SMG. Such retained authority, which shall be reasonably exercised, includes but is not limited to the right to require SMG to negotiate with a particular Event or schedule a particular Event, to resolve conflicting requests for Events on particular dates, to determine if Events are appropriate, and to

approve the financial terms of any contracts for Events between SMG and the Event or its promoter. Consistent with this retained University authority, SMG shall make no representation which would lead to the conclusion that SMG has unqualified authority to schedule the Convocation Center prior to obtaining the consent of the University. Approval of the University for Events, dates and financial terms shall be made within three (3) business days of notification by SMG. Approval of the University for particular Events, dates and financial terms shall be obtained in the following manner:

(a) The University President shall have final veto authority for the University and may veto proposed Events within three (3) business days of the University's receipt of written notice of such proposed Events. The President may designate another University official to exercise this veto/review authority provided such designation is in writing and is delivered to the SMG manager of the Convocation Center.

(b) SMG shall generally submit proposed Events to the President or the President's designee more than 20 days before the first proposed Event date of the engagement. The President or the President's designee shall have three (3) business days from receipt of the proposed Event to approve, to deny or to modify the proposal. If after three (3) business days, the President or the President's designee has taken no written or oral action, the Event shall be deemed to be approved.

(c) If the proposed Event is submitted less than 20 days before the proposed Event date, or if, whenever submitted, it is a proposed agreement between SMG, acting as manager of the Convocation Center, and SMG, acting in another capacity, affirmative approval shall be required in writing.

5.2 General Scheduling. Scheduling of Events by SMG shall be limited by the University's academic and sporting events calendar, which shall be provided to SMG not later than the start of each Fiscal Year hereunder; provided, however, that the University shall have until July 1 of each Fiscal Year to provide SMG with such Fiscal Year's calendar of intercollegiate athletic events to be held in the Convocation Center.

5.3 Admission Limitation. SMG shall not admit a greater number of persons than can safely be accommodated in the Convocation Center at any one time as determined by appropriate authorities. SMG shall not sell, dispose of or permit the sale or distribution of more seat tickets than the seating capacity permitted for the Event.

5.4 Priorities/Categories of Events. For the purposes of scheduling or re-scheduling cancellations, all Events proposed for the Convocation Center shall be categorized and considered for open dates in the following priorities:

(a) First Priority: Regularly scheduled University Events (intercollegiate athletics, commencement, etc.). Events scheduled by the University as of the date this Agreement is executed, and the agreements governing the presentation of such Events, shall be honored by SMG so long as the University gives SMG copies of any such agreements promptly after the date this Agreement is executed, and so long as there are no conflicts in the dates of such Events. No rent will be paid by official University users of the arena portion of the

Convocation Center. In such case, only Event expenses (including but not limited to utility costs, the costs of changeover, cleaning, staffing and liability insurance) will be reimbursed by the users. This policy will apply to the University athletic department and other users for University Events as mutually determined by the University and SMG. Rent will be payable, however, in respect of the use by the University of the conference/meeting area portion of the Convocation Center, (except for the Annex Excluded Area), in a mutually agreeable amount.

(b) Second Priority: Cleveland “Crunch” games during the term of the agreement between the University and North Coast Professional Sports Ltd.; provided, however, that the University will use its best efforts to permit SMG to schedule a show which is a part of a multi-performance Event, such as the Ice Capades or Ringling Bros. Circus, on an otherwise open date which might otherwise be used by the “Cleveland Crunch.”

(c) Third Priority: Events scheduled by SMG (in accordance with the provisions of Section 5.1).

(d) Fourth Priority: Non-regularly scheduled University sponsored Events, which shall be subject to a negotiated rental rate for the Convocation Center. Such Events may be subject to rescheduling or cancellation should a conflict with an Event in categories (a), (b) or (c) occur.

5.5 Annex Excluded Area. The University shall have primary responsibility for scheduling the Annex Excluded Area, and shall give reasonable notice to SMG of any activity to occur in the Annex Excluded Area. If the University desires to use the Annex Excluded Area in connection with a ticketed Event at the Convocation Center, admission to the Annex Excluded Area will be by ticket. SMG shall have absolutely no responsibility for the management or operation of the Annex Excluded Area. Any costs and expenses associated with the use of the Annex Excluded Area shall be borne and paid directly by the University and shall not be an Operating Expense or paid out of the Operating Account.

5.6 University Use. Subject to the foregoing provisions of this Article V, the University shall have the right to use any non-revenue producing portion of the Convocation Center so long as such use will not conflict with the presentation of Events and the University gives SMG reasonable prior notice of any such intended use.

ARTICLE VI **UNIVERSITY’S RESPONSIBILTIES**

6.1 Responsibilities. The University agrees that it shall, at its expense, during the term of this Agreement:

(a) provide all utilities necessary for the proper operation of the Convocation Center, and the Annex Excluded Area, including heating, ventilating and air-conditioning during the appropriate seasons of the year;

(b) provide routine security and life-safety services, including smoke/heat alarms;

- (c) provide daily custodial services for the Convocation Center, and the Annex Excluded Area, including trash removal and pest control services, except any such trash removal services as may be required in connection with the presentation of Events;
- (d) provide outdoor groundskeeping, landscaping and snow removal services;
- (e) provide SMG with suitable office space and storage space in the Convocation Center, together with local phone service;
- (f) make available to SMG all furniture, fixtures and equipment owned or purchased by the University for the operation of the Convocation Center;
- (g) operate, repair and maintain the Parking Lots in a manner consistent with past practice, it being agreed that the Parking Lots will be devoted, on a first priority basis, to the provision of parking for patrons of Events and that the charge for parking (or the provision of any free parking) in connection with the presentation of Events will be mutually agreed to by the University and SMG; provided, however, that the use of the Parking Lots for Events will be subject to the reasonable needs of the University on weekdays and evenings during the University school year, and the University will give SMG reasonable prior notice of any use by the University of the Parking Lots, or any of them, which may conflict with the use of the Parking Lots in connection with the presentation of Events;
- (h) make any necessary repairs or replacements to the Convocation Center building structure (including the roof) and its systems, including electrical, mechanical and heating, ventilating and air-conditioning systems; and
- (i) as described and agreed to in Section 15.1, SMG, as agent for the University, shall enter into a Concessionaire Agreement with CCJV (as defined in Section 15.1) to manage the concession operation at the Convocation Center. CCJV has agreed to make a capital investment of \$500,000 to upgrade concession stands as well as upgrade and improve the catering service, kitchen equipment and catering amenities (“CCJV Capital Investment”). SMG shall develop a CCJV Capital Investment budget and plan and will provide the University a full accounting of such expenditures. SMG shall solely be responsible for performing all work (including construction) in connection with the CCJV Capital Investment. The CCJV Capital Investment shall be amortized over a fifteen (15) year period on a straight-line non-cash basis. In the event of expiration or termination of the Concessionaire Agreement for any reason, SMG, as agent for the University, shall cause any successor concessionaire company to pay CCJV unconditionally and without set-off the unamortized amount of the CCJV Capital Investment existing as of such expiration termination. The payment of any such unamortized amounts shall be made to CCJV no later than thirty (30) days following the effective date of such expiration or termination.

ARTICLE VII
SMG RESPONSIBILITIES

7.1 Special Services. SMG, in addition to those responsibilities to be performed by it as set forth in Section 7.2, agrees that it shall use its best efforts, during the term of this Agreement:

(a) to establish, operate and manage the operation of a computerized ticket-selling agency at the Convocation Center;

(b) to implement a discount ticket and preferential seating program available to University students and faculty staff. This program will provide, to the extent determined by SMG to be practicable and to the extent the promoter of an Event may agree (which agreement SMG will use its best efforts to obtain), discounted tickets for University students, faculty and staff for ticketed Events, priority reserved seating for Events, and a pre-purchase special seating program for Events as may be agreed to by the University and SMG. Special programs will be instituted to address student internships;

(c) at the request of the University, SMG shall advise and consult with the University in promoting and coordinating Events for at least two (2) "Big Weekends" on the University campus per Operating Year, the dates of the Big Weekends to be mutually agreed to, it being understood and agreed, however, that SMG shall not be required to assume any financial obligation in connection with such "Big Weekend" events;

(d) to offer the University a mutually agreed upon number of complimentary tickets to each performance of all ticketed Events;

(e) to participate with the University in a joint effort to develop a standardized staffing level for all Events;

(f) to work with University student organizations to assist them in the presentation of Events; and

(g) to sell sponsorships in the Convocation Center, including, but not limited, to scoreboard sponsorship and outer concourse permanent arena signage, subject to existing contracts for the sale of sponsorships in the Convocation Center, or restrictions on gifts of new or replacement signage.

7.2 Standard Services. SMG shall be responsible for providing day-to-day management of the Convocation Center, and, in such connection, shall provide the services listed in the Section 7.2 and described elsewhere in this Agreement. All the costs and expenses reasonably incurred in connection with SMG's providing the services to be provided by it hereunder, including but not limited to those listed in this Section 7.2, shall be paid directly from the Operating Account. In addition to providing the services described elsewhere in this Agreement, SMG shall:

(a) provide interior equipment and supplies related to Events;

(b) provide Event-related, interior custodial services (in such connection, SMG shall consider the use of the University Plant Department, but shall have the right to use an outside cleaning service if the cost of such outside service would be less than the cost of using the University Physical Plant Department);

(c) provide interior Event security (in conjunction with the University police);

- (d) provide marketing services, promote the Convocation Center and Events, and provide box office services (including but not limited to the sale of tickets to Events);
- (e) schedule Events subject to the provisions of Article V hereof;
- (f) provide staffing necessary for the presentation of Events, including box office personnel, ticket takers and ushers;
- (g) supervise the concession operations at Events;
- (h) provide medical service at Events;
- (i) advertise Events and provide for broadcasting and media coverage for non-University related Events;
- (j) provide refunds in respect of cancelled Events;
- (k) provide professional services directly involving Convocation Center operations (e.g., preparation and enforcement of contracts with Event promoters and concessionaires);
- (l) provide proper uniforms for all SMG employees;
- (m) prepare and develop the Operating Budget;
- (n) inform in writing the University of needed major repairs to the extent SMG has knowledge of the necessity of such repairs;
- (o) oversee the activities of SMG employees;
- (p) identify and notify the University of the need for pest control and snow removal services;
- (q) use best efforts to identify and notify the University of the need for mechanical system and utilities repairs at the Convocation Center;
- (r) upon reasonable request, prepare special reports to the University Representative to address operational issues or plans for future requirements and expanded utilization of the Convocation Center;
- (s) develop a management personnel policy manual for the Convocation Center containing tables of organization for all elements of the on-site management team, position descriptions and job classifications for all principal functions within the on-site facility management organization, procedures and requirements for compliance with affirmative action objectives, and the like. This documentation will be available to the University for information and comment and will be maintained as the principal reference to each function in the organization. It will also be used to develop a digest of key personnel and their responsibilities to be provided to users to enhance coordination in planning, scheduling and implementing major

Events. The University acknowledges and agrees that, as of the date of this Agreement, SMG has satisfied this requirement;

(t) develop and implement internal audit procedures to enforce individual accountability (in such connection, at the request for the University, SMG shall use the internal audit staff of the University with support as needed from the outside auditors of the University, so long as the cost of using such internal audit staff and such outside auditors is borne and paid by the University, is not an Operating Expense and is not paid out of the Operating Account);

(u) settle Events as soon as possible after their completion, pay over to the appropriate authorities any sales or amusement taxes collected by SMG in connection with its sale of tickets to Events, and upon request of the University, permit a designee of the University to be present at Event settlements;

(v) obtain and keep current any licenses and permits necessary for the operation of, and the presentation of Events in, the Convocation Center; provided, however, that the cost of obtaining and keeping current any non-Event related licenses and permits shall be borne and paid by the University, shall not be an Operating Expense and shall not be paid out of the Operating Account;

(w) identify and notify the University of the need for any inspections required under Ohio, local or federal law, and perform any such inspections directly or engage an outside service to perform such inspections;

(x) direct the operation of all trash removal services to be performed by the University or its contractor hereunder;

(y) consult with the University regarding all parking and traffic services to be performed by the University hereunder with a view to maximizing Parking Income;

(z) establish a suitable on-site business office at the Convocation Center, to be designated by the University, which will be the location of the on-site manager and the central processing point for all business and operational functions occurring within the Convocation Center;

(aa) submit a quarterly report of upcoming Events; and

(bb) perform any other services at the University and SMG shall mutually agree to.

7.3 Broadcasting. SMG shall use its best efforts to use the broadcasting, cablecasting or televising facilities of the University for broadcast of Events, and to cause the University to be paid its reasonable and customary fees for services rendered to facilitate any such broadcasting, cablecasting or televising of an Event whenever such use is mutually beneficial, financially competitive and conforms with acceptable professional standards of quality.

7.4 Cash Control. SMG shall institute and maintain cash control procedures necessary for the responsible management and accounting for all funds handled by its employees

and agents. Where appropriate (e.g., in a contract with a food and beverage concessionaire), SMG will impose upon its subcontractors normal and customary provisions as to cash control procedures.

7.5 Gate Receipts. SMG shall institute and maintain a system for handling gate receipts necessary for responsible management and accounting of all tickets and gate receipts.

7.6 Technical Assistance. SMG shall commit the services and technical assistance of its affiliates where necessary to fulfill its obligations under this Agreement.

7.7 Existing Contracts. SMG will manage and operate the Convocation Center in accordance with the requirements of any contracts affecting such operation as of the date hereof of which the University has given SMG written notice. Such contracts shall include, but not be limited to, the contracts listed on Exhibit A hereto.

ARTICLE VIII **TERMINATION**

8.1 Termination With Cause.

(a) The University shall have the right to terminate this Agreement (i) immediately upon the voluntary declaration of bankruptcy by SMG or any of its general partners, upon a finding by a court of competent jurisdiction that SMG or any of its general partners is insolvent, or in the event of an assignment for the benefit of creditors or any other insolvency related proceeding by or (unless dismissed within sixty (60) days) against SMG or any of its general partners, or upon any criminal indictment against SMG or any of its general partners, or (ii) if SMG shall fail in a material manner to perform any of the obligations on its part to be performed hereunder and such failure is not cured within thirty (30) days after SMG's receipt of a notice from the University specifying such failure; provided, however, if such failure cannot be cured with the exercise of due diligence within thirty (30) days, then SMG shall have such time to cure such failure as may be necessary in the exercise of due diligence.

(b) Similarly, SMG shall have the right to terminate this Agreement if the University shall fail in a material manner to perform any of the obligations on its part to be performed hereunder and such failure is not cured within thirty (30) days after the University's receipt of a notice from SMG specifying such failure; provided, however, if such failure cannot be cured with the exercise of due diligence within thirty (30) days, then the University shall have such time to cure such failure as may be necessary in the exercise of due diligence.

(c) The University further reserves the right to terminate this Agreement at any time should performance by SMG under this Agreement be deemed unsatisfactory by the University in the exercise of its reasonable judgment. Prior to any termination for unsatisfactory performance, the University shall give written notice to SMG of the specific conditions deemed unsatisfactory and identify proposed or expected actions by SMG to cure its unsatisfactory performance. SMG shall be given thirty (30) days to cure conditions so identified; provided, however, if such failure cannot be cured with the exercise of due diligence within thirty (30) days, then SMG shall have such time to cure such failure as may be necessary in the exercise of due diligence. In the event that SMG fails or refuses to cure subject conditions to the reasonable

satisfaction of the University within such cure period, the University shall have the right to notify SMG of termination, which will occur effective thirty (30) days from such notification.

8.2 Final Accounting. In the event of a termination of this Agreement under the provision of this Article VIII, there shall be a final accounting between the parties and SMG shall be paid or reimbursed promptly all amounts it is due hereunder. The University shall have the right, upon written request to SMG, to an accounting of all receipts, disbursements, and charges made or owing to the Operating Account. SMG, upon written demand by the University, shall transfer to the University all signatory power over the Operating Account no later than the effective date of the termination.

8.3 Survival. In the event that this Agreement is terminated, the provisions of this Agreement which by their context have application after such termination shall continue in full force and effect and shall be binding on the parties.

8.4 Interior Equipment. In the event this Agreement is terminated, the University shall be required either to (i) return to SMG any interior equipment provided to the Convocation Center by SMG or (ii) pay SMG the book value of said equipment.

ARTICLE IX REENTRY

9.1 Right of Reentry. In the event that SMG breaches any material term or provision of this Agreement, the University shall, in addition to any and all rights and remedies available to it under the laws of the State of Ohio or this Agreement, have the right to reenter the Convocation Center and SMG's office therein, recover the inventory and any account books, and commence direct management of the Convocation Center.

ARTICLE X MISCELLANEOUS

10.1 Governing Law. This Agreement shall be governed in all respects by the laws of the State of Ohio (the "State") and any litigation with respect thereto shall be brought in the courts of the State.

10.2 No Fraud. SMG certifies that it is entering into this Agreement without collusion or fraud and that it has not offered or received any kickbacks or inducements in connection with this Agreement, and that it has not conferred on any public employee having official responsibility for this Agreement any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless considered of substantially equal or greater value was exchanged.

10.3 Aliens. SMG certifies that it does not and will not, during the performance of this Agreement, employ illegal alien workers or otherwise violate the provisions of the Federal Reform and Control Act of 1986.

10.4 No Debarment. SMG certifies that it is not currently debarred from submitting bids or proposals on contracts by any agency of the State, nor is it an agent of any person or entity that is currently debarred from submitting bids or proposals on contracts by any agency of the State.

10.5 Conflicts of Interest. SMG warrants that it has fully complied with the Ohio Conflict of Interest Act.

ARTICLE XI **INDEMNIFICATION**

11.1 SMG Indemnity. SMG shall and does hereby indemnify the University, and the officials and employees thereof, in their official and individual capacities, against any and all costs, damages, claims, expenses or liability whatsoever, in the event of any bodily injury or property damage to the persons or property of others, resulting in whole or in part from the negligence of SMG, its agents or employees, in the management of the Convocation Center, so long as negligent or wrongful action or omission by the University or the State was not the proximate cause of such bodily injury or property damage. Nothing in this Section 11.1 shall affect SMG's right to receive reimbursement hereunder; provided, however, that there shall be no reimbursement of fines, civil or criminal, or of recoveries based on intentional, willful or malicious conduct, or of insured losses of whatever nature (but not including the deductible applicable thereto). Claims under this Section 11.1 shall be made in writing to SMG within a reasonable time after the occurrence giving rise to such claim.

11.2 Definition. For purposes of Section 11.1 hereof, the terms "bodily injury" and "property damage" shall be construed to include, but not be limited to, the following:

(a) bodily injury or property damage arising from the failure of, or the use or misuse by a party, its agents, servants or employees of, any hoist, rigging, blocking, scaffolding, or any and all other kinds of equipment and materials, whether or not owned or furnished by the University. SMG will not be responsible for damages or losses of the Convocation Center and related equipment, if such damages or losses are determined to be the result of design flaws or structural defects of the Convocation Center.

(b) bodily injury or alleged bodily injury, or property damage or alleged property damage, arising from the manufacture, use or sale of any patented or unpatented invention, article or appliance in the performance of this Agreement, including use by or for the benefit of the University.

ARTICLE XII **INSURANCE**

12.1 Required Coverage. SMG shall furnish proof of the following insurance coverages provided by companies reasonably satisfactory to the University. The University and its employees are to be included as additional insureds of the Commercial General Liability coverage, and SMG shall furnish the University annually with certificates of insurance evidencing such coverage and showing the University and its employees as additional insureds.

During the term of this Agreement, SMG shall keep the listed insurance coverages in force. The cost of all insurance coverages placed by SMG shall be an Operating Expense and paid out of the Operating Account.

(a) Workers' Compensation coverage, including Occupational Disease coverage, through the Ohio Bureau of Workers' Compensation.

(b) Commercial General Liability coverage with minimum limits of Ten Million Dollars (\$10,000,000) for each accident for property damage and bodily injury. The Commercial General Liability coverage shall include, but not be limited to, coverage for premises and operations liability, independent contractors liability, completed operations liability, contractual liability, personal injury liability and broad form property damage liability. IN addition, employers liability coverage, sometimes known as stopgap liability coverage, shall be provided with a minimum limit of One Hundred Thousand Dollars (\$100,000) per occurrence.

(c) Business Auto Liability coverage with minimum limits for bodily injury liability of Five Hundred Thousand Dollars (\$500,000) for each person and One Million Dollars (\$1,000,000) for each accident and a minimum limit of One Hundred Thousand Dollars (\$100,000) for property damage liability for each accident. This coverage may alternately be provided with a minimum combined single limit of One Million Dollars (\$1,000,000) for bodily injury liability and property damage liability for each accident.

(d) Employee Benefit Insurance – As required by applicable state and federal laws.

(e) Liquor Liability and Bond – Liquor liability and bonding will be provided by the successful vendor for food and beverage service at the Convocation Center. The University will require the successful food and beverage contractor to name SMG as an additional insured.

12.2 Notice. SMG shall notify the University promptly after the occurrence of any loss or destruction of, or damage to, the Convocation Center or other property of the University within SMG's control, and shall furnish the University with a statement concerning such loss in such detail as the University may reasonably require. This includes the loss of keys issued to SMG by the University.

12.3 Access. The University shall, at all times, have access to the parts of the Convocation Center where the property of the University is located.

12.4 SMG Property. The University will not be held responsible for any equipment or merchandise owned by SMG which is lost, stolen or damaged, unless such loss or damage is caused by the negligence of the University, its agents or employees. Any property of SMG shall remain its responsibility and insured in the discretion of SMG.

12.5 University Property and Insurance. Title to the buildings and equipment constituting the Convocation Center shall remain with the University and property insurance will be the responsibility of the University.

12.6 Waiver of Subrogation. Each of SMG and the University shall require its insurers to include in all of its insurance policies which could give rise to a right of subrogation against the other party a clause or endorsement whereby the insurer shall waive any rights of subrogation against such party.

ARTICLE XIII **FIXTURES**

13.1 Responsibility. Ownership of all Convocation Center furniture, fixtures, equipment and other related items which are purchased by the University shall be retained by the University. Should SMG determine that certain furniture, fixtures or equipment are necessary for regular, on-going Convocation Center operations, the University shall endeavor to acquire the same to the extent that said equipment is acceptable to both parties.

ARTICLE XIV **GENERAL MANAGER**

14.1 Appointment. SMG shall name and appoint a general manager, who shall devote full time to management of the Convocation Center. The University reserves the right to review and approve the appointment of the general manager assigned to the Convocation Center. Notwithstanding the above, it is understood by the parties that Martin Bechtold is hereby approved as general manager of the Convocation Center. Further, the parties agree that any person assigned by SMG to the Convocation Center shall be reassigned to some other task not at the Convocation Center or terminated from employment, at the option of SMG, upon the reasonable and lawful written request of the University that the person no longer work at the Convocation Center. Other than the rights reserved to the University in this Section, SMG shall be wholly responsible for the actions of its staff assigned to operations at the Convocation Center. The University agrees not to unreasonably interfere with the general manager's performance of duties. The salary of the general manager shall be paid out of the Operating Account and shall be approved by the University, such approval not to be unreasonably withheld.

14.2 University Representative. The University shall designate one individual who shall be the principal contact for the General Manager and SMG at the University (the "University Representative"). SMG shall be entitled to rely on the instruction and advice given by the University Representative, who shall have the authority to bind the University regarding all matters arising under the provisions of this Agreement.

ARTICLE XV **SUBCONTRACTS**

15.1 General. SMG may subcontract for the performance of non-managerial services, including but not limited to promotional services, custodial services, concessions, food services, photographic services, broadcast services, and any other services incidental to or in furtherance of its management of the Convocation Center; the costs thereof shall be paid from the Operating Account. In no event, however, shall SMG subcontract its management responsibilities under this Agreement. SMG shall be acting as the agent for the University in entering into such subcontract, shall not be liable for the performance of any financial obligations thereunder, and

any such subcontract shall explicitly so provide. The parties understand and agree that SMG, as agent for the University shall enter into a Concessionaire/Catering Agreement, the form of which shall be pre-approved by the University, with SMG's affiliate, Convocation Center Joint Venture ("CCJV"), owned by SMG and Executive Caterers. SMG agrees that, at all times during the term of the Agreement it will transact business and otherwise conduct all relations with CCJV, where SMG is acting in its capacity as managing agent for the University, in an arms length manner and in good faith, as if the parties were not affiliates. Without limiting the University's approval rights with respect to such concessionaire/catering agreement, it is anticipated that such agreement will contain a provision which gives the University the right to terminate such concessionaire/catering agreement on the basis of unsatisfactory performance in the same manner as provided in Section 8.1(c) of this Agreement (i.e., giving notice to CCJV of such unsatisfactory performance thereunder, identifying the proposed or expected actions of CCJV to cure such performance issues, and giving CCJV an opportunity to cure such performance issues). The following sets forth the commission percentages which shall be due and payable to the University pursuant to the Concessionaire/Catering Agreement to be entered into between the University and the CCJV:

Concession Commissions:

General Concessions:

- 35% of the first \$500,000 in gross sales¹
- 38% of gross sales¹ over \$500,000 and less than \$1,000,000
- 41% of gross sales¹ over \$1,000,000

Candies and Confections:

- 23% of gross sales on candies and confections sold at concession stands

Subcontractors:

- 50% of all revenue received from mutually agreed-upon subcontractors

Commissions relating to Cleveland Crunch Soccer Home Games:

- 37% of gross sales

Catering Commissions:

- 15% of gross catering sales (excluding service, labor and gratuities)

SMG agrees that, at all times during the term of the Agreement it will transact business and otherwise conduct all relations with CCJV, where SMG is acting in its capacity as managing

¹ Excluding sales at Cleveland Crunch Soccer Team Home Games

agent for the University, in an arms length manner and in good faith, as if the parties were not affiliates.

15.2 University Review. All contracts between SMG and subcontractors shall be subject to the review and prior approval of the University before becoming operative. Specifically, any provision in any contract concerning the controls on the quality of food to be provided at the Convocation Center shall receive the prior approval of the University. The provisions of Section 5.1 regarding the approval by the University of Event contracts shall also be applicable to the approval by the University of subcontracts. Subject to the provisions of the next sentence, subcontracts which involve only a single Event at the Convocation Center shall be exempt from the provisions of this Section 15.2. Any subcontract (even if involving only a single Event) between SMG, as manager of the Convocation Center, and any general partner of SMG, or any business entity or enterprise affiliated with SMG or any partner thereof, shall be of no force and effect without the approval of the University. The University hereby approves SMG to sell sponsorships in the Convocation Center or relating to Events to be presented therein, and the payment of commissions and cost of sales to SMG on the sale of any such sponsorships.

15.3 Prohibited Provisions. SMG shall not enter into any subcontract which purports to bind the University, the State or their respective officers or agents, nor shall it enter into any subcontract, containing any one or more of the following conditions:

- (a) Requiring the State or the University to maintain any type of insurance either for the State's or University's benefit or for the subcontractor's benefit;
- (b) Renewing or extending this Agreement beyond the initial term or continuing this Agreement's benefits from term to term;
- (c) Requiring or stating that the terms of the subcontractor's agreement shall prevail over the terms of this Agreement in the event of conflict;
- (d) Requiring the State or University to indemnify or to hold harmless the subcontractor for any act or omission;
- (e) Directly imposing interest, service or late payment charges on the State or University on payments not made within a certain time;
- (f) Requiring the application of the law of any state other than Ohio in interpreting or enforcing the contract;
- (g) Requiring any total or partial compensation or payment for lost profit or liquidated damages by the State or University if the contract is terminated before its scheduled expiration date;
- (h) Permitting unilateral modification of the Agreement by the subcontractor;
- (i) Binding the State or University to any arbitration or to the decision of any arbitration board, commission, panel or other entity or binding the State or University to bargain with any labor union;

(j) Directly obligating the State or University to pay damages, costs of collection or attorney's fees;

(k) Granting the subcontractor a security interest in property of the State or University; or

(l) Requiring any direct payment by the State or the University within a period of less than thirty (30) days after any invoice, due date or demand.

If the University approves a subcontract under the provisions of Section 15.2 hereof, the requirements of this Section 15.3 shall be deemed satisfied.

ARTICLE XVI **FINANCIAL PROVISIONS**

16.1 Basic Fee. The Basic Fee shall be payable in equal monthly installments on the first day of each month during each Operating Year of the term of this Agreement. SMG is authorized to pay the Basic Fee out of the Operating Account.

16.2 Incentive Fee.

(a) The Incentive Fee shall be payable for each Fiscal Year other than the Fiscal Year in which this Agreement expires without being extended. In the event this Agreement is terminated before it is scheduled to expire, calculation and payment of the Incentive Fee for the Fiscal Year in which such termination occurs shall be governed by the provisions of Section 8.3 hereof. The procedure for payment of the Incentive Fee shall be as follows: Within five (5) business days after the delivery of the Annual Statement by SMG to the University, the University shall pay SMG an amount equal to fifty percent (50%) of any Incentive Fee shown to be payable on such Annual Statement. If the University fails to make such payment within such five (5) business day period, then SMG shall have the right to pay itself such amount out of the Operating Account immediately without further authorization from the University. The University shall have fifteen (15) business days after its receipt of the Annual Statement to review the same and to object to the calculation of the Incentive Fee, if any, as may be shown thereon. If the University does not make any such objection within such fifteen (15) business day period, the Annual Statement shall be conclusively deemed to be approved by the University and the University shall be required to pay to SMG the remaining unpaid fifty percent (50%) of the Incentive Fee. If the University does not object to the calculation of the Incentive Fee as set forth in the Annual Statement within such fifteen (15) business day period and does not pay to SMG the remaining unpaid fifty percent (50%) of the Incentive Fee within five (5) business days after the expiration of such fifteen (15) business day period, then SMG shall have the right to pay itself any unpaid Incentive Fee out of the Operating Account immediately without further authorization from the University. If the University does object to the calculation of the Incentive Fee as set forth in the Annual Statement within such fifteen (15) business day period, then the University shall be required to state in reasonable detail the grounds for its objection and the amount of the Incentive Fee in dispute. Simultaneously with the delivery of any such objection, the University shall pay SMG any unpaid Incentive Fee which is not the subject of the University objection. If the University fails to do so, then SMG

shall have the right to pay itself any unpaid and undisputed Incentive Fee out of the Operating Account immediately without further authorization from the University.

(b) Any dispute regarding the calculation of the Incentive Fee shall be promptly referred for resolution to the certified public accounting firm reviewing the Annual Statement. Such accounting firm shall resolve such dispute by issuing its opinion as to the proper calculation of the Incentive Fee promptly after such dispute has been submitted to it. The determination of such accounting firm shall be final and binding on the parties.

(c) If SMG has the right to pay itself the Incentive Fee (or any portion thereof) out of the under the foregoing provisions of the Section 16.2, but there are not sufficient funds in the Operating Account to pay the Incentive Fee (or such portion), then the University shall, immediately after a request by SMG to do so, deposit into the Operating Account sufficient funds to pay the Incentive Fee (or such portion), or pay such unpaid Incentive Fee (or portion) to SMG directly.

16.3 Operating Budget. The Operating Budget for the first Fiscal Year beginning July 1, 2000 has been provided to and approved by the University. For subsequent Fiscal Years, the Operating Budget shall be prepared and submitted to the University not later than May 1. The University shall be required to comment on the Operating Budget within ten (10) days after the date it is submitted. If the University fails to object to the Operating Budget or any part thereof prior to the start of the Fiscal Year for which such Operating Budget has been prepared, the Operating Budget shall be deemed approved, subject to approval by the University's Board of Trustees. If the University objects to a part of the Operating Budget prior to the start of the Fiscal Year for which such Operating Budget has been prepared, then SMG shall make such changes in the Operating Budget as the University may request (provided such requests are not in contravention of the provisions hereof), and the Operating Budget, as so revised, shall become the approved Operating Budget for the Fiscal Year covered by such Operating Budget. SMG shall use its best efforts to conform the operation of the Convocation Center to the applicable Operating Budget, and shall keep the University informed, at least as often as monthly, as to any variation between actual figures and those set forth in the applicable Operating Budget. If the Board of Trustees of the University has not approved an Operating Budget prior to the start of the Fiscal Year for which it has been prepared, the previous Fiscal Year's Operating Budget shall continue to apply until the new Operating Budget has been approved by the Board of Trustees.

16.4 Operating Account. SMG shall deposit any and all Gross Revenue into the Operating Account and shall pay from the Operating Account the Basic Fee, the Incentive Fee (in the manner set forth in Section 16.2 above) and Operating Expenses. The Operating Account shall be established at a bank mutually agreed on by SMG and the University. The Operating Account shall be entitled "Cleveland State University Convocation Center Operating Account." Authorized signatories on the Operating Account shall be those designated by SMG and the Vice President for Finance and Administration of the University. Checks on the Operating Account shall require only one signature. Amounts to be paid out of the Operating Account shall be paid in the following order of priority;

(a) First, the Basic Fee shall be paid on the dates it is due and payable hereunder.

(b) Next, Operating Expenses shall be paid as such Operating Expenses become due and payable; provided, however, that the amount of any Operating Expenses incurred directly by SMG shall be reimbursed to SMG on a monthly basis. The University shall be reimbursed the University Reimbursement Amount for the amount of Operating Expenses incurred by the University for any Operating Year, even if the amount of Operating Expenses incurred by the University in any Operating Year is greater or less than the University Reimbursement Amount. The University Reimbursement Amount shall be paid out of the Operating Account to the University in equal monthly installments on the first day of each month during the term of this Agreement. In addition, all costs incurred by the University's Plant Services associated with post-event clean-up for special events ("Post-event Clean-up Costs") shall be reimbursed to the University's Plant Services and all costs incurred by the University's Plant Services over and above the University Reimbursement Amount and the Post-event Clean-up Costs shall be the responsibility of the University.

(c) Next, the Incentive Fee shall be paid on the dates it is due and payable hereunder, in accordance with the provisions of Section 16.2 hereof.

16.5 Deficits. If, at any time during an Operating Year, there are not sufficient funds in the Operating Account to make all the payments therefrom that are required to be made by the provisions of this Agreement (including payment of the University Reimbursement Amount), SMG shall so notify the University, specifying the amount of funds needed to make up any such shortfall (the "Shortfall"). The University shall pay the amount of the Shortfall into the Operating Account within five (5) business days after its receipt of such notice. Further, in order to assure the orderly payment of Operating Expenses and other amounts to be paid pursuant to the provisions hereof, (i) the University shall, within five (5) business days after the date this Agreement is executed by SMG and the University, pay into the Operating Account an amount sufficient to fund the Operating Account an amount sufficient to fund the Operation of the Convocation Center for the first month of the term of hits Agreement; and (ii) the University shall, by the 10th day of each calendar month after such initial funding, pay into the Operating Account such amount as the University and SMG agree is required to fund the operation of the Convocation Center for such month. Amounts deposited into the Operating Account by the University under this Section 16.5 shall be used to make the payments out of the Operating Account that are required to be made pursuant to the provisions hereof.

16.6 Capital Expenditures.

(a) SMG will submit to the University an annual capital improvement budget for the Convocation Center. Such budget will contain a cost/benefit analysis and will make recommendations based on safety issues and cost recovery opportunities. The University will use reasonable efforts to fund capital improvements recommended by SMG.

(b) SMG shall make a \$360,000 capital investment ("SMG Capital Investment") in the Convocation Center for the purchase of a Marquee and the erection and operation thereof ("Capital Improvements"). SMG shall prepare a budget and provide detailed plans for the University's review regarding any such Capital Improvements and shall provide a full accounting of all such expenditures. SMG shall solely be responsible for implementing such purchase and performing all work (including construction) in connection with the Capital

Improvements. SMG shall provide frequent updates to the University. The SMG Capital Investment shall be amortized on a non-cash, straight-line basis over a fifteen (15) year period. The net revenue (gross revenue less up to 15% commission) generated in connection with the Marquee shall be applied as follows:

1. To SMG to offset the cost of the basketball floor changeover, which cost shall not exceed \$70,000; and
2. To the University (it is understood that SMG shall be solely entitled to sell all sponsorship rights relating to the Marquee).

(c) In the event of the expiration or termination of this Agreement for any reason, the University shall pay, or cause any successor management company to pay, to SMG unconditionally and without set-off the un-amortized amount of the SMG Capital Investment existing as of such expiration or termination. The payment of any such un-amortized amounts shall be made to SMG no later than thirty (30) days following the effective date of such expiration or termination.

ARTICLE XVII **BOND**

17.1 **Obligation of SMG.** In order to assure the performance by SMG of its obligations hereunder during the initial five (5)- year term of this Agreement (assuming this Agreement is extended under Section 3.1(b) hereof), SMG shall be required to furnish a surety bond for the benefit of the University in the amount of \$500,000 each Operating Year during such term. Notwithstanding the foregoing, during the last month of the second, third and fourth Operating Years, the parties shall consult with one another concerning the necessity of continuing the bond required by the provisions of this Section 17.1. If the parties agree that continuation of the bond is not necessary, then SMG shall not be required to continue to provide the bond as required by the provisions of this Section. Such bond shall be issued by a reputable surety company licensed to do business in the State of Ohio and reasonably satisfactory to the University. The cost incurred by SMG in obtaining such bond shall be paid out of the Operating Account. Such bond may be drawn by the University only in the event the University has notified SMG of a default hereunder in accordance with the provisions of Section 8.1(a)(ii) hereof and SMG has failed to cure such default within the time periods provided for in Section 8.1(a)(ii). In such event, the University shall have the right to draw on the bond only to the extent that the University may have suffered direct damages resulting from SMG's uncured default hereunder.

ARTICLE XVIII **FINANCIAL STATEMENTS**

18.1 **Monthly Statements.** Within twenty-five (25) days after the end of each month of each Operating Year, SMG shall furnish the University with an Operating Statement for the month just ended and for the Fiscal Year to date. In addition, the University will have full access currently to all financial information relating to the operation of the Convocation Center, and SMG will be available for not less than bi-weekly meetings with the University Representative to discuss financial performance.

18.2 Annual Statement. SMG shall provide the University with an Annual Statement within ninety (90) days after the end of each Fiscal Year ending within an Operating Year and within ninety (90) days after the last Operating Year of the term hereof. The Annual Statement shall be reviewed by a certified public accounting firm which has been mutually approved by the University and SMG. The costs of such Annual Statement shall be paid for out of the Operating Account. The University shall be deemed to have approved the Annual Statement for any Fiscal Year if it does not object thereto within ninety (90) days after the University receives such Annual Statement. The University shall have the right, upon reasonable notice to SMG, to inspect the books and financial records of SMG respecting the management and operation of the Convocation Center. SMG agrees to retain all books, records and other documents relating to this Agreement for five (5) years after the termination hereof.

ARTICLE XIX
COMPLIANCE WITH LAWS, REGULATIONS & ORDINANCES

19.1 Compliance. SMG shall comply with all applicable laws, regulations and ordinances of federal, state and local governments as pertain to the operation of the Convocation Center and Events scheduled therein by SMG. Further, SMG shall abide by all University regulations which govern facility use, communications and other related matters. The costs incurred by SMG pursuant to this Section 19.1 shall be paid out of the Operating Account. Notwithstanding the foregoing, SMG shall have no obligation to comply with laws or University regulations under the provisions of this Section 19.1 to the extent the University may have the responsibility for such compliance and for the payment of the cost thereof pursuant to the other provisions of this Agreement, it being understood and agreed that SMG shall in no event be required to make any alterations to the Convocation Center or to make any capital expenditures (collectively, "Legally Required University Repairs"). The University shall, at its expense, pay the cost of all Legally Required University Repairs except to the extent that there are funds available to pay such cost in the capital expenditure line item of the then applicable Operating Budget.

ARTICLE XX
USE OF UNIVERSITY'S NAME AND CREDIT

20.1 University's Name and Credit. Except as specifically permitted by the provisions of this Agreement or as necessarily related to publicity for the Convocation Center or the Events to be presented therein, SMG shall not in any manner use the name, logo or implied credit of the University in its business operations. SMG shall have the right to advertise and publicize the fact that it is operating and managing the Convocation Center.

ARTICLE XXI
NON-DISCRIMINATION BY CONTRACTOR

21.1 No Discrimination.

- (a) During the term of this Agreement, SMG agrees as follows:
 - (i) SMG will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or

national origin is a bona fide occupational qualification reasonably necessary to the normal operation of SMG. SMG agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(ii) SMG, in all solicitations or advertisements for employees placed by or on behalf of SMG, will state that SMG is an equal opportunity employer.

(iii) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.

(b) SMG will include the provisions of (a) above in every subcontract or purchase order over Ten Thousand Dollars (\$10,000), so that the provisions will be binding upon each subcontractor or vendor.

ARTICLE XXII **NON-ASSIGNMENT; NO PERSONAL LIABILITY**

22.1 Non-Assignment. Except as specifically provided herein, SMG shall not have the right to assign its rights or delegate its duties hereunder except with the prior written consent of the University. Further, nothing in this Agreement shall be construed by the parties as pledging the credit of the University or the State to meeting any of the obligations herein.

22.2 No Personal Liability. The obligations and liabilities of SMG hereunder are limited to the partnership assets of SMG and no general partner of SMG shall have liability or responsibility with respect to any or all of said obligations and liabilities.

ARTICLE XXIII **MISCELLANEOUS**

23.1 Modification. Any change affecting the terms and conditions of this Agreement shall not be valid unless explicitly set forth in writing and signed by the parties hereto.

23.2 Notices. All notices provided for herein shall be in writing and delivered by hand or by Federal Express or other recognized overnight delivery service, with receipt therefor, to the address of the party to whom such notice is addressed, as set forth above in the preamble to this Agreement, unless notice of a change of address is given pursuant to the provision of this Section 23.2.

23.3 Damage to the Convocation Center. If the Convocation Center is damaged or destroyed by fire, flood or any other casualty to the extent that the University is unable to make the Convocation Center available for Events scheduled by SMG, the University shall not be liable to SMG or any promoter, subcontractor or performer for any damages caused thereby. If necessary repairs cannot be made for any reason within 180 days after the date of the casualty, either SMG or the University shall have the right to terminate this Agreement upon not less than thirty (30) days' prior written notice to the other. Upon such termination, the provisions of Section 8.3 hereof shall apply.

23.4 Waiver By the University. No delay or omission by the University in exercising any right in any of the Agreement terms shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude the University from any or further exercise of any other right or remedy provided for hereunder. The University may itself cure any default without waiving the default and such cure shall not constitute a waiver of any prior or subsequent default.

23.5 Waiver By SMG. No delay or omission by SMG in exercising any right in any of the Agreement terms shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude SMG from any or further exercise of any right or remedy. SMG may itself cure any default without waiving the default and such cure shall not constitute a waiver of any prior or subsequent default.

23.6 Severability. In the event any portion of this Agreement shall be finally determined by any court of competent jurisdiction to be invalid or unenforceable, such provisions shall be stricken and this Agreement, as modified, shall continue in full force and effect.

23.7 Headings. All headings contained herein are for clarification and convenience of reference only and are not intended to limit the scope of any provisions of this Agreement.

23.8 Bind and Inure. This Agreement shall be binding on, and shall inure to the benefit of, the parties hereto and their permitted successors and assigns.

ARTICLE XXIV **APPROPRIATIONS**

24.1 Condition. It is understood and agreed by the University and SMG that the performance by the University of its obligations hereunder is subject to the University's receiving from the State sufficient funds to perform such obligations. Accordingly, if, at any time during the term hereof, the State does not make available to the University sufficient funds to permit the University to satisfy its obligations hereunder, the University shall promptly so notify SMG. Upon the giving and receipt of such notice, either party hereto shall have the right to terminate this Agreement by written notice to the other. Upon any such termination, neither party hereto shall have any further liability to the other hereunder except as set forth herein, and the provisions of Section 8.3 shall apply.

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

CLEVELAND STATE UNIVERSITY

By _____

Title _____

Date _____

SMG

By _____

Title _____

Date _____

Exhibit List

A - Existing Contracts (Section 7.7)

Exhibit A

CSU Convocation Center – Existing Contracts

1. Cleveland Crunch Soccer Agreement
2. Ticketmaster Ohio Agreement
3. IATSE, Stagehand Union, Local 27 Labor Agreement
4. IATSE, Treasurers and Ticket Sellers Union, Local 756 Labor Agreement
5. Hall Entertainment Security Agreement