

SPORTS FACILITY ADMINISTRATION AGREEMENT

by and between

TOWN OF GRAND CHUTE

and

FOX CITIES SPORTS DEVELOPMENT, INC.

**SPORTS FACILITY ADMINISTRATION AGREEMENT**

This Sports Facility Administration Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018 (“Effective Date”), by and between the Town of Grand Chute, a Wisconsin political subdivision (“Town”), and Fox Cities Sports Development, Inc., a Wisconsin corporation (“Administrator”).

RECITALS:

WHEREAS, the Community Development Authority of the Town of Grand Chute, Wisconsin (the “CDA”), owns the land, infrastructure, buildings, parking, lighting, sports playing surfaces, sports equipment, and all other hard assets associated with the athletic complex as the same exist now or may exist in the future, including any and all improvements related thereto, located on an approximately 25-acre tract of land at 2200 N. McCarthy Road, in the jurisdictional limits of the Town of Grand Chute, as the same exist now or may exist in the future, known as the Fox Cities Champion Center or any other name that may be identified in the future (collectively, the “Facility”). The amount of vacant acreage originally making up part of the Facility is subject to reduction in the discretion of the Town during the term of this Agreement, so long as reduction does not impair operation of the Facility or compliance with applicable laws, rules, ordinances, or regulations;

WHEREAS, Town is the lessee of the Facility pursuant to a lease with the CDA as lessor dated \_\_\_\_\_ pursuant to which Town is duly authorized to enter into an agreement for Administration Services (as described and defined in Exhibit A) for the Facility;

**Commented [KMB1]:** Note: We will just want to review the lease to ensure it cannot be terminated by the CDA or under what circumstances it can be terminated.

WHEREAS, Administrator will provide general operational oversight and expertise in providing Management Services for athletic complex facilities and ensuring the Facility is operated in a fashion that is reasonably likely to generate paid overnight stays at more than one hotel, motel or other lodging establishment within the Tourism Zone in compliance with the requirements of “tourism promotion and tourism development” as that term is defined in Wis. Stat. § 66.0615(1)(fm).; and

WHEREAS, Town and Administrator desire for Administrator to operate and manage the Facility subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Town and Administrator agree as follows:

**ARTICLE I  
DEFINITIONS**

1.1. **Definitions.** For purposes of this Agreement, the following terms have the meanings referred to in this Section 1.1:

**Administrator:** The term “Administrator” shall have the meaning ascribed to such term in the Preamble to this Agreement.

**Affiliate:** A person or company that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person or company.

**Agreement:** The “Agreement” shall mean this Sports Facility Administration Agreement, together with all exhibits attached hereto (each of which are incorporated herein as an integral part of this Agreement), as amended, supplemented, or restated from time to time.

**Capital Expenditures:** All expenditures for building additions consisting of additional square footage including foundation, roof, and walls. ~~The term “Capital Expenditures” shall also include expenditures for public infrastructure in the dedicated right of way and the costs to maintain and operate the regional storm water pond.~~

**Capital Maintenance Reserve:** Shall mean a segregated reserve account of funds holding a reasonable sum of money to cover anticipated repairs, maintenance, and replacement of the Facility and its improvements.

**CDA:** The term “CDA” shall have the meaning ascribed to such term in the Preamble to this Agreement.

**Commercial Rights:** Naming rights, pouring rights, advertising, sponsorships, the branding of food and beverage products for resale, and memorial gifts at or with respect to the Facility.

**Effective Date:** “Effective Date” shall have the meaning ascribed to such term in the preamble of this Agreement.

**Excess Revenues:** “Excess Revenues” means the total amount of Revenue less Operating Expenses, as calculated on a monthly basis.

**Existing Contracts:** Service Contracts, Revenue Generating Contracts, and other agreements relating to the day-to-day operation of the Facility existing as of the Effective Date.

**Facility:** The “Facility” shall have the meaning ascribed to such term in the Recitals to this Agreement.

**FF&E:** Furniture, fixtures, and equipment to be procured by the CDA for use at, and initial start-up operation of, the Facility.

**Laws:** Means all applicable laws, statutes, rules, regulations, and ordinances.

**Management Services Provider:** A third party provider engaged in professional sports facility operations and providing full-time on-site operations management of the Facility,

including all staffing and services required to operate the Facility. Administrator is responsible to select a qualified Management Services Provider capable of achieving the financial and operational objectives of the athletic complex Facility.

**Operating Account:** Shall mean a segregated account used for the deposit of all Revenues and the payment of all Operating Expenses.

**Operating Expenses:** All expenses incurred by Administrator or Management Services Provider at reasonable competitive rates in connection with its operation, promotion, maintenance, and management of the Facility, including but not limited to maintenance and repairs of the Facility, interior and exterior, structural and non-structural, including replacements and renewals when necessary, at least in equal quality and class to the original condition of the Facility, all employees' salaries, wages, and benefits of their respective personnel, all charges for gas, electricity, water, light, heat, power, telephone, other communication services, and any other service used, rendered, or supplied upon or in connection with the Facility during the term of this Agreement and the term of the contract between Administrator and Management Services Provider, further including all insurance premiums for insurance coverages in 6.2(e) (i), (ii), (iii), and (iv) below. The term "Operating Expenses" does not include debt service on the Facility or Capital Expenditures.

**Operations Manual:** The document to be developed by Administrator or Management Services Provider which shall contain terms regarding the management and operation of the Facility, including detailed policies and procedures to be implemented in operating the Facility, as agreed upon by both Administrator and Management Services Provider.

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**Revenue:** All revenues generated by Administrator's or Management Services Provider's operation of the Facility, including, but not limited to, event ticket proceeds income, rental and license fee income, merchandise income, gross food and beverage income, gross income from any sale of Commercial Rights, gross service income, equipment rental fees, box office income, and miscellaneous operating income, but shall not include event ticket proceeds held by Administrator in trust for a third party and paid to such third party, and sponsorship fees that are subject to a commission to Manager under this Agreement.

**Revenue Generating Contracts:** Vendor, concessions and merchandising agreements, user/rental agreements, booking commitments, licenses, and all other contracts or agreements generating revenue for the Facility and entered into in the ordinary course of operating the Facility.

**Service Contracts:** Agreements for services to be provided in connection with the operation of the Facility, including, without limitation, agreements for consulting services, ticketing, web development and maintenance, computer support services, FF&E purchasing services, engineering services, electricity, steam, gas, fuel, general maintenance, HVAC maintenance, telephone, staffing personnel, extermination, elevators, fire control panel and other safety equipment, snow removal, and other services which are deemed by Administrator to be either necessary or useful in operating the Facility.

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

**Term:** The term “Term” shall have the meaning ascribed to such term in Section 2.2 of this Agreement.

**Termination Date:** The term “Termination Date” shall have the meaning ascribed to such term in Section 2.3 of this Agreement.

**Tourism Zone:** The term “Tourism Zone” means the Fox Cities Tourism Zone, established pursuant to the Commission Agreement and the Room Tax Act, encompassing the municipalities that are party to the Cooperation Agreement and any neighboring municipalities.

**Town:** The term “Town” shall have the meaning ascribed to such term in the Preamble to this Agreement.

## **ARTICLE II APPOINTMENT; TERM; TERMINATION**

2.1 **Appointment.** Town hereby retains, engages, and appoints Administrator as Town’s agent to act as the sole and exclusive Administrator of the Facility and to perform or contract for the Management Services (as further set forth on Exhibit “A” attached hereto) during the Term, as more fully described herein, and Administrator hereby accepts said appointment upon and subject to the terms hereof. The Town acknowledges that the Administrator intends to contract with a Management Services Provider to provide the day-to-day operations of the Facility.

2.2 **Term.** This Agreement shall commence on the Effective Date of this Agreement and shall continue in full force and effect until such time as the date on which the Community Development Authority Lease Revenue Bonds, Series 2018, have been paid in full, or until the 10<sup>th</sup> anniversary of the Effective Date, whichever shall occur later (“Term”), unless earlier terminated pursuant to this ~~Agreement.~~ Agreement. It is the current intention of the parties to this Agreement that at the end of the Term, the Town will exercise its right of first refusal to purchase the Facility for \$100 from the CDA and then Gift the Facility to Administrator, or the Fox Cities Convention and Visitors Bureau for the continuation of operations for the purposes stated in this Agreement. The parties acknowledge and agree, however, that such proposed transactions will be subject to review of the facts and circumstances then present at the end of the Term, to determine if such transactions are in the best interests of all parties ~~involved.~~ involved.

2.3 **Termination.** This Agreement may be terminated (a) by Town, only upon default by Administrator or default by the Management Services Provider under its contract with the

Administrator, which, in either case, such default is not cured within sixty (60) days following the date upon which Administrator receives written notice from Town describing the alleged default (or in the event the default cannot be cured within such period, such additional time as is reasonably necessary to promptly and diligently cure the default); or (b) by mutual agreement of Town and Administrator. The effective date of termination shall be referred to as the "Termination Date". As an alternative to termination, the Town may, in the event of default by Administrator which is not cured within the time set forth above, perform such obligation on behalf of the Administrator, and Administrator shall reimburse Town for costs incurred by Town in curing the default.

2.4 **Effect of Termination.** Upon termination or expiration of this Agreement in accordance with its terms, (i) Administrator shall vacate the property and promptly discontinue the performance of all services rendered hereunder related to the Facility; (ii) Administrator shall make available to Town all data, electronic files, documents, procedures, reports, estimates, summaries, and other such information and materials with respect to the Facility as may have been accumulated by Administrator in performing its obligations hereunder, whether completed or in process and to the extent Administrator has the right to such document; and (iii) upon the request of Town, Administrator shall assign its rights under the Facility Management Agreement with the Management Services Provider, or assign to Town, who shall assume or shall cause a successor manager to, assume all obligations arising after the date of such termination or expiration under any Service Contracts, Revenue Generating Contracts, booking commitments, and any other agreements entered into by Administrator or the Management Services Provider in furtherance of its duties hereunder, including responsibility for payment of all Operating Expenses, and all unpaid bills which have been approved by the Town as set forth herein. Any obligations of the parties that are specifically intended to survive expiration or termination of this Agreement shall survive expiration or termination hereof

### **ARTICLE III OWNERSHIP; MANAGEMENT SERVICES**

3.1 **Ownership of Facility, Data, Equipment, and Materials.** The CDA shall at all times retain Ownership of the Facility, including, but not limited to, real estate, technical equipment, furniture, displays, fixtures, and similar property, including improvements made during the Term, at the Facility. Any data, equipment, or materials furnished by Town to Administrator or acquired by Administrator as an Operating Expense shall remain the property of the CDA and shall be returned to Town when no longer needed by Administrator to perform under this Agreement. Notwithstanding the above, Town shall not have the right to use any third-party software licensed by Administrator for general use by Administrator at the Facility and other facilities managed by Administrator, the licensing fee for which is proportionately allocated and charged to the Facility as an Operating Expense, and such software may be retained by Administrator upon expiration or termination hereof. Furthermore, Town recognizes that the Operations Manual to be developed and used by Administrator hereunder is proprietary to Administrator and shall belong solely to Administrator at the end of the Term and Town shall not use or maintain copies of the Operations Manual upon the end of the Term for any reason whatsoever.

3.2 **Management of the Facility.**

(a) **General.** Town hereby delegates to Administrator, subject to the terms and conditions set forth in this Agreement, complete discretion and authority to determine and implement, certain programs and other rules and regulations affecting the Facility or the operation thereof. The Town acknowledges that the Administrator intends to contract with a Management Services Provider to provide the day-to-day operations of the Facility.

(b) **Town's Rights.** Administrator acknowledges and agrees that Town shall have the right to review the Facility Management Agreement between the Administrator and Management Services Provider.

3.3 **Use of the Property.**

(a) **General.** Town hereby grants to Administrator the exclusive right and license to use the Facility for the Term *for the sole purposes of operating an athletic and recreation complex* that is reasonably likely to generate paid overnight stays at more than one hotel, motel or other lodging establishment within the Tourism Zone in compliance with the requirements of *"tourism promotion and tourism development" as that term is defined in Wis. Stat. § 66.0615(1) (fm)*. Administrator accepts such right of use and agrees to perform or cause to have performed the Management Services, including, without limitation, the operation and maintenance of all physical and mechanical facilities necessary for, and related to, the operation, maintenance, and management of the Facility, including, without limitation, athletic space, food service, meeting areas, and such other uses as shall be compatible for the operation of a state-of-the-art athletic facility. Administrator shall be solely responsible for providing such office equipment as is reasonably necessary to enable Administrator to perform its obligations under this Agreement.

(b) **Relationship.** The parties agree that, in no event, is the relationship established herein one of landlord and tenant, or licensor and licensee, and Administrator has no right to operate the Facility other than for the purposes set forth in this Agreement.

3.4 **Restrictions, Conditions, and Requirements on Use.** Administrator hereby agrees, represents, and warrants that the use, operation, and management of the Facility will comply with the following restrictions, conditions, and requirements:

(a) The Facility shall be a non-smoking facility and campus.

(b) The Facility, in all respects, shall be a family friendly facility, which includes, but is not limited to, a requirement that all advertising for and at the Facility be family friendly.

(c) The Facility shall not be used for large-crowd, non-sports events such as concerts, flea markets, home and garden shows, or similar such bookings / events that would create occupancy loads and assembly uses not approved under the Facility's design permits as an indoor sports and recreation complex and venue.

(d) Discounted Use by Supporting Municipalities. Administrator and/or Management Services Provider will grant all municipalities that are party to the Series 2018 Lease Revenue Bonds two “community days” a calendar year in which the residents of the municipality will be provided a 50% discount on use fees during any ice or gym recreation use scheduled for the public. Discounts shall not apply to contracted rates for organized club or team use to admission charged by private event sponsors. Municipality is responsible for providing appropriate identification to such residents and for informing Administrator and Management Services provider as to the identification that can be accepted and their preferred dates.

~~(d) Administrator and/or Management Services Provider~~ Individuals residing within the jurisdictional limits of Town shall receive a 50% discount on fees equal to 50%, as compared to fees for use by residents from other communities, during any ice or gym recreation use scheduled for the general public. Said discount shall also apply to skate rental. Discounts shall not apply to contracted rates for organized club or team use or to admission charged by private event sponsors. Town is responsible for providing appropriate identification to such residents and for informing Administrator as to the identification that can be accepted.

#### ARTICLE IV COMPENSATION; FINANCIAL REQUIREMENTS

4.1 **Administrator At Risk.** The Town acknowledges that, for the entirety of the Term, it will not charge Administrator any lease or fees for the privilege of administering the Facility. Administrator shall operate the Facility on its own accord and acknowledges that it is at risk for all operational expenses related to the Facility. Administrator acknowledges that it does not expect to compensate itself from Revenues generated by the Facility and shall use Excess Revenues in accordance with Section 4.2.

4.2 **Distribution of Profits.** Town acknowledges that the Management Services Provider will generally receive and accumulate Revenues and pay Operating Expenses from an Operating Account. Administrator has reserved for itself the right to sell certain naming rights for the Facility, the Revenues from which will be deposited into an account separate and distinct from the Operating Account. Those Revenues and Excess Revenues generated from by and from the operation of the Facility shall be distributed by Administrator and used in the following order:

(a) First, to pay back any outstanding debt and / or operating losses from prior years. For example, in the event that Administrator has to obtain a loan from the Fox Cities Convention and Visitors Bureau, or from some other person or entity, to cover operating losses, any and all Excess Revenues generated by and from the Facility shall be used first to pay back such loan obligations.

(b) Second, to establish and fund, at the recommendation of Administrator and in consultation with the Management Services Provider and with approval of Town, which shall not be unreasonably withheld, a Capital Maintenance Reserve for payment of repairs, maintenance, and replacement of the Facility and its improvements, set forth and described herein and as further described in Section 6.2 (h) of the Agreement, as further described in Section 6.2 (i) of the Agreement.

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(c) Third, Excess Revenues will be deposited into the Tourism Facilities Grant Fund to be administered by the Fox Cities Convention and Visitors Bureau to be used by the Fox Cities Convention and Visitors Bureau within its discretion.

For purposes of clarification, no Excess Revenues shall be allocated to either subparagraph (b) or (c) until the obligations set forth in subparagraph (a) have been satisfied. Similarly, no Excess Revenues shall be allocated to subparagraph (c) until the obligations set forth in both subparagraphs (a) and (b) have been satisfied.

4.4 **Source of Funding.** Administrator shall pay all items of expense for the operation, maintenance, supervision, and management of the Facility, including all Operating Expenses, from the funds in the Operating Account, which Administrator may access periodically for this purpose. The Operating Account shall be funded with amounts generated by operation of the Facility.

4.5 **Advancement of Funds.** Under no circumstances shall Town be required to pay for or advance any of its own funds to pay for any Operating Expenses or any other forms of compensation to Administrator or Management Services Provider.

## **ARTICLE V PERSONNEL**

5.1 **Generally.** All Facility staff and personnel, including those hired on a part-time and seasonal basis, shall be engaged or hired by Administrator or Management Services Provider, and shall be employees, agents, or independent contractors of Management Services Provider, and not of Town. Administrator shall work in consultation with the Management Services Provider to select the number, function, qualifications, and compensation, including salary and benefits (which must be obtained a reasonably competitive rate), of its employees and shall control the terms and conditions of employment (including, without limitation, termination thereof) relating to such employees. Administrator and Management Service Provider agrees to use its reasonable and prudent judgment in the selection and supervision of such personnel. Town specifically agrees that Administrator shall be entitled to pay its employees, agents, or independent contractors, as an Operating Expense, bonuses and benefits in accordance with the Facility's then current employee manual. During the Term, Town shall have no right or obligation to supervise or direct such employees, agents, or independent contractors.

## **ARTICLE VI RESPONSIBILITIES OF PARTIES**

6.1 **General Responsibilities of Administrator.** Administrator will provide general operational oversight and expertise in providing Management Services for Facility and ensure the Facility is operated in a fashion that is reasonably likely to generate paid overnight stays at more than one hotel, motel or other lodging establishment within the Tourism Zone and for "tourism promotion and tourism development" as that term is defined in Wis. Stat. § 66.0615(1)(fm).

6.2 **Specific Responsibilities of Administrator and Town.**

(a) **Contract Administrator.** Each party shall appoint a contract administrator who shall monitor such party's compliance with the terms of this Agreement. Administrator's contract administrator shall be its President. Town shall notify Administrator of the name of its contract administrator within thirty (30) days of execution hereof. Any and all references in this Agreement requiring Administrator or Town participation or approval shall mean the participation or approval of such party's contract administrator, unless otherwise provided herein.

(b) **Facility Advisory Committee/Reports:** Town acknowledges that Administrator has established a Sports Facility Advisory Committee to provide oversight and guidance of the Management Services Provider. Town will, for the Term, have representation on this Committee and via this participation, the Town will receive regular reports regarding the operations of the Facility, including financial reports. Administrator will, upon request of Town, but no less than once annually, provide copies of budgets and financial statements or reports which are provided to Administrator by the Management Services Provider.

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(c) **Furnishings, Equipment, Etc.** The Town and Administrator acknowledge that the CDA, at CDA expense, shall be responsible for the furnishing of the FF&E of the Facility to an initial start-up "opening day" operable level, for which funding is obtained by the CDA as part of the "Cost of the Work" through Series 2018 Lease Revenue Bonds.

(d) **Inventory.** Town shall provide Administrator with an inventory of personal property, materials, and equipment at the commencement of the Term. Administrator shall maintain a current inventory of all personal property, materials, and equipment used in connection with the Facility.

(e) **Insurance.** Town and Administrator shall be responsible for obtaining and administering insurance in connection with the Facility as follows:

Administrator shall obtain Owners' liability insurance for the CDA and pay all premiums therefore. Administrator shall obtain

(i) **General Liability - Town.** Administrator shall obtain, maintain, and pay the premiums at its sole expense for a general liability policy which insures Town, as tenant for the Facility with a combined single limit of \$5,000,000 per occurrence and a general annual aggregate limit of \$10,000,000. All such insurance shall be on an occurrence basis.

(ii) **General Liability - Administrator.** Administrator shall procure and maintain, at its sole expense, a general liability policy (including contractual and Errors and Omissions liability insurance) which insures Administrator as the named insured and where Town is listed as an additional insured, with a combined single limit of \$1,000,000 per occurrence and a general annual aggregate limit of \$3,000,000. All such insurance shall be on an occurrence basis.

(iii) General Liability – CDA. Administrator shall obtain, maintain, and pay the premiums at its sole expense for an Owner’s general liability policy which insures the CDA, as owner of the Facility with a combined single limit of \$1,000,000 per occurrence and a general annual aggregate limit of \$3,000,000. All such insurance shall be on an occurrence basis.

(iv) Workers Compensation. Administrator shall procure and maintain all workers compensation insurance required under applicable Wisconsin state law.

(v) Property Insurance. Town shall procure and maintain fire, extended coverage casualty insurance, all risk insurance, and (if appropriate) flood insurance regarding the Facility in full replacement costs and pay the premiums therefore. Said insurance shall name CDA and Administrator as additional insured under the Town’s policies, provided, however, that Administrator shall reimburse Town for all costs of such insurance out of the Operating Account.

(vi) Certificates of Insurance. Administrator shall upon execution of this Agreement furnish to Town certificates of all of the foregoing insurance as well as certificates of renewal no later than thirty (30) days prior to the expiration of each policy. No cancellation or non-renewal may take effect without thirty (30) days’ prior written notice by registered mail to Town.

(f) Taxes and Assessments. Town acknowledges that the CDA owns the Facility and the land on which the Facility is located. As such, the Facility is exempt from real estate property taxation and there will be no real estate taxes assessed to the Administrator. Administrator shall be responsible for and promptly pay from the Operating Account all personal property taxes, improvement assessments, where required, and other like charges related to the Facility and the property on which the Facility is located.

(g) Compliance with Legal Requirements. Administrator shall take such actions as may be necessary to comply with any and all laws, orders, or requirements affecting Town or the Facility by any federal, state, county, or municipal agency, or authorities having jurisdiction thereover.

(h) Use and Maintenance of Property. As set forth herein, Administrator shall be responsible for the payment of all Operating Expenses, which includes, but is not limited to, repairs, maintenance, and replacement of the Facility and its improvements, including, but not limited to, any and all building components and any and all mechanical, plumbing, heating, air conditioning, and electrical systems and equipment servicing costs and expenses. Administrator agrees not to knowingly permit the use of the Facility for any purpose which might void any policy of insurance relating to the Facility, or which might render any loss thereunder uncollectible, or which would be in violation of any government restriction. Administrator hereby covenants and agrees to keep the Facility in good condition and repair. Administrator agrees to make regular inspections of the Facility and to complete necessary repairs and maintenance in a timely manner.

(i) Operating Expenses; Administrator Compensation; Capital Expenditures: Administrator shall be solely responsible for all Operating Expenses and Management Services Provider compensation, and the same shall be paid by Administrator from the Revenue in the Operating Account. CDA shall be responsible for debt service (for bonds, mortgage loans and notes for borrowed money) on the Facility, and Capital Expenditures, set forth and described herein.

(j) Observance of Agreements. Throughout the Term, Town agrees to pay, keep, observe, and perform all payments, terms, covenants, conditions, and obligations under any leases, bonds, debentures, loans, and other financing and security agreements to which Town is bound in connection with its lease of the Facility.

(k) Liquor License. Town agrees to cooperate in the granting of a liquor license to Administrator for the Facility (or an establishment located at the Facility). Town shall have civil liability exemption for any and all damages to persons or property resulting from the consumption of alcohol at the Facility.

~~(k)~~ 6.3 Facility Advisory Committee: During the ~~Term, of this Agreement,~~ Town and Administrator agree that each municipality that is party to the Series 2018 Lease Revenue Bonds, will have the option to appoint one representative to a Sports Facility Advisory Committee, chaired and administered by the Administrator, that will advise on the operations of the Fox Cities Sports Facility and ensure that the facility is operated for its intended tourism-generating purpose at the highest possible standards. Appointees will serve at the pleasure of the highest elected official in the municipality. Appointees with facility management, sports operations, marketing, events and/or hotel experience are encouraged.

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## ARTICLE VII FACILITY CONTRACTS; TRANSACTIONS WITH AFFILIATES

7.1 Existing Contracts. Other than the Lease with the CDA, and this Agreement, there are no Existing Contracts related to the Facility to which the Town is a party, other than various agreements associated with generating room tax, and supporting documents for issuance of Series 2018 Lease Revenue Bonds by the CDA.

7.2 Execution of Contracts. Administrator or the Management Services Provider shall have the right to enter into Service Contracts, Revenue Generating Contracts, and other contracts related to the operation of the Facility. Any such contracts shall contain standard indemnification and insurance obligations on the part of each vendor, licensee, or service provider, as is customary for the type of services or obligations being provided or performed by such parties.

7.3 Transactions with Affiliates. In connection with its obligations hereunder relating to the purchase of goods or procurement of services for the Facility (including, without limitation, food and beverage services, ticketing services, and Commercial Rights sales), Administrator may purchase or procure such goods or services, or otherwise transact business with, an Affiliate of Administrator, provided that the prices charged and services rendered by such Affiliate are

competitive with those obtainable from any unrelated parties providing such goods or rendering comparable services.

## **ARTICLE VIII COVENANTS AND REPRESENTATIONS**

8.1 **Town's Covenants and Representations.** Town makes the following covenants and representations to Administrator, which covenants and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

(a) **Town's Status.** Town is a municipality organized pursuant to the laws of the State of Wisconsin and is authorized to transact business in the State of Wisconsin, with full power and authority to enter into this Agreement.

(b) **Authorization.** The making, execution, delivery, and performance of this Agreement by Town has been duly authorized and approved by requisite action, and this Agreement has been duly executed and delivered by Town and constitutes a valid and binding obligation of Town, enforceable in accordance with its terms and applicable Laws.

(c) **Effect of Agreement.** To Town's best knowledge, without duty of inquiry, neither the execution and delivery of this Agreement by Town nor Town's performance of any obligation hereunder: (i) will constitute a violation of any law, ruling, regulation, or order to which Town is subject; or (ii) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under any other agreement or document (A) to which Town is a party or is otherwise bound, or (B) to which the Facility or any part thereof is subject.

(d) **Town's Property Rights.** Town shall obtain and retain the interests in the Facility pursuant to its lease with the CDA necessary to enable Administrator to perform its duties pursuant to this Agreement peaceably and quietly.

(e) **Documentation.** If necessary to carry out the intent of this Agreement, Town agrees to execute and provide to Administrator, on or after the Effective Date, any and all other instruments, documents, conveyances, assignments, and agreements which Administrator may reasonably request in connection with the operation of the Facility.

8.2 **Administrator's Covenants and Representations.** Administrator makes the following covenants and representations to Town, which covenants and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

(a) **Corporate Status.** Administrator is a corporation duly organized, validly existing, and in good standing under the laws of the State of Wisconsin and is authorized to transact business throughout the United States, including within the State of Wisconsin, with full corporate power to enter into this Agreement and execute all documents required hereunder.

(b) **Authorization.** The making, execution, delivery, and performance of this Agreement by Administrator has been duly authorized and approved by all requisite action of the

board of directors of Administrator, and this Agreement has been duly executed and delivered by Administrator and constitutes a valid and binding obligation of Administrator, enforceable in accordance with its terms and applicable Laws.

(c) **Effect of Agreement.** To Administrator's best knowledge, without duty of inquiry, neither the execution and delivery of this Agreement by Administrator nor Administrator's performance of any obligation hereunder (i) will constitute a violation of any law, ruling, regulation, or order to which Administrator is subject; or, (ii) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under any other agreement or document to which Administrator is a party or is otherwise bound.

(d) **Documentation.** If necessary to carry out the intent of this Agreement, Administrator agrees to execute and provide to Town, on or after the Effective Date, any and all other instruments, documents, conveyances, assignments, and agreements which Town may reasonably request in connection with the operation of the Facility.

(e) Town represents and warrants that Administrator's performance of the services required by this Agreement shall not violate the property rights or interests of any other Person.

#### **ARTICLE IX LIABILITY**

9.1 **Assumption of Liability; Indemnification.** Notwithstanding anything contained herein to the contrary, Administrator hereby releases and agrees to hold harmless, indemnify, and defend Town from any and all claims, causes of action, liabilities, damages, and / or costs, including, without limitation, actual reasonable attorneys' fees, claimed against or incurred by Town that are in any way related to the use, operation, and / or management of the Facility, and Administrator hereby agrees to assume all risk and liability for the same, and reimburse the Town for all such expenditures incurred by the Town as described above.

#### **ARTICLE X GENERAL PROVISIONS**

10.1 **Relationship.** Administrator and Town shall not be construed as joint venturers or general partners of each other and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Administrator understands and agrees that the relationship to Town is that of independent contractor, and that it will not represent to anyone that its relationship to Town is other than that of independent contractor. Nothing herein shall deprive or otherwise affect the right of either party to own, invest in, manage, or operate property, or to conduct business activities, which are competitive with the business of the Facility. Administrator covenants and agrees that, even though it may have a management responsibility for other similar properties, which from time-to-time may be competitive with the Facility, Administrator shall always represent the Facility fairly and deal with Town on an equitable basis.

10.2 **Representations.** Town represents and warrants: (i) that Town has full power and authority to enter this Agreement; (ii) that, to the best of Town's knowledge, the property on which

the Facility is located is zoned for the intended use; (iii) that all permits for the operation of the Facility have or will be secured and are, or will be, current; and (iv) that the Facility and its operation do not violate any applicable statutes, laws, ordinances, rules, regulations, orders, or the like (including, but not limited to, those pertaining to hazardous or toxic substances).

10.3 **Assignment.** This Agreement shall not be assigned by either party without the express written consent of the non-assigning party. Any such assignment made without proper consent shall be deemed void.

10.4 **Benefits and Obligations.** The covenants and agreements herein contained shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, successors, and assigns.

10.5 **Building Compliance.** Administrator does not assume and is given no responsibility for compliance of the Facility or any equipment therein with the requirements of any building codes or with any statute, ordinance, law, or regulation of any governmental body or of any public authority or official thereof having jurisdiction, except to notify Town promptly, or forward to Town promptly, any complaints, warnings, notices, or summonses received by Administrator relating to such matters. Town represents that, to the best of Town's knowledge, the Facility and all such equipment contained therein comply with all such requirements.

10.6 **Notices.** All notices provided for in this Agreement shall be in writing and served by registered or certified mail, return receipt requested, postage prepaid, at the following addresses until such time as written notice of a change of address is given to the other party:

If to Town: Administrator Jim March  
(or the then-current Administrator)  
1900 W. Grand Chute Boulevard  
Grand Chute, WI 54913-9613

with a copy to: Robert Buckingham  
(or the then-current Community Development Director)  
1900 W. Grand Chute Boulevard  
Grand Chute, WI 54913-9613

If to Administrator: Fox Cities Sports Development, Inc.  
Attention: President  
3433 W. College Avenue  
Appleton, WI 54914

with a copy to: Epiphany Law, LLC  
Attn: Kathryn Blom  
4211 N. Lightning Drive  
Appleton, WI 54913

10.7 **Amendments.** This Agreement may be amended by the Administrator and the Town pursuant to mutual agreement. All amendments to this Agreement shall be in writing and signed by appropriate officials on behalf of the Administrator and the Town.

10.8 **Headings.** All headings and subheadings employed within this Agreement and in the accompanying schedules and exhibits are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

10.9 **Force Majeure.** Any delays in the performance of any obligation of Administrator under this Agreement shall be excused to the extent that such delays are caused by wars, national emergencies, natural disasters, strikes, labor disputes, utility failures, governmental regulations, riots, adverse weather, and other similar causes not within the control of Administrator and any time periods required for performance shall be extended accordingly.

10.10 **Entire Agreement.** This Agreement, including any specified attachments, constitutes the entire agreement between Town and Administrator with respect to the management and operation of the Facility and supersedes and replaces any and all previous management agreements entered into or/and negotiated between Town and Administrator relating to the Facility covered by this Agreement. No change to this Agreement shall be valid unless made by supplemental written agreement executed and approved by Town and Administrator. Except as otherwise provided herein, any and all amendments, additions, or deletions to this Agreement shall be null and void unless approved by Town and Administrator in writing. Each party to this Agreement hereby acknowledges and agrees that the other party has made no warranties, representations, covenants, or agreements, express or implied, to such party, other than those expressly set forth herein, and that each party, in entering into and executing this Agreement, has relied upon no warranties, representations, covenants, or agreements, express or implied, to such party, other than those expressly set forth herein.

10.11 **Rights Cumulative; No Waiver.** No right or remedy herein conferred upon or reserved to either of the parties to this Agreement is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this Agreement or now or hereafter legally existing upon the occurrence of an event of default under this Agreement. The failure of either party to this Agreement to insist, at any time, upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy, shall not be construed as a waiver or relinquishment of such right or remedy with respect to subsequent defaults. Every right and remedy given by this Agreement to the parties may be exercised from “time to time” and as often as may be deemed expedient by those parties.

10.12 **Applicable Law.** The execution, interpretation, and performance of this Agreement shall, in all respects, be controlled and governed by the laws of the State of Wisconsin. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the courts of record of the State of Wisconsin in Outagamie County or the United States District Court for the Eastern District of Wisconsin. Each party consents to the sole and proper jurisdiction of such



court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court.

10.13 **Acknowledgement.** The parties hereto acknowledge that they have been provided with a copy of this Agreement for review prior to signing it, that they have been given the opportunity to review it prior to signing it, that they have been given the opportunity to have this Agreement reviewed by their attorney prior to signing it, and that they understand the purposes and effect of this Agreement.

10.14 **Severability.** If any provision or provisions of this Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed and enforced as if such provision or provisions had not been included.

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

TOWN

THE TOWN OF GRAND CHUTE,  
WISCONSIN

By: \_\_\_\_\_  
Print Name: David Schowalter  
Print Title: Town Chairman

ADMINISTRATOR

FOX CITIES SPORTS DEVELOPMENT, INC., a Wisconsin Corporation

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

CDA

COMMUNITY DEVELOPMENT AUTHORITY OF THE TOWN OF GRAND CHUTE,  
WISCONSIN

The CDA executes this Agreement for the purpose of acknowledging the rights granted to Administrator hereunder and evidencing its agreement to Sections 2.2, 6.2 (c), and 6.2 (i).

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

EXHIBIT "A"

MANAGEMENT SERVICES

During the Term, Administrator will provide directly or through delegation to a professional Management Service Provider services related to a broad range of management, booking, marketing, business development, planning, design, vendor negotiation, branding, marketing, operations set-up, bookkeeping and software systems set-up, employee and volunteer recruitment, policy and procedures, and other aspects required at the Facility (collectively, the "Management Services"). The Management Services address Administrator's responsibility for all aspects of oversight for the staffing, marketing, maintenance, event management, sponsorship and advertising sales, and day-to-day operations of the Facility, as well as obtaining any and all licenses and permits that are necessary to conduct the operations of the Facility and solicitation, arrangement, advertising and operation of all events to be conducted at the Facility as authorized by this Agreement.

~~During the term of this Agreement, the ARA shall provide an opportunity for reasonable participation of the Municipalities in decisions relating to the operation of the Exhibition Center through the creation of an advisory committee which is intended to provide counsel to the ARA and to assist in program development and operations for the Exhibition Center (the "Advisory Committee"). The membership of the Advisory Committee shall include the following: one representative from each Municipality (appointed by the Municipality); two Operators collecting Room Taxes (appointed by the ARA Chairperson and approved by ARA), two community members residing within a Municipality (appointed by the ARA Chairperson and approved by ARA), one member of the ARA (appointed by the ARA Chairperson); and the Executive Director of the CVB, or his/her designee. The Appleton Community and Economic Development Director, or a designee thereof, shall also be a non-voting, advisory member of the Committee. The Chair and Vice Chair of the Committee shall be designated by ARA and shall serve one year terms that may be renewed at the discretion of ARA. Committee members, with the exception of the Executive Director of the CVB and Appleton Community and Economic Development Director, or designees thereof, shall serve terms of two years and may serve up to three consecutive terms. However, upon establishment of the Advisory Committee, the following shall serve an initial term of three years: one half of the participating Municipalities chosen by random selection, one of the hotelier representatives, and one of the community members, chosen by the ARA Chairperson. The roles and responsibilities and general operating rules of the Advisory Committee shall be as passed and approved by the Advisory Committee from time to time.~~

