

**CITY AND COUNTY OF DENVER - ARTS & VENUES USER AGREEMENT
DENVER COLISEUM**

THIS USER AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation, organized and existing by virtue of Article XX of the Constitution of the State of Colorado, hereinafter referred to as the "City", and **DENVER CUTTHROATS LLC**, a Colorado limited liability company whose address is c/o Packard Dierking, LLC, Attn: Scott Culley, Esq., 2595 Canyon Blvd, Suite 200, Boulder, CO 80302, hereinafter referred to as the "User."

WITNESSETH:

1. Permitted Premises. For and in consideration of the mutual agreements contained herein and subject to the terms and conditions hereinafter stated, the City and the User agree that User shall have the right to use the property known as the Denver Coliseum, located at 4600 Humboldt Street, Denver, Colorado, 80216 including the floor area, seating facilities, ticket booths, access areas, public address and sound systems, scoreboards, game clocks, goal nets, dasher boards and glass, ice resurfacer(s), locker and dressing rooms for home and visiting teams as well as referees, press rooms, corridors, stairways, walks, concourses, lavatories, secure storage areas, sub-levels in or about the Denver Coliseum, and parking on site and immediately adjacent to the Denver Coliseum all in a functioning, working condition, or as may be improved by the City in its sole discretion ("Permitted Premises").
2. Term. The term of this User Agreement is from the date of full execution of this Agreement to July 31, 2022, provided, however, that commencement of the term is subject to satisfaction of the contingency set forth in Section 14 below. As used herein, "Director" shall mean the Director of Arts & Venues Denver, or his designee. User shall designate a team representative authorized to communicate with the City on User's behalf regarding operational issues arising hereunder.
3. Use. User shall have the right to use the Permitted Premises for the following:
 - A. The exclusive right to professional hockey on the Permitted Premises and the exclusive right to any form of team hockey that would use the Permitted Premises as "home ice" for ten (10) games or more, including, but not limited to, presentation and play of: (i) User's entire "home" schedule of pre-season and regular season men's professional ice hockey league games as determined by the professional hockey league in which the User is a member from time to time ("League"), which is anticipated to consist of approximately thirty-three (33) regular season games and one (1) pre-season game each year, (individually, "Regular Season Game" and collectively, the "Regular Season Games") during the term of this Agreement, subject to the terms and conditions set forth below; (ii) any "home" playoff League games of the User ("User Playoff Games"), subject to scheduling availability; (iii) hosting of any League all-star games awarded to User ("User Hosted League All-Star Games"), subject to the terms and conditions set forth below, and subject to scheduling availability; and (iv) hosting of any exhibition hockey games by User ("User Hosted Exhibition Games"), all collectively referred to as Games or Game, subject to the terms and conditions set forth below, and subject to scheduling availability.

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- B. Team practices ("Team Practices"), subject to the terms and conditions set forth below and subject to scheduling availability.
- C. The ability to conduct additional events ("Additional Events") all collectively referred to as Additional Events or Additional Event, as follows:
 - (i) "Promotional Events (non-ticketed, ticketed non-revenue or any value added activity that is part of a Game ticket)" which shall mean events related to the User's team and the promotion of the User's team for the purposes of marketing, operations and/or community outreach including, but not limited to, "select-a-seat" events for season ticket holders (full or partial), hospitality events, open practices, camps, clinics, pre or post-Game parties and concerts and other skate and hockey exhibitions.
 - (ii) "Ticketed Non-Profit Events" which shall mean events held by User with a primary purpose to benefit a charity, community outreach or other non-profit organization including, but not limited to, ice exhibitions, tournaments, benefit concerts/events or other fundraising purposes.
 - (iii) "Ticketed For-Profit Events" which shall mean User's promotion of events other than Games, Ticketed Non-Profit Events or Promotional Events.

Additional Events shall be subject to all terms and conditions of this Agreement. User shall have access to the Permitted Premises from 7 a.m. to midnight on the days of its Games, Team Practices and Additional Events as provided in this Agreement. User shall notify and request the approval of City of all usage of the Permitted Premises at least 7 days prior to each activity; provided that User shall have no duty to notify City for Games scheduled pursuant to Section 8 below. User agrees that it will play all of its Games at the Permitted Premises, except as provided in Section 8 and in addition as may be otherwise approved in unusual circumstances by the Director.

- 4. Fees. The fees to be paid to the City by the User are in the amounts and on the basis and terms as follows (make all checks payable to the City and County of Denver):
 - a) Game fees and expenses. Game day fees and expenses shall be \$2,000 per Game in year one. In year two Game day fees and expenses shall be \$6,000 per Game, and shall increase each year thereafter in accordance with the annual percentage increase in the Consumer Price Index ("CPI") (rounded up to the nearest dollar), as determined between the most recently published CPI prior to October 1 each year after year two and the most recently published CPI that is at least one year prior thereto. As used herein, CPI means the consumer price index for the Denver metropolitan area 1982-1984 = 100 as published by the United States Department of Labor, Bureau of Statistics or any successor index. Fees and other charges incurred by User pursuant to this Agreement are payable monthly in arrears, not more than 15 days from the date of invoicing by the City. Game day fees, expenses, facility fees, FDA or any other fees and expenses only shall be payable by User for Games played at the Denver Coliseum.
 - b) Facility fee. A facility fee must be added to the price of each ticket sold to cover the parking at the Denver Coliseum, which fee shall be paid to the City and County of

Denver. The amount of the facility fee shall be \$2.50 in year one. In year two and in each year thereafter, the facility fee will increase by the same percentage as any increase in the average ticket price from the preceding season for the upcoming season, rounded up to the nearest dime.

- c) Team Practices. User shall pay \$75 per hour, adjusted annually for CPI and rounded up to the nearest dollar, for the use of the ice surface for Team Practices, except for Team Practices on days on which User is scheduled to play a Game, for which there shall be no hourly fee. To the extent that User and City agree to schedule any camps, clinics, or other uses of the ice surface, pursuant to Section 8 below, the \$75.00 per hour shall also apply to those events.
- d) Additional Events fees.
 - (i) Promotional Events shall not be subject to any fees, provided that any such Promotional Events are held in conjunction with a Game and within the time periods specified for Games. "Select a seat" events and occasional non-ticketed open practices shall be considered Promotional Events not subject to any fees but need not be held in conjunction with Games.
 - (ii) Ticketed Non-Profit Events fees shall be the greater of six percent (6%) of net admission price (net of facility fees and FDA tax) for each ticket sold, with a minimum of \$3500 (adjusted annually for CPI and rounded up to the nearest dollar) for each such event.
 - (iii) Ticketed For-Profit Events fees shall be the greater of eight percent (8%) of net admission price (net of facility fees and FDA tax) for each ticket sold, with a minimum of \$5,000 (adjusted annually for CPI and rounded up to the nearest dollar) for each such event.

5. FDA Tax. The City and County of Denver levies a Facilities Development Admissions Tax of 10%. The tax shall be paid in accordance with FDA tax rules applicable to all users, within fifteen (15) days after the last day of the month in which the Games are played, unless exception is granted by the Manager of Finance. A separate check for Facilities Development Admissions ("FDA") Tax shall be paid directly to Manager of Finance by User. Exemptions to this tax may be granted only by the Manager of Finance, City and County of Denver. The FDA Tax Return Form and the FDA Tax Payment may be remitted to:

The City and County of Denver - Department of Finance
Treasury Division
PO Box 660860
Dallas, TX 75266-0860

or such other address as the City may provide to User.

The User will pay the FDA tax on the total ticket price including the facility fee, but the City will offset the amount of tax allocable to the facility fee against the facility fee owed. For example, if the total ticket price including the facility fee is \$17.50, consisting of the \$15.00 ticket price and a \$2.50 facility fee, the FDA tax on the \$15.00 would be \$1.36, and the FDA

tax on the \$2.50 would be \$.23. The User would pay \$1.59 in FDA tax to the Manager of Finance, and \$2.27 to the City's Arts & Venue Denver Division.

6. Building Services. The City will provide the following services for each Game at no cost to User: (i) ushers; (ii) ticket takers; (iii) security; (iv) stagehands consisting of a 4-man house crew; (v) police; (vi) fire and paramedics; (vii) ice resurfacers driver(s); (viii) parking attendants; and (ix) ice operations staff. Staffing shall be determined by the City in its reasonable discretion and consistent with its past practice at comparable events, after good faith consultation with User and consideration of League staffing standards. Additional Services not included in the foregoing shall be paid by the User as provided in Section 10. Staffing (as identified in this Section) at no cost to User shall be based upon use of the Permitted Premises commencing one hour prior to Game time, and ending one hour after the Game. Subject to the terms of Section 10, User shall be responsible for payment of any services required by Team Practices, Additional Events, and special pre-Game or post-Game activities, such as pre-Game exhibitions or post-Game concerts not otherwise included in the Game Services provided in this Agreement. City shall provide necessary set-ups and changeover for complete configuration of the Permitted Premises for Games and Additional Events, including but not limited to ice manufacturing and resurfacing, set up of goal nets, safety nets and dasher boards, and all other equipment and facilities reasonably required by User and/or League for Games and Additional Events (the "Changeover"). The parties agree that Changeovers shall be completed no later than 11 a.m. of the day of Games and Additional Events. The cost of any Changeovers accomplished specifically to accommodate User's practice schedule and other non-Game events, and take down thereof, will be paid by User, except there will be no Changeover fees for Games or Game day practices.

Notwithstanding any provision of this Agreement to the contrary, the City agrees to: (y) give User access to the locker rooms by 11 a.m. the day of each Game and Additional Event, and to the ice surface for morning skates/practices by 11 a.m. and for warm-ups at least two (2) hours before each Game and Additional Event at no cost to User; and (z) provide staffing at a reduced level for up to 2 hours after the completion of the Game pursuant to Section 10, for post-Game "VIP" events, involving participants in the VIP area as designated on Exhibit A attached hereto and incorporated herein or as may be otherwise mutually agreed by User and the Director for the Permitted Premises. User and City shall provide at User's expense, the staffing required for sound system operators, spotlight operators, and other technical equipment operators. User shall provide at User's expense, for each Game or Additional Event, ticket sellers, box office services for its operations, scoreboard operators, video production staff, camera operators, replay operators, announcers and emcees. The City at no cost to User will provide training to User to properly operate all systems and equipment at the Permitted Premises referenced in the two (2) preceding sentences. User will pay the cost of Police services to the off-duty officers, and City will credit this amount against the User's fee obligation. Basic utilities (heating, lighting, water and sewer services) will be provided by the City at no cost to User.

7. Ticketing. User shall have the right to choose its own ticketing company and the right to non-exclusive usage of the box office for Games and Additional Events. User shall be responsible for any refunds owed to ticket buyers. The User shall provide the City with an authenticated ticket manifest showing the number and types of tickets printed within five (5) days of each Game or Additional Event. The User is also accountable for reporting unsold

tickets and providing them for verification on request of the City. The User shall be responsible for ticket security; therefore, any tickets lost, stolen, or missing shall be considered as sold for purposes of computing FDA Taxes. Complimentary tickets, including without limitation 200 complimentary tickets to be retained and distributed by the User for all its events on the Permitted Premises, shall be properly documented and deducted separately by specific quantities from the report of tickets sold and shall not be subject to any applicable facility fees, FDA tax (unless required by FDA tax rules), or other fees pursuant to this Agreement. The User shall not sell, allow, or cause to be sold or issued, admission tickets in excess of the seating capacity of, or admit a larger number of persons to, the Permitted Premises than can be properly and safely seated and move about in said area, and the decision of the Director in this respect shall be final. Notwithstanding the foregoing, the Director agrees that the seating capacity of the Permitted Premises shall not be reduced below 8,000 seats, subject to Section 33 below. Subject to the foregoing, in the event of any changes to seating capacity or seating configuration at the Permitted Premises the Director shall give notice to the User not less than twenty (20) days prior to any scheduled Games or Additional Events.

8. Scheduling. Not later than April 1 of each year (the "Preliminary Scheduling Deadline"), User shall designate its desired dates for the scheduling of the User's Games for the upcoming hockey season. It is anticipated that approximately thirty-three (33) Games and one (1) home pre-season Game shall be scheduled between October 1 and March 31 ("Hockey Months") during each season through the term of this Agreement. User acknowledges that historical events such as National Western Stock Show, Colorado High School Activities Association events, Denver March Pow Wow, Ringling Brothers Circus, Disney on Ice, and Arena Cross will conflict with and not be available for designation as a Game date. The City will also retain scheduling rights, and thus exclude from the dates available for Games, two Fridays and two Saturdays during the Hockey Months from the dates available for designation by User and will deliver notice of those four dates to User prior to the Preliminary Scheduling Deadline, provided that such retained dates may not be used to schedule any other hockey events except as permitted by Section 3.A above. Other than the historic, recurring events specifically identified and listed above, and the four dates retained by City, User shall have a first right of refusal as to the scheduling of its Games during the Hockey Months. Not later than July 1 of each year, User will deliver to the City the final designation of the dates for its Games, based upon the League-approved schedule. Prior to July 1, the City and User will cooperate in the scheduling of events. After July 1, scheduling changes by User are subject to availability. With respect to scheduling User Playoff Games, the City will hold and User shall have the rights to fifteen (15) dates in April and fifteen (15) dates in May of each year at least two (2) of which for each of those months shall be on consecutive Fridays and Saturdays. In addition to the foregoing, the City agrees that the User at no time in either April or May of each year shall be unable to use or schedule the Permitted Premises for User Playoff Games for more than five (5) consecutive days. Notwithstanding any provision of this User Agreement to the contrary, User may schedule Games two Fridays and two Saturdays during the Hockey Months at a premises or facility other than the Permitted Premises at no cost pursuant to Section 4.a.
9. Parking Spaces. City agrees that not less than 2,000 parking spaces will be available for each of User's Games and Additional Events on or adjacent to the grounds for the Permitted Premises. In addition, the City shall provide to User 150 free parking spaces on or adjacent to the grounds of the Permitted Premises for all Games, Team Practices and

Additional Events. Subject to all common access, safety and security rules and regulations imposed on all users of those areas, City will accommodate one team bus and one broadcast truck directly next to the Denver Coliseum at no extra charge during Games, Team Practices, and Additional Events.

10. Additional Services. The User shall pay to the City, on demand, such other and further sums as may become due the City on account of special facilities, equipment and material, or extra services furnished or to be furnished by the City: (i) at the request of the User, the compensation for which is not otherwise included in the fees specified herein, provided that the estimated costs thereof will be disclosed to and not rejected by User prior to the services being performed; (ii) that the City reasonably determines are necessitated by User's occupancy of the Permitted Premises, the compensation for which is not otherwise included in the fees specified herein, provided that the estimated costs thereof will be disclosed to and not rejected by User prior to the services being performed; or (iii) that the City reasonably determines are necessary due to an imminent threat to the health and safety of persons or property at the Permitted Premises necessitated by User's occupancy at the Permitted Premises, the compensation for which is not otherwise included in the fees specified herein.

11. Ticket Rebate. The City shall credit against the amounts owing hereunder by User a monthly rebate based upon the following per Game paid attendance figures:

Attendance	Rebate per ticket*
0 – 1750	\$0
1,751 and above	\$4.00

*As increased annually by the CPI each season after Season 2, and rounded up to the nearest whole cent. The amount of any monthly rebate shall be netted against the amounts payable by User pursuant to this Agreement.

12. Letter of Credit. The User shall furnish to the City an irrevocable letter of credit from a national bank with a Denver branch (the "LOC"), or other security acceptable to the Director, initially in the amount of \$400,000, guaranteeing User's payment of all fees and charges for services, and other liquidated financial obligations of User hereunder, as provided below. The LOC must be in a form acceptable to the Director, and be capable of being drawn in Denver for a minimum of ninety (90) days following the expiration of this Agreement. The LOC shall be delivered to the Director at least thirty (30) days prior to the initial use of the Permitted Premises by User. Should an Event of Default by User occur, then upon notice to User the City may draw upon the LOC in settlement of any of User's fees and charges or other liquidated financial obligations due and owing as a result of such Event of Default and the amount of the LOC shall be replenished to the full amount of the guarantee at that time. As used herein, "liquidated financial obligations" includes, in the case of an Event of Default pursuant to section 30 (c), or other material Event of Default by User resulting in the termination of this Agreement, the amount of the termination fee payable were User exercising its User Termination Option pursuant to section 31.B. The amount of the LOC will be reduced dollar for dollar by the amount of FDA tax received by the City on account of User's payments pursuant to Section 5 above, and such reduction shall occur on June 1 of the year following the year such FDA taxes are received by the City; provided, however, that

the LOC shall not be reduced below \$100,000.00. If the City collects funds pursuant to a separate League letter of credit on account of a particular amount owed by User, then User's exposure under the LOC for that particular amount owed shall be reduced by the amount so collected.

13. Office Space. User may during the term hereof request that the City provide, at no additional cost to User, open office/cubicle space to User at the Permitted Premises, and the City will use reasonable efforts to accommodate User's request. If office/cubicle space is provided by the City, User will maintain such offices, and pay for any office furnishings, and phone and internet service. City shall provide electricity, heat, and trash removal at no additional cost.
14. League License Agreement: This User Agreement becomes effective upon City's receipt of User's fully executed license agreement with League confirming that the User is affiliated with the League. The license agreement must specify that the League will not license any other team in the League to have a home facility within 45 miles of the Permitted Premises. If this contingency is not met on or before August 1, 2012, this Agreement shall terminate. User must maintain good standing with the League, the failure of which shall constitute a default hereunder.
15. Broadcasting and Related Rights. As between the City and User, the User shall retain all rights to television, radio, video, internet, and any broadcast form in any media of its Games and Additional Events at the Permitted Premises. User shall have the right to enter into agreements with third parties concerning the broadcasting in any and all media of User's Games played or Additional Events at the Permitted Premises. Costs associated with the set up and or transmission of such broadcasts shall be borne by and be the sole responsibility of User. City agrees that it will not charge an origination fee in connection with any broadcasts of the Games or Additional Events, and will permit User to use existing utility lines on the Permitted Premises in connection with any broadcasts. User acknowledges and agrees all trademarks, service marks, copyrights, logos, and names relating to the Permitted Premises not in the public domain and owned by the City are the sole property of the City. The City acknowledges and agrees all trademarks, service marks, copyrights, logos, and names relating to User's team and/or the League are the sole property of the User and/or the League as the case may be. The City reserves the right to make photographs, audio and video recordings and any other digital media in the Permitted Premises and use the User property rights as described above at its option for customary advertising and publicity for the City and other non-commercial uses, and the City shall be responsible for any claims resulting from such City use. The User reserves the right to make photographs, audio and video recordings and any other digital media in the Permitted Premises and use the City property rights as described above at its option to use for customary advertising, publicity and marketing uses for promotion of User's business, and the User shall be responsible for any claims resulting from such User use.
16. Capital Improvements. Subject to prior appropriation of the funds required, the City commits to making certain improvements to the Permitted Premises, as further described on Exhibit B attached hereto and incorporated herein (the "City Improvements"). The City reserves the right to determine the means, methods and specifications for the City Improvements. If the Marquee improvements are not accomplished by the date set forth in Exhibit B, the City will confer with User and use commercially reasonable efforts to provide

something substantially similar to the Marquee improvements on Exhibit B as an alternative investment of the funds budgeted for the Marquee improvements.

17. Compliance with Laws. City shall provide the Permitted Premises in compliance with all applicable Municipal, State and Federal laws and applicable rules and regulations pertaining to the Permitted Premises and all other rules and regulations prescribed by the Denver Fire and Police Departments and other governmental authorities. User shall use and occupy the Permitted Premises in a safe and careful manner and shall comply with all applicable Municipal, State, and Federal laws and rules and regulations pertaining to Arts & Venues Denver Facilities, and all other rules and regulations prescribed by the Denver Fire and Police Departments and other governmental authorities all as related to the User's presentation of Games and Additional Events, as may be in force and effect during the term of this Agreement. User shall not use said Permitted Premises or any part thereof for any unlawful or immoral purpose or in any manner so as to injure persons (other than hockey players) or property in, on or near the Permitted Premises. User shall not do any act or suffer any act to be done during the term of this User Agreement which will in any way mar, deface, alter or injure any part of the Permitted Premises. If at any time, in the judgment of the Director, the use of the Permitted Premises by the User is illegal, indecent, obscene or immoral, the Director shall so notify the User and the User shall either cease and desist from continuing such objectionable use or be on notice of a default of this User Agreement. The User hereby releases the City and its officers, agents, employees and representatives from any loss or damage occasioned by such cease and desist actions. User agrees to pay promptly all taxes, excise or license fees of whatever nature applicable to this occupancy and to take out all permits and licenses, Municipal, State, or Federal, required for the usage herein permitted, and further agrees to furnish the City, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of all taxes and fees above referred to, and showing that all required permits and licenses are in effect.
18. Food and Beverage/Fliers/Program and Team Merchandise. The User shall not sell or cause to be sold or sampled, items of food or drink at or in the Permitted Premises. Food and beverage sales are the exclusive rights of ARAMARK Sports and Entertainment Corporation, and any successor City concessionaire (the "Concessionaire"). User may negotiate with Concessionaire any proposed sale of food or beverage at the Permitted Premises, subject to the Director's approval which shall not be unreasonably withheld. Except for announcement of upcoming events at Arts & Venues Facilities, the User shall not distribute fliers, petitions, surveys or literature of any kind except with the written permission of the Director, which shall not be unreasonably withheld. This Agreement shall not affect, in any way whatsoever, any concession heretofore or hereafter granted by the City to any other party.

Notwithstanding the foregoing, User shall have full control and authority over the sale of (i) Game programs, and (ii) team merchandise. User shall be the sole owner of all proceeds with respect thereto, responsible for the cost of all goods sold, and shall be responsible for the proper collection and remittance to the appropriate governmental authorities of all sales tax associated with such sales.

19. Marketing. The City will provide annual marketing support to User, as described on Exhibit C attached hereto and incorporated herein.

20. No Obstruction. All portions of the sidewalks, entrances, passages, vestibules, halls and all ways of access to public utilities on the Permitted Premises shall be kept unobstructed by the User and shall not be used for any purpose other than ingress or egress to and from the Permitted Premises, unless approved by the Director. The doors, stairways or openings into any place in the structure, including hallways, corridors and passageways, also house lighting attachments, shall in no way be obstructed by the User.
21. Signage and Sponsorship. User has the rights to signage inventory on the dasher wall, in ice, on the ice resurfer, and other temporary in-arena signage including the video boards, that is removed on days that are not Game days. User and City agree to work together to increase sponsorship revenue through shared and separately negotiated sponsor contracts. User controls all off-site sponsorship rights and benefits related to the User. Costs for User based sponsorship shall be borne by User. The City shall permit, at the User's cost, the installation of a highly visible banner on the exterior of the Permitted Premises at least 90 days prior to the first Game, subject to any applicable zoning regulations, the precise location of which shall be approved by the Director.
22. Indemnification. The User shall defend, indemnify, and save harmless the City, its officers, agents and employees from any and all losses, damages, claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including without limitation Workers' Compensation claims against User, of or by anyone whomsoever, that the City may sustain or on account of injuries to the person or property of the City, its agents or employees or to injuries or death of any other person rightfully on the Permitted Premises for any purpose whatsoever, where the injuries or death are caused by the negligence or willful misconduct of the User, the User's agents, employees, subtenants, assignees, or of any other person entering upon the Permitted Premises under express or implied invitation of the User or where such injuries or death are the result of the violation of the provisions of this Agreement by any of such persons. This indemnity shall survive the expiration or earlier termination of this Agreement. User need not, however, indemnify or save harmless the City, its officers, agents and employees from any and all losses, damages, claims, demands, suits, actions or proceedings of any kind or nature whatsoever resulting from the negligence or willful misconduct of the City's officers, agents and employees. This indemnity clause shall also cover the City's defense costs, in the event that the City provides its own defense. To the extent User or User's insurer will retain counsel for City's defense from an insurer pre-approved list and City can choose counsel from such list, or to the extent User retains other qualified counsel for City's defense reasonably acceptable to City, the City shall not provide its own defense. Insurance coverage specified herein constitutes the minimum requirements, and said requirements shall in no way lessen or limit the liability of the User under this Agreement. The User shall procure and maintain, at its own expense and cost, any additional kinds and amounts of insurance that it may deem necessary.
23. Insurance.
- A. General Conditions: User agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. User shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof and, for any claims-made coverage, for three (3) years after termination of the Agreement. The

required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII or better. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." Additionally, User shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the User. User shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the User. The User shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

- B. Proof of Insurance: Prior to use of the Permitted Premises, User shall provide to the Director a copy of a certificate or certificates of insurance evidencing the coverages required herein. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of User's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.
- C. Additional Insureds: For Commercial General Liability, Auto Liability and Excess Liability/Umbrella, User's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- D. Waiver of Subrogation: For all coverages, User's insurer shall waive subrogation rights against the City.
- E. Workers' Compensation/Employer's Liability Insurance: User shall maintain the coverage as required by statute and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.
- F. Commercial General Liability: User shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.
- G. Property Insurance: User shall maintain All-Risk/Special Cause of Loss Form Property Insurance on a replacement cost basis to provide coverage for User's tenant improvements and betterments, contents and personal property. The City and County of Denver shall be named Loss Payee as its interests may appear.

H. Excess/Umbrella Liability: User shall maintain excess liability limits of \$1,000,000.

I. Additional Provisions:

- (1) For all Commercial General Liability and Excess Liability, the policies must provide the following:
 - (a) Coverage for insured contracts as provided under the policy;
 - (b) Defense costs in excess of policy limits;
 - (c) A severability of interests, separation of insureds or cross liability provision;
 - (d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City;
- (2) For claims-made coverage, the retroactive date must be on or before the contract date or the first date of User's use, whichever is earlier.
- (3) User shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At its own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the User will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

24. Care and Surrender of Premises. At the termination of this Agreement, User shall deliver the Permitted Premises to the City in good condition, ordinary wear and tear excepted, provided that User shall not be responsible for the condition of the Permitted Premises related to other users or wear and tear caused by other users. Upon the termination of this Agreement, User shall remove all of User's movable furniture and other effects. All furniture and other effects and all fixtures that the City has requested be removed that are not so removed shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by the City without notice to User or any other person, and without obligation to account therefore, and User shall pay the City all expenses incurred in connection with such property. User's obligation to observe or perform this covenant shall survive the termination of this Agreement.

25. Prior Appropriation. The City's payment obligations, whether direct or contingent, extend only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

26. Personal Property. The City assumes no responsibility whatsoever, for any property placed in said Permitted Premises, and the City is hereby released and discharged from any and all liabilities for any loss, injury or damages to persons or property that may be sustained by reason of the use of said Permitted Premises under this Agreement, except to the extent caused by the City's negligence or wilful misconduct. All watchmen or other protective service desired by the User must be arranged for by special agreement with the City. In the receipt, handling, care or custody of property of any kind shipped or otherwise delivered to the Arts & Venues Denver Facilities, either prior to, during or subsequent to the use of the Permitted Premises by the User, the City and its officers, agents and employees shall act solely for the accommodation of the User and neither the City nor its officers, agents or

employees shall be liable for any loss, damage or injury to such property. The City shall have the sole right to collect and have custody of all articles left on the Permitted Premises by persons attending any function held on the Permitted Premises. Any property left on the Permitted Premises by User shall, after a period of thirty (30) days from the last date of use hereunder, be deemed abandoned and at the City's sole option, become the property of the City, without further notice.

27. Notice. Any notice pursuant to this Agreement by the City shall be deemed sufficiently rendered or given if the same be in writing and sent by registered or certified mail addressed to the User as specified on Page One hereof, or at the latest address submitted thereof by the User in writing to the City, or left at such address or delivered to the User's representative. The effective date of such notice shall be deemed to be three (3) days after the notice is mailed, or the date when left or delivered as herein provided. Any notice from the User to the City shall be validly given if sent by registered or certified mail addressed to Director of Denver Arts & Venues, City and County of Denver, 1245 Champa Street, Denver, Colorado 80204-2154, or at such other address as the City shall hereafter designate by notice to the User.
28. Examination of Records: The City and any of its representatives, including without limitation the City's Auditor shall have the right, upon reasonable prior notice, to inspect or audit all of the books of account, bank statements, documents, records, returns, papers and files of User that are directly pertinent to the performance of User's obligations hereunder. User upon written request shall make all such documents available for examination within the Denver metropolitan area. Such documents shall be available to City representative within fourteen (14) calendar days of the date of the written request. City's right to perform such an audit shall expire three years after User's statement for that year has been delivered to City. The User also agrees that City and any of its representatives, including without limitation the City's Auditor, may inspect any document, return, data or report filed pursuant to Chapter 53 of the Denver Revised Municipal Code by User with City's Manager of Revenue and any related reports, document, data or other information generated by City's Manager of Revenue or employees under the control of such Manager of Revenue in connection with any examination or audit of User by City's Department of Revenue.
29. Rights Reserved. It is understood and agreed that the City hereby reserves the right to control and manage its facilities and to enforce all necessary and proper rules for the management and operation of the same, and reserves the right for its authorized representatives to enter the Permitted Premises at any time. The City also reserves the right, but not the duty, through its duly appointed representatives, to eject any objectionable person or persons from the Permitted Premises and the User hereby waives any and all claims for damages against the City or any and all of its officers, agents or employees resulting from the exercise of this authority. The City reserves the right to manage and control all parking facilities on the Permitted Premises for all events held at the Denver Coliseum.
30. Default. The following occurrences shall be considered "Events of Default."
 - a) User shall fail to pay any amount due hereunder to City when due and such default shall continue for a period of more than thirty (30) days after written notice thereof has been given to the User;

- b) User or City shall fail to perform any other material covenant or obligation hereunder and such default shall continue for a period of more than thirty (30) days after written notice thereof has been given to the defaulting party; or
- c) User or City shall (i) become insolvent or generally not pay its debts as such debts become due, (ii) admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; (iii) institute or have instituted against it any proceeding seeking (x) to adjudicate it a bankrupt or insolvent, (y) any liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or (z) the entry of an order for the appointment of a receiver, trustee or other similar official for it or for any substantial part of its assets, and in each such case such proceeding is not terminated, stayed or set aside within a period of sixty (60) days after it is instituted.

If an Event of Default by User shall occur, City by written notice given to User, as its exclusive remedies (except as provided in the next sentence), may draw on the LOC subject to the terms and as provided in Section 12 to satisfy outstanding financial obligations of the User, and may terminate this Agreement. City shall have in addition any other right or remedy available to it at law or in equity to enforce and collect any termination fee due and owing as provided in Section 31.B. If an Event of Default by City shall occur, User by written notice to City, and as its sole and exclusive remedy (except as provided in the next sentence), may terminate this Agreement. User shall have in addition to its right to terminate any other right or remedy available to it at law or in equity to enforce and collect any termination fee due and owing as provided in Section 32.B.

31. Early Termination by User. User shall have the right to terminate this Agreement as follows:

- A. If the City fails to substantially complete the City Improvements by the dates set forth in Exhibit B, then User shall have the right, in its sole and absolute discretion, to terminate this Agreement by giving written notice to City. In such event (i) this Agreement shall terminate thirty (30) days after the date of such notice or such later date as may be specified in such notice, and (ii) the parties shall, upon the dates specified in the notice be released from all liabilities and obligations hereunder except those that expressly survive the expiration or earlier termination hereof.
- B. User shall have the one-time right to terminate this Agreement at any time during the term thereof (the "User Termination Option"), subject to the following terms and conditions:
 - (i) User shall provide to City written notice of its election to exercise the User Termination Option not less than six (6) months prior to the new termination date set forth in the notice (the "New Termination Date");
 - (ii) User shall at the time it delivers its notice of termination pay to City a termination fee equal to \$400,000 in Year one. The amount of the termination fee will be reduced dollar for dollar by the amount of the FDA tax received by the City on account of User's payments pursuant to Section 5 above, and such reduction

shall occur on June 1 of the year following the year such FDA taxes are received by the City; provided, however, that the termination fee shall not be reduced below \$100,000.00.

- (iii) User shall continue to pay the fees due and payable under this Agreement to the New Termination Date, and the foregoing termination fee is in addition thereto; and
 - (iv) Upon the New Termination Date, the parties shall be released from all liabilities and obligations hereunder except those that expressly survive the expiration or earlier termination hereof.
- C. The User may terminate this Agreement after the fifth season, or after any season thereafter, if the paid ticket sales for Games during the previous season averaged below 2,000 per Game. Termination on this basis will not require a termination payment. Notice of termination on this basis shall be given on or before July 1 based on the average paid ticket sales for the just concluded season. Upon such termination, the parties shall be released from all liabilities and obligations hereunder except those that expressly survive the expiration or earlier termination hereof.
- D. The Director agrees to negotiate with User to enter into a lease or other user agreement on any new City owned, controlled or jointly developed facility suitable for hockey games, before the Director enters such negotiations with any other professional hockey club. In the event User and City enter into a new agreement regarding any such new facility, said agreement shall provide for the termination of this User Agreement and the release of the parties from all liabilities and obligations hereunder except those that expressly survive the expiration or earlier termination hereof.

32. Early Termination by the City.

- A. The City may terminate this Agreement after the fifth season, or after any season thereafter, if the paid ticket sales for Games during the previous season averaged below 2,000 per Game. Termination on this basis will not require a termination payment. Notice of termination on this basis shall be given on or before July 1 based on the average paid ticket sales for the just concluded season. Upon such termination, the parties shall be released from all liabilities and obligations hereunder except those that expressly survive the expiration or earlier termination hereof.
- B. This Agreement shall terminate if during the term hereof the Denver Coliseum is permanently or indefinitely closed to public events (the "City Termination"), subject to the following terms and conditions:
- (i) City shall provide to User written notice of the City Termination not less than six (6) months prior to the new termination date set forth in the notice (the "New Termination Date").
 - (ii) City shall at the time it delivers its notice of termination pay to User a termination fee equal to \$400,000 in Year one. After Year one, the amount of the termination fee will be the number of tickets sold by User in the preceding twelve months

times a per ticket fee as listed below, but subject to the maximum cap amount indicated:

<u>Year</u>	<u>\$ per Ticket Sold</u>	<u>Cap</u>
2	\$6	\$400,000
3	\$6	\$400,000
4	\$6	\$400,000
5	\$5	\$350,000
6	\$5	\$300,000
7	\$5	\$250,000
8	\$4	\$200,000
9	\$3	\$150,000
10	\$2	\$100,000

Notwithstanding the foregoing, City shall not be required to pay a termination fee to the extent User is able to relocate to another facility within twenty-three (23) miles of the Denver Coliseum on substantially similar terms to this Agreement.

(iii) Upon the New Termination Date, the parties shall be released from all liabilities and obligations hereunder except those that expressly survive the expiration or earlier termination hereof.

33. Force Majeure. The performance of the respective parties hereto and their respective obligations hereunder shall be subject to force majeure, including, but not limited to, insurrections, riots, wars and warlike operations, explosions, epidemics, strikes, shortages of supply, fires, accidents, acts of any public enemy or any similar occurrence beyond such party's reasonable control, but the inability to make a monetary payment required by this Agreement shall not of itself be an event of force majeure. Any party temporarily excused from performance hereunder by any such circumstance shall use its best efforts to avoid, remove or cure such circumstances and shall resume performance with the utmost dispatch when such circumstances cease to apply. Any party claiming force majeure as a reason for delay in performance shall give prompt notice in writing thereof to the other party or parties.
34. Reservation of Rights. The City reserves all rights to manage the Permitted Premises not expressly granted herein, including without limitation the right to enter the Permitted Premises to perform inspections or repairs in the interest of public safety.
35. No Discrimination in Employment. In connection with the performance of work under this User Agreement, the User agrees not to refuse to hire, discharge, promote, or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely

because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the User further agrees to insert the foregoing provision in all subcontracts hereunder.

36. Pyrotechnics/Rigging. Special stage effects involving pyrotechnic displays (including fireworks and flash powders) are prohibited except by special fee City permit from the Fire Prevention Bureau. If a pyrotechnician is required, arrangements must be made through the Denver Fire Prevention Bureau at the User's expense. If rigging is required for any events, it must meet City specifications and be approved by the City in advance.
37. Venue/Colorado Law. It is mutually agreed by and between the parties hereto, that should any dispute arise regarding this agreement, the parties will attempt to resolve the dispute amicably. If suit be deemed necessary by either party, that venue for such action shall lie in the District Court in and for the City and County of Denver, Colorado, and that any and all notices, pleadings and process may be served upon the User(s) by service of two copies of said notice, pleading or process upon the Colorado Secretary of State, 1700 Broadway, Suite 250, Denver, CO 80290, and by mailing by certified U. S. mail an additional copy of said notice, pleading or process to the address of said User (s) shown in this agreement. Said service, as above set forth, shall be considered by the parties as valid personal service upon the party so served, and judgment may thereafter be taken if the party so served does not, within the time prescribed by Colorado law or rule of civil procedure appear and plead or answer. Furthermore, this user agreement shall be construed and enforced pursuant to the laws of the State of Colorado, without regard to any statute or rule of law specifying a different choice of law and pursuant to the Charter, Revised Municipal Code, Rules and Regulations, and Executive Orders of the City of Denver.
38. Copyrighted Material. The User warrants that all copyrighted material to be performed by User has been duly licensed and authorized by the copyright owners or their representatives and agrees to indemnify and hold the City and County of Denver harmless from any and all claims, losses, or expenses incurred with regard thereto.
39. City Seats. User will reserve and supply the City with the use of 50 "House Seats" for each of User's Games and Additional Events. The House Seats shall be evenly distributed throughout the lower bowl (but not in the first five rows). The House Seats for each Game must be received by Arts & Venues no later than one week prior to each Game or Additional Event.
40. ADA Requirements. The parties recognize that the City is subject to the provisions of Title II of the Americans with Disabilities Act ("ADA") and that the User is subject to the provisions of Title III of the ADA (including all revised regulations dated September 15, 2010 and effective March 15, 2011). Concerning compliance with the ADA and all regulations thereunder, the City is responsible for the permanent building access requirements; such as seating accessibility, wheelchair ramps, elevators, signage, restrooms, doors and walkways. The User shall not modify or otherwise rearrange any building structures or improvements in any manner that would affect the City's compliance with its ADA requirements. In addition, the User is responsible for the non-permanent accessibility standards and requirements, such as, but not limited to, ticketing, ticket pricing, sign language interpreters, and all other auxiliary aids and services customarily provided by the User. User and User's ticketing company shall comply with the ADA and all regulations thereunder.

Tickets for unsold accessible seating may be released for sale to individuals without disabilities:

1. When all non-accessible tickets (excluding luxury boxes, club boxes, or suites) have been sold;
2. When all non-accessible tickets in a designated seating area have been sold and the tickets for accessible seating are being released in the same designated area; or
3. When all non-accessible tickets in a designated price category have been sold and the tickets for accessible seating are being released within the same designated price category.

User represents that it has viewed or otherwise apprised itself that such access to the premises and common areas and accepts to its actual knowledge that such access, common areas and other conditions of the premises as adequate for User's responsibilities under the ADA. User shall be responsible for ensuring that the Permitted Premises complies and continues to comply in all respects with the ADA, including accessibility, usability and configuration insofar as the User modifies, rearranges or sets up in the facility in order to accommodate the performance produced by the User. User shall be responsible for any violations of the ADA that arise from User's reconfiguration of the seating areas or modification of other portions of the premises in order to accommodate User's engagement. User shall be responsible for providing auxiliary aids and services that are ancillary to its production and for ensuring that the policies, practices and procedures it applies in its production are in compliance with the ADA.

In the event the User already has a ticketing policy in place it must at a minimum match the criteria set forth in the ADA and all the regulations thereunder and the City policy.

41. Miscellaneous Provisions.

- A. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the User, and nothing contained in this User Agreement shall give or allow any such claim or right of action by any other or third person on such User Agreements. It is the express intention of the City and the User that any person other than the City or the User receiving services or benefits under this User Agreement shall be deemed to be an incidental beneficiary only.
- B. User assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate, and official motion, resolution, or action passed or taken, to enter into this User Agreement. The person or persons signing and executing this User Agreement on behalf of User do hereby warrant and guarantee that he/she or they have been fully authorized by User to execute this User Agreement on behalf of User and to validly and legally bind User to all the terms, performances, and provisions herein set forth.
- C. This User Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein

in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other User Agreement properly executed by the parties.

- D. The parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein. The User further agrees not to hire or contract for services with any employee or officer of the City in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 and 1.2.12.
- E. It is understood and agreed by the parties hereto that if any part, term, or provision of this User Agreement is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the User Agreement did not contain the particular part, term, or provision held to be invalid.
- F. Neither party may assign this Agreement or its rights hereunder without the express written consent of the other party and with written amendment to this Agreement memorializing the same, which amendment must be approved and executed by all requested City signatories. The Director will grant his consent and recommend approval of User's assignment of this Agreement to any party; provided, that (1) the League has formally approved such transaction in writing, including the assignment or transfer of the League franchise then held by User to present the Games in Denver, Colorado, (2) the proposed assignee agrees in writing to be bound by all of the terms and conditions of this Agreement, (3) the proposed assignee furnishes evidence satisfactory to the City that the assignee's insurance and letter of credit are in material compliance with the requirements of this Agreement at the time of any such assignment and will be in full force and effect as of the closing date of such transaction, and (4) the proposed assignee is not in default of its obligations pursuant to any agreement with the City. Notwithstanding any provision of this Agreement to the contrary, the following events shall not require any consent or other approval by the City: a conditional or collateral assignment of this Agreement as may be required by any League as part of User's subsequent change in League membership or affiliation, so long as such assignment imposes no financial obligations, contingent or otherwise, upon City; User's change in League membership or affiliation; a change in League status or affiliation; other changes in User's relationship with any League; or any assignment or other transfer of this Agreement to any successor or transferee entity or business in which User or any of its principals shall own a controlling interest (day to day operations or other ownership interest).

[SIGNATURES ON THE FOLLOWING PAGE]

Contract Control Number: THTRS-201102885-00

Contractor Name: Denver Cutthroats

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

By _____

By _____

By _____



Contract Control Number: THTRS-201102885-00

Contractor Name: Denver Cutthroats

By: 

Name: Brad Lund
(please print)

Title: Manager / President
(please print)

ATTEST: [if required]

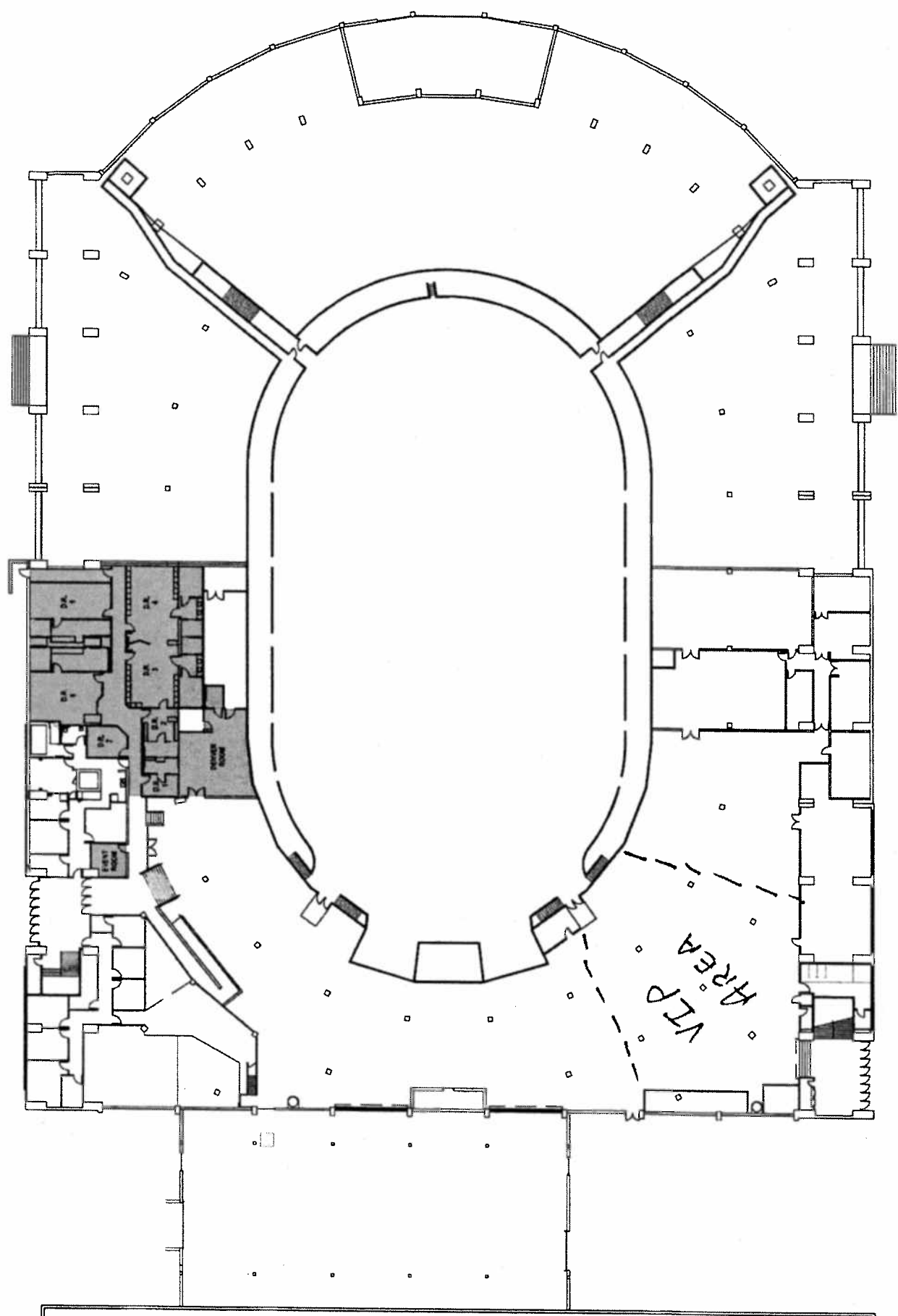
By: _____

Name: _____
(please print)

Title: _____
(please print)



Exhibit "A"



ARCIDE LEVEL
REV. DATE: 11-16-11

MEN WOMEN

Brungardt
Enterprises, L.L.C.
"L&L Seating for Dinners and Events"
(903) 740-2223

Exhibit B

Capital Improvements and Timeline

The following list of capital equipment shall be provided as part of the lease agreement:

- Indoor Video-Boards - digital score boards that will hang from the interior rigging
- Outdoor Marquee - sign structure visible along I-70 and capable of announcing game schedule
- Hockey Infrastructure - including but not limited to Zambonis, dasher boards, glass, penalty boxes, team benches, goals, etc...
- Team Dressing Rooms – team specific dressing rooms

The following dates correspond to the timeline for procurement:

1. Indoor Video-Boards

- a. Selection of vendor: Q1 2012
- b. Installation of video boards in City venue: Q2 2012

2. Outdoor Marquee (contingent on permitting)

- a. Planning department recommendation related to structure: Q2 2012
- b. Funding process confirmation (based upon signed lease): Q2 2012
- c. Design process with RFP: Q3 2012
- d. Installation of outdoor marquee (subject to permitting): Q4 2012

3. Hockey Infrastructure

- a. Procurement/Bid process: Q2 2012
- b. Obtain equipment: Q2 2012
- c. Installation and testing complete: Q3 2012

4. Home Team Dressing Room

- a. Complete design: Q4 2012
- b. Complete Construction: Q3 2013

Exhibit C – City Marketing Support

1. \$150,000 hard asset value – The User will have advertisement placement on a variety of advertising assets provided by Arts & Venues Denver including but not limited to LED screens in the area of the Colorado Convention Center/Denver Performing Arts Complex, newspaper and magazine advertising, outdoor and other out-of-house advertising, radio, television and other electronic media, and Internet and social media applications. The value of each opportunity will be calculated based on standard rack rates.
2. \$50,000 soft asset value – The User will receive promotional exposure through City assets including Red Rocks Amphitheatre, the Denver Performing Arts Complex, Crossroads Theatre as well as City employee email blasts with a minimum value of \$50,000 per year. The City and the Team will meet each year no later than August 1 to determine the specific promotional elements.
3. Coliseum Marquee – If an exterior marquee is constructed adjacent to the Coliseum, the User shall be entitled to a portion of the available inventory on the marquee. User shall be entitled to time on the marquee to promote its events at the Coliseum, which shall be a percentage of the total marquee time equal to the ratio of User's events to the total number of events at the Coliseum. If third party advertising is permitted on the marquee, User shall be entitled to that same percentage of the overall time available for third party advertising. User's rights with regard to third party advertising shall be subject to City sponsorship agreements in effect as of the date of full execution of this User Agreement.