

AMPHITHEATER DEVELOPMENT AND OPERATING AGREEMENT

DATED AS OF _____, 2017

BY AND BETWEEN

THE CITY OF BRIDGEPORT, CONNECTICUT (“City” or “Owner”)

AND

HARBOR YARD AMPHITHEATER, LLC (“HYA” or “Operator”)

AMPHITHEATER DEVELOPMENT AND OPERATING AGREEMENT

THIS AGREEMENT (the "**Agreement**") dated as of _____, 2017 entered into by and between the **City of Bridgeport**, Connecticut, a municipal body corporate and politic and a political subdivision of the State of Connecticut (the "**City**"), having an address at 45 Lyon Terrace, Bridgeport, CT 06604 and **Harbor Yard Amphitheater, LLC**, a limited liability company organized and existing under the laws of the State of _____, having its principal place of business at _____ ("**HYA**" or "**Operator**").

RECITALS:

A. The City is the owner of a baseball stadium commonly known as the Ballpark at Harboryard (the "**Ballpark**") that has been the home field for an Independent League baseball team since 1998 known as the Bridgeport Bluefish ("**Bluefish**").

B. The Stadium Management and Operations Agreement between the City and the Bluefish expired at the end of the 2016 baseball season but the parties entered into a one-year extension of that agreement that has now ended and the Bluefish are in the process of vacating the Facility.

C. In an attempt to determine the future use of the Facility, the City issued a Request For Proposals in early 2017 (#PEB807173R) ("**RFP**"), which is incorporated by reference as if fully set forth herein.

D. The City received a number of proposals in response to the RFP, including a proposal from the Bluefish, but decided, in light of the estimated \$26,000,000 cost associated with renovating or rebuilding the Ballpark for continued baseball operations, to select the proposal submitted by HYA and Live Nation, which is incorporated by reference as if fully set forth herein, a portion of which is recognized as confidential as HYA business or trade secrets protected from disclosure pursuant to the Connecticut Freedom of Information Act ("**Proposal**"). Howard Saffan, HYA's principal and owner, is a life-long Connecticut resident, has extensive business interests and experience in Connecticut as the owner of SportsCenter of Connecticut in Shelton, Connecticut, is an active commercial real estate developer, and, is the former President of the Webster Bank Arena from 2011 - 2015, has a relationship with Live Nation Entertainment, a Fortune 300 company ("**Live Nation**").

E. HYA has entered into a contractual, strategic relationship with Live Nation, the world's leading concert promoter of live music events and festivals that it promotes at amphitheaters that it operates or owns, including the Chevrolet Theater in Wallingford, CT, a relationship that makes the HYA/Live Nation combination capable of attracting and presenting a high level of top-tier entertainment events at the Facility during the warm weather months, that is, from mid-April and extending through mid-October.

F. Live Nation operates and/or books 196 entertainment venues across the world with over 50 amphitheaters and over 100 theaters and clubs such as the House of Blues, The Fillmore, and the Hollywood Palladium.

G. HYA and Live Nation project that the Amphitheater will host 20 – 30 concerts and 50-75 other events of various types (including festivals, expositions, sports events, community events, religious events, etc.) on an annual basis. Live Nation will participate in the Amphitheater endeavor as the exclusive concert promoter, Live Nation and HYA will jointly participate in events that other promoters bring to the Amphitheater, and HYA will promote all other non-concert events (e.g., graduations, exhibits, family shows, etc.)

H. In order to provide a first-class venue to match the high quality of Live Nation events, HYA proposes to renovate the Facility into a modern, luxurious and high-profile amphitheater venue (the “**Amphitheater**” or the “**Facility**”) that is projected to open in the Spring of 2019. HYA and the City have agreed to a maximum hard construction budget of Fifteen Million (\$15,000,000) Dollars, with HYA and the City each contributing Seven Million Five Hundred Thousand (\$7,500,000) Dollars in capital, exclusive of soft costs. The City and HYA will mutually agree on the Amphitheater design that will include as a central design feature a tensile fabric roof over the former grandstands, concourse, premium seating (clubs, skyboxes) and performance area that will greatly reduce or eliminate the historic water-intrusion problem in the Ballpark and thus reduce the historic demands on the City’s capital funds. Upon completion of the renovation project, the City will own all of the improvements made by both parties to create the Amphitheater as well as all furniture, fixtures and equipment incorporated therein. The City continues to own all baseball-related infrastructure and equipment from the Facility and has the right to use or re-use such items at other stadiums or fields or to dispose of any items of such infrastructure and equipment in its sole discretion.

I. HYA will operate the Amphitheater and expects to bring high-value and prominent entertainers that will help to promote, attract, stimulate, develop, grow and expand other business, commerce and tourism opportunities within the City while drawing concert-goers from Connecticut, New York and Rhode Island. The economic impact to the City is anticipated to exceed \$50,000,000 annually.

J. The development and promotion of the Amphitheater on public property owned by the City will provide significant benefits to the general public including (i) construction contracts to local minority contractors and open-shop contractors, (ii) temporary construction jobs and (c) permanent Amphitheater jobs to Bridgeport residents. Based on the projected number and quality of events, there will be significant direct and indirect economic impacts to the City of Bridgeport due to increased demand for goods and services from local contractors, suppliers, vendors and retailers that HYA intends to utilize. HYA has already designated numerous local companies, including minority-owned companies, for construction work and as food and beverage vendors. HYA views the use of recognized, local businesses and the use of their goods and services as essential to the success of this local venue. Increased demand for goods and services will result in more local employment. HYA intends to hire approximately 16 full-time and 305 part-time employees and will focus on hiring from the Bridgeport labor pool to the greatest extent possible and expects that the economic impact of Amphitheater operations will create an additional 900 jobs in the region.

K. HYA expects that the retrofitting and new construction involved in the creation of the Amphitheater from the existing structure and layout of the Facility will have a one-time impact on the economy in terms of the creation of approximately 258 construction jobs, resulting in the use of union labor and union shops based on HYA's relationships with and ongoing commitment to the skilled trades.

L. In addition to committing approximately 50% of construction dollars to union shops, HYA has agreed to use Good Faith Efforts, as defined in the City of Bridgeport's Minority Business Enterprise Ordinance ("**MBE Ordinance**"), to employ qualified minority subcontractors in order to achieve or exceed the mandatory requirements (6% African-American subcontractors in construction) and goals (15% MBE and 15% WBE in total) contained in the MBE Ordinance. The City's Minority Business Resource Office will monitor and report on the use of Good Faith Efforts in all hiring activities and the results achieved.

M. In light of the foregoing, the City has determined that entering into this Agreement to create the Amphitheater represents the prospect of significant economic and employment impacts that will benefit the City, its residents, MBE businesses and the skilled trades, will have a significant positive spillover effect on local business, commerce and tourism, is in the best interests of the City and the welfare of its residents, and is in accord with valid public purposes.

The above recitals are incorporated into and made a part of this Agreement as if fully set forth in the body thereof.

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

ARTICLE I
DEFINITIONS; PARTY REPRESENTATIVES AND
THEIR RESPECTIVE SCOPES OF AUTHORITY;
SUBSTANTIVE CHANGES

1.1 Definitions.

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

"**Amphitheater Premises**" shall mean the approximately 7.8176 Ac. parcel of real property and improvements described as "Lot No. 1" on that certain Subdivision Map of Property Located on Broad Street & South Frontage Rd, dated January 14, 2000, rev'd 6-29-00, Scale 1" = 60', prepared by Kasper Group, Inc.,

Bridgeport, Connecticut, a copy of which is attached hereto and made a part hereof as **Schedule A.**

“Approval” or **“Approve”** shall mean the City’s right to receive prior notice of (a) an HYA request to modify a term or condition of this Agreement or (b) a request that is stated herein to require the City’s “Approval”, and the City’s right to grant, deny or condition its written approval of an action in the manner set forth in this Agreement, which request for action or approval the City agrees to consider and promptly act upon in the exercise of its commercial business judgment, reasonably exercised.

“Approved Form of Communication” shall mean, as to any communication required or desired to be given in this Agreement, a written notice or other communication delivered to the other party at the physical address given herein for notice and transmitted (a) by hand, (b) by a recognized overnight delivery service, (c) by certified mail delivered through the United States Postal Service, or (d) by email or facsimile to the email address or facsimile phone number given herein provided, however, that a copy of such email or facsimile must be delivered promptly to the physical address for delivery set forth herein through one of the other Approved Forms of Communication.

“Capital Item” shall mean expenditures for any or all capital installations, alterations, improvements, to the Amphitheater structure or building systems, and purchases of additional or replacement furniture, fixtures or equipment at the Amphitheater that are required for the operation thereof or improvements to the same (but not ordinary maintenance) that extend the depreciable life thereof, the depreciable life of which according to Generally Accepted Accounting Principles is five (5) years or more and costs in excess of Twenty-five thousand (\$25,000) Dollars that is for the benefit of the Amphitheater plant and operation itself and does not inure exclusively to any individual person or entity, the purchase or acquisition of which HYA shall competitively procure in a manner reasonably satisfactory to the City.

“Capital Repair & Replacement” shall mean the furnishing or replacement of a Capital Item or a modification, repair or addition that will extend the depreciable life of a Capital Item (but not ordinary maintenance) from funds contained in the Capital R&R Account.

“Capital Repair & Replacement Account” or **“Capital R&R Account”** shall mean that certain segregated bank account owned jointly by the parties during the entire Term of this Agreement to be used for the construction of the Amphitheater and furnishing or replacement of a Capital Item.

“Capital Repair & Replacement Contributions” shall mean funds generated through the Rent or PILOT payments in excess of Two Hundred Fifty Thousand (\$250,000) Dollars per year up to a maximum of One Million (\$1,000,000) Dollars or such greater amount that may be needed in the near future pursuant to the Facility Condition Report to address the need for anticipated Capital Repair & Replacement of Capital Items.

"City Events" means non-commercial events conducted, sponsored or co-sponsored by the City pursuant to this Agreement.

"City Parking Lot" shall mean that certain City-owned surface lot or lots comprising approximately 3-Ac. in size located on Broad Street directly across the street from the Facility.

"City Representative—Administration" shall mean the Director of the Office of Planning and Economic Development.

"City Representative—Facility" shall mean the Director of the Department of Public Facilities.

"Completion Date" shall mean the approximately 18-month period agreed to by the parties to achieve substantial completion of the Amphitheater measured from the date that the first building permit is issued.

"Construction Budget" shall mean the sum of up to Fifteen Million (\$15,000,000) Dollars for the renovation of the Ballpark into the Amphitheater, to be shared equally by the parties, exclusive of design costs.

"Emergency Repair" shall mean any condition or situation that threatens (or if not promptly acted upon will threaten) the health, safety or welfare of users of the Amphitheater or its structure or systems 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 from the Capital R&R Account unless such account is insufficient to address such Emergency Repair in which case the City will reimburse HYA for such repair within thirty (30) days of request for reimbursement.

"Environmental Condition" shall mean 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 Amphitheater site in violation of the Environmental Laws.

"Environmental Laws" shall mean 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.

"Event" shall mean all entertainment, cultural, civic, sporting and other activities, performances and shows that are described in the Proposal and in this Agreement that are conducted at the Amphitheater, whether or not revenue is generated therefrom, and whether or not they are promoted by Live Nation, by Live Nation and

HYA jointly, or by HYA alone that are consistent with the Permitted Uses and provided that the legal capacity of the Amphitheater does not exceed its permitted legal occupancy without the prior Approval of the City or any agency having jurisdiction.

"Event Parking" shall mean the City's obligation to provide adequate 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 Amphitheater to satisfy the legal requirements of the Amphitheater.

"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 Amphitheater and that (i) will be reimbursed by the user or promoter, if any, 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 Amphitheater 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 the Event. The Operator shall charge only Event-Related Expenses to the City for a City Event.

"Facility Condition Report" shall mean a study prepared by an appropriate consultant familiar with facilities like the Amphitheater to determine the long-term capital needs for the Amphitheater so that the parties can take appropriate action and prioritize the use of and amounts necessary to be available in the Capital Repair & Reserve Account, which report shall be conducted during the 6th year of this Agreement and the cost of which shall be paid from the Capital Reserve & Replacement Account.

"Facility Maintenance Program" shall mean a program of ordinary maintenance activities developed by the Operator and Approved by the City that will ensure regular attention to, cleaning, inspecting, parts replacement, lubricating and other activities involving the physical plant, all building systems, and the FF&E constituting the Amphitheater from time to time.

"Furniture, Fixtures & Equipment" or **"FF&E"** shall mean the furniture, fixtures and equipment to be identified on **Exhibit 4** to be purchased by the Operator on the City's behalf as part of the Construction Budget, including the useful life of each, that the City will own as part of the Amphitheater immediately upon installation.

"Hazardous Materials" shall mean 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.

“HYA” shall mean HYA acting as the Operator and the City’s agent with respect to construction of the Amphitheater.

“HYA Representative” shall mean HYA’s designee in writing.

“Impositions” shall mean all governmental assessments, franchise fees, excises, license and permit fees, levies, charges and taxes, general and special, real or personal, 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 Amphitheater; (b) any payments received from any holders of a leasehold interest or license in or to the Amphitheater, from any guests or from any others using or occupying all or any part of the Amphitheater; 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 Amphitheater. 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); (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.

“Live Nation” shall mean the concert promoter for the Amphitheater pursuant to a separate contract between Live Nation and HYA.

“Park City Communities Parking Lot” shall mean the approximately 3.3-Ac. surface lot located on Broad Street across from the Facility owned by Park City Communities (formerly the Housing Authority of the City of Bridgeport).

“Parking Lot(s)” shall mean, singly, either the City Parking Lot or the Park City Communities Parking Lot and when used as a plural term, both the City Parking Lot and the Park City Communities Parking Lot.

“Parking Lot Operator” shall mean the City of Bridgeport generally but shall also include HYA, its affiliate or subcontractor for the limited purpose of managing the Parking Lots for as long as the City owns them, or otherwise, the right of HYA to manage the loading-in and loading-out of Event patrons at the Amphitheater, including the ability to perform such activities for Events (a) at any public or private development that occurs on the City Parking Lot and/or the Park City Communities Parking Lot or (b) in connection with the construction of a public parking garage to be used on a non-exclusive basis for patrons of the Amphitheater and other venues to the extent that the City, using commercially-reasonable efforts, is able to reserve for HYA such loading-in

and loading-out ability in connection with the negotiation of future development activities.

“Permitted Uses” shall mean the use of the Amphitheater Premises in accordance with all applicable laws and consistent with this Agreement as a state-of-the-art music concert and event amphitheater containing approximately five thousand five hundred (5,500) permanent seats or as many attendees as may be permitted by law or as may be otherwise limited by this Agreement, twenty (20) luxury suites, three (3) VIP clubs/lounges, an outdoor barbeque terrace, VIP parking and such other features and amenities as the parties may agree to and the City may Approve at the inception of this Agreement and from time to time thereafter during the Term.

“PILOT” shall mean HYA’s annual contribution for the right to operate the Amphitheater in lieu of all rental, usage fees, taxes, Sales Taxes or Impositions consisting of the sum of Three (\$3.00) Dollars per manifested concert ticket sold for Amphitheater Events, which amount shall increase by Twenty-Five (\$0.25) Cents at the beginning of the 6th, 11th, and 16th years of the Term, and during the 1st and 6th years of the First Renewal Term and during the 1st and 6th years of the Second Renewal Term, with the minimum payable to the City during each year being One Hundred Fifty Thousand (\$150,000) Dollars. Any PILOT amount that exceeds \$250,000 in a year shall be contributed to the Capital R&R Account to be used for Capital Repair & Replacement.

“Premium Seating” shall mean the skybox and/or club seats, suites and club or other premium seats in areas at the Amphitheater designated by the Operator and the City that 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 and shall not be considered manifested seating for purposes of ticket sales under the PILOT calculation.

“Rent” shall mean the PILOT paid under this Agreement.

“Sales Taxes” shall mean 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.

“Schedule” shall mean the construction schedule applicable to the renovation of the Facility and the construction of the Amphitheater attached or to be attached hereto and made a part hereof as **Exhibit 1**.

“Schedule of Values” shall mean the percentage of completion of the Amphitheater construction certified by the project architect that will determine the timing of the City’s payment of capital contributions toward construction of the Amphitheater as more particularly described herein that will be determined when the Construction Budget is approved and will be attached as **Exhibit 3** and made a part hereof.

“Substantial Completion” shall mean the date that the Amphitheater construction is sufficiently complete to allow legal occupancy thereof, evidenced by the issuance of a certificate of occupancy.

“**Year**” shall mean a calendar year beginning on January 1 and ending on the following December 31 during the Term of this Agreement, including any period shorter than a year occurring during the initial Year of the Term following the Substantial Completion of the Amphitheater and any period shorter than a year occurring during the final Year of the Term.

1.2 Party Representatives.

(a) City Representative(s). At the inception of this Agreement, the City Representative—Administration shall be Mr. Thomas Gill, with respect to the day-to-day administration, coordination, accounting, compliance, reporting and planning under this Agreement. At the inception of this Agreement, the City Representative--Facility shall be Mr. John Ricci with respect to the condition, maintenance and repair of the physical plant and equipment that are part of the Facility.

(b) HYA Representative. At the inception of this Agreement, Mr. Howard Saffan shall be the HYA Representative.

(c) Any change to a City Representative or to the HYA Representative shall be made in writing with an Approved Form of Communication defined herein.

1.3 Substantive Changes.

(a) Substantive changes to this Agreement may only be made with the Approval of the Bridgeport City Council. Changes to this Agreement, whether made orally or in writing, that have not been Approved by the City Council authorizing an amendment to this Agreement, shall be void and unenforceable against the City.

(b) HYA may not request, and the City is not obligated to ensure or assure affirmative or desired action from a duly-constituted department, agency, commission, or representative of the City of Bridgeport government or of the State of Connecticut acting in the exercise of its, her or his statutory, regulatory or enforcement capacity, such as, for example, the Zoning Department, the Tax Assessor, the Fire Marshal, the Building Official, and the like.

ARTICLE II
GRANT OF LICENSE, TERM, RENT,
USE OF AMPHITHEATER PREMISES;
INDEMNIFICATION AND INSURANCE

2.1 Grant of Use and License; Engagement of Operator; Authority of Operator.

(a) Provided that HYA is not in material default (beyond applicable notice and cure periods) of its obligations under this Agreement, the City hereby directly and independently grants to HYA the license and right to use and occupy the Amphitheater Premises that includes the Facility commencing thirty (30) days following the execution of this Agreement or on such other date set forth in writing between the parties ("**Commencement Date**"), including HYA's obligation to take steps to winterize the Facility, install a security fence, and employ other measures to protect the Facility, subject to the terms, conditions, covenants and provisions of this Agreement, during the Term for the Permitted Uses in accordance with and subject to the terms and conditions hereinafter set forth (the "**License**"). The License granted herein shall be the exclusive grant of use of the Amphitheater directly by the City for the presentation of events that constitute the Permitted Uses.

(b) The City acknowledges that it selected HYA as a result of the RFP to be the principal developer and user of the Amphitheater during the Term, subject to the terms, covenants and conditions of the Agreement and applicable law.

(c) Engagement of Operator.

The City hereby appoints the Operator as the sole and exclusive manager and operator of the Amphitheater during the Term hereof and authorizes the Operator to exercise such powers as may be necessary and appropriate for the management of the Amphitheater 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 amphitheater management firm and/or to subcontractors or agents with the Approval of the City, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, no Approval shall be required for the Operator's delegation of such duties to Affiliates of the Operator, and nothing herein shall restrict or limit the Operator's other rights of assignment under this Agreement except for those that require City Approval.

(d) 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 pursuant to the terms of this Agreement. The powers of the Operator with respect to the Amphitheater 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 Amphitheater for events, including licensing at below-market or subsidized rental rates to charitable, educational or civic groups, in the reasonable discretion of the Operator; the promotion or co-promotion of Events; the repair, maintenance and improvement of the Amphitheater; 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; the operation of the Parking Lots as Parking Lot Operator , and any and all other activities related, in the reasonable judgment of the Operator, to the operation, maintenance and improvement of the Amphitheater. Throughout the Term 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 Amphitheater. No party shall be required to inquire into the authority of the Operator to enter into any of the aforesaid agreements that are consistent with this Agreement.

2.2 City Representative Responsibilities and Authority.

The City Representative--Administration is the City's principal authorized representative who shall act as liaison and contact person between the City, the City Representative--Facility, and HYA in administering and implementing the terms of this Agreement. The City Representative--Administration, shall respond to HYA's requests for review, Approval (as to matters requiring Approval) or waivers within fifteen (15) business days after submittal unless a response to such request is in response to an needed Emergency Repair, in which case the response shall be as soon as possible, or if it requires a longer period of consideration the City will be afforded up to thirty (30) days unless the request involves the need for Approval from the Bridgeport City Council. All administrative and ministerial consents or Approvals required of the City (unless such Approval must be granted by the Bridgeport City Council) shall be given by the City Representative--Administration on behalf of City. The Operator and any other person dealing with the City in connection with this Agreement or any matter governed by this Agreement may rely upon and shall be fully protected in relying upon the authority of the City Representative--Administration to act for and bind City in any such matter within and only to the extent of the authority delegated to the City Representative—Administration by this Agreement.

2.3 Operator Representative Responsibilities and Authority.

The Operator Representative shall 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 elected officer of the Operator, by providing written notice thereof to the City. The Operator Representative, or such authorized designee, shall respond to requests for review, consents or waivers within ten (10) business days after submission. The City may rely upon and shall be fully protected in relying upon the authority of the Operator Representative or any such proper designee to act for and bind the Operator in any such matter.

2.4 Permitted Uses.

Provided that HYA is not in default of its obligations under this Agreement during the Term, HYA shall be permitted to use the Amphitheater Premises for the Permitted Uses set forth herein.

2.5 Term of License; Renewals.

(a) This Agreement shall be effective as a binding contract as of the date that a fully-executed original of this Agreement, consistent with the City Council approval of this matter, is delivered by HYA, but HYA's right and obligation to use the Facility, HYA's duties and obligations hereunder, and therefore the term of this Agreement (the "**Term**") shall not begin until the Commencement Date and shall end twenty (20) years after the date of Substantial Completion unless extended in the manner provided herein.

(b) The Term may be renewed for an additional ten (10) year period ("**First Renewal Term**"), provided that HYA is not in Default beyond any applicable grace or cure period provided hereunder or has not, at the time that HYA requests such renewal, committed an act, which with the giving of notice or the passage of time would constitute a Default hereunder. HYA may request renewal by notice no earlier than 365 days prior to the expiration of the Term and no later than 180 days prior to the expiration of the Term and, provided that HYA has observed and performed the material terms and conditions of this Agreement at the time of giving notice, the City shall grant such request.

(c) The Term may be renewed for a second additional ten (10) year period following the expiration of the First Renewal Term ("**Second Renewal Term**"), provided that HYA is not in Default beyond any applicable grace or cure period provided hereunder or has not, at the time that HYA requests such renewal, committed an act, which with the giving of notice or the passage of time would constitute a Default hereunder. HYA may request renewal by notice no earlier than 365 days prior to the expiration of the First Renewal Term and no later than 180 days prior to the expiration of the First Renewal Term and, provided that HYA has observed and performed the material terms and conditions of this Agreement at the time of giving notice, the City shall grant such request.

2.6 Rent or PILOT; Increases; Excess Amounts to Capital R&R Account; Process.

(a) The rent or other compensation payable to the City shall be determined and be payable on the basis of the Operator's payment of Three (\$3.00) Dollars per manifested concert ticket sold for the first five (5) years of the Term, which amount shall increase by an additional Twenty-five (\$0.25) Cents per ticket sold in the 6th, 11th and 16th Seasons ("**PILOT**"), which amount shall increase again by Twenty-Five (\$0.25) Cents at the beginning of the 1st and 6th years of the First Renewal Term and again at the beginning of the 1st and 6th years of the Second Renewal Term. "**Tickets Sold**" shall mean manifested tickets sold for concert Events but shall not include (a) a reasonable number of complementary tickets that the performer approves for distribution at the performer's Event, if any, and (b) Premium Seating. The Operator guarantees a

minimum PILOT payment of One Hundred Fifty Thousand (\$150,000) Dollars per Year during the Term.

(b) The Operator believes that, based upon the prevailing business and financial arrangements that prevail in the concert industry and that the entertainment talent dominate, the City's 5% admissions tax is an impediment to obtaining the high quality and number of Events that will be willing to perform at the Amphitheater because it directly and adversely affects the gross receipts from concert events. In order to avoid the consequences of imposing the City's admissions tax, the Operator believes that exemption from the admissions tax will ensure the high quality and number of Events that will be attracted to the Amphitheater and will enhance greater PILOT revenue payable to the City and into the Capital Repair & Replacement Account that will substantially offset the City's admissions tax. The Operator therefore requests that the City seek a partial exemption from the City's admissions tax for concert events only within six (6) months after the Commencement Date.

(c) All PILOT payments in excess of Two Hundred Fifty Thousand (\$250,000) Dollars during a Year shall be deposited into the Capital Reserve & Replacement Account until the Capital Repair & Replacement Account reaches a total of One Million (\$1,000,000) Dollars or such greater amount as may be anticipated for the replacement of Capital Items pursuant to the Facility Condition Report, and amounts collected in excess of such amount shall be paid into the City general fund.

(d) PILOT amounts shall be paid monthly for concerts performed in the prior month.

(e) On February 15 of each Year during the Term, the Operator shall prepare and present to the City a report as to the physical condition of the Amphitheater Premises and whether any Capital Repairs are anticipated in the current or upcoming Year. The Operator and the City shall mutually decide what expenditures should be authorized to be made from the Capital Repair & Reserve Account. The Operator may make Emergency Repairs to the Amphitheater Premises without the City's authorization so long as the Operator provides sufficient information promptly thereafter reasonably acceptable to the City, and provided, further, however, that with respect to Emergency Repairs in excess of \$25,000, the City shall immediately upon receipt of such sufficient information authorize the reimbursement from the Capital R&R Account of the amount so expended; provided, however, that if the Capital Repair & Reserve Account balance is insufficient to pay for such Emergency Repair, the City shall reimburse the Operator for the costs thereof within thirty (30) days of notice and invoice from the Operator that it has incurred such Emergency Repair.

(f) For the avoidance of doubt, Capital Repairs and Replacements costing \$25,000 or less shall be the sole and exclusive responsibility of the Operator and Capital Repairs and Replacements costing in excess of \$25,000 shall be the sole and exclusive responsibility of the City, in each case regardless of whether the cash balance existing from time to time in the Capital R&R Account is sufficient to pay for such Capital Item.

2.7 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 Amphitheater 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 Amphitheater (or any portion thereof) due to any negligence of the Operator, its officers, directors and employees from and after the Commencement 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, by a court of competent jurisdiction, 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 beyond any applicable cure period, (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, but excluding any claim, action or proceeding against the City.

2.8 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 that any Operator Indemnitees may suffer or sustain or that 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 construction 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 Commencement Date, (v) the existence of any Environmental Condition relating to the Facility or violation or alleged violation of any Environmental Laws, except to the extent that the Operator has been finally determined, through a court of competent jurisdiction, to have caused such Environmental 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 beyond any applicable cure period; (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.

2.9 Insurance.

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

2.10 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.

2.11 Survival.

The provisions of this indemnification provision shall survive the termination or expiration of this Agreement.

2.12 Operator Insurance.

(a) Casualty. The City shall be obligated to obtain and maintain the following casualty insurance. However, starting on the Commencement Date, if the City has not provided evidence of such insurance, the Operator shall obtain and maintain insurance against loss or damage to the Facility or to the Amphitheater upon its Substantial Completion 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 or to the Amphitheater upon its Substantial Completion and the FF&E contained therein. Full replacement cost shall be determined at reasonable intervals by the City's or the Operator's insurer, as the case may be, or other appraiser mutually acceptable to the Operator and the City.

(b) Business Interruption. Starting on the Commencement 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 Amphitheater 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.

(c) **Liability.** Starting on the Commencement 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 Seven Million Dollars (\$7,000,000) combined single limit, naming the City, and its elected and appointed officials and 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 insured parties **by policy endorsement**. This insurance 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.

(d) **Workers Compensation.** The Operator shall obtain and maintain workers' compensation insurance complying with the statutory requirements of the State of Connecticut 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.

(e) **Other Operator Insurance Coverage.** From and after the Commencement 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 entertainment facilities.

2.13 City Insurance.

(a) 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 that shall provide coverages against claims for personal injury, bodily injury, death and property damages arising from the conduct of the City Event at the Amphitheater 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.

(b) The City shall provide evidence of its self-insurance coverage in connection with its responsibilities under this Agreement, including but not limited to, the Parking Lots in the form of a letter from the City Attorney explaining the City's standing as a self-insured governmental entity.

(c) Builder's Risk or Installation Floater. The City shall maintain during the construction period of the Amphitheater 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 Amphitheater 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.

2.14 General Provisions.

(a) All required insurance shall be primary coverage and shall be for the benefit of the Operator and the City.

(b) All required insurance shall be reviewed periodically by the Operator and the City, and in any event at least every three (3) years, for the purpose of determining whether to add additional insurance coverage, increase or decrease the minimum limits and deductibles of such insurance to amounts that may be reasonable and customary for facilities of like size and operation.

(c) All required insurance shall be obtained from financially sound insurance companies, having financial ratings reasonably acceptable to the parties and authorized to do business in the State of Connecticut.

(d) All required insurance shall provide that the waiver of recovery (subrogation) described below shall not invalidate or have any adverse effect on the liability of the insurer.

2.15 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.

2.16 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 an Amphitheater 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 on the first day of the month following the date on which such premium was paid.

2.17 Proceeds Disposition.

All insurance proceeds with respect to loss or damage to the Facility or to the Amphitheater, as the case may be, shall be payable, under the provisions of the policy of insurance, into the Capital Repair & Replacement Account and shall be disbursed to the fullest extent necessary to make necessary repairs to, or restorations of, the Amphitheater. All insurance proceeds from any other insurance policies maintained hereunder, e.g., in the nature of business interruption insurance and other insurance for the sole benefit of the Operator, shall be payable to the Operator.

ARTICLE III

RENOVATION AND NEW CONSTRUCTION; APPROVAL OF DESIGN; COMPLETION OF AMPHITHEATER; PARTY CONTRIBUTIONS; SPENDING PLAN; MEETINGS AND REPORTS; WINTERIZATION

3.1 The parties hereto acknowledge that the City and HYA have agreed to renovate the Ballpark in order to make the Amphitheater a top-of-the-line concert and event venue. After HYA has produced preliminary design drawings in accordance with the Schedule, HYA will proceed to have its architect prepare design development drawings, final design drawings and issued-for-construction drawings, each of which will have to be Approved by the City in the exercise of its commercial business judgment, reasonably exercised. Following the City's Approval of the final design drawings, HYA agrees to proceed diligently and in good faith with renovation and construction of the Amphitheater and shall complete the same by no later than the Completion Date set forth in the Schedule, which the parties anticipate will require a construction period of eighteen (18) months following the issuance of the first building permit.

3.2 The parties have agreed to make capital investments in the renovation of the ballpark that will create the Amphitheater by each contributing the sum of Seven Million Five Hundred Thousand (\$7,500,000.00) Dollars toward its completion for a total budget of

Fifteen Million (\$15,000,000.00) Dollars (“**Construction Budget**”). The City shall segregate the amount of its maximum contribution in a separate bank subaccount designated as the Amphitheater construction account (“**Construction Account**”) for the Amphitheater project and shall make its contributions in the following amounts and order pursuant to the completion budget that HYA prepares for the Amphitheater project (“**Completion Budget**”) to be attached hereto as **Exhibit 2** in accordance with a schedule of values (“**Schedule of Values**”) to be attached hereto as **Exhibit 3**:

- The City shall contribute \$5,000,000 into the Construction Account on or before the thirtieth (30th) day following the Commencement Date.
- With respect to any construction costs incurred to renovate the Amphitheater up to \$10,000,000 (“First Tier Construction Costs”), the City’s contribution to the Construction Account shall equal \$5,000,000, payable as hereinafter set forth and the Operator shall be responsible for the balance of the First Tier Construction Costs.
- On the date that invoices for construction costs are anticipated to exceed \$10,000,000 but have not yet exceeded \$12,000,000 (the “Second Tier Construction Costs”), as evidenced by documentation provided by the Operator to the City, and assuming the Operator is then in substantial compliance with this Agreement, the City shall contribute an additional \$1,000,000 or one-half (1/2) of the anticipated Second Tier Construction Costs), whichever is less, into the Construction Account. The City shall join the Operator in authorizing disbursements from the Construction Account to pay invoices within the Second Tier Construction Costs as long as such Second Tier Construction Costs are borne equally by the City and the Operator.
- On the date that invoices for construction costs are anticipated to exceed \$12,000,000 (the “Third Tier Construction Costs”), as evidenced by documentation provided by the Operator to the City, and assuming the Operator is then in substantial compliance with this Agreement, the City shall contribute up to an additional \$1,500,000, or one-half (1/2) of the anticipated Third Tier Construction Costs, whichever is less, into the Construction Account. The City shall join the Operator in authorizing disbursements from the Construction Account to pay invoices within the Third Tier Construction Costs as long as such Third Tier Construction Costs are borne equally by the City and the Operator.
- Disbursements shall be made from the Construction Account to the Operator in Five Hundred Thousand Dollar (\$500,000) increments to fund the City’s share of the First Tier Construction Costs as and when construction is certified as being 10% complete by the Operator’s architect, and at such time as every certification is made of an additional 10% completion thereafter by the Operator’s architect as set forth in the Schedule of Values.

Upon Substantial Completion of the Amphitheater, the parties shall true-up the construction costs so that the City pays no more than \$7,500,000 (exclusive of professional costs) or one-half (1/2) of the cost of construction up to \$15,000,000, but in no event less than \$5,000,000.

Except for professional design and engineering fees, which are the City's responsibility as the owner of the improvements to the Amphitheater, all construction costs for the Amphitheater that exceed \$15,000,000 shall be the sole financial obligation of the Operator and paid solely by it. The City shall reimburse the Operator for professional design and engineering fees within thirty (30) days of the Operator's presentation to the City of an invoice for such services.

3.3 The City is engaging the Operator to act as the City's representative with respect to the construction of the Amphitheater ("**Owner's Representative**") and the project fiduciary as to the expenditure of the City's capital contribution to the construction ("**Project Fiduciary**"). The construction of the Amphitheater and furnishing it with the FF&E (the "**Work**") will be conducted using "open book" accounting techniques available for City inspection in the City of Bridgeport. The Owner's Representative/Project Fiduciary shall ensure that all contractors are timely paid and that no liens are placed against the Amphitheater Premises and, if such liens arise, the Operator shall be obligated to pay or bond off those liens promptly.

3.4 The Operator will engage the designer and the engineer to develop the design of the Amphitheater. At every stage of the design, the City shall have the right to Approve the design. The City will approve the final design (expected to be in excess of 70% complete) and the Budget and the Operator will proceed to complete the design and issued-for-construction drawings on which construction bidding will be based. The City will be responsible for all building permit fees or will arrange to have them waived for this City project. The design will incorporate a tensile fabric roof that will cover the existing grandstand, skyboxes, press box and offices in order to prevent the long-standing problem of water intrusion into the building while three walls of the Amphitheater will remain open. The design must also take into account concerns for soundproofing although the design of the tensile roof and the grandstand's orientation away from residential areas is expected to lessen any sound emanating from the Amphitheater.

3.5 The City has agreed to assist the project by providing millings for the Amphitheater project and the Parking Lots and maintaining any fencing around the Parking Lots.

3.6 The Operator shall provide and the Owner's Representative--Administration shall ensure that all contract awards for the Work, other than FF&E, shall have 100% performance and payment bonds in place prior to the work of any such contract being commenced.

3.7 The Owner's Representative--Administration shall ensure that the City receives monthly progress reports concerning the construction of the Amphitheater in sufficient detail that is reasonably satisfactory to the City and shall further ensure that the City Representative—Facility is included in all project meetings and that the City

Representative—Administration is included in all meetings with State and local regulatory officials and bodies.

3.8 The Operator/Project Fiduciary is responsible to deliver the completed Amphitheater on time and within the Completion Budget and failure to do so will be the sole risk and responsibility of the Operator for delays and cost-overruns.

3.9 It is anticipated as of the date of this Agreement that Events will be produced during the months of April to October. Promptly after the last scheduled Event of each Year, the Operator shall take steps to winterize the building housing the former grandstand, press box, offices, club areas and skyboxes in order to protect those areas from winter weather during the offseason and to winterize any areas of the Amphitheater that require protection. The only portion of the Amphitheater that will remain operational during the offseason will be the structure(s) attached to the main stage that will house the offices of the Operator and Live Nation.

ARTICLE IV REPRESENTATIONS, WARRANTIES AND COVENANTS

4.1 Operator's Representations, Warranties and Covenants.

(a) Organization.

The Operator is a limited liability company duly organized and validly existing under the laws of the State of Connecticut and has all requisite power and authority to enter into this Agreement.

(b) Authorization; No Violation.

The execution, delivery and performance by HYA of this Agreement has been duly authorized by all necessary corporate action and will not violate its charter, bylaws or any written rule, regulation or policy in effect, or result in the breach of or constitute a default under any loan or credit agreement, or other material agreement to which HYA is a party or by which HYA or its material assets may be bound or affected. This Agreement has been duly executed and delivered by HYA and this Agreement and the documents referred to herein constitute valid and binding obligations of HYA.

(c) Litigation.

No suit is pending against or affects HYA that could have a material adverse effect upon HYA's performance under this Agreement or upon its financial condition or business. There are no outstanding judgments against HYA that would have a material adverse effect upon its assets, properties or franchises.

(d) No Conflicts.

This Agreement is not prohibited by and does not conflict with any other agreements, instruments, judgments or decrees to which HYA is a party or is otherwise subject.

(e) No Violation of Laws.

HYA is not in violation of any applicable statutes, rules and regulations of the United States of America, the State of Connecticut, 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 HYA is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other governmental authority that is in any respect material to the transactions contemplated hereby.

(f) Local Taxes.

HYA is not delinquent in any taxes owed to the City of Bridgeport.

4.2 City's Representations Warranties and Covenants.

(a) Organization.

The City is a municipal body corporate and politic and a political subdivision of the State of Connecticut and has all requisite power and authority to enter into this Agreement.

(b) Authorization, Enforceability.

The execution, delivery and performance by the City of this Agreement are within the power of the City and have been duly-authorized by all necessary action of its legislative body and will not violate its charter or result in the breach of any material agreement to which the City is a party. This Agreement has been duly executed and delivered by the City and the documents referred to herein constitute valid and binding obligations upon it.

(c) No Conflicts.

This Agreement is not prohibited by and does not conflict with any other agreements, instruments, judgments or decrees to which the City is a party or is otherwise subject.

(d) City's Covenants.

The City has received no notice as of the date of this Agreement asserting any noncompliance by the City in any material respect with applicable statutes, rules and regulations of the United States of America, the State of Connecticut or any agency having jurisdiction over and with respect to the transactions contemplated in and by this Agreement, 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 that is in any respect material to the transactions contemplated hereby.

4.3 Mutual Covenants.

(a) Further Assurances.

The City and HYA shall, whenever and as often as each shall be reasonably requested to do so by the other party, execute or cause to be executed any further documents, including such reasonable documents or reasonable changes in documents, take any further actions and grant any further approvals, acknowledgements, estoppels or non-disturbance assurances as may be necessary or expedient in order to consummate the transactions provided for herein, and to carry out the purpose and intent of this Agreement and any related agreements.

(b) Good Faith; Duty to Cooperate.

In exercising their respective rights and fulfilling their respective obligations under this Agreement and any related agreements, the City and HYA shall act in good faith in a commercially reasonable manner to ensure that this public/private partnership achieves the collective and individual goals of each party as expressed in this Agreement. Each party acknowledges that this Agreement and all related agreements contemplate cooperation between HYA and the City. Each party further acknowledges that the terms and conditions of this Agreement and any related agreements have been negotiated on the basis of certain projections and assumptions, including the assumption that the City and HYA will, among other purposes, act to advance, and not unreasonably interfere with, the public purposes to be served by the Amphitheater.

This Article shall survive expiration or termination of the Agreement.

ARTICLE V DEFAULT AND REMEDIES

5.1 Operator Default Including Operator Bankruptcy or Attachment.

The following events shall constitute an Operator default (each, an “**Operator Default**”):

- (a) HYA shall have commenced any case, proceeding or other action (a) under the Federal Bankruptcy Code, as amended from time to time, or under any other existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered, seeking to adjudicate the organization as bankrupt or insolvent, or seeking reorganization, arrangement, adjustments, winding-up,

liquidation, dissolution, discharge, composition or other relief with respect to itself or its debts or (b) seeking the appointment of a receiver, custodian or other similar official for all or any substantial part of its assets or shall make a general assignment for the benefit of its creditors; or

- (b) There shall be commenced against HYA any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, stayed or bonded pending appeal within one hundred twenty (120) days from the entry thereof; or
- (c) Operator shall have violated any material term or condition of this Agreement that shall not have been cured within thirty (30) days following written notice.

then in such event, in addition to the other remedies for default authorized herein or by law, the City shall be entitled to terminate this Agreement and, in the case of (a) or (b) of this Section 5.1, seek the appointment of a receiver for the specific assets of HYA. Nothing herein shall preclude or prevent HYA from obtaining appointment of a receiver or other remedies with regard to its general assets.

5.2 Remedies Cumulative.

In the event of any breach by any party of any of the covenants, agreements, terms or conditions contained in this Agreement, in addition to any and all other rights provided herein and except as otherwise waived herein, the parties shall be entitled to invoke any right and remedy allowed at law or in equity or by statute or otherwise for such breach as though other remedies were not provided for in this Agreement, provided, however, that neither party may seek compensatory, punitive or exemplary damages.

This Article shall survive expiration or termination of this Agreement.

ARTICLE VI PARKING, PARKING MANAGEMENT; TRAFFIC PLAN; EVENT SECURITY

6.1 Utilization of City Parking Lot and Park City Communities Parking Lot; Parking Fees.

Since the Ballpark first opened, the City has provided the City Parking Lot for parking by patrons of the Facility and the Webster Bank Arena and has leased the Park City Communities Parking Lot for parking pursuant to a lease agreement that has expired. The City is taking steps to obtain fee title to or a long-term lease of the Park City Communities Parking Lot in order to ensure its availability for Event parking in the future. It is anticipated that parking fees will not be charged for Amphitheater events and

the City will determine whether to continue to charge parking fees and in what amount for Webster Bank Arena events.

6.2 City Management of Parking Lots For Non-Amphitheater Events; Operator to Handle Loading of Amphitheater Patrons.

The City has taken or will soon take control of the City Parking Lot and the Park City Communities Parking Lot. With respect to Events at the Amphitheater, HYA believes and the City recognizes that parking for Amphitheater events is necessary and that proper loading-in and loading-out of patrons is essential to a smooth Amphitheater experience. Therefore, the City agrees that HYA shall have the right to manage the Parking Lots at its sole cost and expense for Amphitheater Events. The City plans to request proposals for the future development of either or both the City Parking Lot and the Park City Communities Parking Lot and in that regard the City will use reasonable efforts in connection with any future development to ensure that HYA retains the ability to continue such load-in and load-out controls at its sole cost and expense whether any additional parking facility or amenity is privately- or publicly-owned and that the City is responsible to provide sufficient parking within a one-half (1/2) mile radius of the Amphitheater.

6.3 Discontinuance of Allen Street.

The City intends to commence action to discontinue Allen Street so that it effectively becomes an area of additional Event Parking.

6.4 Creation of Additional Public Parking Facility or Parking Accommodations.

The City will use reasonable efforts to seek, in connection with any future development of the City Parking Lot and/or the Park City Communities Parking Lot, assistance from the State and federal governments for financing of part or all of the cost of a new parking facility or parking accommodation, the primary but not exclusive use thereof being for the benefit of the Amphitheater and the Webster Bank Arena.

6.5 Development of a Traffic Plan

The City, HYA and representatives of the Bridgeport Police Department will meet to develop a traffic plan that the Police Department will implement for the general area to accommodate a smooth flow of traffic from all entry points into the area, including I-95, Route 8, and local streets, to various public parking and private parking facilities, and to establish manpower needs based upon a smoother flow of traffic ("**Traffic Plan**"). In this effort, HYA and/or the City intends to (a) create and install digital signage in the general area including, without limitation, on Route 8 and Interstate 95, that will help to direct traffic to parking opportunities, and (b) provide information on social media outlets to advance-ticket patrons and event-day patrons to identify parking opportunities and travel routes in the area to minimize confusion and delay.

6.6 Security

The City is obligated to provide traffic security for Amphitheater events at its sole cost and expense. HYA intends to provide event security on the Amphitheater Premises through the use of private security services and reserves the right to request that Bridgeport Police Officers on an overtime basis be present for certain Events where HYA believes that private security may need to be supplemented. The City will use reasonable efforts to incorporate the Amphitheater into the City's Emergency Operations Center through the use of cameras and sensors.

ARTICLE VII

PARTIES' RESPECTIVE RESERVATIONS OF RIGHTS

7.1 City Reservation of Rights.

(a) Sports/Entertainment Authority.

The Operator understands and agrees that the City has the right to establish a sports or entertainment authority and that this Agreement, and the City's rights, duties and obligations thereunder, may be assigned to such an authority as the City's successor under this Agreement.

(b) City Events.

The City, as owner of the Amphitheater, reserves the exclusive, non-assignable right to use the Amphitheater for up to five (5) days during each Season for City Events, subject to the Operator's priority scheduling of all other Events. Any dates not used by the City for City Events during the Season shall terminate and shall not accrue for use during successive Seasons. 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 (2) 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 Amphitheater. 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 (1) City Event per Season that cannot be rescheduled without the City's Approval.

The Operator shall permit temporary advertising for a City Event 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 at the City's sole cost and expense.

Ticket revenue derived from City Events ("**City Event Revenue**") shall be collected by the Operator and distributed to City upon the City's payment in full to Operator of Event-Related Expenses. The City shall promptly reimburse the Operator from City funds (or the 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 within thirty (30) days after the date of the City Event or the date on which the Operator notifies the City of the Event-Related Expenses, whichever period is longer, or as specified in any applicable use agreement between the Operator and the City Event sponsor. The City shall provide evidence of insurance for such City Events.

(c) City Skybox; Complimentary Tickets.

The City shall be entitled to the exclusive use of one of the twenty (20) skyboxes at the Facility, said skybox to be renovated in the same manner as the other skyboxes ("**City Skybox**"), and shall be entitled to twenty (20) complimentary tickets, subject to the promoter or performer making same available, for general seating to each Event at no cost. The Operator shall hold all complimentary tickets at the Amphitheater box office until one hour before the start of each Event, after which the same may be sold in the ordinary course if not claimed by the City. The City may permit third parties to use its Skybox. The City may sell, assign or sublease its Skybox with the Operator's consent, which shall not be unreasonably withheld.

(d) No Discrimination.

The Operator agrees not to discriminate, nor permit discrimination, against any person in the performance of this Agreement on the grounds of race, color, creed, national origin, religion, sex, gender, sexual 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.

(e) City Access.

The City reserves the right to enter the Amphitheater during regular business hours to conduct fire, safety and health inspections, to determine that the Operator is in compliance with this Agreement, or to exercise the City's normal police powers, provided, however, that the City (a) shall not interfere with the normal operations of the Amphitheater, (b) 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, and (c) shall not unreasonably interfere with the performers or their preparation for Events.

Additionally, the City shall have the right to enter the Amphitheater at any time and without notice in the case of an emergency.

(f) City Advertising and Announcements.

The City shall have the right to fixed display advertising at two (2) average-sized locations equivalent in size and visibility as those of other advertising locations marketed by the Operator during all Events, consistent with adjacent or comparable commercial ads, at no cost to the City. In the event that the Operator makes a material reduction in the advertising areas in the Amphitheater, 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 announced over the Amphitheater's public address system or on digital boards during each Event at no charge for the 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 promotional rights or use them for purposes other than promoting tourism and economic opportunities in the City. All advertising hereunder shall be solely to promote the City and shall be non-commercial, non-partisan and of public service in nature and shall not conflict with other advertising in the Amphitheater. The City shall produce its own advertising copy for all fixed or digital advertisements and all public service announcements at no cost to the Operator.

(g) Tobacco-Free Facility.

The Amphitheater shall be a smoke-free and tobacco-free facility and shall not advertise any tobacco or electronic products that mimic smoking in its operation.

(h) City Audit Rights.

At the City's option, the City may conduct an audit or examination of the Construction Account, the Capital R&R Account, the Tickets Sold, and the complimentary tickets issued for Events at any time upon reasonable notice to the Operator, such examination or audit to be made at the City's sole cost and expense.

(i) State Admissions Taxes.

The State of Connecticut's ten percent (10%) admissions tax applicable to ticket sales at the Amphitheater shall be considered to be the Operator's direct operating costs.

(j) City's Right to Assignment of Concert Promoter's Contract.

The City shall have the right to receive from the Operator or to obtain upon request, in confidence to the extent that all or a portion thereof qualifies for exemption from disclosure pursuant to the Connecticut Freedom of Information Act, a copy of the Operator's contract with a concert promoter.

7.2 HYA Reservation of Rights.

(a) The City acknowledges that the Operator has formed its financial projections and assumptions hereunder and established the PILOT on the basis that the PILOT includes an amount that replaces any admission, real property or personal property taxes (or substitutions therefor) that may otherwise be due in connection with the operation of the Amphitheater. All improvements constructed at the Amphitheater and all FF&E purchased by the Operator on the City's behalf, shall become the City's property upon its completion or installation, as the case may be. The Operator agrees that it will not use any of the City's personal property except in connection with the operation of the Amphitheater.

(b) HYA reserves the right to apply for permits to construct a digital billboard on the Amphitheater Premises or on the Park City Communities Parking Lot if the latter is available for that use, and the City agrees to cooperate with the Operator in obtaining approval of such a billboard. If the billboard is located on City property, the parties shall negotiate a billboard agreement that is mutually satisfactory.

(c) The Operator reserves to itself the right to promote and co-promote Events at the Amphitheater, to sell advertising, sponsorships, and naming rights at the Amphitheater for its sole benefit and to receive income from other endeavors at the Amphitheater consistent with this Agreement.

(d) The Operator reserves the right to seek from the City an easement over the internal roadway that passes from Broad Street behind the Ballpark and exits onto South Frontage Road or Water Street for use by selected patrons and performers at Amphitheater Events.

ARTICLE VIII ASSIGNMENT AND TRANSFER

8.1 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 in a manner satisfactory to the City. Any such transfer shall conform to the terms and restrictions of 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 that 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 assignment to an Affiliate, the Operator shall not assign or transfer its rights or interests in this Agreement without the prior written Approval of the

City, which Approval shall not be reasonably 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 a venue 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 that 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.

8.2 City's Right to Assignment.

The City shall have the right to assign this Agreement to another municipal entity, such as a sports or entertainment authority, 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 under this Agreement.

ARTICLE IX MISCELLANEOUS

9.1 Notices; Cross-Notices Relating to Claimed Defaults.

All notices and other communications required or desired to be given pursuant to this Agreement shall be in writing using an Approved Form of Communication to the City or the Operator, as applicable. Notices shall be deemed properly given upon delivery to the recipient, or refusal of delivery, if sent by an Approved Form of Communication. Notices shall be addressed as follows and shall be presumed delivered upon actual receipt or refusal of delivery by personal delivery or overnight courier, two (2) days after mailing, and upon the date of facsimile or email delivery so long as the same is confirmed by sending a copy of such notice by way of another Approved Form of Communication.

AS TO THE CITY:

Mayor, City of Bridgeport
Margaret E. Morton Government Center
999 Broad Street
Bridgeport, CT 06604

and

City Attorney
City of Bridgeport
Margaret E. Morton Government Center
999 Broad Street
Bridgeport, CT 06604

and

Director
Office of Planning and Economic Development
Margaret E. Morton Government Center
999 Broad Street
Bridgeport, CT 06604

AS TO THE OPERATOR:

Harbor Yard Amphitheater, LLC
9 Squires Lane
Weston, CT 06880

Attn: Managing Member

With copy to:

David Levine, Esq.
Cohen and Wolf, P.C.
1115 Broad Street
Bridgeport, CT 06604

Each party may by written notice to the other specify a different address for subsequent notice purposes.

9.2 Severability.

If any provision of this Agreement is determined to be illegal or unenforceable by a court of competent jurisdiction, this Agreement shall remain valid as if such provision had not been contained herein, provided that no such severance shall serve to deprive any of the parties of the enjoyment of its substantial benefits under this Agreement.

9.3 Interpretation.

This Agreement constitutes the entire understanding of the parties with respect to the subject matter of this Agreement. There are no oral or written statements, representations, agreements, understandings or surrounding circumstances which modify, amend or vary any of the provisions hereof that are not stated herein.

9.4 Amendment.

This License Agreement shall not be amended or modified except in writing signed by all parties to this Agreement. The City's rights hereunder shall not be waived except with the prior written approval of the City, acting by its Mayor under authorization from the City Council, and any attempt to amend, modify or waive any of the terms or provisions of this Agreement shall be void and unenforceable against the City.

9.5 Successors and Assigns.

This Agreement shall extend to and be binding upon the representatives, successors and permitted or Approved assigns of the respective parties hereto including, without limitation, any successor, assign or replacement of the Operator as the operator of the Amphitheater whether pursuant to the Agreement, by operation of law or otherwise.

9.6 Time of the Essence.

The parties hereto mutually understand and declare that time is of the essence under this Agreement as to those matters that are specifically stated herein to be time of the essence.

9.7 Governing Law; Venue; Dispute Resolution.

This Agreement shall be construed in accordance with and pursuant to the laws of the State of Connecticut and all disputes arising out of this Agreement or its interpretation shall be resolved in a court having jurisdiction in Fairfield County, Connecticut.

9.8 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 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.

9.9 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.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of _____, 2017.

Attest:

CITY OF BRIDGEPORT:

By: _____

Attest:

OPERATOR:
HARBOR YARD AMPHITHEATER, LLC

By: _____

Schedule A

Amphitheater Premises

Exhibit 1

Project Construction Schedule

Exhibit 2

Construction Completion Budget

Exhibit 3

Schedule of Values

Exhibit 4

Furniture, Fixtures & Equipment Schedule