

**INDUSTRIAL DEVELOPMENT AUTHORITY  
OF CHARLOTTESVILLE**

**AND**

**CHARLOTTESVILLE PAVILION, LLC**

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**SUBLEASE AND FINANCING DOCUMENTS**

**FOR**

**CHARLOTTESVILLE AMPHITHEATER**

# SUBLEASE, EASEMENT AND MANAGEMENT AGREEMENT

by and between the

INDUSTRIAL DEVELOPMENT AUTHORITY OF THE  
CITY OF CHARLOTTESVILLE, VIRGINIA,

and

CHARLOTTESVILLE PAVILION, LLC

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## **SUBLEASE, EASEMENT AND MANAGEMENT AGREEMENT**

This SUBLEASE, EASEMENT, AND MANAGEMENT AGREEMENT is made and entered into as of this 30th day of September, 2004, by and between the INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF CHARLOTTESVILLE, VIRGINIA, a political subdivision of the Commonwealth of Virginia ("CIDA"), and CHARLOTTESVILLE PAVILION, LLC, a Virginia limited liability company ("Operator") (hereinafter individually referred to as "Party" or collectively referred to as "Parties").

### **RECITALS:**

WHEREAS, pursuant to the City Lease (defined below), the City of Charlottesville, Virginia ("City") leased the Amphitheater Area (defined below) and a portion of the Recreation Center (defined below) to CIDA;

WHEREAS, Operator seeks to lease the Premises (defined below), including the Amphitheater Area and a portion of the Recreation Center, to construct the Amphitheater (defined below);

WHEREAS, Operator shall construct the Amphitheater and be solely responsible for all construction costs in excess of the \$1,000,000 CIDA Contribution (defined below) and the \$2,400,000 CIDA Loan (defined below) provided to Operator for the payment of Construction Costs (defined below);

WHEREAS, CIDA, with the consent and approval of the City, desires to have Operator construct the Amphitheater, lease the Premises (including the Amphitheater Area) and manage the operation of the Amphitheater, all as set forth more particularly herein; and

WHEREAS CIDA desires to make the \$1,000,000 CIDA Contribution and the \$2,400,000 CIDA Loan, all as set forth more particularly herein.

NOW, THEREFORE it is agreed as follows:

### **ARTICLE 1**

#### **DEFINITIONS AND PARTIES**

##### **Section 1.1 — Defined Terms/Interpretation.**

1.1.1 Definitions. As used in this Agreement, the following terms shall have the respective meanings indicated:

(1) "Additional Ticket Surcharge" shall mean the Ticket surcharge provided for in Section 6.2.1.



(2) "Agreement" shall mean this Sublease, Easement and Management Agreement, as the same may be amended or modified pursuant to the terms hereof from time to time.

(3) "Alterations" shall mean any alterations of, additions to, demolition of or other changes in or to the Premises.

(4) "Amphitheater" shall mean the outdoor amphitheater facility which Operator is obligated to construct upon a portion of the Premises pursuant to Article 10, including, without limitation, the Amphitheater Structure (as defined below), all buildings, improvements, landscaping, structures, fixtures, personal property and other items which are constructed or placed from time to time on a portion of the Premises, as a part of or related to the use, maintenance, management or operation of the Amphitheater, except for Trade Fixtures (defined below). The Amphitheater shall have a seating capacity of 4,500 seats of which approximately 250 shall be covered box seats, 2,750 shall be covered seats and 1,500 shall be uncovered lawn seats. The actual number of seats shall be determined based on the final design of the Amphitheater. The capacity of the Amphitheater for unseated shows may exceed 4,500 Event Attendees.

(5) "Amphitheater Area" shall mean the area shown on Exhibit A which is attached hereto and incorporated herein by this reference.

(6) "Amphitheater Structure" shall mean that portion of the Amphitheater consisting of the permanent or temporary roof, all structures supporting the roof, the stage, the stage house and all fixed seating, but excluding all Trade Fixtures.

(7) "Backstage Service Area" shall mean that portion of the Amphitheater consisting of the Storage Area and that portion of the Premises which Operator shall have the right to use for backstage services and storage including an area for parking, loading and unloading trucks, buses and other vehicles, and which is shown on Exhibit B attached hereto and incorporated herein by this reference.

(8) "Casualty Event" shall mean fire, flood, earthquake, acts by terrorists, acts of war, extraordinary weather, riot, insurrection, explosion, or vandalism causing material property damage to the Premises. "Major Casualty Event" shall mean any Casualty Event that makes it impracticable or economically infeasible to continue operation of the Amphitheater for any Events. "Minor Casualty Event" shall mean any Casualty Event that limits the size of Events that can be held and is not a Major Casualty Event.

(9) "CIDA" shall mean the Industrial Development Authority of the City of Charlottesville, Virginia, or any successor thereto.

(10) "CIDA Contribution" shall mean the aggregate amount of \$1,000,000.00 to be contributed by CIDA to the Construction Costs.

(11) "CIDA Executive Director" shall mean the individual appointed by CIDA to be the administrative contact for CIDA, as identified in Section 1.2.2, or any successor appointee.

(12) "CIDA Event of Default" shall mean the events of default described in Section 13.4.

(13) "CIDA Loan" shall mean the loan in the amount of \$2,400,000 from CIDA to Operator for the construction of the Amphitheater under the terms of a Promissory Note of even date and secured by a Security Agreement of even date.

(14) "City" shall mean the City of Charlottesville, Virginia, a political subdivision of the Commonwealth of Virginia, and shall include, without limitation, the various departments of the City, and any assignee or delegates of or successor to their rights, powers and responsibilities.

(15) "City Lease" shall mean the lease between the City and CIDA dated December 15, 2003 and attached hereto as Exhibit K and incorporated herein by this reference.

(16) "City/CIDA Events" shall mean all events, shows or performances presented by or on behalf of the City or CIDA at the Amphitheater pursuant to the rights and provisions contained in this Agreement.

(17) "Concert Season" shall mean the time period in which the Operator shall have first priority to use the Premises. The Concert Season begins on April 1 of each year and ends on October 31.

(18) "Construction Costs" shall mean the cost of constructing the Amphitheater and renovating the Storage Area (including infrastructure and design costs) pursuant to Article 10 of this Agreement.

(19) "CPI" shall mean the Consumer Price Index for Urban Earners and Clerical Workers, United States and Selected Areas, All Items, published monthly by the U.S. Department of Labor's Bureau of Labor of Statistics, or any successor agency or publication thereto.

(20) "Environmental Laws" shall have the meaning set forth in Section 12.3.4.

(21) "Event Attendee" shall mean an individual who attends an Event, whether ticketed or not.

(22) "Event Period" shall mean the period starting 2 hours before the doors open for an Event to the Event Attendees and until the crowd of Event Attendees has disbursed after an Event.

(23) "Events" shall mean the events held at the Amphitheater and shall include both City/CIDA Events and Operator Events.

(24) "Facility Maintenance Fee" shall mean those fees added to the Gross Ticket Price as provided for in Section 6.5.

(25) "Facility Maintenance Fund" shall mean that fund established pursuant to Section 6.5 to hold the Facility Maintenance Fee.

(26) "Force Majeure" shall mean war, acts of terrorism, insurrection, judicial or governmental acts or omissions, floods, volcanic activity, earthquakes, explosions, fires, acts of God, acts of the public enemy, epidemics, and quarantine restrictions or similar events beyond the control of the Parties.

(27) "Governmental Authority" shall mean any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever concerning any governmental or quasi-governmental entity or unit (federal, state, county, district, municipal, city or otherwise), whether now or hereafter in existence, having jurisdiction over the Premises, CIDA or the Operator.

(28) "Gross Ticket Price" shall mean the purchase price of a Ticket to attend an Event less the amount of any taxes, Facility Maintenance Fees, service charges or similar add-on charges included in the purchase price of a Ticket.

(29) "Hazardous Substances" shall mean any hazardous or toxic substance or material including, without limitation, asbestos, oil and petroleum products and those substances regulated, controlled or within the scope of any applicable Environmental Laws, including, without limitation, the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, and the Superfund Amendment and Reauthorization Act of 1986, as amended.

(30) "Impositions" shall mean all taxes and assessments (ad valorem and non-ad valorem), use and occupancy taxes, sales and use taxes, leasehold interest taxes, electrical, telephone, gas, water, sewer and storm water and other utility service charges, rates, rents, deposits, charges and fees concerning the Amphitheater Area and Storage Area, excises, levies, license and permit fees, and other charges, including, without limitation, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which shall or may at any time during the Term be assessed, levied, charged, confirmed or imposed upon or accrue or become a lien against this Agreement or the Amphitheater Area and Storage Area (together with any interest and penalties thereon); provided, however, that Impositions shall not include any income taxes imposed upon any Rent received by CIDA.

(31) "Improvements" shall mean all improvements, buildings, work, materials, structures, personal property and fixtures within the Amphitheater Area and Backstage Service Area whether or not constructed by Operator. Trade Fixtures are not considered Improvements.

(32) "Indemnitees" shall mean a Party indemnified hereunder and their respective affiliates, elected officials, officers, owners, members, shareholders, employees, representatives, agents, contractors and consultants.

(33) "Initial Term" shall mean the initial five-year term, beginning on the Lease Commencement Date.

(34) "Laws" shall mean (i) any and all present and future statutes, rulings, rules, regulations, orders, permits, directives, policies, findings, codes or ordinances of any Governmental Authority applicable to the Premises or the use, operation, maintenance, ownership, occupancy, possession, management, alteration, repair or reconstruction of the Premises; (ii) any and all terms, provisions, agreements or restrictions created or imposed pursuant to any lease, contract, instrument or restrictive covenant or other document, now or hereafter in existence, applicable to and enforceable against the Premises, CIDA or the Operator; and (iii) any and all judicial orders, decisions, findings, rulings or judgments concerning the Premises, Operator or CIDA.

(35) "Lease Commencement Date" shall mean October 3, 2004.

(36) "Net Revenue" shall mean gross revenue less direct, actual and incremental costs incurred in obtaining such gross revenues, and with respect to City/CIDA Events Out of Pocket Expenses.

(37) "Obligations" shall mean any and all of the covenants, warranties, representations and other obligations (other than to pay Rent) made or undertaken by a Party to the other Party pursuant to this Agreement.

(38) "Operator" shall mean Charlottesville Pavilion, LLC, a Virginia limited liability company, or any permitted successor thereto.

(39) "Operator Appointee" shall mean the individual appointed by the Operator to be the administrative contact for the Operator, as identified in Section 1.2.1(b) or any successor appointee.

(40) "Operator Event of Default" shall mean the Operator events of default described in Section 13.1.

(41) "Operator Events" shall mean all events, performances and shows presented at the Amphitheater by the Operator, except for City/CIDA Events.

(42) "Out of Pocket Expenses" shall mean Operator's actual incremental out-of-pocket expenses including payments to third parties, but not including fixed overhead expenses except with respect to City/CIDA Events for which repayment of such fixed overhead expenses of Operator shall be included, along with a reasonable allocation for depreciation and amortization costs.

(43) "Permitted Rate" shall mean the prime rate of interest as indicated in the Money Rates section of The Wall Street Journal plus two percent (2%) per annum.

(44) "Person" shall mean any individual, trust, estate, partnership, joint venture, company, corporation, association, limited liability company, limited liability partnership, Governmental Authority or entity, or any other legal entity or business or investment enterprise.

(45) "Premises" shall mean that area shown on Exhibit C that the Operator shall have exclusive use of during Event Periods which includes the Amphitheater Area and the Backstage Service Area.

(46) "Recreation Center" shall mean the City Recreation Center located at 800 East Market Street, Charlottesville, Virginia.

(47) "Renewal Terms" shall mean the five successive options to renew and extend this Agreement for five (5) additional years each, exercisable pursuant to Section 3.2.

(48) "Rent" shall mean all sums, charges, and amounts to be paid by or due from Operator pursuant to Article 6.

(49) "Required Permits" shall mean all permits, licenses, approvals, consents and authorizations which are required or necessary in order for Operator to properly use, occupy, operate, manage, repair and maintain the Premises in conformance and strict compliance with the terms and conditions of this Agreement and all Laws, including, without limitation, all building permits, business licenses, liquor licenses, sign permits, certificates of occupancy, health permits, and zoning approvals.

(50) "Stage System" shall mean that part of the Amphitheater described on Exhibit J. The CIDA Executive Director and the Operator Appointee shall agree on Exhibit J before the commencement of the initial Concert Season. Exhibit J shall include an itemization of all portions of the Stage System which were purchased with funds from either the CIDA Loan or CIDA Contribution.

(51) "Storage Area" shall mean that portion situated in the basement of the Recreation Center located within the Premises over which Operator shall have exclusive control and use at all times, and which is shown on Exhibit F.

(52) "Term" shall mean the period of time covered by the Initial Term and any of the Renewal Terms, as the same may be sooner terminated.

(53) "Ticket" shall mean a ticket entitling an Event Attendee to attend an Event.

(54) "Trade Fixtures" shall mean all personal property, equipment and fixtures owned by Operator that are installed and located from time to time upon the Amphitheater Area,

whether or not affixed in any manner to the real estate constituting the Amphitheater Area and whether or not removal of such Trade Fixtures may cause injury to the Premises including any buildings or improvements comprising the Amphitheater Area. Without limiting the foregoing, the following items are not Trade Fixtures and cannot be removed from the Amphitheater Area without the written permission of CIDA: Amphitheater Structure or any portion of the Stage System purchased with the CIDA Contribution or funds from the CIDA Loan. Trade Fixtures includes, without limitation, any portion of the Stage System purchased with Operator's funds, chairs and concession equipment.

(55) "Transit Center" shall mean the bus transit center located adjacent to the Amphitheater Area and constructed pursuant to the resolution attached as Exhibit G hereto.

(56) "Utility Lines" shall mean all such pipes, wires, conduits, equipment, apparatus, improvements, structures and facilities as shall be necessary for the provision of utility services to the Premises.

1.1.2 Accounting Terms. All financial or accounting terms used in this Agreement, which are not otherwise defined herein, such as "revenue", "depreciation" and "amortization" shall have the meanings given to them pursuant to general accepted accounting principles, as uniformly applied in the United States.

1.1.3 Headings/References. Pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate and the masculine gender shall include the feminine and neuter and vice versa. Article and Section headings in this Agreement are for convenience and reference only and shall not affect the construction or interpretation of this Agreement. Whenever the terms "hereof", "hereby", "herein", or words of similar import are used in this Agreement, they shall be construed as referring to this Agreement in its entirety rather than to a particular section or provision, unless the context specifically indicates to the contrary. Whenever the words "including" or "include" are used in this Agreement they shall be construed as meaning "including, without limitation." Any reference to a particular "Article" or "Section" shall be construed as referring to the indicated article or section of this Agreement.

## **Section 1.2 — Parties to Agreement.**

### **1.2.1 Operator.**

(a) Operator is a limited liability company duly organized under the laws of the Commonwealth of Virginia and duly authorized and licensed to transact business in the Commonwealth of Virginia.

(b) Operator shall appoint and at all times maintain an individual as its administrative contact for this Agreement. Operator hereby appoints Ken MacDonald as Operator Appointee. If prior to the expiration of the Term, Operator Appointee resigns or Operator wishes to replace Operator Appointee, Operator may upon written notice to CIDA

replace Operator Appointee. Operator Appointee shall report directly to Operator with regard to this Agreement. Operator Appointee shall have the full authority to act on behalf of Operator, as Operator's agent and representative, on all matters relating to this Agreement and to discharge Operator's duties and responsibilities under this Agreement; provided, however, that this acknowledgment by CIDA that Operator Appointee may perform certain Obligations and responsibilities and act as an agent of Operator shall not limit in any way the liability or Obligations of Operator under this Agreement.

1.2.2 CIDA. The CIDA Executive Director shall be CIDA's administrative contact for this Agreement. CIDA may, upon written notice to Operator, appoint a replacement CIDA Executive Director. The CIDA Executive Director may act on behalf of CIDA only on those specific matters that by the express terms of this Agreement permit the CIDA Executive Director to take such actions.

### **Section 1.3 — Ownership of Amphitheater and Trade Fixtures.**

1.3.1 Improvements. Upon completion of the construction of the Amphitheater and the Storage Area, all Improvements shall become and remain the sole property of the City and CIDA free and clear of all claims, liens and encumbrances of Operator or anyone claiming by, under or through Operator. Operator shall defend, indemnify and hold the City and CIDA harmless for, from and against any and all liability and loss which may arise from the assertion of any such claim, lien or encumbrance concerning any of the Improvements. The indemnity provided in this Section 1.3.1 shall not apply to such liabilities or losses resulting from the gross negligence or intentional acts of the City or CIDA or their elected officials, board members, officers, employees, authorized agents and representatives. Title to the Improvements shall belong to, and accrue solely to the benefit of the City and CIDA. Operator shall have the right to any income tax benefit allowed to be taken under applicable laws. Provided, however, that Operator shall rely solely on its own tax advice with respect to said benefit. Operator agrees to execute and deliver to CIDA any documents CIDA may reasonably request to evidence such transfer of ownership and to assign all rights, guarantees, or warranties associated therewith.

1.3.2 Trade Fixtures. Operator, at Operator's sole cost and expense, shall have the right to bring onto the Amphitheater Area, remove, repair, maintain and replace Trade Fixtures, as necessary for Operator to use the Amphitheater pursuant to this Agreement. At the expiration or sooner termination of the Term, provided that Operator is not then in default, Operator shall have the right to remove such Trade Fixtures; provided, however, that any such Trade Fixtures must be removed within a reasonable time after the date of expiration or sooner termination of the Term and Operator shall, at its expense, repair any damage to the Amphitheater Area occasioned by the removal of any such Trade Fixtures and restore the Amphitheater Area to its condition existing prior to the installation of any removed Trade Fixtures. If the Trade Fixtures are not removed from the Amphitheater Area within such period, Operator hereby agrees that the Trade Fixtures shall (without the payment of compensation to Operator or others) be automatically deemed abandoned property after ten (10) days written notice that such materials remain on the Premises and CIDA shall have the right, if it so elects, to claim and thereafter own all such Trade Fixtures.

1.3.3 CIDA Lien on Trade Fixtures. Notwithstanding the foregoing, if an Operator Event of Default exists under this Agreement, or if an event has occurred that with notice and the passage of time could constitute an Operator Event of Default, Operator may not remove any of the Trade Fixtures until and unless CIDA has been fully compensated for any damages or sums owing to CIDA as a result of such Operator Event of Default. Operator hereby grants to CIDA a security interest in and to all Trade Fixtures located from time to time in the Amphitheater Area for the purpose of securing the payment by Operator to CIDA of all Rent, the Additional Ticket Surcharge and the performance by Operator of all Obligations under this Agreement. Operator acknowledges and agrees that CIDA may from time to time file and record appropriate financing statements and other documents in appropriate state or city offices in order to perfect the foregoing security interest in favor of CIDA and Operator agrees from time to time to execute and deliver to CIDA such documents upon the request of CIDA. Nothing in this Agreement shall be construed to grant CIDA any rights in or to any fixtures, or personal property, rented or leased by the Operator from third parties or not owned by the Operator. Upon expiration or termination of this Agreement, CIDA will take all reasonable actions to release its lien against the Trade Fixtures, provided Operator shall not then be in default of any of its obligations under this Sublease and no Operator Event of Default shall have occurred nor has any event occurred that will with the passage of time constitute an Operator Event of Default hereunder.

**Section 1.4 — No Encumbrances.** Operator shall not assign, transfer, encumber, mortgage, lien or pledge this Agreement, the Premises or the Improvements or any portion thereof or any interest or rights therein, except to the City or CIDA. Nothing in this Section 1.4 shall be construed as to prohibit Operator from requesting the City or CIDA, as appropriate, to grant easements over portions of the Premises to utility providers as reasonably necessary for the purpose of providing utilities to the Premises.

## ARTICLE 2

### PREMISES AND POSSESSION

**Section 2.1 — Premises.** CIDA hereby leases to Operator, and Operator hereby rents, demises and leases from CIDA, the Premises on the terms and conditions set forth in this Agreement.

**Section 2.2 – Possession.** Upon the Lease Commencement Date, Operator shall take possession of the Premises on the terms provided herein. Prior to the Lease Commencement Date, Operator shall have access to the Premises for investigations, inspections, tests and studies related to the construction of the Amphitheater (“Studies”) after reasonable notice to the City and CIDA. All Studies shall be performed in a manner that does not unreasonably disturb or disrupt the Premises. Operator shall, in performing its Studies, comply with any and all laws, ordinances, rules, and regulations applicable to any or all of such procedures. Operator shall provide CIDA with copies of any and all final, third party reports prepared on behalf of Operator as part of the Studies promptly upon CIDA’s request for such reports. Operator shall (i) promptly pay when due any third party costs associated with its Studies; (ii) at Operator’s sole cost, repair any damage to the Premises resulting from the Studies; and (iii) indemnify CIDA for any mechanics’ liens, costs or damages resulting from the Studies. The amphitheater stage cover which covers the stage area at the time of the execution of this Agreement shall be removed by CIDA or the



City within a reasonable time after the Lease Commencement Date and shall remain the property of the City.

### **Section 2.3 — Access Easement.**

2.3.1 Construction Access Easement. CIDA does hereby grant to Operator (and shall grant to Operator upon reasonable request of Operator) such non-exclusive easements for ingress, egress and other activities related to or otherwise required for the construction of the Amphitheater, the Backstage Service Area and the Storage Area and for use of the areas described and shown on Exhibit D attached hereto, with all such easements to be in form and substance reasonably satisfactory to Operator. Certain areas may be limited to certain construction uses as noted in Exhibit D. Operator shall provide any requested construction easement agreement at least thirty (30) days in advance of any construction activities on the Premises.

2.3.2 Controlled Access Easements. In addition to the other easements granted herein to Operator, CIDA does hereby grant and agrees to grant to Operator upon reasonable request of Operator such non-exclusive easements for ingress, egress, access and travel, and to control ingress, egress, access, travel and other activities related to the operation, management and use of the Premises during the Term and to control access to the Premises during Event Periods at the location shown on Exhibit M, with all such easements to be in form and substance reasonably satisfactory to Operator.

**Section 2.4 — Utility Easement.** CIDA does hereby agree to grant to Operator and to any applicable Utility provider providing utility services to the Premises, from time to time during the Term, such easements over, across, through and under the Premises solely for the purpose of installing, maintaining, repairing, removing, and reconstructing Utility Lines as shall be necessary or appropriate for the provision of utility services to the Premises or any portion thereof, including, but not limited to, water, electricity, steam, natural gas, telephone, cable television lines, fiber-optic cable, computer networking, sanitary sewer and storm sewer, all such easements to be in form and substance reasonably satisfactory to Operator and the respective Utility provider. Upon completion of construction of the Amphitheater, Operator shall execute and deliver to CIDA such instruments, documents and agreements as may be reasonably requested by CIDA to provide CIDA with accurate information regarding the location of any Utility Lines placed upon the Premises in connection with the construction of the Amphitheater.

**Section 2.5 — Acceptance of Improvements “AS-IS.”** Operator acknowledges that Operator is obligated pursuant to Article 10 to design, develop and construct the Amphitheater and the Backstage Service Area located on the Premises. At the time of execution of this Agreement and upon completion of construction of those improvements, Operator shall accept all of the improvements “AS IS,” “WHERE IS,” without any warranty or representation from CIDA whatsoever, express or implied, imputed or otherwise, and Operator agrees to use, operate, occupy, maintain and manage the Premises at Operator’s sole cost and expense and at Operator’s sole risk and peril, in accordance with the terms and conditions of this Agreement, but subject to any payment obligations of CIDA arising in connection with the Facility Maintenance Fund or as otherwise provided in this Agreement.

**Section 2.6 — Surrender on Termination.** Upon expiration of this Agreement or other termination of this Agreement for any cause whatsoever, Operator shall peacefully vacate and surrender the Amphitheater Area and the Improvements in good order and in fully operable condition, less ordinary wear and tear. Except as CIDA agrees in writing to the contrary, Operator agrees to remove, at Operators's expense, all of its Trade Fixtures in accordance with Section 1.3.2 above, and to promptly reimburse CIDA for the cost of repairing all damage done to the Ampitheater Area in excess of normal wear and tear, except those matters of repair and maintaince for which payment may be made by CIDA from the funds held by CIDA in the Facility Maintenance Fund.

### **ARTICLE 3**

#### **TERM**

**Section 3.1 — Initial Term.** The Term of this Agreement shall begin upon the Lease Commencement Date and expire upon the completion of the Initial Term, subject to the Renewal Terms of this Agreement and may be earlier terminated pursuant to the terms of this Agreement.

**Section 3.2 — Renewal Options.** Operator may exercise the Renewal Terms only pursuant to the following terms, provisions and conditions:

(a) Operator shall not have the right to exercise any options to extend the Term of this Agreement at any time during which an Operator Event of Default is continuing under this Agreement or the CIDA Loan.

(b) In order to validly exercise any of Operator's options to extend the Term of this Agreement, Operator must provide written notice of Operator's election to CIDA by no earlier than two (2) years, and no later than one (1) year prior to the expiration of the then effective Term; provided in the event that Operator shall repay the CIDA Loan during the last twelve (12) months of the expiration of the then effective Term, Operator shall have the longer period of (i) forty-five (45) days, or (ii) the remainder of the Term if less than forty-five days (45), to elect in writing to renew the Term.

(c) So long as the CIDA Loan has not been paid in full, then the Renewal Terms shall be deemed automatically exercised.

### **ARTICLE 4**

#### **USE AND LIMITATIONS ON USE**

**Section 4.1 — Use.**

4.1.1 Generally. Operator shall use the Premises in a manner consistent with a first class professional outdoor amphitheater and in accordance with the City Lease, all Laws, and the terms and conditions of this Agreement. Operator shall have the exclusive right to schedule all

events at the Amphitheater, including, without limitation, Operator Events and City/CIDA Events, provided Operator will use reasonable efforts to coordinate scheduling matters for City/CIDA Events with CIDA Executive Director as provided for in Section 5.2. Operator shall have exclusive use of the Premises during Event Periods and exclusive use of the Storage Area at all times. CIDA acknowledges that Operator may reserve dates to be open in the hope of finding an appropriate Event for such date, but such Event may never materialize.

4.1.2 Broadcasting; Photographs. Operator shall have the exclusive right to broadcast, record and photograph Operator Events, including the right to film, record, telecast and otherwise broadcast Operator Events. Operator agrees to indemnify, defend and hold harmless the City and CIDA for, from and against all claims, expenses including attorneys' fees, costs, fines, actions or liabilities arising from or related to such filming, recording, telecasting and other broadcasting of Operator Events, including, without limitation, any alleged or actual copyright violations or similar claims or causes of action. Operator shall not, nor shall it allow any other party, to film, record, telecast or otherwise broadcast any content that is not in compliance with Laws or is lewd, pornographic or designed to incite riots or destruction. City and CIDA shall have the exclusive right to broadcast, record and photograph City/CIDA Events, including the right to film, record, telecast and otherwise broadcast City/CIDA Events. To the extent permitted by applicable laws, CIDA agrees to indemnify, defend, and hold harmless Operator for, from and against all claims, expenses, costs, fines, actions or liabilities arising from or related to the City or CIDA's filming, recording, telecasting or other broadcasting of City/CIDA Events, including, without limitation, any alleged or actual copyright violations or similar claims or causes of action. City and CIDA shall not, nor shall they allow any other party, to film, record, telecast or otherwise broadcast any content that is not in compliance with Laws or is lewd, pornographic or designed to incite riots or destruction.

4.1.3 Concessions. Operator shall have the exclusive right to operate and/or procure concessions and to sell food, beverage and merchandise for all Events. All revenue from concessions generated during Operator Events at the Amphitheater shall belong to Operator. The Net Revenue from concessions generated during City/CIDA Events, for which Operator provides or makes available concession services, shall belong to CIDA and be promptly paid by Operator to CIDA at least once a month during the Term. Operator shall be entitled to payment for any Out of Pocket Expenses incurred by Operator in the provision of these services to the City or CIDA. Operator shall be responsible for collecting and remitting all applicable sales and meals taxes to the City with respect to its operations and requiring in its contracts that all of its vendors, subcontractors and employees remit all applicable sales and meals taxes to the City. To the extent the sponsor of the Event is the City or CIDA and enjoys the benefit of exemption from collecting and remitting such sales tax, the Operator shall not be obligated hereunder to collect or remit sales tax amounts solely for such exempt shows, including, without limitation, City/CIDA Events.

4.1.4 Naming Rights. Operator shall have the right to select the operating name used for the Amphitheater; provided however, that Operator must receive written approval in advance from CIDA and the City for any name selected by Operator. The name shall be a name that is in compliance with Laws, does not contain any lewd or pornographic terms or materials, and does not include the name of a tobacco product or company. The name used for the Amphitheater

cannot include the name of any governmental entity other than CIDA or the City except that Operator may use the following terms: "Charlottesville", "Virginia" or "Central Virginia". Operator will notify CIDA in writing of a proposed name for the Amphitheater and CIDA and the City shall approve or object to such proposed name within thirty (30) days or such proposed name shall be deemed approved by CIDA and the City. At the written request of CIDA, the approval period may be extended up to fifteen (15) days if necessary to provide sufficient time for City approval.

**Section 4.2 - Operator Proceeds.** Except as otherwise provided herein, all revenue, from any source, arising out of the Operator's use, management, marketing, advertising or broadcast of or from the Premises, any activities upon the Premises, or any performance held upon the Premises, shall be solely owned by Operator.

**Section 4.3 — Right to Enter Premises.** CIDA and the City shall have the right to access all common areas of the Premises. CIDA and the City shall have the right to access any portion of the Premises during Events with reasonable notice and permission from the Operator.

**Section 4.4 — Open Access During Non-Events Periods.** Except during the Event Period or as otherwise agreed in writing by CIDA, the Premises shall be open for access by the general public. All seating, trash receptacles, or any other temporary structures shall be removed at the conclusion of the Event Period; provided, however, that with the consent of the CIDA Executive Director the Operator may keep seats, trash receptacles or other Event related temporary structures in the Amphitheater Area from Event to Event. The Operator shall be solely responsible for the repair, maintenance and security of any seats, trash receptacles or temporary structures in the Amphitheater Area at all times. The Stage System shall remain on the Premises at all times during the Concert Season.

**Section 4.5 — No Censorship.** Except as expressly provided elsewhere in this Agreement, CIDA shall have no independent right arising under this Agreement to censor or have any approval rights concerning the content or type of entertainment being produced or presented by Operator except no content shall be allowed which is not in compliance with Laws, or which is lewd, pornographic or designed to incite riots or destruction. CIDA shall have the right in its reasonable discretion to prohibit acts or entertainers from performing in the Amphitheater if previous performances by the acts or performers resulted in substantial destruction or disturbances.

**Section 4.6 — Permits.** Operator shall in its name, and at its sole cost and expense, apply for, secure, obtain and keep in full force and effect at all times during the Term all Required Permits necessary to construct, use, operate, maintain, repair, occupy and manage the Premises. Operator agrees, at the request of CIDA, to provide CIDA with copies and other evidence of the existence of such Required Permits.

**Section 4.7 — Compliance with Laws.** Operator shall use, occupy, operate, maintain, repair and manage the Premises in compliance with all Laws and the terms and conditions of this Agreement, including, without limitation, workers' compensation laws, withholding tax laws, any applicable wage laws and any duty to pay prevailing wages, if any. Any employees or

independent contractors of Operator shall have all necessary professional licenses to perform their duties for Operator. Any employee of Operator who operates a motor vehicle shall have a commercial driver's license if required by Virginia law. Operator shall also file all tax returns and pay all Impositions when due, and shall indemnify, defend and hold the City and CIDA harmless for, from and against any and all costs, expenses including attorneys' fees, claims, losses and liabilities related to, or associated with Operator's failure to comply with any Laws or to pay any such taxes, Impositions or other charges.

**Section 4.8 — Signage.** The design of any fixed, permanent exterior signage shall be subject to the prior review of the Board of Architectural Review of the City and the content shall be approved in advance by CIDA in writing. Such approval shall not be unreasonably withheld. All other signage shall comply with the applicable City zoning ordinance.

**Section 4.9 — Backstage Service Area.** Operator shall have exclusive use of the Backstage Service Area commencing 12 hours before the Event Period for an Operator Event until 6 hours after the Event Period concludes and for such other periods as CIDA shall reasonably agree. Operator shall have the right to park an office trailer in the Backstage Service Area provided that any such office trailer shall not be parked in the Backstage Service Area for more than fourteen (14) consecutive days.

## ARTICLE 5

### CITY'S AND CIDA'S RIGHT TO USE THE PREMISES

**Section 5.1 — City/CIDA Concert Use.** Except as provided in Section 5.2 of this Agreement, during the Concert Season, when the Premises are not scheduled for Operator Events (including set up and take down), Operator will make all or any portion of the Premises available to the City or CIDA for non-competing events; provided, however, on days when Operator Events are scheduled, any events, held by the City or CIDA upon the Premises on such days shall conclude at least six (6) hours before the Event Period for the Operator Event.

**Section 5.2 — Reserved City/CIDA Events.** The City and CIDA shall provide a schedule of its proposed Events to Operator no later than February 1 of each calendar year. If a proposed City/CIDA Event conflicts with an Operator Event, or a day Operator wants, in its sole discretion, to keep available for a possible Event, then Operator shall provide written notice to CIDA, and CIDA and Operator shall attempt to resolve any dispute within ten (10) days of receipt of the notice by CIDA; provided, however, if CIDA and Operator cannot resolve the conflict, then Operator shall have the right to determine the schedule for all Events and resolve any such conflict. As provided for in the City Lease, the City shall be entitled to at least twenty (20) City/CIDA Events during each calendar year. The City shall be entitled to priority with respect to the ten (10) City/CIDA Events listed on the attached Exhibit I ("City Priority Events"), provided that the City submit in writing the proposed dates for the City Priority Events to Operator by February 1 of each year. Operator shall have the right to reschedule CIDA/City Events after February 1 of each year, provided that Operator gives CIDA or the City, as the case may be, written notice of rescheduling at least thirty (30) days prior to the particular date of the City/CIDA Event, provided further that the City Priority Events may not be rescheduled without

the written consent of the City to the rescheduling of the City Priority Events. Notwithstanding the previous sentence, Operator shall have the right reschedule one (1) City Priority Event per Concert Season without the consent of the City, provided that: (i) the Operator provide CIDA and the City written notice of the rescheduling at least thirty (30) days prior to the City Priority Event to be rescheduled and (ii) the Operator shall compensate the City for any extraordinary expenses which result from the rescheduling of the City Priority Event.

**Section 5.3 — City/CIDA Off-Season Use.** Outside of the Concert Season (“Off Season Use”), the City and CIDA shall have the right to use the Premises for City/CIDA Events; provided the Operator may make use of the Premises at any time during this period that it is not being used by the City or CIDA. The City or CIDA, whichever makes use of the Premises, must pay all Out-of-Pocket costs incurred by Operator associated with such use and is further obligated to de-winterize and re-winterize the Amphitheater, including the costs of installing and removing the Amphitheater Roof. CIDA further agrees for itself and the City that all other costs, including a reasonable allocation for overhead, depreciation and amortization costs that Operator incurs with use of the Amphitheater, associated with any Off-Season Use by CIDA or the City, are solely responsibility of the City or CIDA and not Operator.

**Section 5.4 — Reimbursement of Operator Expenses.** For any City and CIDA use permitted by this Agreement, the Premises shall be made available to City and CIDA at a charge no greater than the amount necessary to recover Operator's Out-of-Pocket Expenses. City's and CIDA's use of the Premises pursuant to this Article 5 shall be governed by the following provisions:

5.4.1 During any City/CIDA Events, Operator shall, if requested in advance by the City or CIDA, (i) make available a production manager and general operational staff (which includes, without limitation, its security manager, house staff, supervisor, marketing director and an accountant), and (ii) operate the Premises during such City/CIDA Event. Notwithstanding the foregoing, City or CIDA, as applicable, shall be responsible for reimbursing Operator for all of Operator's Out-of-Pocket Expenses incurred as a direct result of the holding, presenting or performing of such City/CIDA Event.

5.4.2 City or CIDA, as applicable, shall be entitled to receive and retain all Net Revenue associated with the sale of tickets to each City/CIDA Event. City or CIDA, as applicable, may avail itself, free of charge, of Operator's ticketing services or box office in connection with City/CIDA Events. City and CIDA shall pay Operator all Out-of-Pocket Expenses in connection with such use.

5.4.3 During all City/CIDA Events, City or CIDA shall have the sole and exclusive right (i) to cause Operator to operate, or direct the operation of, all concession facilities and operations at the Amphitheater including, without limitation, the decision as whether to have the sale of food, beverage, alcohol or merchandise at the Amphitheater during a City/CIDA Event, and (ii) to receive and retain all Net Revenues associated with Operator's operation of such concession facilities and operations at the Amphitheater during City/CIDA Events. Provided, however, Operator shall be entitled to recover all Out-of-Pocket Expenses incurred by Operator in the provision of these services.

## ARTICLE 6

### RENT

**Section 6.1 — Annual Rental.** Operator shall pay to CIDA the Annual Rent of \$100 on the first day of the Concert Season each year.

**Section 6.2 — Additional Rent.**

6.2.1 Commencement of Additional Rent. Upon the payment of the CIDA Loan in full, Operator shall commence to pay Additional Rent by paying to CIDA an Additional Ticket Surcharge of \$.50 per Ticket to Operator Events in an aggregate amount not to exceed \$1,000,000.00 ("Additional Ticket Surcharge Cap"). After payment in full of an amount equal to the Additional Ticket Surcharge Cap, Operator shall have no further obligation hereunder to charge, collect and/or remit the Additional Ticket Surcharge during the Term hereof. The Additional Ticket Surcharge will be reduced (but not below zero) by the amount of any admission or similar tax charged by the City on Ticket sales to Operator Events. Any such tax applied to Operator Events shall be credited to the Additional Ticket Surcharge Cap. If the Additional Ticket Surcharge Cap has been paid in full, CIDA shall pay annually an amount equal to any such tax charge on Operator Events to the Facility Maintenance Fund.

6.2.2 CPI Adjustment. After the CIDA Loan is paid in full and the Operator is obligated to pay the Additional Ticket Surcharge, the amount of the Additional Ticket Surcharge shall be adjusted by multiplying the Additional Ticket Surcharge Amount by the increase, if any, in the CPI for the time period from the Lease Commencement Date until the date the Operator is first obligated to pay the Additional Ticket Surcharge ("CPI Adjustment"). The amount of the CPI Adjustment shall be added to the Additional Ticket Surcharge and shall become the new Additional Ticket Surcharge amount. After the initial CPI Adjustment, the Additional Ticket Surcharge shall be adjusted every two years by multiplying the current Additional Ticket Surcharge amount by the CPI for the two-year period beginning January 1 of the year of the previous Additional Ticket Surcharge Adjustment. The amount of the CPI Adjustment shall be added to the Additional Ticket Surcharge and become the new Additional Ticket Surcharge. CIDA shall provide written notice to Borrower of the new Additional Ticket Surcharge no later than sixty (60) days prior to the commencement of each Concert Season. Operator shall have a period of thirty (30) days after receipt of said notice in which to request a reconsideration of the amount of increase in the Additional Ticket Surcharge and CIDA agrees to reconsider the amount and/or bases for such increase in the Additional Ticket Surcharge and use commercially reasonable efforts to resolve any such conflict. The Parties shall attempt to agree on the proposed change in the Additional Ticket Surcharge, but if the Parties cannot agree, then the Executive Director of CIDA shall make the final decision on the amount of the increase in the Additional Ticket Surcharge.

6.2.3 Payment of Additional Ticket Surcharge. The Additional Ticket Surcharge for Events shall be paid to CIDA collectively on the first day of each month for all Events occurring up through and including the 25<sup>th</sup> day of the preceding month. CIDA shall have the right to audit Operator with respect to the Ticket Surcharge once a year upon reasonable written notice. If the

results of the audit indicate amounts owed to CIDA for the Ticket Surcharge for the Concert Season are at least 10% more than have been paid to CIDA, then the Operator shall pay CIDA the unpaid Additional Ticket Surcharge and for all of the costs of the audit.

**Section 6.3 — On Site Advertising.** Operator shall provide CIDA with a reasonable opportunity to advertise City/CIDA Events along with on-site advertisements of Operator Events.

**Section 6.4 — Impositions.** During the Term, Operator will pay as and when the same shall become due all applicable Impositions. Where any Imposition may be paid pursuant to Laws in installments, Operator may pay such Imposition in installments as and when such installments become due and payable. Operator shall furnish to CIDA, promptly upon request from CIDA and receipt thereof, copies of all notices, bills and invoices concerning the Impositions. Upon the payment by Operator of Impositions, Operator shall at the request of CIDA deliver to CIDA evidence of such payment. The obligations of this section shall be effective on the Lease Commencement Date.

If Operator fails to timely pay any Imposition for which it is responsible hereunder and if Operator is not contesting the validity or amount of such Imposition pursuant to the provisions of this Section 6.4, then CIDA may, at its election (but without obligation) pay such Imposition with any interest and penalties due thereon, and the amount so paid shall be repayable by Operator, on demand, together with interest thereon at the Permitted Rate from the date of such payment until repaid. Before CIDA pays any Imposition on behalf of Operator, CIDA shall give Operator ten (10) business days' prior written notice thereof.

**Section 6.5 — Facility Maintenance Fund.** CIDA shall establish and maintain with a federally insured depository institution an escrow account for the Facility Maintenance Fund.

**6.5.1 Purpose.** The Facility Maintenance Fund is for the purpose of paying for upgrading, modernizing, repairing or replacing the improvements comprising the Premises and its facilities and is intended to keep the Amphitheater and Backstage Service Area and other facilities on the Premises in good and reasonable condition. The Facility Maintenance Fund shall not be used for routine or ordinary maintenance and repair. Repairs which cost less than \$25,000 or which have a life-span of less than seven (7) years shall be deemed ordinary or routine maintenance unless otherwise agreed in writing by the Executive Director. Either CIDA or Operator may submit a written proposal for these improvements to the other for their review and comment (within 5 business days) on whether or not the proposal is an appropriate use of Facility Maintenance Fund funds. Such proposal shall detail: (i) the proposed use of the monies; and (ii) the proposer's best estimate of the total cost of the proposed improvement. The Parties shall attempt to agree on the proposed improvement, but if the Parties cannot agree, then the CIDA Executive Director shall make the final decision on the use of the Facility Maintenance Fund. Operator shall schedule and perform the work detailed in such proposal and the actual cost of the proposal shall be paid by CIDA from the Facility Maintenance Fund within fifteen days of the presentation to CIDA of invoices for the work performed as detailed in such proposal.



6.5.2 Deposits. Operator agrees that it shall fund the Facility Maintenance Fund with a Facility Maintenance Fee of \$1.00 per Ticket, which shall be added to the cost of all Tickets sold for a Gross Ticket Price of \$15 or more (such amount to be adjusted by the CPI every two years, effective on the first day of the Concert Season). All proceeds from the Facility Maintenance Fee shall be paid into the Facility Maintenance Fund while the Facility Maintenance Fund contains \$200,000 or less. When the Facility Maintenance Fund exceeds \$200,000, then any funds in the Facility Maintenance Fund in excess of \$200,000 shall be paid to CIDA to reduce amounts owed by Operator under the CIDA Loan. Upon payment in full of the CIDA Loan, any funds in the Facility Maintenance Fund in excess of \$200,000 shall be retained by Operator and applied for maintenance and repair of the Amphitheater as provided for in Section 7.1 below.

6.5.3 Right to Funds. All interest, if any, accruing on said Facility Maintenance Fund shall be paid to CIDA to reduce amounts owed under the CIDA Loan. Any monies remaining in the Facility Maintenance Fund upon the expiration or termination of this Agreement shall belong to CIDA.

**Section 6.6 — No Setoffs.** Except as otherwise set forth in this Agreement, the Operator is not entitled to Rent abatement. The Rent shall be paid to CIDA without any deduction, counterclaim, setoff or offset whatsoever with respect to the Premises. All applicable costs, expenses and charges relating to the Premises, shall be paid by Operator, and the City and CIDA shall be defended, indemnified and held harmless by Operator for, from and against the same.

**Section 6.7 — Payment of Rent.** All Rent payable hereunder by Operator to or for the account of CIDA is and shall be payable to the Industrial Development Authority of Charlottesville, c/o Department of Economic Development, 610 East Main Street, Charlottesville, VA 22902, Attention: Executive Director.

**Section 6.8 – Security Deposit.** Upon the commencement of the initial Concert Season, Operator shall deposit with CIDA an irrevocable letter of credit in the amount of \$50,000 (“Letter of Credit”) issued by a federally-insured depository institution in form and substance reasonably satisfactory to CIDA as security for the faithful performance by Operator of all the terms, covenants, and conditions of this Agreement to be kept and performed by Operator during the Term hereof. Upon occurrence of an Operator Event of Default (which default continues beyond expiration or termination of any applicable grace, cure or notice period), including, but not limited to the provisions relating to the payment of Rent, CIDA may (but shall not be required to) draw upon all or any part of the proceeds of the Letter of Credit as a security deposit hereunder for the payment of any Rent or any other sum in default, or for the payment of any amount which CIDA may spend or become obligated to spend by reason of the Operator Event of Default, or to compensate CIDA for any other loss or damage which CIDA may suffer by reason of the Operator Event of Default. If any portion of said Letter of Credit is drawn upon, Operator shall within five (5) days after written demand therefor, either deposit an additional irrevocable letter of credit with CIDA in an amount sufficient to restore the original amount of the Letter of Credit or establish another method of security deposit constituting immediately available funds and acceptable to CIDA in the same cash amount as the Letter of Credit (the “Security Deposit”), and Operator's failure to do so shall be a material breach of this Agreement. If Operator shall fully and faithfully perform every provision of this Agreement to be performed

by it, the Letter of Credit shall be released and terminated by CIDA (or the Security Deposit or any balance thereof shall be returned to Operator) within forty-five (45) days of the expiration or termination of the Term. In the event of termination of CIDA's interest in this Agreement by virtue of a valid assignment of this Agreement by CIDA and a valid assumption by an assignee, CIDA shall transfer the Letter of Credit (or Security Deposit) to CIDA's successor in interest and upon such transfer, CIDA shall be relieved of any and all liability therefor and obligation with respect thereto after the effective date of such transfer and Operator shall look solely to such successor in interest of CIDA for release and termination of the Letter of Credit (or return of any applicable portion of the Security Deposit).

## ARTICLE 7

### MAINTENANCE, MANAGEMENT AND OTHER OPERATOR OBLIGATIONS

**Section 7.1 — Operator Duty to Maintain and Repair.** Except with respect to application of amounts from the Facility Maintenance Fund and as otherwise provided in Section 7.3, Operator agrees to assume full responsibility for the use, repair, operation, management and maintenance of the Amphitheater Area, including, without limitation, the Improvements. Such responsibility shall include, without limitation, the maintenance and repair of the Storage Area, the Amphitheater Structure (including, without limitation, the interior and exterior thereof, the replacement of the Amphitheater roof, and the winterization and de-winterization of the roof, except as provided in Section 5.3) throughout the Term without cost or expense to CIDA, unless otherwise expressly provided herein, and the performance of all repairs and replacements necessary to maintain and preserve the Amphitheater and its fixtures and furnishings in a first class, safe and sanitary condition. Operator shall be responsible for the maintenance and repairs of all restrooms and concession areas in the Amphitheater Area except for maintenance and repair required specifically as a result of City or CIDA use of the restrooms or concession areas which shall be the responsibility of CIDA. If the City or CIDA requests that the restrooms be available for any periods outside of Event Periods then CIDA shall be responsible for any clean-up, maintenance and repair of the restrooms resulting from the use of the restrooms outside of Event Periods. Operator shall have the right to pursue any contractual remedies it may have against a contractor responsible for construction work that was faulty or defective. Operator agrees to assume full responsibility for the clean up of rubbish and other debris caused by an Operator Event from the Premises within a reasonable time not to exceed twenty-four (24) hours after an Operator Event takes place on the Premises. Operator shall be responsible for the repair of any portion of the Premises damaged during an Operator Event. The manner of disposal of the rubbish and debris shall be approved in advance by CIDA. Operator shall be responsible for the moving, maintenance, repair and replacement of any of Operator's movable landscaping, including but not limited to planters, topiaries and bollards within the Premises.

**Section 7.2 — Waste.** Operator shall not commit or suffer to be committed any waste or impairment of the Premises, or any part thereof.

**Section 7.3 — CIDA Obligation to Maintain and Repair.** CIDA shall be responsible for the cleanup of rubbish and debris from the Amphitheater Area during non-Event periods and for CIDA/City Events. Except as provided in Section 7.1 above, CIDA shall be responsible for the

maintenance of the landscaping in the Amphitheater Area, provided during the Concert Season Operator shall have the right to mow the grass areas in the Amphitheater in addition to the regular mowing schedule by the City for these areas. Except as provided in Section 7.1 above, CIDA shall be responsible for the maintenance and repair, including landscaping, of the portion of the Premises outside the Amphitheater Area and Storage Area; provided that each party shall be responsible of the repair of any portion of the Premises damaged during their respective Events.

**Section 7.4 — General Standard.** At all times, Operator must:

7.4.1 Restore the Premises to a clean and safe condition after each Operator Event; and

7.4.2 Discharge all of its duties under this Agreement in a manner customary for an entity experienced in using, operating, maintaining, managing, repairing and cleaning comparable facilities.

**Section 7.5 — Audit Provisions.**

7.5.1 Concessions. Within 10 days after each City/CIDA Event, Operator shall provide the Concessions royalty report and reasonable supporting documentation, if requested, to CIDA for inspection and review.

7.5.2 Ticket Agreement. Operator may enter into an agreement with a third party to provide ticket service to both Operator Events and City/CIDA Events. Promptly, but in no event less frequently than weekly, Operator shall provide a ticket audit for all Events to CIDA for inspection and review.

7.5.3 Expenses. Upon request, Operator shall provide reasonable supporting documentation within a reasonable time for any Out-of-Pocket Expenses charged to CIDA.

**Section 7.6 — Other Obligations.**

7.6.1 Operating and Scheduling. Operator shall schedule the use of the Amphitheater by all Parties pursuant to this Agreement and shall coordinate the Parties' uses of the Premises pursuant to Article 5 of this Agreement, which may overlap from time to time. CIDA shall have the right in its reasonable discretion to reject acts/performers for Operator Events for which previous Events were disrupted by acts/performers or Event Attendees.

7.6.2 Capital Repairs. Operator agrees to assume full responsibility for the repair and replacement of capital items and major structural elements of the Amphitheater Area. If it is the Operator's assessment or recommendation that any item requiring replacement or repair is a capital item of the Amphitheater Area, Operator shall deliver to CIDA written notice of such item requiring repair or replacement, along with a written estimate of the costs of such repair or replacement. Operator shall pay for all costs and expenses associated with such repair or replacement, but may, pursuant to Section 6.5, request funds from the Facility Maintenance Fund for the payment of such repair and replacements. Provided, however, that the Facility

Maintenance Fund shall not be used for ordinary maintenance or repairs. All such replacement and repair shall be completed in a good and workmanlike manner. Operator shall use properly trained and qualified personnel or third parties, licensed or certified when required by law, to accomplish such work. When it is the customary practice in the industry, such work shall be inspected and certified. In discharging its duties under this Agreement, Operator shall comply with the conditions of a manufacturer's warranty or guaranty applicable to the Premises or any portion thereof and shall use manufacturer approved technicians or maintenance contractors if required to do so by such warranty or guaranty.

7.6.3 Inspections. Operator, at Operator's expense, shall obtain a thorough physical inspection of the Amphitheater, including the Amphitheater Structure, annually prior to the start of the Concert Season by a qualified, independent inspector. Operator shall provide a written copy of the inspection report to CIDA.

7.6.4 Event Staffing and Support. Operator shall provide staff and support services needed to operate the Premises for all Operator Events. Support services include, without limitation, security, parking within the Operator Managed Parking Areas as provided for in Section 7.6.16 below, concessions, first aid, cleaning, ushers, ticket taking and setup crews.

7.6.5 Utilities. Except as otherwise provided herein, Operator shall construct all water, sewer, heat, cooling, air conditioning, electricity, gas, telephone, communications wiring and other utilities necessary for the operation and use of the Amphitheater Area and the Backstage Service Area upon the Premises and for maintaining desirable interior environmental conditions for all Events. All permanent Utility Lines constructed by Operator shall be located underground. Operator shall select providers of all utilities and give written notice of the same to CIDA. Operator shall use its best efforts to avoid waste in the use of the utilities and to conserve resources. If there is any interruption in utility services affecting the Premises, Operator will use reasonable best efforts to arrange with the appropriate providers of such utilities for the prompt and complete restoration of such service. Operator shall not, however, incur any liability to CIDA in the event that any such utility is not available during the period of interruption of services unless such interruption was the result of Operator's gross negligence or willful misconduct. To the extent possible, Operator shall provide for separate metering for all utilities used for Event purposes. Otherwise, utilities shall be prorated based on the use of the utilities by the Operator.

7.6.6 Rules and Regulations. Operator may promulgate and enforce rules and regulations for Events. CIDA shall have the right to review and approve such rules and regulations which shall be uniformly applied to similar Operator Events and City/CIDA Events and be consistent with this Agreement. Said approval by CIDA shall not be unreasonably withheld or delayed. If CIDA does not object to the rules and regulations or otherwise provide its express approval within 30 days of receipt from Operator, then the rules and regulations provided to CIDA shall be deemed approved hereunder.

7.6.7 Alcoholic Beverages. The sale, use and consumption of alcoholic beverages shall be permitted at the Premises, except during City/CIDA Events where the City or CIDA, whoever is conducting the particular event, shall decide whether to permit the sale of alcohol. Operator

will regulate such sale and shall require any Person engaging in such sale: (i) to have the liquor license required by Virginia law; (ii) to have a liquor liability insurance policy required by Article 8 of this Agreement; and (iii) to use commercially reasonable efforts to enforce laws regulating the sale and consumption of alcohol including enforcement of the legal drinking age.

#### 7.6.8 Provide Concessions.

(a) Selecting Concessionaire. Operator shall have the authority to select, terminate and replace the concessionaire subject to the approval of CIDA, which shall not be unreasonably withheld or delayed. Operator shall consider, during the concessionaire selection process, vendors located in the City of Charlottesville, but it shall have no obligation to select or otherwise use a Charlottesville operator and the final determination shall be made by Operator. Operator shall be responsible for monitoring of the concessionaire's performance against any performance standards contained in the concession agreement. In the event that either the City or CIDA has a dispute with the concessions provider, they may notify Operator. Operator agrees to use best efforts to remedy the performance of the concessions provider when notified of such a dispute by the City or CIDA, including bringing an action against the concessionaire or otherwise pursuing Operator's rights and remedies under the concession agreement.

(b) Concession Service. Operator shall ensure that (i) concessionaires with whom it contracts will provide equal service, menu options and royalty payments to CIDA for City/CIDA Events that Operator would receive from concessionaire for a similar event, (ii) any concessionaire has appropriate insurance coverage, and (iii) all concessionaires shall comply with all applicable Laws including but not limited to any applicable City or state Health Department regulations.

7.6.9 Security. As between CIDA and Operator, Operator agrees that Operator shall be solely responsible for providing sufficient and necessary security for the use, operation and occupancy of the Premises during the Event Period and before and after the Event Period if reasonably necessary. Operator will prepare a security plan for the Premises during Events, in conjunction with the City of Charlottesville Police Department ("CPD"). Operator's security responses shall be coordinated with CPD and the Charlottesville Fire Department. Nothing in this Agreement shall be construed to prevent Operator from contracting with a third party for private security services. CIDA agrees that Operator is to be reimbursed for the costs of security pursuant to Section 5.4 of this Agreement, when security is used for City/CIDA Events.

7.6.10 Law Enforcement. Operator agrees that CPD is solely responsible for law enforcement activities and responses upon the Premises surrounding all Operator Events. Operator will reimburse CPD at the hourly rate set by CPD for reasonably required private security work and, when necessary, equipment and other costs related to law enforcement services for an Operator Event. CPD staffing decisions shall be reasonable and made by CPD on an Event by Event basis after consultation with Operator and other local authorities, and after considering a variety of factors including, but not limited to, the upcoming Event's anticipated attendance and the act's recent history at other venues, provided any such staffing decisions shall be consistent with the rates, staffing levels, cost reimbursement and other CPD requirements for comparable or similarly situated events in the City. Operator authorizes the City and/or CPD to

enforce trespass and other similar laws and rights regarding the Premises at all times. CPD and the Charlottesville Fire Department shall have access to the Premises at all times.

7.6.11 Pedestrian Lights. Operator shall install, maintain and repair lights sufficient to make the Amphitheater Area accessible and safe for pedestrians after dark when Events are not taking place, provided such lighting shall provide the same level of lighting as currently serves the Premises and the adjoining areas of the City mall.

7.6.12 Drug Free Area. Operator shall use its best efforts to ensure that the Premises shall be free from all illegal drugs and compliance by all Event Attendees with all Laws related to illegal drugs.

7.6.13 Pyrotechnics. The use of any pyrotechnics on the Premises must be approved in writing by the Charlottesville Fire Department at least three (3) business days prior to their use.

7.6.14 Free Concert Tickets. The Operator shall be prohibited from providing any free or low cost tickets for any Operator Event to any City employee, elected official or individuals appointed by the City Council to any City boards, authorities, commissions or other City governmental bodies unless the Operator Event is free to the general public.

7.6.15 Non-Discrimination. For admission to any and all Events open to the public, Operator agrees that it will not discriminate against any person because of race, religion, sex, sexual orientation, national origin, age, disability or any other basis prohibited by law.

7.6.16 Operator Managed Parking. During the Event Period for Operator Events, Operator shall be responsible for the Operator Managed Parking Areas shown on the attached Exhibit L. Operator shall be entitled to keep any revenue generated from the Operator Managed Parking Areas during or as a result of any Operator Events.

## **Section 7.7 — Noise Covenants.**

7.7.1 Operator shall prohibit any sound from Operator Events emanating from the Premises outside of the Event Operating Period set forth in Section 7.10 which would violate Section 16-10 of the Code of the City of Charlottesville (the "Code") or, subject to the rights of Operator set forth in Section 7.7.3 below, any successor Code provision governing sound which applies to the Downtown Business District (as defined in Section 16-10 of the Code). During the Event Operating Period set forth in Section 7.10, Operator shall control sound emanating from the Premises during Operator Events, including, but not limited to, amplified sound (the "Event Sound") so that the Event Sound does not exceed 90db (decibels) when measured as an average over any consecutive three and one-half (3.5) hour period during an Event Period. Any sound measurement of the Event Sound taken to test or enforce the standard set forth in the preceding sentence shall be measured by an appropriate sound meter, device or other equipment that creates a permanent record of such measurement ("Sound Meter") at either: (i) a location on East Main Street (Downtown Mall) not closer than a line extending in a southerly direction from the eastern boundary line of City Tax Map Parcel 53-91 which is currently occupied by the U.S. Post Office and the City Market Street Parking Garage (the "Primary Location"), or (ii) the front

entrance of any residential structure situated within a closer distance to the Amphitheater Area than the location described in the preceding subsection 7.7.1(i) (the "Alternative Location"); provided, however, that the right to measure the Event Sound from the Alternative Location shall be conditioned upon the breach or violation of the noise covenants set forth above as measured from the Primary Location more than five (5) times in the immediate twelve (12) month period preceding CIDA's election to move the measurement site from the Primary Location to the Alternative Location; provided, further, however, that the Alternative Location shall in no event include any property in which Operator or R. Coran Capshaw shall own an interest, regardless of any prior or current breach or violation hereunder. In the event of any violation of this Section 7.7.1, the penalties prescribed under Section 13.3 of this Agreement may be imposed on Operator, as well as any other rights or remedies CIDA or the City may have. A Sound Meter for all Operator Events shall be provided by the Operator for operation by CIDA or its designees unless otherwise instructed by CIDA in writing. The Sound Meter shall be recently calibrated and of a type satisfactory to CIDA in its reasonable discretion.

7.7.2 The parties agree to review the decibel standard set forth above in Section 7.7.1 after the first full year of Amphitheater operation and to determine if the decibel standard should be adjusted as mutually agreed by the parties.

7.7.3 Notwithstanding any other provision of this Agreement or any Loan Document, if the City modifies any current Law, including, but not limited to Chapter 16 of the Code, or enacts any new Law, including, but not limited to, any successor Code, governing, limiting, restricting or prohibiting the level of sound emanating from the Premises (or otherwise produced as a result of Operator's operations thereon) ("New Sound Ordinance"), and regardless of whether the New Sound Ordinance is addressed as a specific measure affecting only the Premises or as part of a comprehensive measure affecting the area of the City in which the Premises is located or otherwise, and such New Sound Ordinance causes the continued operation of the Amphitheater on the Premises by Operator as contemplated in this Agreement impracticable or economically infeasible, Operator may terminate this Agreement at its option upon written notice to CIDA and return possession and control of the Premises to CIDA as provided in this Agreement, and thereafter, the Loan shall be abated in full and CIDA shall cancel and release the Note, the Guaranty and any other Loan Document; provided, however, as a condition precedent to Operator's right to terminate this Agreement and receive an abatement of the Loan, and CIDA's obligation to cancel and terminate the Loan Documents, Operator's violation or breach of the noise covenants set forth above in Section 7.7.1 shall not constitute the principal cause for the adoption of the New Sound Ordinance. For the purposes of this Section, if the Operator has breached or violated the noise covenants set forth above in Section 7.7.1 more than five (5) times in the twelve (12) month period preceding the adoption of a New Sound Ordinance then such breaches or violations shall be deemed to constitute the principal cause for the adoption of the New Sound Ordinance.

**Section 7.8 — Cost of Services.** Except as expressly provided in this Agreement, all costs associated with or related to the Operator's use, operation, maintenance, management and lease of the Premises shall be borne entirely and exclusively by Operator. Operator agrees to pay when due all applicable costs, fees, liabilities, claims, losses, permits, fines and expenses associated with or related to Operator's use of the Premises and CIDA shall have no liability

whatsoever in connection with Operator's use of the Premises except as otherwise provided herein.

**Section 7.9 — Alterations to the Premises.** Operator shall not make or permit to be made any Alterations to the Premises without the CIDA Executive Director's prior written approval, which shall not be unreasonably withheld, provided approval shall not be required for the following alterations:

7.9.1 Alterations involving routine maintenance, repairs and interior decoration;

7.9.2 Single Alterations to the Amphitheater Area or Storage Area not exceeding \$25,000 or the aggregate expenditures for Alterations during any one (1) year period not exceeding \$100,000.

Operator agrees to provide notice to the CIDA Executive Director of Alterations exceeding \$10,000.

Operator shall bear the cost of all Alterations and shall bear full responsibility for the maintenance and repair thereof. Notwithstanding the prohibition in this Section 7.9, Operator may make Alterations to the Premises as are required by Laws or otherwise required for the continued safe and orderly operation of the Premises. Nothing contained in this Section 7.9 shall be deemed to be an approval or a waiver, implied or express, of the permits and approvals required by the Laws.

**Section 7.10 — Event Operating Period.** No Events shall begin before 6:00 a.m. or end after 11:59 p.m. on Fridays and Saturdays and after 11:00 p.m. on Sunday through Thursday, except for Events scheduled on New Years Eve or any other occasions mutually agreed upon by CIDA and Operator.

**Section 7.11 — Free or Low Price Event.** CIDA and Operator agree to work together to develop a mutually optimal weekly free or low ticket price Event during the Concert Season. These Events shall be similar to the "Fridays After Five" events which at the time of the execution of this Agreement currently use the Premises where the Amphitheater will be constructed.

## ARTICLE 8

### INSURANCE AND INDEMNITY

#### Section 8.1 — Property Insurance.

8.1.1 Operator Insurance. Operator shall, at its sole cost and expense, keep and maintain in force policies of insurance on the Storage Area and on the Amphitheater Structure at all times and on: (i) the Premises, (ii) all Improvements and (iii) all temporary structures in the Amphitheater Area for the period from the commencement of the Event Period for Operator Events until the Premises have been cleaned by Operator as required by this Agreement and



during any additional times Operator uses or occupies the Premises or a portion thereof (which shall include insurance on any temporary structures left in the Amphitheater Area from Event to Event) written on an "All Risks" basis including, but not limited to, coverage for perils of flood, earthquake, fire, explosion, windstorm or hail, lightning, smoke, aircraft or vehicles, riot or civil commotion, theft, vandalism, malicious mischief, and collapse, in an amount which CIDA, in the exercise of CIDA's reasonable judgment and discretion, shall deem appropriate, but not less than replacement cost of the Storage Area and the Amphitheater Structure. All such policies shall be issued by companies reasonably satisfactory to CIDA, shall name the City and CIDA as additional insureds and loss payees as their interests may appear. Operator agrees to use best efforts to maximize recovery from any insurance provisions. Operator shall furnish CIDA with duplicate originals or copies certified as being true and correct of all such insurance policies and shall furnish and maintain with CIDA, at all times, a certificate of the insurance carrier certifying that such insurance shall not be canceled without at least forty- five (45) days advance written notice to CIDA. If Operator fails to maintain such insurance, CIDA, at its election but without obligation to do so, may procure such insurance as may be necessary to comply with these requirements, and Operator agrees to repay the cost of same to CIDA on demand, with interest thereon at the Prime Rate from the date of expenditure until paid. All insurance described in this Section 8.1 may be obtained by Operator by endorsement or equivalent means under any blanket insurance policies maintained by Operator, provided that the coverage and other terms of such insurance comply with this Section 8.1.

8.1.2 CIDA Insurance. CIDA or the City shall maintain a separate "All Risks" policy of insurance covering that portion of the Premises not covered by Operator's Insurance.

**Section 8.2 — Builder's Risk Insurance.** During construction of the Amphitheater, Operator shall maintain or cause to be maintained, Builder's Risk Insurance in an amount not less than the total amount of the insurable improvements being constructed or altered, with responsible insurance companies legally authorized to transact business in the Commonwealth of Virginia. All such policies shall be issued by companies reasonably satisfactory to CIDA, shall name the City and CIDA as additional insureds and loss payees as their interests may appear.

**Section 8.3 — Liability Insurance – Premises Liability.**

8.3.1 Operator's Liability Insurance. Operator shall obtain and keep in force commercial general liability insurance with a minimum limit at a reasonable level approved by CIDA based on industry standards at that time and any insurance requirements in the City Lease or required by the City's current insurance carrier (a "CIDA Approved Level") for each occurrence and an annual aggregate limit of liability of a CIDA Approved Level for such coverage, applicable at all times to the Storage Area, the Amphitheater Structure and any temporary structures left in the Amphitheater Area from Event to Event, and applicable to the Premises for the period from the commencement of the Event Period for Operator Events until all Event cleanup is completed by Operator or during any other period Operator uses or occupies the Premises or a portion thereof. The policy shall include, without limitation, coverage for bodily injury, personal and advertising injury, fire damages, legal liability, broad form property damage, personal injury (including but not limited to coverage for contractual and employee acts), blanket contractual, independent contractors liability, stopgap/employers liability, liquor

liability, incidental professional liability, premises/operations and products and completed operations. Further, the policy shall include, without limitation, coverage for the hazards commonly referred to as "XCU" and shall contain a severability of interests provision. This insurance shall apply as primary with respect to any other insurance maintained by the City or CIDA. All such policies shall be issued by companies reasonably satisfactory to CIDA, shall name the City and CIDA as additional insureds and loss payees as their interests may appear.

8.3.2 CIDA Liability Insurance. CIDA shall obtain liability insurance in the amounts and with the coverages as provided in paragraph 8.3.1 for that portion of the Premises not covered by Operator's Liability Insurance.

**Section 8.4 — Commercial Automobile Insurance.** Operator shall obtain and keep in force at its sole cost and expense commercial automobile liability coverage for all owned, hired and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than a CIDA Approved Level for such coverage and shall stay in effect during the term of this Agreement. The policy shall include contractual liability coverage. All such policies shall be issued by companies reasonably satisfactory to CIDA, shall name the City and CIDA as additional insureds and loss payees as their interests may appear.

**Section 8.5 — Worker's Compensation Insurance.** Operator, and its contractors and subcontractors and all employers providing work, labor or materials under this Agreement who are subject employers under the Virginia State Worker's Compensation Law shall comply with all Laws regarding Workers Compensation and shall maintain Employers Liability Insurance with coverage limits of not less than a CIDA Approved Level for such coverage for each accident shall be included.

**Section 8.6 — Umbrella Liability Coverage.** Umbrella coverage in the sum of a CIDA Approved Level for such coverage shall be provided by Operator and will apply over all liability policies, without exception, including but not limited to, Commercial General Liability, Automobile Liability and Employers' Liability. All such policies shall be issued by companies reasonably satisfactory to CIDA, shall name the City and CIDA as additional insureds and loss payees as their interests may appear.

**Section 8.7 — General Insurance Provisions.**

8.7.1 Duration. All of the insurance required by Article 8 shall be an occurrence form (as opposed to claims made) and remain in effect until the expiration of the Term and until Operator has delivered to the CIDA Executive Director thirty (30) days written notice that such insurance is terminating.

8.7.2 Endorsements. All of the insurance required by Article 8 shall be endorsed to include the City and CIDA as additional insureds and shall stipulate that the insurance afforded by the policies shall be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention trusts maintained or participated in by the Parties shall be excess and not contributory to insurance required. All liability insurance policies will be endorsed to show this additional coverage.

8.7.3 Certificates. Operator and CIDA shall provide to each other and the City certificates of insurance acceptable to the other and the City prior to the Lease Commencement Date, as evidence that policies providing the required coverages, conditions and limits are in full force and effect. Such certificates shall identify this Agreement, specify the insurance related provisions of this Agreement and contain provisions that coverage afforded under the policies shall not be canceled, terminated, reduced, or materially changed until after forty five (45) days prior written notice has been given to CIDA or Operator. A renewal certificate will be sent to CIDA and Operator, as the case may be, fifteen (15) days prior to coverage expiration date. Any failure to comply with this provision will not affect the insurance coverage provided to CIDA or Operator. The forty five (45) days notice of cancellation shall be physically endorsed on to the policy. The words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted from the cancellation provisions of all certificates provided by Operator. Certificates of insurance should be addressed in the manner described in this Agreement and shall show the City and CIDA as additional insureds and not simply as certificate holders.

8.7.4 Waiver. Operator shall cause insurers providing the policies required by Article 8 to waive all rights of recovery against the City, CIDA and their Indemnitees. CIDA shall cause insurers providing the policies required by Article 8 to waive all rights of recovery against the Operator and its Indemnitees.

8.7.5 Ratings of Insurer. All insurance policies required by this Article 8 shall be obtained from a financially sound insurance company deemed acceptable by CIDA and rated not less than A:VII by A.M. Best Company and which are admitted to do business in the Commonwealth of Virginia. CIDA reserves the right to reject all or some of the insurance carriers with an unacceptable financial rating. Provided, Operator may propose another insurance carrier so long as it is rated at not less than A- and CIDA in its sole discretion may approve or reject such insurance carrier.

8.7.6 Cross-Liability Clause. A cross-liability clause or separation of insureds conditions will be included in all general liability, professional liability, and errors and omissions policies required by this Agreement.

8.7.7 Deductible. Operator shall be responsible for and hold the City, CIDA, its employees or elected officials harmless for, from and against any claim or loss caused by the Operator not covered by insurance as a result of any deductible amounts from coverage.

8.7.8 Adjustment of policy limits. The limits of insurance coverage provided for herein, shall be increased by Operator from time to time at the request of CIDA, but no more frequently than once every two (2) years, to such amounts as should be reasonably carried by similar venues in similar markets, so long as such increased amount of coverage can be obtained at a commercially reasonable rate.

## **Section 8.9 — Release and Indemnity.**

8.9.1 Operator Indemnification of CIDA. Except as expressly provided in this Article, the Operator shall at all times during the Term of the Agreement indemnify, hold harmless defend and release the City and CIDA, their elected officials, board members, officers, employees, authorized agents and representatives, from and against any and all losses, damages, costs, claims, charges, expenses, judgments and liabilities, including attorneys' fees, resulting from, arising out of, or related to Operator's management, operation or use of the Premises or events that occur as a result of the Operator's granting others the right to use such areas. The indemnity provided in this Article shall not apply to losses resulting from the sole gross negligence or intentional acts of the City or CIDA or their elected officials, board members, officers, employees, authorized agents and representatives.

8.9.2 CIDA Indemnification of Operator. Except as expressly provided in this Article and to the extent allowed under applicable law, during City/CIDA Events or events that occur as a result of the City or CIDA granting others the right to use the premises, CIDA shall indemnify, hold harmless and defend Operator, its members, officers, employees, agents and representatives, from and against any and all losses, damages, costs, claims, charges, expenses, judgments and liabilities, including attorneys' fees, resulting from or arising out of City/CIDA Events or events that occur as a result of the City or CIDA granting others the right to use the Premises. The indemnity provided in this Article shall not apply to losses resulting from the sole gross negligence or intentional acts of Operator its members, officers, employees, agents and representatives.

## **ARTICLE 9**

### **CASUALTY AND CONDEMNATION**

**Section 9.1 — Casualty and Reconstruction.** Each party agrees to give notice to the other party of any Casualty Event that occurs on the Premises within twenty-four (24) hours of such Casualty Event.

9.1.1 Major Casualty Event. If there is a Major Casualty Event then all Rent shall be completely abated, from the time of the Major Casualty Event until such time as the Amphitheater can be reconstructed (if elected under Section 9.2) and can hold a full capacity Event. A Major Casualty Event shall not release Operator from any obligation to make payments pursuant to the CIDA Loan.

9.1.2 Minor Casualty Event. If there is a Minor Casualty Event, and Operator determines that, despite the Minor Casualty Event, it is economically feasible to operate the Amphitheater, then Operator shall be entitled to equitable Rent abatement to be determined by the Parties. Operator shall diligently and in good faith pursue restoration of the Amphitheater Area if a Minor Casualty Event occurs.

9.1.3 Uninsurable Events. In the event that a Major Casualty Event is of a type for which there is no insurance coverage under the insurance required by this Agreement, there shall

be no duty to rebuild unless Operator deems it commercially reasonable to restore the Amphitheater and the Amphitheater Area to its original condition. CIDA has no duty to restore the Amphitheater and the Amphitheater Area, but can elect to restore at its option. If neither Party elects to restore the Amphitheater and the Amphitheater Area, then either Party may terminate this Agreement upon written notice to the other Party.

9.1.4 Lease Extension. In the event of a cessation of operation of the Amphitheater due to a Casualty Event, the Term shall be automatically suspended for the amount of time required to reconstruct or repair and reopen the Premises. Upon resumption of operation, the Term shall be automatically extended for the amount of time of the suspension; provided, however, that the Term shall not extend beyond forty (40) years from the Lease Commencement Date.

**Section 9.2 — Election to Rebuild.** If a Major Casualty Event shall occur then the following provisions shall apply:

9.2.1 Operator Election. Operator may elect to reconstruct the Amphitheater, the Amphitheater Area and the Storage Area (collectively "Operator Reconstruction Areas").

9.2.2 CIDA Election. In the event that Operator elects not to reconstruct the Operator Reconstruction Areas, CIDA may elect to have the Operator Reconstruction Areas rebuilt as follows:

(a) CIDA may compel the Operator to reconstruct the Operator Reconstruction Areas provided the proceeds from insurance are sufficient to cover the cost of reconstruction. Provided however, that in the event that casualty insurance coverage, required under Article 8 of the Agreement, is denied by the insurance carrier for reasons other than a material misrepresentation of the Operator to the insurance carrier, or due to the Operator's failure to make a premium payment when due, the Operator shall have no obligation to rebuild.

(b) In the event that the cost to reconstruct the Operator Reconstruction Areas exceeds by 15% the casualty insurance proceeds, Operator has the right not to reconstruct. Provided, however, that CIDA may still compel the reconstruction of the Operator Reconstruction Areas by paying any costs of reconstruction over and above the 15% of the policy limit already exceeded. By exercising this option Operator will be obligated to pay no more than the 15% of the costs of reconstruction over and above the proceeds of insurance. To the extent they are available, funds from the Facility Maintenance Fund may be used for payment of Operator's portion of the cost of reconstruction as provided for in this Section 9.2.2(b).

9.2.3 Application of Insurance Proceeds. Proceeds of Casualty Insurance shall be applied to costs of reconstruction provided either the Operator or CIDA elect to reconstruct under 9.2.1 or 9.2.2. In the event that neither Operator nor CIDA elect to rebuild the Operator Reconstruction Areas after a casualty, the insurance proceeds shall be first applied to payment of any amount owing under the CIDA Loan, as provided for in the promissory note for the CIDA Loan, second to restoring the Operator Reconstruction Areas to a condition substantially similar to the one that existed before the Amphitheater was built. Any remaining proceeds are to be divided evenly between Operator and CIDA.

9.2.4 Obligation Cease. If a Major Casualty Event occurs and neither CIDA nor the Operator elect to rebuild, then all future obligations of the Operator under this Agreement shall cease and proceeds of insurance, if any, shall be applied pursuant to Section 9.2.3.

### **Section 9.3 — Condemnation.**

#### **9.3.1 Total and Partial Taking**

(a) Any Condemnation proceedings of the Premises completed by the City that adversely impacts the operation of the Amphitheater, shall constitute a breach of the Agreement and CIDA and any assignee shall be in default of this Agreement. If Operator intends to claim that such condemnation is a breach of this Agreement, then Operator shall give notice of such intent to claim breach within 30 days of receiving the City's notice of condemnation.

(b) If a Governmental Entity, other than the City, causes a condemnation of the Premises that makes the continued operation of the Amphitheater impracticable or economically infeasible, Operator may terminate this Agreement at its option. Regardless of whether Operator elects to terminate this Agreement, the Operator shall receive the proceeds of the condemnation action up to the value of the leasehold interest, at the time of the condemnation, including any of Operator's rights to use easements upon the Premises and thereafter to CIDA for all remaining sums.

(c) CIDA and Operator shall have standing, and a right to participate in any condemnation or eminent domain proceeding affecting the Premises.

9.3.2 No Waiver. Nothing contained herein shall be construed as a waiver by Operator of any claim which it may have against the condemnor for taking all or any part of the Premises, and Operator shall have the right to appear and file its claim for damages in any such condemnation proceedings, to participate in any and all hearings, trials and appeals thereon, to be represented by counsel of its choice therein, and to receive the share of any such awards so adjudicated to be due it.

## **ARTICLE 10**

### **CONSTRUCTION PERIOD**

**Section 10.1 — Construction Period.** The Construction Period shall run from October 3, 2004 until May 15, 2005. During the Construction Period the Operator shall have the right to use the Construction Access Easement provided in Section 2.3.

**Section 10.2 — Scope of Construction.** Operator agrees to construct the Amphitheater, the Storage Area and the Backstage Service Area in accordance with the site plans provided for below. Operator shall be solely responsible for the design, management and costs of construction of the Amphitheater, the Backstage Service Area and the Storage Area except as otherwise provided herein; provided, however, that CIDA acknowledges and agrees the costs of such matters shall constitute Construction Costs hereunder. CIDA shall not have any financial

obligation for the cost of constructing the Amphitheater, Backstage Service Area or Storage Area in excess of the \$1,000,000 CIDA Contribution, the \$2,400,000 CIDA Loan, and the Transit Center Improvements described in Section 10.5.

10.2.1 Approval of Amphitheater Area Site Plan. The Amphitheater Area site plan shall be approved by CIDA in writing prior to the commencement of construction of the Amphitheater.

10.2.2 Approval of Backstage Service Area Site Plan. The Backstage Service Area site plan shall be approved by CIDA in writing prior to the commencement of renovation and construction of the Backstage Service Area.

10.2.3 Permits and Approvals. Operator shall obtain all permits, approvals and bonds necessary or required to construct the Amphitheater, Backstage Service Area and the Storage Area. Operator shall indemnify, defend and hold the City and CIDA harmless for, from and against any and all cost, expenses including attorneys' fees, claims, losses and liabilities related to or associated with Operator's failure to comply with this provision.

10.2.4 Construction. Operator will perform all construction and renovations and any other repair and maintenance, in accordance with all applicable local, State and Federal building codes, ordinances and laws, and in a workmanlike manner. Operator shall use properly trained and qualified personnel or third parties, licensed or certified when required by law, to perform the construction.

10.2.5 Cooperation. Operator and CIDA agree to coordinate with the City's construction of the Transit Center in order to allow the Amphitheater and the Transit Center to be completed in the most efficient and cost effective manner, time being of the essence as to such cooperation and coordination by and among Operator, CIDA and the City. No party shall unreasonably withhold, condition or delay its consent or approval of any decision or other item set forth herein regarding development and construction of the Amphitheater or any other improvements contemplated herein, including, but not limited to, the Transit Center. Any party who shall unreasonably delay in providing such cooperation and/or coordination or otherwise unreasonably withholds, conditions or delays its consent or approval of any such decision or other item shall indemnify and hold harmless the other party from any costs, damages or expenses that arise therefrom to the extent allowed under applicable law. It shall be prima facie unreasonable for a party to object later to or otherwise attempt to disapprove a matter it has previously approved.

10.2.6 City Approvals. Notwithstanding any other provision in this Agreement or any Loan Document, Operator and CIDA acknowledge and agree that Operator must obtain formal approvals from the appropriate City agencies, boards and other City regulatory authorities or bodies for the Amphitheater design proposed in good faith by Operator and its design consultants and contractors and any detailed site plan (or site plans) required for the development and construction of the Amphitheater (the "Pre-Development Approvals"). If in order to satisfy any condition for obtaining the Pre-Development Approvals, Operator must incur additional development costs exceeding by Fifty Thousand and 00/100 Dollars (\$50,000.00) the amount then projected by Operator and its consultants and contractors as a good faith estimate for the

development and construction of such proposed Amphitheater design, then Operator shall provide written notice to CIDA of the objectionable requirements for the Pre-Development Approvals causing the good faith estimate to be exceeded by \$50,000 and CIDA shall have thirty (30) days after receipt of such notice to seek to cure such objectionable requirements to the satisfaction of Operator. If CIDA is unable or unwilling to effect cure of the objectionable requirements prior to the expiration of the foregoing 30 day period, then Operator may terminate this Agreement at its option upon written notice to CIDA and return possession and control of the Premises in the same condition as commencement of this Sublease to CIDA as provided in this Agreement, and thereafter, any amounts owing under the Loan shall be repaid by Operator, the Loan shall be abated in full and CIDA shall cancel and release the Note, the Guaranty and any other Loan Document. Operator's right to object to objectionable requirements shall expire on November 1, 2004 and if a written objection has not been delivered to CIDA by November 1, 2004 then this provision shall have no further force or effect.

### **Section 10.3 — CIDA Construction Loan.**

10.3.1 Loan Terms. CIDA has agreed to lend to Operator \$2,400,000 as a construction loan for the purposes of constructing the Amphitheater, Storage Area and the Backstage Service Area. The CIDA Loan shall have an interest rate of 3.7% per annum and be payable semi-annually over twenty (20) years. The CIDA Loan shall be secured by a first lien Security Agreement on all of Operator's assets, including the Amphitheater, its fixtures, Trade Fixtures and the Operator's Accounts Receivable. The CIDA Loan shall be unconditionally guaranteed by R. Coran Capshaw. Funds from the CIDA Loan shall be disbursed to Operator upon the presentment to CIDA of written invoices for Construction Costs that have been paid by Operator for categories of construction of items set forth on the attached Exhibit E. The parties agree to execute and deliver simultaneously this Agreement and the CIDA Loan loan documents.

10.3.2 Payment of Construction Loan on Transfer. Upon a Transfer (hereinafter defined) of more than 30% of Operator's membership interest, the CIDA Loan shall be immediately due and payable.

**Section 10.4 — CIDA Contribution.** In addition to the CIDA Loan, CIDA shall contribute \$1,000,000.00 to the cost of construction of the Amphitheater. The CIDA Contribution shall be used for the construction of various items covered in the categories listed on the attached Exhibit E unless otherwise agreed in writing by the CIDA Executive Director. Funds from the CIDA Contribution shall be paid to Operator by CIDA within thirty (30) days of submission to the CIDA Executive Director of written invoices for the construction of various items covered in the categories listed on Exhibit E which have been paid by Operator.

**Section 10.5 — Transit Center Improvements.** In addition to the CIDA Loan and the CIDA Contribution, and pursuant to the resolution attached hereto as Exhibit G, the City will construct, at its cost and expense, certain improvements related to the City's transit center as listed on the attached Exhibit H (the "Transit Center Improvements"), which shall provide incidental benefits to Operator and the Amphitheater.



**Section 10.6 — No Liens; Payment and Performance Bond.** At all times during the Term, Operator shall take all necessary steps to ensure that the Premises and Improvements remain free and clear of all liens, encumbrances and claims of lien for labor, services, materials, supplies or equipment performed on or furnished to the Premises, except for liens, encumbrances and claims of lien for labor, services, materials, supplies or equipment performed on or furnished to the Premises with respect to the Transit Center Improvements for which the City, CIDA and/or their respective contractors and vendors shall have sole responsibility. In the event a memorandum of such a lien is filed, Operator shall within ten business days of such filing cause the lien to be removed or bonded off. Operator, at Operator's expense, shall provide to CIDA a labor and materials payment and performance bond in an amount equal to all estimated cost of any improvements, additions or alterations to or on the Premises, to insure CIDA against liability for mechanics' liens and to insure completion of work.

## **ARTICLE 11**

### **TRANSFER, CHANGES OF OWNERSHIP AND CONTROL**

**Section 11.1 — Definition of Transfer.** As used in this Article 11, the verb "Transfer," in whatever form, number or tense, shall mean, as the case may be, to assign, sell, convey, transfer, pledge, encumber, or grant a management interest in, or otherwise to dispose of voluntarily or involuntarily.

#### **Section 11.2 — Prohibition Against Transfer.**

11.2.1 Operator recognizes that, in view of:

- (a) the importance of the development of the Premises to CIDA;
- (b) except as otherwise permitted in this Agreement, the fact that a change in ownership or control of the Operator or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in control of the Operator or the degrees thereof, is for practical purposes a transfer or disposition of the Premises; and
- (c) the qualification and identity of Operator, and its partners and principals are of particular concern to CIDA.

Due to the foregoing, this Agreement may not be transferred by Operator, and none of the members of the Operator shall, during the Term of the Lease, other than the following permitted transfers:

- (1) a Transfer or Transfers of interests in the Operator totaling in the aggregate 30% or less;
- (2) a direct or indirect Transfer by one or more of the members of all or a portion of their respective interests in the Operator to an existing member of Operator or to

any member's immediate family or to another entity under common control of such transferring member;

(3) a Transfer of a member's interest in Operator (or of any outstanding stock or other equity interest in such member) occasioned by the death or incapacity of such member, so long as, and only if, the estate of such member or the individual exercising member's power of attorney expressly assumes such Obligations in a form and substance acceptable to CIDA;

(4) license the Amphitheater to other promoters or operators in the ordinary course of business (i.e., on a daily or weekly basis, but not for a material portion of then remaining Term);

(5) grant concession rights to vendors or other concessionaires for the sale of food, beverages, merchandise or similar items; or

(6) a transfer requested by Operator and consented to in writing by CIDA, at CIDA's sole discretion, but subject to the matters of considerations described in Section 11.3 below.

**Section 11.3 — CIDA Consent to Transfer.** CIDA shall weigh the following factors to determine whether or not to grant consent to transfer by Operator: (1) the credit worthiness of the new operator; (2) the operational experience of the new operator; and (3) the new operator's overall ability to operate the Amphitheater in a manner consistent with this Agreement.

**Section 11.4 — Restriction on CIDA Transfer.** CIDA shall not transfer its interest in this Agreement without the written consent of the Operator which shall not be unreasonably withheld.

**Section 11.5 — Indemnity on Transfers.** Operator agrees to and shall indemnify, defend and hold the City and CIDA harmless for, from and against all claims, demands and Obligations asserted by or from any Party claiming a right, interest or ownership to this Agreement, through or with Operator and its members arising out of or in connection with relationships Operator or its members have entered into with such other Party in violation of this Agreement.

**Section 11.6 — Void Without Consent.** Any Transfer or attempt to Transfer this Agreement, or any right herein or the Premises, in violation of this Agreement shall be deemed to be void and of no effect. No voluntary or involuntary successor in interest to any interest in Operator, or any other Person or entity who acquires an interest in Operator in violation of the prohibitions of this Article 11 may acquire any rights or powers under this Agreement.

**Section 11.7 — Disclosure.** Operator has prior to the execution hereof identified and disclosed to CIDA the Persons comprising the members of Operator, and shall, prior to any proposed permitted Transfer hereafter, identify and disclose the identities of every other Person who would pursuant to such proposed Transfer become an investor in Operator and the nature and the extent of the interest in Operator to be acquired by such Person or entity. Operator shall submit to

CIDA instruments and legal documents necessary to disclose such identities and the nature and the extent of such interest.

## ARTICLE 12

### REPRESENTATIONS, WARRANTIES AND COVENANTS

**Section 12.1 — CIDA Representations and Warranties.** CIDA represents and warrants to Operator the following:

12.1.1 Organization. CIDA is a political subdivision of the Commonwealth of Virginia, duly organized under the laws of the Commonwealth of Virginia. This Agreement is a legal, valid and binding obligation of CIDA, enforceable in accordance with its terms.

12.1.2 Authority. CIDA has full power and authority to enter into this Agreement, and the execution, delivery and consummation of this Agreement by CIDA have been duly authorized by all necessary action. The Chairman of CIDA is the person duly authorized to execute this Agreement on behalf of CIDA and has so executed this Agreement.

12.1.3 No Conflicts. The execution, delivery and performance of this Agreement by CIDA is not prohibited by and does not conflict with any other agreements, instruments, judgments or decrees to which CIDA is a party or is otherwise subject.

**Section 12.2 — Operator's Representations, Warranties and Covenants.** Operator represents, warrants and covenants to CIDA the following:

12.2.1 Organization. Operator is a limited liability company, duly organized under the laws of the Commonwealth of Virginia.

12.2.2 Authority. Operator has full power and authority to enter into this Agreement, and the execution, delivery and consummation of this Agreement by Operator have been duly authorized by all necessary action.

12.2.3 No Conflicts. The execution, delivery and performance of this Agreement by Operator is not prohibited by and does not conflict with any other agreements, instruments, judgments or decrees to which Operator is a party or is otherwise subject.

12.2.4 Litigation. No suit is pending or threatened before or by any court or governmental or other administrative body against Operator. There are no outstanding judgments against Operator.

12.2.5 No Violation of Laws. Operator has received no written notice asserting any noncompliance in any material respect by Operator with Laws; or of any judgment, order, injunction or decree of any court, administrative agency, or other Governmental Authority against Operator or any of its investors.

12.2.6 Laws. Operator has taken no action that violates or may violate any Laws and there is no material noncompliance by Operator with any Laws. Operator will promptly notify the CIDA Executive Director if subsequent to the date of this Agreement, Operator acquires knowledge of changes concerning any material noncompliance or potential material noncompliance with any Laws or if Operator receives any written or oral notification from any Governmental Authority or any third party regarding any material noncompliance or threatened or potential material noncompliance with or any request for information pursuant to any Laws.

**Section 12.3 — Mutual Covenants.** Operator and CIDA each covenant and agree with the other as follows:

12.3.1 Additional Documents. Operator and CIDA shall, whenever and as often as each is reasonably requested to do so by the other Party, execute or cause to be executed any further documents, as may be necessary or expedient in order to consummate the transactions provided for in this Agreement and to carry out the purpose and intent of this Agreement.

12.3.2 Good Faith. In exercising its rights and fulfilling its Obligations under this Agreement, CIDA and Operator shall each act in good faith. Each Party acknowledges that this Agreement contemplates cooperation between Operator, CIDA and the City, and each Party will use reasonable best efforts to foster and facilitate such cooperation by and among Operator, CIDA and the City.

12.3.3 Notice of Matters. If CIDA or Operator receives knowledge regarding any material matter which may constitute a breach of any of its warranties or covenants set forth in this Article 12 which arises after the date of this Agreement, the Party receiving such knowledge will promptly notify the other Party of the same in writing.

12.3.4 Hazardous Substances. Neither CIDA nor Operator shall cause or permit, at any time during the Term, any Hazardous Substances to be disposed of or otherwise released on, to or under the Premises, except such materials as are incidental to the normal course of business, maintenance and repairs of the Premises and which are handled in compliance with all applicable Environmental Laws. Neither CIDA nor Operator shall engage in operations at the Premises that involve the generation, manufacture, refining, transportation, treatment, handling or disposal of "Hazardous Substances" or "hazardous wastes" as such terms are defined under any Environmental Laws, .

In the event that either CIDA or Operator should violate this section, the Party responsible for the violation agrees to indemnify, defend and hold harmless the other Party from any and all fines, suits, claims, expenses, penalties, demands, losses and actions (including, without limitation, any and all attorneys' fees and costs) arising out of any condition or circumstance which would not otherwise exist but for the failure of either CIDA or Operator to fulfill its covenant contained in this Section 12.3.4.

Operator and CIDA agree to fully comply with, and to take no action or fail to take any action which shall or may result in a violation of any federal, state or local law, statute, code, ordinance, regulation, rule or other requirement (including, but not limited to, consent decrees

and judicial or administrative orders), relating to health or safety or the environment, all as amended or modified from time to time (collectively, "Environmental Laws").

In the event that Operator is at fault for breach of any Environmental Law, all costs and expenses incurred by CIDA and its exercise of this right shall be deemed to be additional Rent payable in accordance with the terms and conditions of this Agreement. Each Party's obligations under this Section 12.3.4 shall survive the expiration or sooner termination of this Agreement. In the event that CIDA is at fault, and Operator elects to perform CIDA's obligations, all costs and expenses incurred by Operator shall be paid by CIDA.

In the event of any "release" as defined by CERCLA 42 USC § 9601(22), in the Amphitheater Area or the Backstage Service Area as a result of Operator's use or operation of the Premises, Operator shall be responsible for the cleanup of the release, unless the release was the sole responsibility of CIDA or the City or any other party using the Amphitheater Area or Backstage Service Area with the permission of CIDA or the City, except for operators and any party using the Amphitheater with the permission of Operator.

**12.3.5 Survival of Covenants and Warranties.** All representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement and the termination of this Agreement. No action taken pursuant to or related to this Agreement, including without limitation any investigation by or on behalf of a Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition or agreement herein.

## **ARTICLE 13**

### **DEFAULTS AND REMEDIES**

**Section 13.1 — Operator Event of Default.** An "Operator Event of Default" for purposes of this Agreement shall be deemed to have occurred if any of the following occurs:

**13.1.1 Rent Default.** If any Rent payable to CIDA, or any transferee permitted under this Agreement, remains unpaid on the date upon which the same is due to be paid and continues to be unpaid for five (5) business days after the date the Rent is due and payable.

**13.1.2 Non-Rent Event of Default.** If any of the Obligations of Operator are not performed and discharged as and when called for, and (a) the failure, refusal or neglect to perform and discharge such obligation continues for a period of fifteen (15) business days after Operator has been given written notice thereof or (b) if by reason of the nature of such obligation the same cannot be remedied within fifteen (15) days, and (i) corrective measures to cure are not commenced within such fifteen (15) day period, or (ii) the corrective measures to cure are not in good faith diligently and continuously prosecuted, then an "Operator Event of Default" shall be deemed to have occurred for all purposes of this Agreement.

## **Section 13.2 — CIDA Remedies.**

If an Operator Event of Default occurs, then CIDA, at any time thereafter, prior to the curing thereof, shall have, as its remedy, the right to pursue any remedy at law or in equity, including, without limitation, the right to do any one or more of the following:

13.2.1 Terminate this Agreement by giving Operator fifteen days (15) written notice thereof, in which event this Agreement and the leasehold estate hereby created and all interest of Operator and all Parties claiming by, through, or under Operator shall terminate upon the expiration of such notice with the same force and effect and to the same extent as if the effective date of such notice were the day originally fixed in Article 3 hereof for the expiration of the Term.

13.2.2 Reenter and take possession of the Premises and remove all Persons and property therefrom, after providing Operator fifteen (15) days notice of intent to reenter and take possession of the Premises.

13.2.3 File such lawsuits against Operator as may be necessary to pursue rights and remedies provided by law or in equity against Operator for damages or mandamus and claims for damages by reason of the existence of such Operator Event of Default; or

13.2.4 Perform the Obligations of Operator which gave rise to the existence of such Operator Event of Default, in which event Operator shall be obligated to reimburse to CIDA all reasonable expenses incurred by CIDA as the result of CIDA's performance of the Obligations of Operator together with interest thereon at the Permitted Rate from the date of expenditure until repaid in full.

**Section 13.3 — Liquidated Damages.** Upon a breach of the noise covenants set forth above in Section 7.7, CIDA may charge Operator, in addition to all other rights and remedies available to CIDA under this Agreement, at law or in equity, Two Thousand Dollars (\$2,000.00) for each violation during an Event and/or practice or rehearsal. In the event of ten (10) violations during any successive twelve (12) month period, Operator shall thereafter, be charged Four Thousand Dollars (\$4,000.00) for the eleventh and each subsequent violation during an Event and/or practice or rehearsal. If there are no violations during the next succeeding twelve (12) month period, the charge shall revert to Two Thousand Dollars (\$2,000.00) per violation, but shall be subject to increase in the event of more than ten (10) violations in a twelve (12) month period as set forth above. The foregoing charges are deemed by the Parties to this Agreement to be liquidated damages and not a penalty, the Parties agreeing and hereby stipulating that the exact amount of damages would be extremely difficult to ascertain and that the foregoing charges constitute a reasonable and fair approximation of such damages. Operator waives any defense as to the validity of any liquidated damages on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages.

## **Section 13.4 — CIDA Default.**

13.4.1 CIDA Event of Default. If any of the Obligations of CIDA are not performed and discharged as and when called for and (a) the failure, refusal or neglect to perform and discharge such Obligation continues for a period of fifteen (15) days after CIDA has been given written notice thereof or (b) if by reason of the nature of such obligation the same cannot be remedied within fifteen (15) days, and (i) performance and discharge of such Obligation is not commenced within such fifteen (15) day period, or (ii) the performance and discharge of such Obligation is not diligently and continuously prosecuted, then a "CIDA Event of Default" shall be deemed to have occurred for all purposes of this Agreement.

13.4.2 Operator's Remedies. If a CIDA Event of Default occurs, Operator, at any time thereafter prior to the curing thereof, shall have the right to pursue any remedy at law or in equity including, without limitation, the right to do any one or more of the following:

(a) Perform the Obligations of CIDA which gave rise to the existence of such CIDA Event of Default, in which event CIDA shall be obligated to reimburse to Operator all expenses incurred by Operator as the result of Operator's performance of the Obligations of CIDA together with interest thereon at the Permitted Rate from the date of expenditure until repaid in full; and

(b) Bring an action for damages caused by the CIDA Event of Default, such damages shall include lost profits and any other damages that Operator may be legally entitled to recover.

**Section 13.5 — Attorneys' Fees.** In the event that a party incurs attorneys' fees or other expenses to enforce its rights under this Agreement, then the party that is in default of its obligations imposed by this Agreement shall be responsible for the payment of the non-defaulting party's reasonable attorneys' fees and expenses incurred in the enforcement of rights hereunder.

## **ARTICLE 14**

### **GENERAL PROVISIONS**

**Section 14.1 — Governing Law/Jurisdiction and Venue/Rights in Event of Litigation.** This Agreement shall be governed by and construed according to the laws of the Commonwealth of Virginia. Each Party hereby submits to jurisdiction and venue in the Circuit Court for the City of Charlottesville, Virginia. Operator shall comply with land use regulations, codes and laws affecting the acquisition, ownership, use, and improvement of the Premises.

**Section 14.2 — Notices.** All notices and other communications requested by this Agreement must be in writing and will be deemed properly given if sent by (i) personal delivery, (ii) express mail, postage prepaid, return receipt requested, or (iii) certified United States mail, postage prepaid, return receipt requested, addressed as follows:

In the case of a notice to Operator to:

Ken MacDonald  
P.O. Box 520  
Crozet, VA 22932

With a copy to (which shall not constitute notice):

Philip H. Goodpasture  
Williams Mullen, PC  
Suite 1700, Two James Center  
1021 East Cary Street  
Richmond, Virginia 23219

In the case of a notice to CIDA to:

Industrial Development Authority of the City of Charlottesville, Virginia  
c/o Department of Economic Development  
Attn: Aubrey V. Watts, Jr.  
605 East Main Street  
Charlottesville, VA 22902

With copies to (which shall not constitute notice):

J. Page Williams  
Feil, Pettit & Williams, PLC  
530 East Main Street  
Charlottesville, VA 22902

and

City Attorney  
City of Charlottesville  
605 East Main Street  
Charlottesville, VA 22902

Each Party may by notice to the other specify a different address for subsequent notice purposes. Notice is effective on the date of actual receipt or three (3) days after the date of mailing, whichever is earlier.

**Section 14.3 — Time of Essence.** Time is of the essence with respect to the performance of each of the covenants, conditions and Obligations contained in this Agreement.

**Section 14.4 — Relationship of Parties.** No partnership, joint venture or other business relationship is established between the City, CIDA and Operator under this Agreement or any other agreement referred to in this Agreement other than the relationship of CIDA as the landlord



of the Premises and Operator as an independent contractor, tenant and operator of the Premises. Operator and its respective employees and agents shall not be considered employees or agents of CIDA or to have been authorized to incur any expense on behalf of the City or CIDA or to act for or to bind CIDA. CIDA, its board members, officers, employees and agents shall not be considered employees or agents of Operator or to have been authorized to incur any expense on behalf of Operator or to act for or to bind Operator. No Party hereto shall be liable for any acts, omissions or gross negligence on the part of the other Party, its employees, agents, independent contractors, licensees and invitees resulting in either personal injury or property damages.

**Section 14.5 — Approvals By CIDA and Operator.** Wherever this Agreement requires CIDA or Operator to approve any contract, document, plan, proposal, specification, drawing or other matter, such approval must not be unreasonably withheld or delayed unless otherwise expressly stated.

**Section 14.6 — Severability.** If any provision of this Agreement is declared void or unenforceable, such provision will be deemed severed from this Agreement, which shall otherwise remain in full force and effect, provided that this Agreement must be construed to give effect to the Parties' intent.

**Section 14.7 — Entire Agreement.** This Agreement is executed in counterparts, each of which is deemed to be an original. This Agreement and the referenced exhibits, each of which is incorporated herein, constitutes the entire understanding and agreement of the Parties with respect to the subject matter of this Agreement.

**Section 14.8 — Exhibits.** Exhibits A through M are attached to this Agreement and by this reference are incorporated and made a part of this Agreement. Exhibits E, H, I & J may be amended by the CIDA Executive Director and the Operator Representative to reflect additions, subtractions or corrections as they may agree in writing.

**Section 14.9 — Other Agreements.** This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations and the previous agreements among the Parties with respect to the subject matter of this Agreement.

**Section 14.10 — Waivers.** All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of CIDA and Operator, and all amendments hereto must be in writing and signed by the appropriate authorities of CIDA and Operator.

[SIGNATURE PAGE TO FOLLOW]

[SIGNATURE PAGE TO SUBLEASE, EASEMENT AND MANAGEMENT AGREEMENT]

IN WITNESS WHEREOF, the Parties have hereunto set their hands as of this 30<sup>th</sup> day of September, 2004.

CHARLOTTESVILLE PAVILION, LLC  
a Virginia limited liability company

By: [Signature]

By: R. Coran Capshaw

Its: President

Date: 10/12/04

STATE OF VIRGINIA )  
CITY OF CHARLOTTESVILLE ) ss.

Subscribed, sworn and acknowledged before me by R. Coran Capshaw

My commission expires: My Commission Expires May 31, 2005

SEAL:

[Signature]  
Notary Public

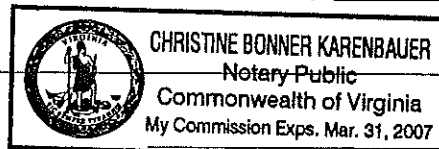
INDUSTRIAL DEVELOPMENT  
AUTHORITY OF THE CITY OF  
CHARLOTTESVILLE, VIRGINIA

By: [Signature]  
Name: Robert E. Noll  
Title: Chairman

STATE OF VIRGINIA )  
CITY OF CHARLOTTESVILLE ) ss.

Subscribed, sworn and acknowledged before me by Robert E. Noll

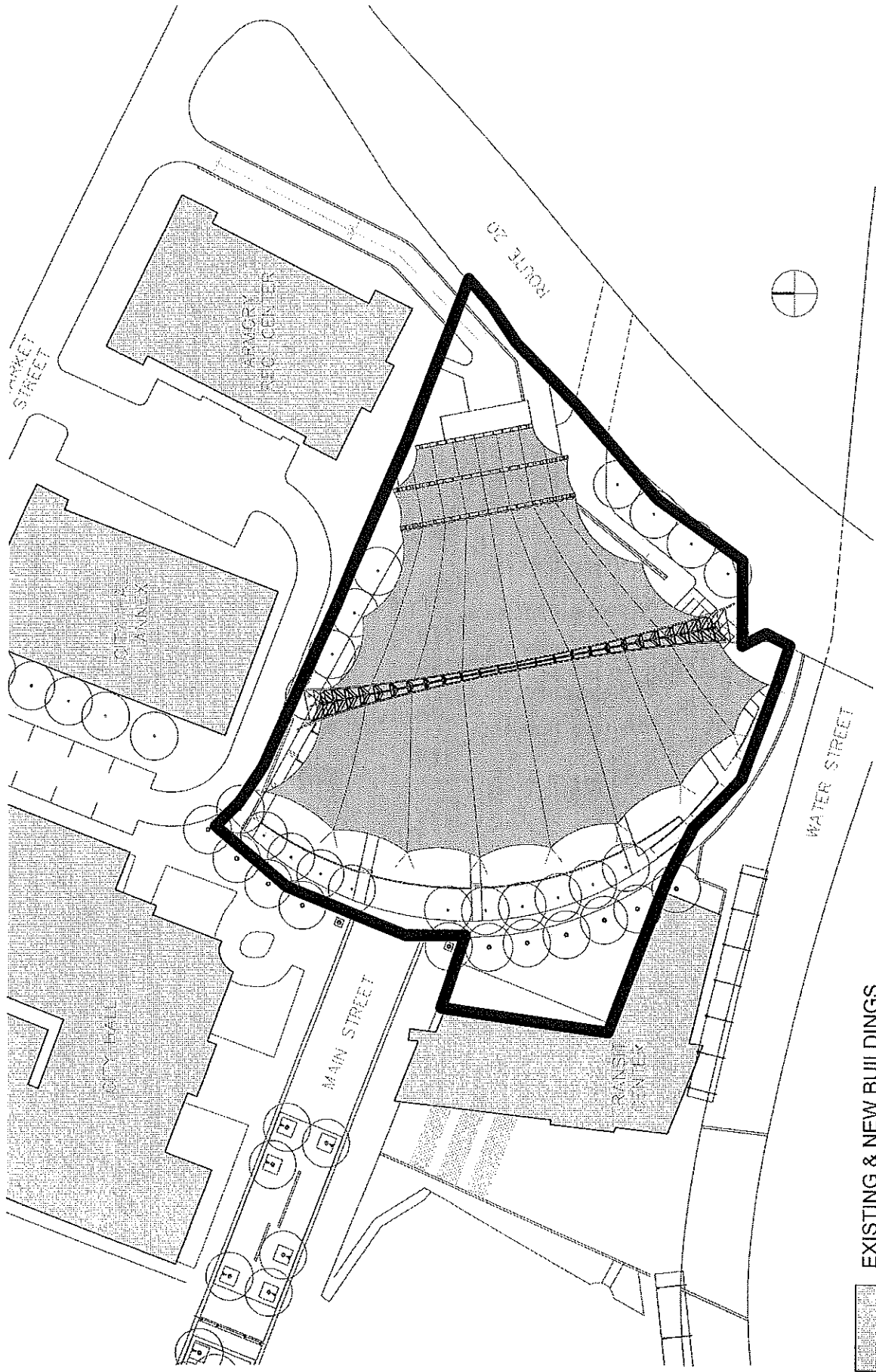
My commission expires:





SEAL:

Notary Public

Christine Bonner Karenbauer



-  EXISTING & NEW BUILDINGS
-  MUSIC PAVILION FABRIC ROOF

# **Ex. A – Amphitheater Area** TRANSIT CENTER STEERING COMMITTEE & B.A.R. COUNCIL SUBMISSION



28 May 2004

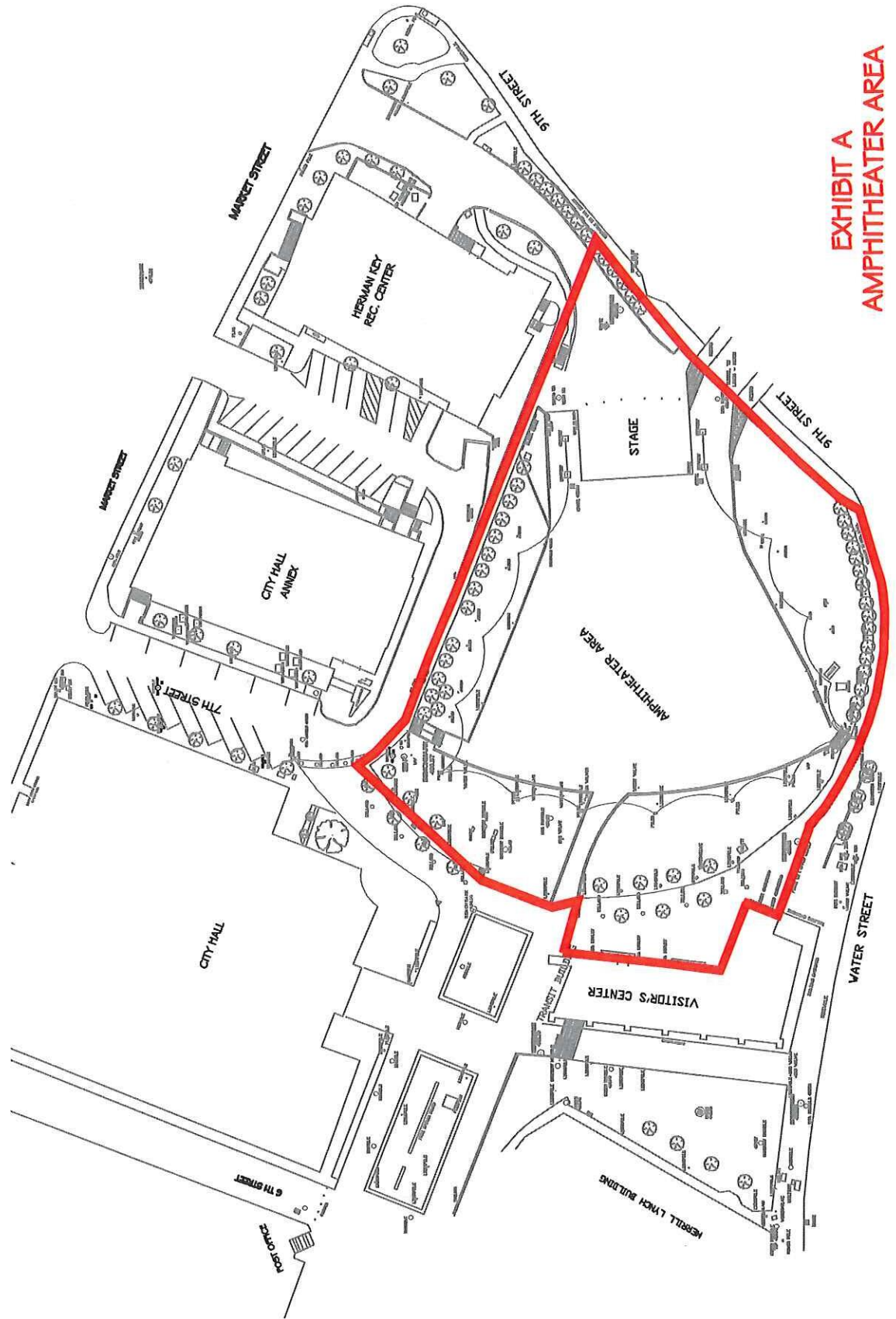
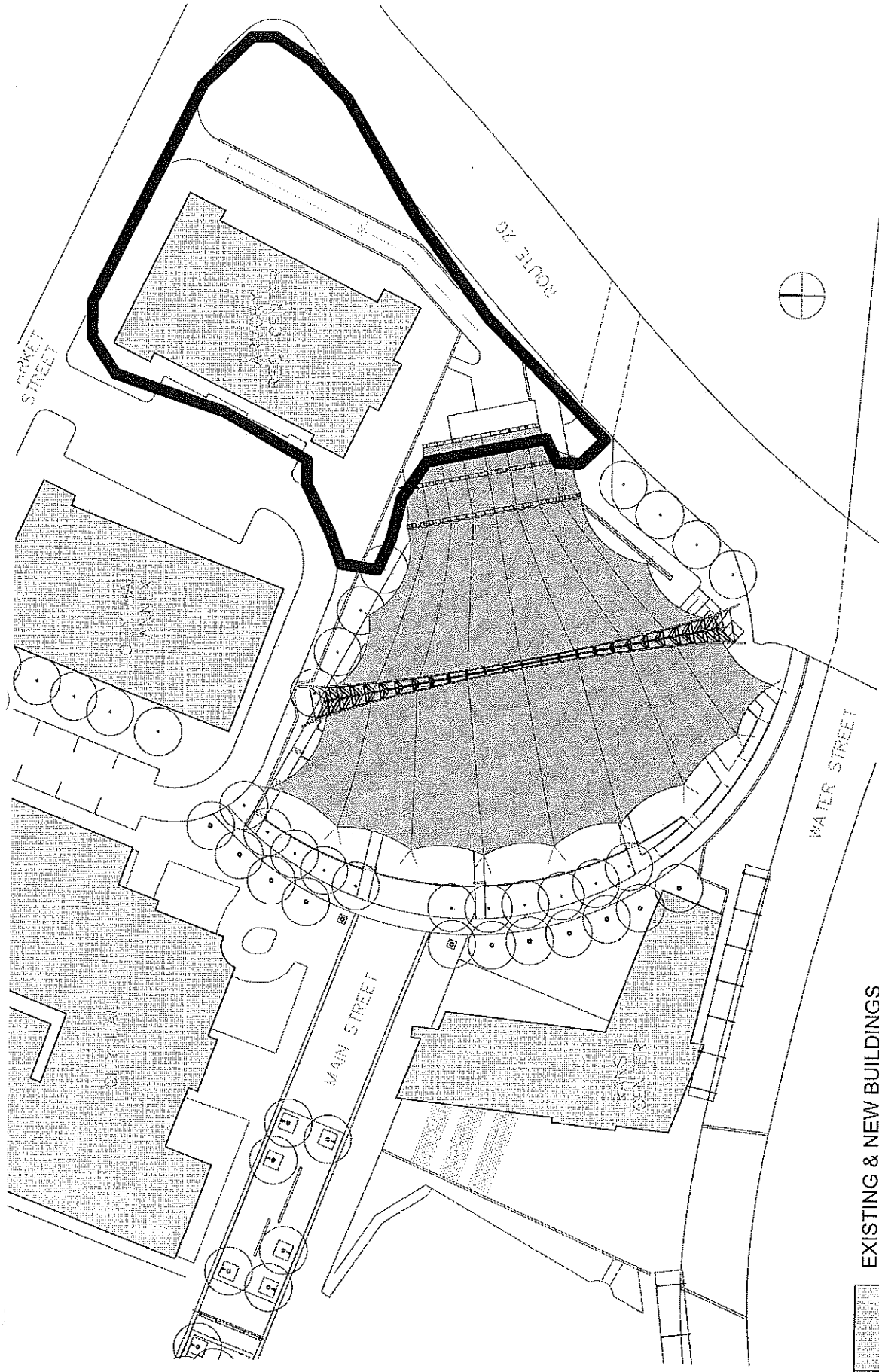


EXHIBIT A  
AMPHITHEATER AREA



EXISTING & NEW BUILDINGS

MUSIC PAVILION FABRIC ROOF

## Ex. B - Backstage Service Area

TRANSIT CENTER STEERING COMMITTEE & B.A.R. COUNCIL SUBMISSION



28 May 2004



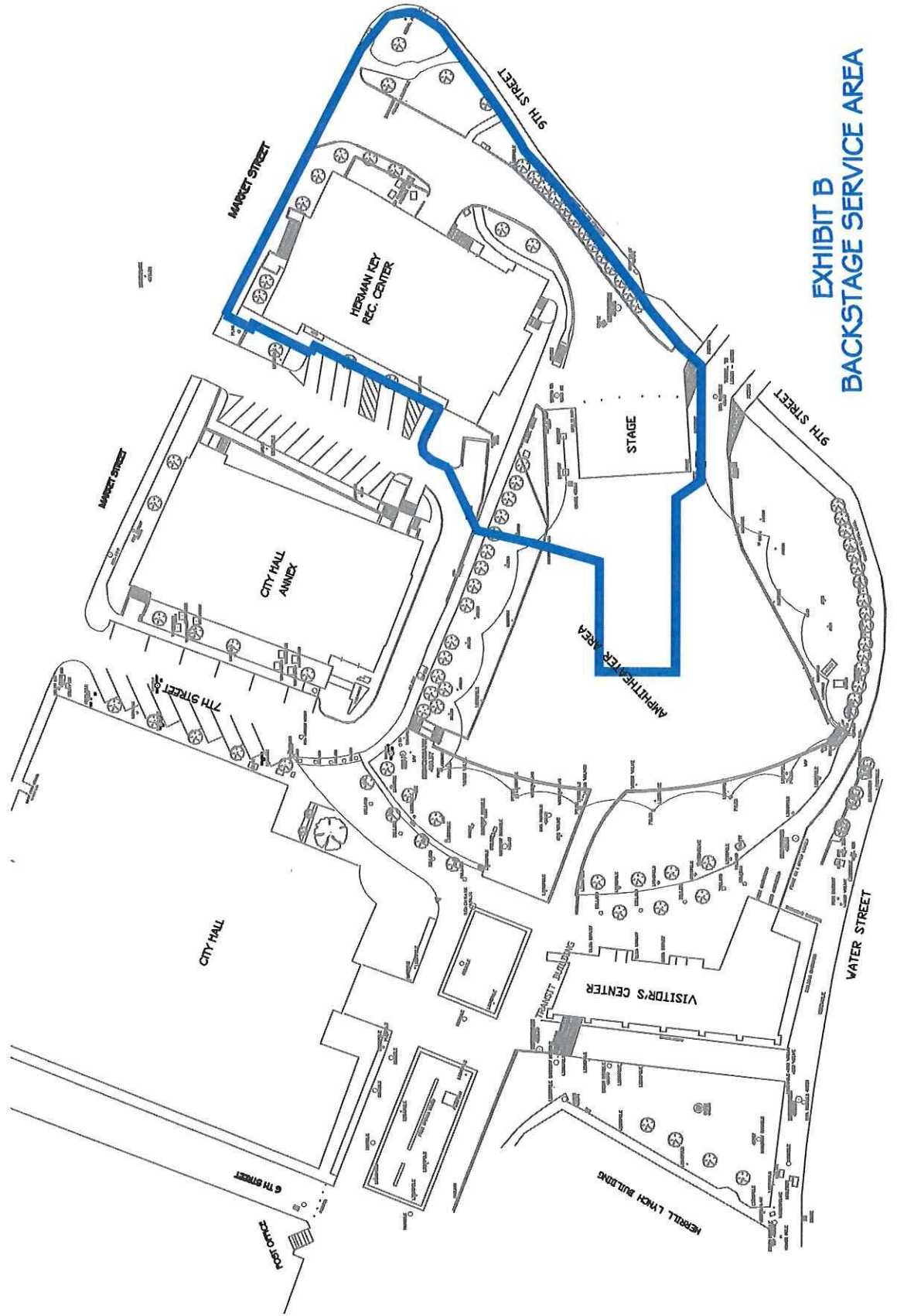
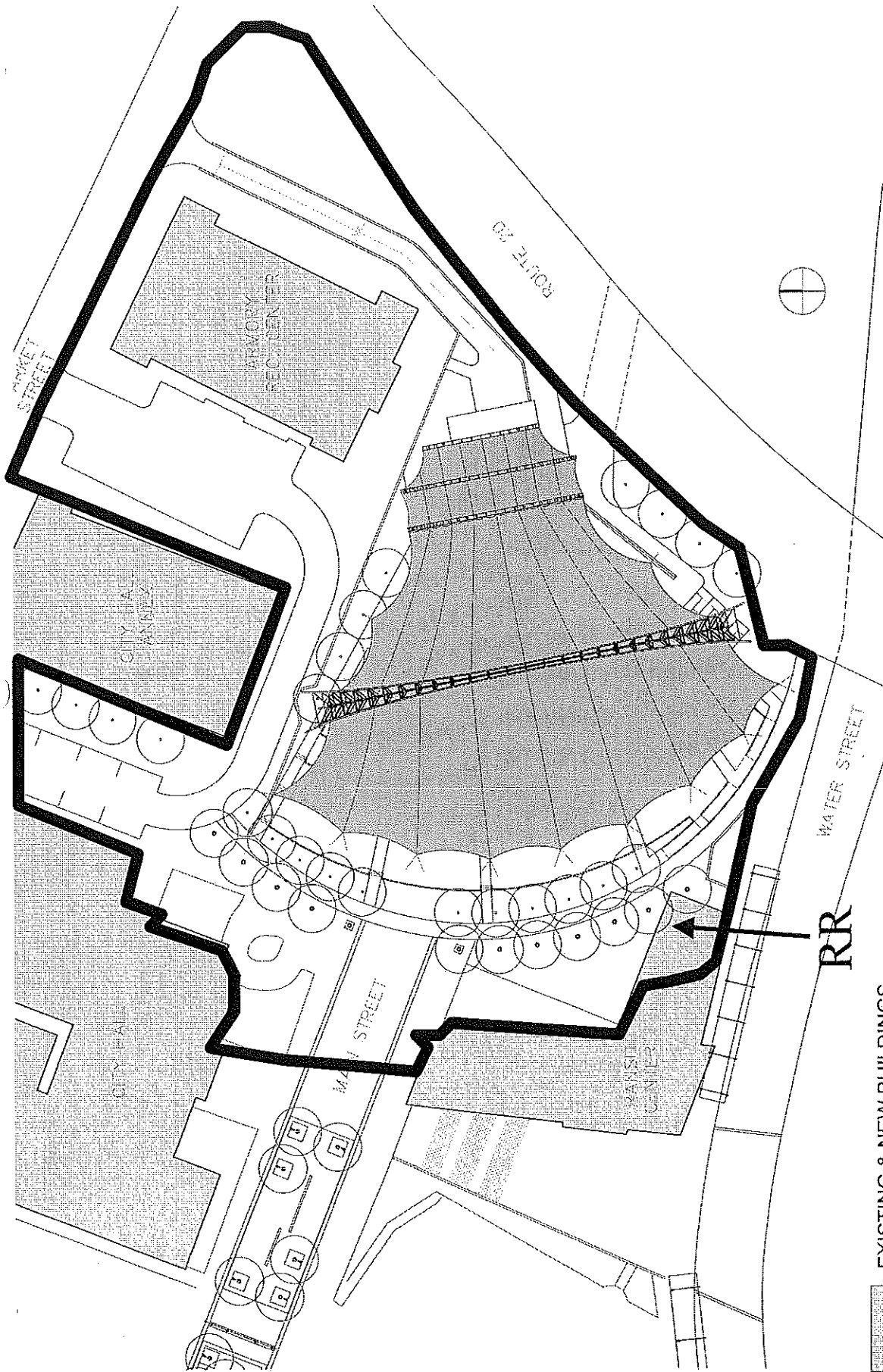


EXHIBIT B  
BACKSTAGE SERVICE AREA



EXISTING & NEW BUILDINGS

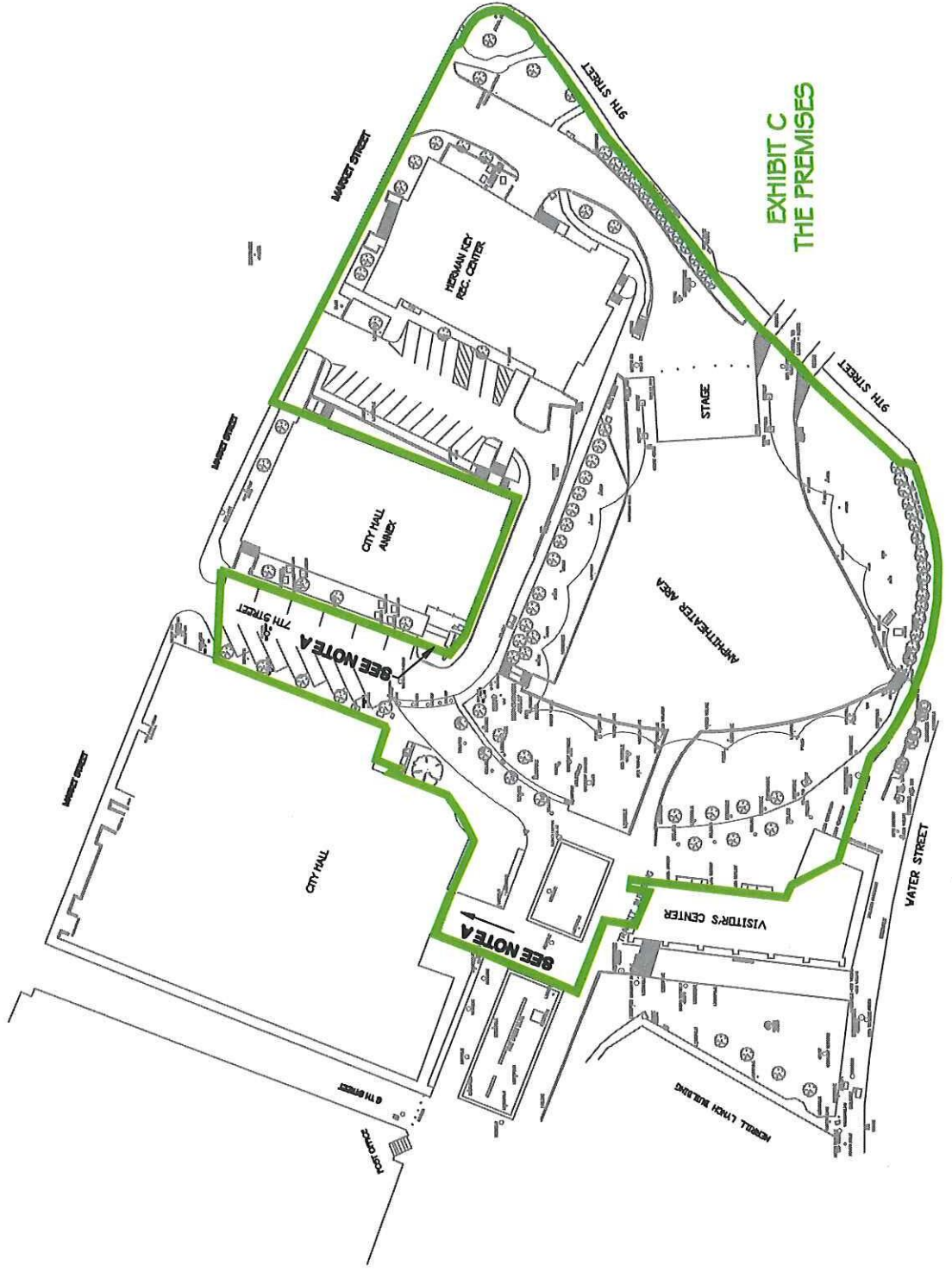
MUSIC PAVILION FABRIC ROOF

## Ex. C - Premises

TRANSIT CENTER STEERING COMMITTEE & B.A.R. COUNCIL SUBMISSION

28 May 2004

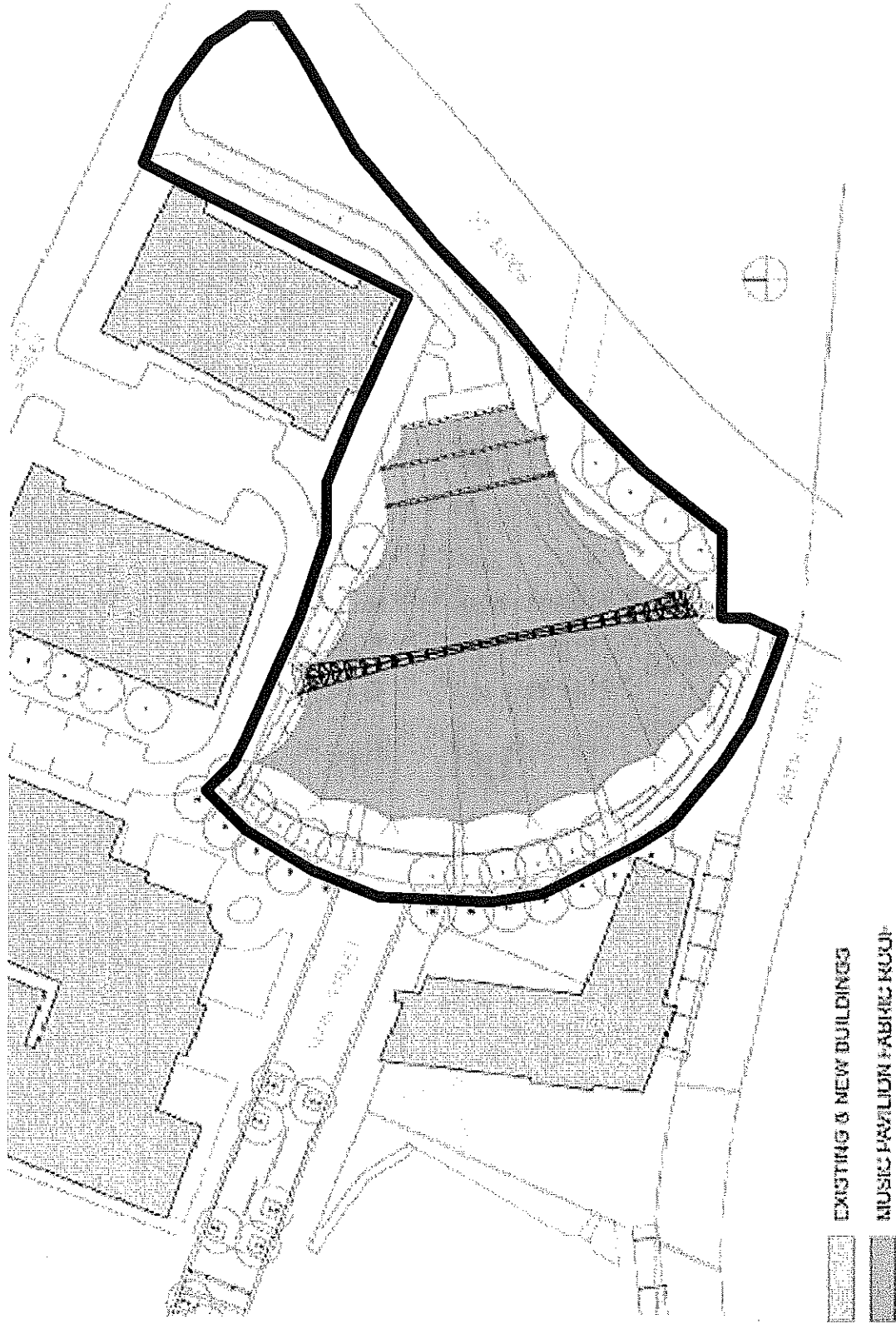




**EXHIBIT C  
THE PREMISES**

**NOTE A:** At all times during normal City Hall business hours and when a special event occurs at:





**Ex. D - Construction Access Area**



TRANSIT CENTER STEERING COMMITTEE & B.A.R. COUNCIL SUBMISSION

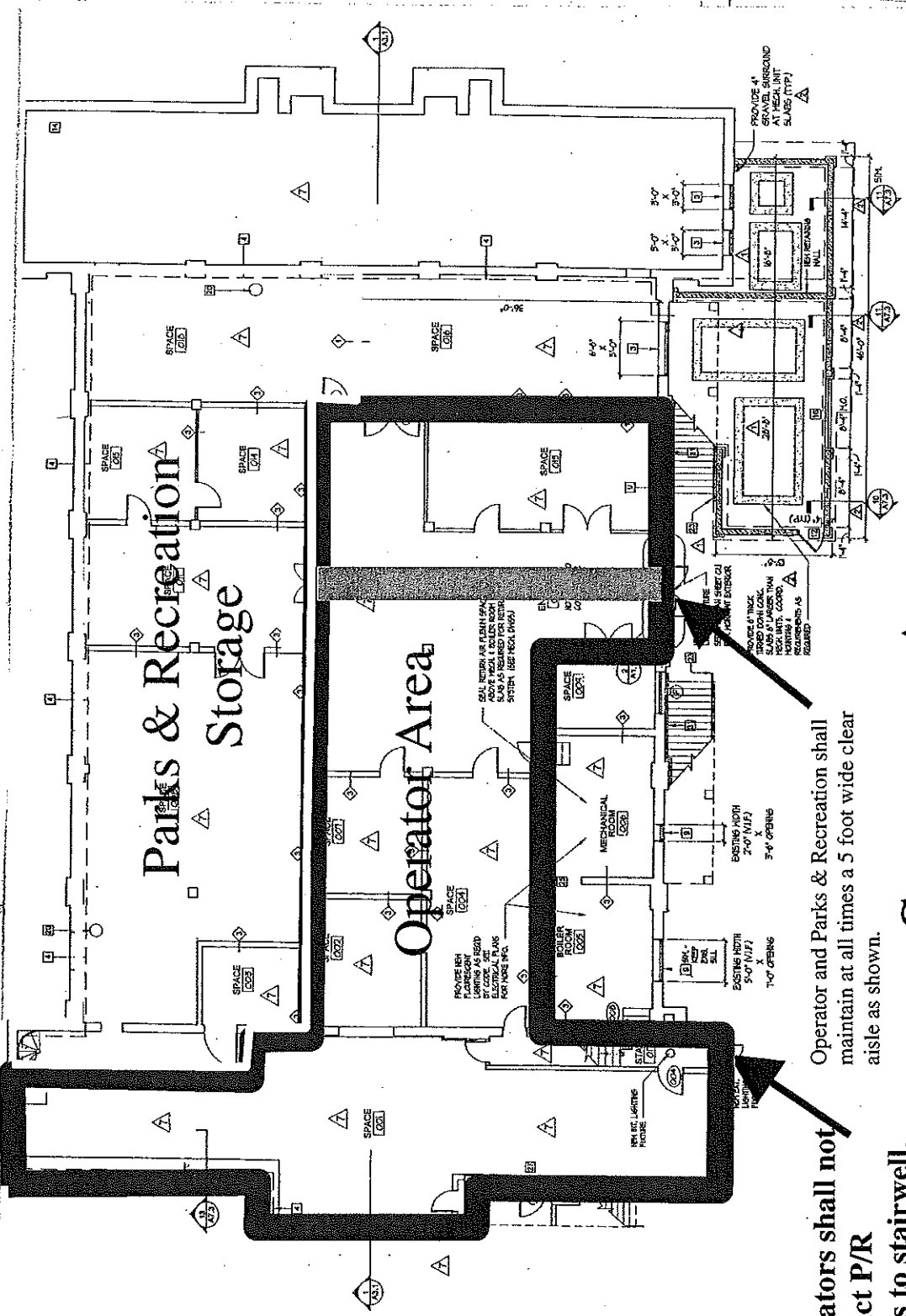


28 May 2004

## **EXHIBIT E**

### **CIDA Contribution Construction Schedule**

New Stage, including footings  
Canopy footings  
Canopy  
Arch footings  
Arch  
Paving  
Seating Slabs/lawn area  
Seating risers  
Box Seats  
Hand rails  
Electrical Service  
Lighting within Canopy  
Gates  
Fencing  
Access Road, including associated grading and retainage walls  
Stage Lift, if required  
All associated Design and Engineering fees  
Stage roof and wings  
Box Office Kiosks  
VIP Area Tent  
Dressing Rooms  
Miscellaneous Equipment  
Chairs  
Concession Equipment  
Merchandise Tent & Tables  
Concession Office Space  
Staff Office Space  
Operations Storage  
Catering  
Production Office  
Sound Meter



Operator and Parks & Recreation shall maintain at all times a 5 foot wide clear aisle as shown.

Storage Area

Exhibit F

**EXHIBIT G**

**Resolution for Transit Center Improvements**

**APPROPRIATION**  
**\$5,578,000**  
**Transit Center Facility**

**WHEREAS**, on June 27, 2002, City Council approved appropriation of \$1,000,000 in grants from the Federal Transit Administration (FTA) and the Virginia Department of Rail and Public Transportation to support the design and construction of a multi-modal transit facility; and

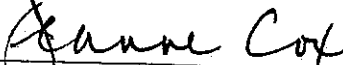
**WHEREAS**, the architectural firm of Wallace, Roberts & Todd, LLC (WRT) was hired to develop an urban design plan for the downtown and West Main Street areas, to include the proposed transit facility; and

**WHEREAS**, in January 2003 City Council approved the design plan submitted by WRT for the transit facility, which was then presented to the Board of Architectural Review and the general public for comment; and

**WHEREAS**, FTA and VDRPT have approved the City's application for \$5,578,000 in grant funds for this project, and City staff recommend approval of an appropriation equal to that amount, subject to receipt of said FTA and VDRPT grant funds; now, therefore,

**BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia that the sum of \$5,578,000.00, to be received as grants from the Federal Transit Administration and the Virginia Department of Rail & Public Transportation, is hereby appropriated to account code 26-191-092052 in the Capital Projects Fund to support the design and construction of a multi-modal transit facility.

Approved by Council  
January 5, 2004

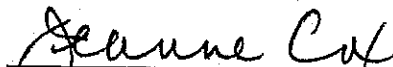
  
Clerk of City Council

**APPROPRIATION**  
**Federal Transit Administration and**  
**Virginia Department of Rail and Public Transportation**  
**\$1,000,000**

**WHEREAS**, the Federal Transit Administration and the Virginia Department of Rail and Public Transportation, has awarded a grant to the City of Charlottesville specifically for the construction of a transit transfer facility and related improvements.

**BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia, that a total of \$1,000,000 be appropriated into account 26-280-092052-50111 in the Grants Fund for the purpose of funding the construction of the transit transfer facility and related improvements.

Approved by Council  
June 27, 2002

  
Clerk of City Council

## EXHIBIT H

### **Transit Center Improvements**

Clearing/demolition  
Mass grading/excavation  
South retaining wall  
Plaza (west of building)  
Steps at plaza  
Plaza (east of building)  
Mall extension (brick paving system)  
Utility relocation  
Storm water retention  
Landscaping (outside amphitheater perimeter)  
Railings, as necessary at south retaining wall  
Construction of Transit building  
Construction of public restrooms  
Site lighting (outside amphitheater perimeter)  
Sidewalks (outside amphitheater perimeter)  
Curbs/gutters  
Water feature (if applicable)  
Improvements at 7<sup>th</sup> Street, north  
Improvements at Rec Center parking area  
Connecting roadway between 7<sup>th</sup> Str. North and Rec Center parking areas

## **EXHIBIT I**

### **City Priority Events**

First Night Virginia

Easter Egg Hunt

Halloween

Christmas Tree Festival

6 Municipal Band Concerts



**EXHIBIT J**

**Stage System Description**

To be finalized prior to initial Concert Season.

**EXHIBIT K**

**City Lease**


**AN ORDINANCE  
TO AUTHORIZE LEASING OF PROPERTY  
ON 7<sup>TH</sup> STREET, N.E. (DOWNTOWN AMPHITHEATER AND  
PORTION OF DOWNTOWN RECREATION CENTER) TO THE  
CHARLOTTESVILLE INDUSTRIAL DEVELOPMENT AUTHORITY.**

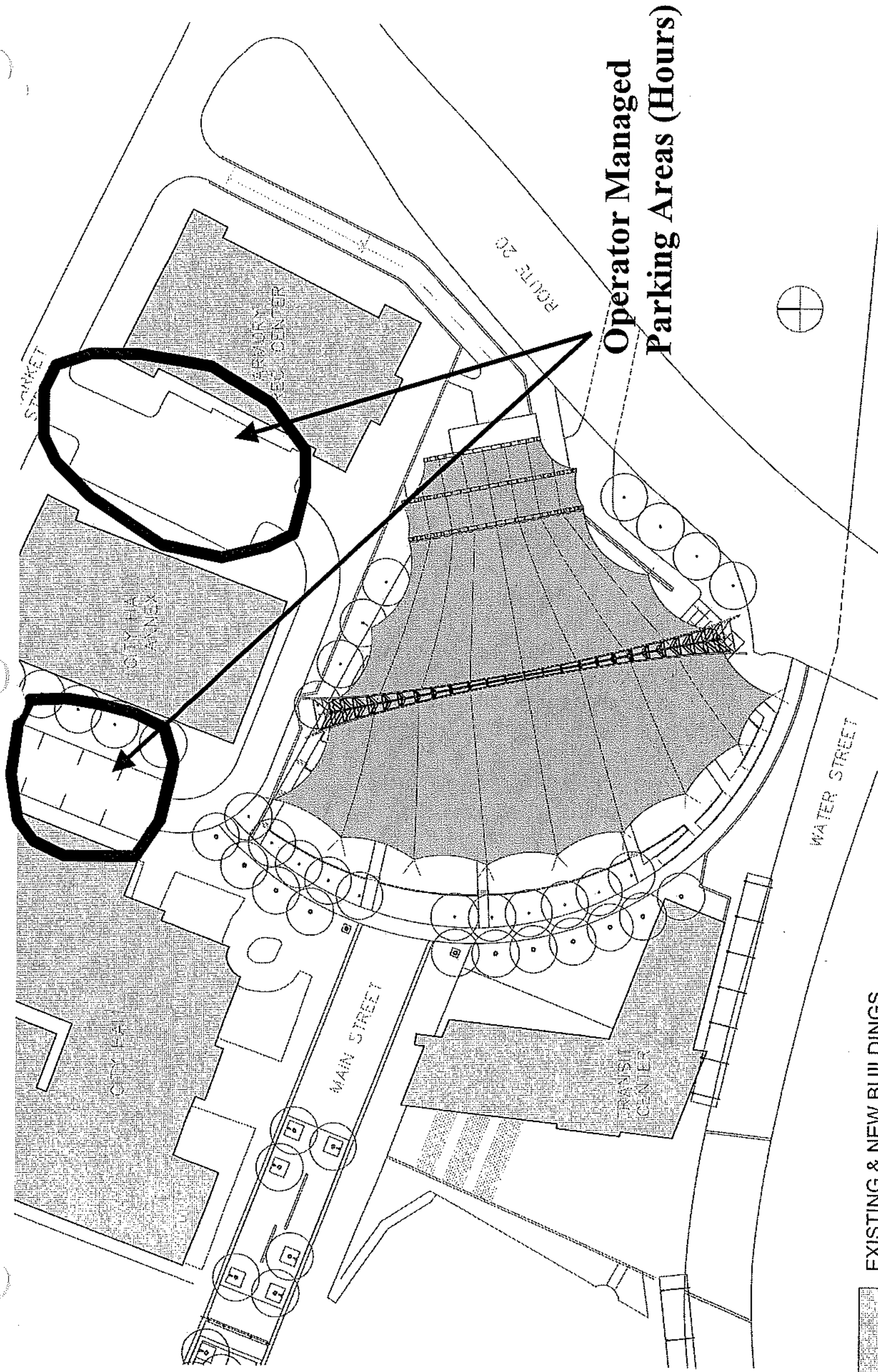
**WHEREAS**, the City of Charlottesville wishes to lease to the Charlottesville Industrial Development Authority certain City-owned property containing the downtown amphitheater and a portion of the Downtown Recreation Center on 7<sup>th</sup> Street, N.E. for the purpose of facilitating development at the East End of the downtown mall; and

**WHEREAS**, a public hearing was held on December 1, 2003 to give the public an opportunity to comment on the possible lease of said City land to a third party; now, therefore

**BE IT ORDAINED** by the Council of the City of Charlottesville, Virginia that the City Manager is hereby authorized to execute a ground lease agreement, in substantially the same form as attached hereto, for the leasing of the property described in the attached lease agreement. Said lease agreement shall be approved by the City Attorney prior to execution by the City Manager.

Approved by Council  
January 5, 2004

  
Clerk of City Council



# Operator Managed Parking Areas (Hours)

- EXISTING & NEW BUILDINGS
- MUSIC PAVILION FABRIC ROOF

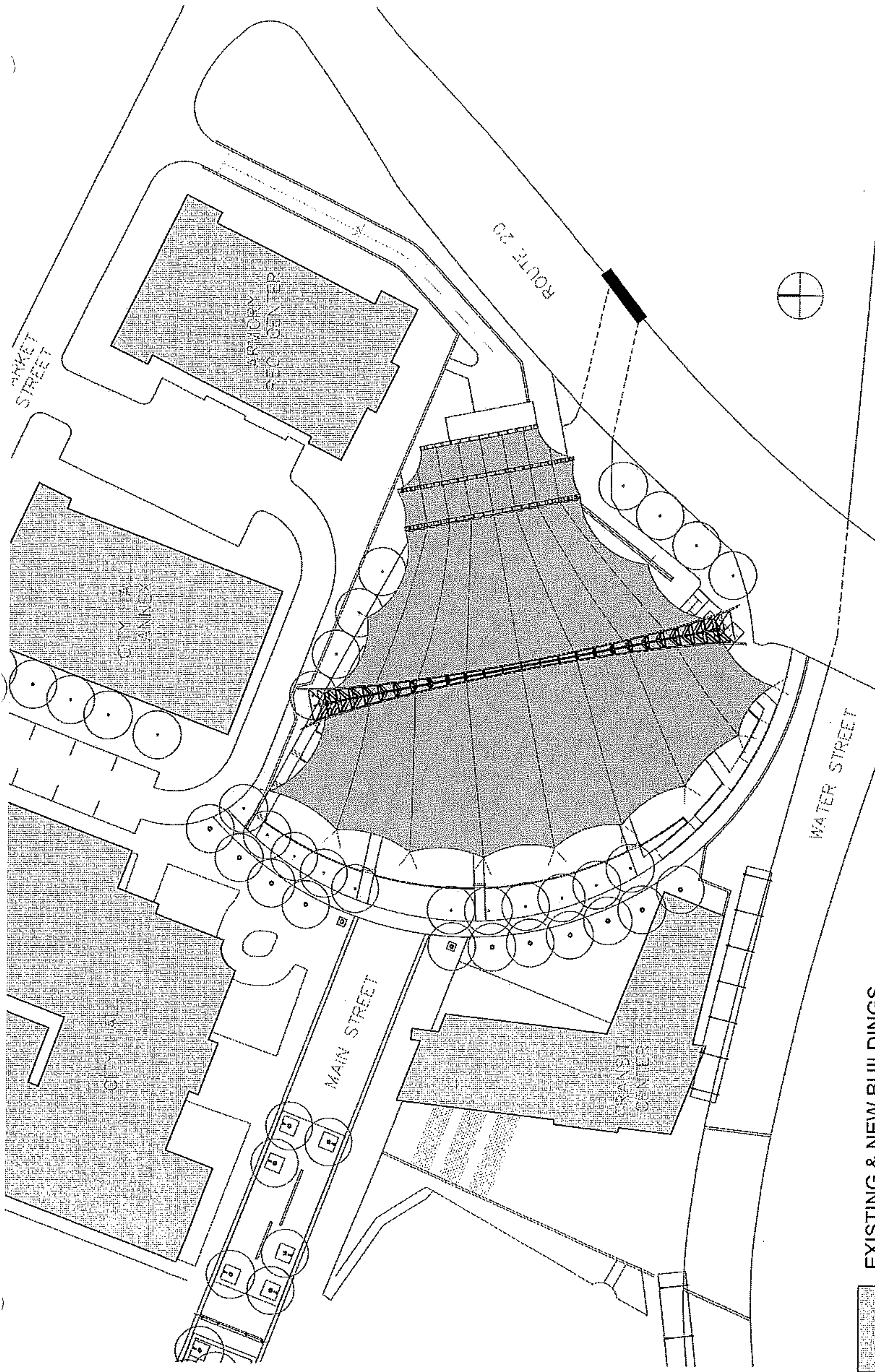
## Ex. L - Operator Managed Parking Areas

TRANSIT CENTER STEERING COMMITTEE & B.A.R. COUNCIL SUBMISSION



28 May 2004





- EXISTING & NEW BUILDINGS
- MUSIC PAVILION FABRIC ROOF

## Ex. M – Controlled Access Area



TRANSIT CENTER STEERING COMMITTEE & B.A.R. COUNCIL SUBMISSION



28 May 2004