

**MANAGEMENT AGREEMENT
BETWEEN THE STATE OF LOUISIANA AND SMG
AS AMENDED AND COMPILED
THROUGH JULY 1, 2003**

The following constitutes the current Management Agreement between the State of Louisiana and SMG as compiled from the following: the Management Agreement dated June 13, 1977 as amended by an Amendment dated July 13, 1983; a Second Amendment dated June 22, 1984; a Third Amendment dated March 3, 1986; a Fourth Amendment dated June 19, 1998; a Fifth Amendment dated May 2, 2002 and a Sixth Amendment dated July 1, 2003.

The section captions in Articles I through XXVI have been added for convenience of reference but are not a part of the Management Agreement.

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MANAGEMENT AGREEMENT
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ARTICLE I
DEFINITIONS

1.1 **Definitions.** As used in this agreement, the following expressions shall have the following meanings:

A. "Adjusted Base Deficit" means the Base Deficit as adjusted for each Fiscal Year pursuant to the provisions of Article IV hereof.

B. "Base Deficit" means the Deficit for the Fiscal Year ended June 30, 1977.

C. "Base Deficit Improvement" means the amount by which the Profit or Deficit during any Fiscal Year of this agreement constitutes an improvement over the Adjusted Base Deficit.

D. "Capital Expenditures" means all expenditures for building additions, alterations or improvements, and for purchases of additional or replacement furniture, machinery or equipment, the depreciable life of which, according to accepted accounting principles, is in excess of one (1) year and expenditures for maintenance or repairs which extend the useful life of the assets being maintained or repaired for a period in excess of one year.

E. "Deficit Year" means any Fiscal Year under this agreement during which the Deficit is greater than the Base Deficit, or Adjusted Base Deficit, whichever is the greater.

F. "Superdome" means the Louisiana Superdome, together with all facilities, equipment, machinery, advantages and appurtenances thereunto belonging, as more fully defined in Act No. 541 of the 1976 Regular Session of the Louisiana Legislature, including any term, mark, or logo pursuant to La. R.S. 51:293 et seq.

G. "Operating Costs" means all expenses incurred or properly accrued by SMG in the management or operation of the Superdome excluding (a) depreciation of capital assets (other than those acquired during the term of the agreement for the principal purpose of reducing operating expenses and/or increasing operating revenues), (b) interest on or amortization of the bonded indebtedness of the State, (c) any overhead or personnel costs of SMG not related to the exercise of SMG's powers or the performance of its obligations under this Agreement or matters reasonably incident thereto, (d) Capital Expenditures and (e) insurance premiums relating to the insurance referred to in Article XII below, other than employee benefit-related insurance.

H. "Operating Revenues" means all amounts received (a) for the use of the

Superdome, (b) for the right to use any term, mark or logo pursuant to La. R.S. 51:293, et seq., and (c) for the right to sell any product or advertise in the Superdome.

I. "Profit or Deficit" means the difference between Operating Revenues and Operating Costs during any Fiscal Year of this agreement ending on or before June 30, 2006 and thereafter shall mean the difference between Gross Operating Income (as defined in the following paragraph) and Operating Costs.

J. "Adjusted Net Income" means Gross Operating Income less Direct Expenses. For these purposes:

(a) "Gross Operating Income" means any and all revenues of every kind or nature derived from owning, operating, managing or promoting the Superdome or the Arena, including, but not limited to: license, lease and concession fees and rentals, revenues from merchandise sales, advertising sales, sales of sponsorships, pouring, serving and servicing rights, equipment rentals, utility revenues, box office revenues, parking revenues, food service and concession revenues (however, if such revenues are collected in the first instance by and retained by the concessionaire, only the amount of such revenues paid by the concessionaire to the Superdome or the Arena shall be included as Gross Operating Income), commissions or other revenues from decoration and set-up, security and other subcontractors (however, if such revenues are collected in the first instance by and retained by such subcontractors, only the amount of such revenues paid by such contractors to the Superdome or the Arena shall be included as Gross Operating Income), miscellaneous operating revenues, and proceeds of business interruption insurance interest revenues, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis. Revenues from the sale of tickets for events at the Superdome or the Arena that are payable to the promoter and/or performer of each such event are included in Gross Operating Income only to the extent that they are retained by SMG as the rental charges or other event reimbursements due by such promoter and/or performer for use of the Superdome or the Arena; provided, however, that any receipts payable directly to the New Orleans Louisiana Saints Limited Partnership or any other National Football League member team playing its home games in the Superdome or to the New Orleans Hornets NBA Limited Partnership or any other National Basketball Association team playing its home games in the Arena shall not be included in Gross Operating Income nor treated as Direct Expenses (collectively, "Excluded Major League Receipts").

(b) "Direct Expenses" means the costs of event staffing, setup, cleanup and other direct event expenses, cost of sales, and other expenses directly associated with the production of an item of Operating Income but does not include expenses incurred to generate Excluded Major League Receipts, insurance, utilities, general, administrative

and other overhead expenses, and amounts paid with the approval of the State as inducements to attract major events."

K. "Manager's Capital" means the amount paid by SMG to the State under Section 7.5. Manager's Capital outstanding at any point in time is the sum of the amounts paid by SMG to the State under Section 7.5(a) reduced by the amounts refunded by the State to SMG under Section 7.5(b)."

ARTICLE II POWERS AND FUNCTIONS

2.1 **Grant of Power to SMG.** The State hereby grants, and SMG hereby accepts, the exclusive right to perform and furnish or cause to be performed and furnished, from the effective date hereof, all management, services, labor and materials needed to operate and maintain the facility known as the "Louisiana Superdome", in the most efficient and profitable manner as can be reasonably expected. It is the intent of the parties that SMG will have full authority over the operation of the Superdome and all of its facilities and related properties.

2.2 **Employees Hired by SMG.** Employees hired by SMG will be employees of SMG, and not of the State. The authority of SMG will be absolute with respect to the number, function, qualifications, compensation and other terms and conditions relating to its employees, subject to the provisions of Paragraph 19.1 of this agreement; provided, however that without the approval of the State, which approval shall not be unreasonably withheld, delayed or conditioned, SMG shall not (i) discharge other than for cause or reassign the general manager of the Superdome and the Arena or (ii) designate a new general manager of the Superdome and the Arena other than to serve as acting general manager on an interim or temporary basis.

2.3 **Delivery of Superdome to SMG.** The State covenants that it will, no later than the commencement date of this agreement, deliver to SMG the Superdome, and that same will be equipped with sufficient inventory, equipment and supplies to enable SMG to fulfill its obligations under this agreement.

2.4 **Representative of State.** It is agreed that the Governor, or his designee for the purpose, shall represent the state with respect to the administration of this agreement.

2.5 **Prohibition on Board Solicitation.** The members of the Board of Commissioners of the Louisiana Stadium and Exposition District shall be prohibited from soliciting, requesting or seeking any services, contributions, gifts, favors, tickets or gratuities from any of the Louisiana Superdome lessees, tenants, sub-contractors, employees, exhibitors, etc.

2.6 **Prohibition on Board Intervention.** The members of the Board of Commissioners of the Louisiana Stadium and Exposition District shall be prohibited from intervening in any manner whatsoever in connection with negotiations between SMG and

Louisiana Superdome lessees, tenants, advertisers, service contractors, etc.

**ARTICLE III
TERM**

3.1 **Initial Term.** "The term of this Agreement (including Article XXVI) shall end on June 30, 2012 (the "Extended Term"), unless sooner terminated pursuant to the provisions of this Agreement; provided, however, that the term of this Agreement shall be further extended for an additional five year period ending June 30, 2017 (the "second Extended Term"), unless on or before June 30, 2011 the State notifies SMG in writing of notice of its election not to extend the term for an additional five years and pays to SMG the termination fee prescribed in Section 7.5."

3.2 **Extended Term.** The parties and the Louisiana Stadium and Exposition District agree that prior to the expiration of this Agreement they shall negotiate in good faith with respect to a renewal or extension of the term of this Agreement on the terms hereof or on such other or additional terms as they may agree.

**ARTICLE IV
ANNUAL AUDIT**

4.1 **Auditor.** As soon as is practicable after the close of each Fiscal Year, an audit will be conducted by Arthur Andersen & Co. ("Auditor"), or whatever other firm of Certified Public Accountants may be acceptable to both parties. The firm will issue a report stating that the audit has been conducted in accordance with generally accepted auditing standards. In addition, the Auditor shall issue a report setting forth a statement of Profit or Deficit, Adjusted Base Deficit and Base Deficit Improvement for such period. The cost of conducting the audit will be considered as an operating Cost.

[Pursuant to Section 4 of the Sixth Amendment,

The following Section 4.2 is deleted effective July 1, 2006]

4.2 **Adjustments to Base Deficit.** It is the intention of the parties that the compensation to be derived by SMG under the agreement should be measured by the Base Deficit Improvement it effects in the operations of the Superdome. In this regard, account should be taken of those conditions over which SMG is unable to exercise effective control, and accordingly, the Auditor shall, for each Fiscal Year of this agreement, revise the Base Deficit, by making the following adjustments:

(a) a percentage shall be applied to Operating Costs and Operating Revenues for the Fiscal Year ended June 30, 1977, which percentage shall be computed as the ratio of the average consumer price index for the then current Fiscal Year to the average consumer price index for the Fiscal Year ended June 30, 1977. The index applied shall be that issued by the United States Department of Labor applicable to the New Orleans area and the average shall be

computed on an annual basis, utilizing the most current index available.

(b) to the extent not adjusted in accordance with (a) above, a percentage shall be applied to the costs incurred for the Fiscal Year ended June 30, 1977, with respect to gas, electricity and water, which percentage shall be computed as the ratio of the average per-unit costs of such utilities for the then current Fiscal Year to the average per-unit costs for the Fiscal Year ended June 30, 1977. The average shall be computed on an annual basis.

(c) the difference between (1) the man-hours expended during the Fiscal Year ended June 30, 1978, for maintenance and repairs and preventative maintenance and (2) the man-hours expended for such purposes during the Fiscal Year for which such calculation is being made, in each case as determined by the Auditor, shall be multiplied by the direct cost of such labor during the Fiscal Year ended June 30, 1978, after taking into account the applicable skill and wage level of the man-hours expended during the Fiscal Year for which the calculation is being made.

(d) To the extent that the Operating Revenues of the Superdome, pursuant to any extension, modification or other amendment of any contract described in Article 8, which is confected after June 30, 1982 and to which the State or any representative thereof has been made a party, have been or may be reduced at any time on or after July 1, 1982 by reductions in the amount of rent or other payments required thereunder which would have been payable in the subject Fiscal Year to SMG if such rent or payment had been calculated by reference to the applicable contractual provisions in effect prior to July 1, 1982, the Operating Revenues shall be deemed increased by the amount of such reduction in each such Fiscal Year throughout the term of such lease and any extensions thereof as so modified or amended; and to the extent any Operating Revenues of the Superdome (such as rents, user fees, revenues from parking, food or beverage concessions or box suite rentals) are assigned or properly disbursed to any tenant or user of the Superdome as an inducement to locate or remain in the Superdome pursuant to an agreement to which the State or an authorized representative thereof is a party, such amounts so assigned or disbursed shall, nonetheless, be included in Operating Revenues in the subject Fiscal Year.

The sum of the amounts set forth above shall be added or subtracted, as the case may be, to the Base Deficit or Operating Revenues to create for each Fiscal Year hereunder an Adjusted Base Deficit. SMG or the State shall have the right to propose any further adjustment it deems appropriate to the Base Deficit for any Fiscal Year hereunder. In the event that the parties hereto are unable to agree on the disposition of any such proposal, such proposal may be submitted for arbitration as provided herein.

ARTICLE V FEE

5.1 (a) Rate of Payment. As compensation to SMG for performing the

services herein specified, the State shall pay SMG the following fees:

For any Base Deficit Improvement, SMG will be entitled to thirty percent (30%) of the first One Million Dollars (\$1,000,000), (or any part thereof), forty percent (40%) of the next One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000), (or any part thereof), and twenty-five percent (25%) of any amount above Two Million Seven Hundred Fifty Thousand Dollars (\$2,750,000) . The obligation to pay this fee shall not be subject to the limitations of Section 7.1.

(b) **Management Fees.** Beginning with the Fiscal Year beginning July 1, 2006 and continuing throughout the remaining term of this Agreement, the amounts payable to SMG for services rendered under this Agreement shall be as follows:

- (1) A fixed annual fee of \$700,000, as adjusted under Section 5.1(d), (e), (f) and (g) (the "Superdome Base Fee") for services rendered with respect to the Superdome;
- (2) A fixed annual fee of \$300,000, as adjusted under Section 5.1(d), (e), (f) and (g) (the "Arena Base Fee") for services rendered with respect to the Arena;
- (3) An annual fee (the "Incentive Fee") for services rendered with respect to the Superdome and the Arena in an amount equal to ten percent of Adjusted Net Income for the Fiscal Year up to and including \$10,000,000 (the "First Tier") and five percent of any Adjusted Net Income above the First Tier payable in quarterly installments as provided in Section 5.2. For accounting purposes, the Incentive Fee shall be allocated between the Superdome and the Arena in proportion to their respective contributions to Adjusted Net Income and shall be adjusted by reference to Section 5.1(f), if applicable; and
- (4) An annual fee (the "Bonus Fee") for services with respect to the Superdome and the Arena, computed as a percentage of the combined Base Fees of the two buildings, based on the actual financial performance realized with respect to the two buildings in a Fiscal Year in relation to the combined budget for the Superdome approved by the Governor or his designee as representative of the State in administering this Agreement and the Budget for the Arena prepared in accordance with Section 26.5.6 and approved in accordance with Section 26.5.7. The Bonus Fee for a Fiscal Year shall be computed as follows: (1) determine the percentage (the "Applicable Percentage") represented by fraction with (x) a denominator equaling the budgeted Deficit or Profit and (y) a

numerator equaling the budgeted Deficit or Profit increased by the amount by which the actual Deficit or Profit is improved over the budgeted Deficit or Profit or reduced by the amount by which the actual Deficit or Profit is worse than the Budgeted Deficit or Profit, as the case may be and (2) determine the Bonus Fee by reference to the Applicable Percentage in accordance with the following:

<u>Applicable Percentage</u>	<u>Bonus Fee as a Percentage of Base Fee</u>
90 to 95%	5.0 %
95 to 100%	10.0 %
100 to 105%	12.5 %
105 to 110%	15.0 %
110 % and above	20.0 %

Thus, for example, if the budgets for the Arena and the Superdome show combined Operating Expenses of the Arena and Operating Costs of the Superdome exceeding combined Operating Revenues of the Arena and the Superdome by \$3,500,000 but the actual Operating Expenses and Operating Costs exceed actual Operating Revenues by \$3,000,000, the Applicable Percentage would be 114 percent computed as follows:

$$\frac{\$3,500,000 + \$500,000}{\$3,500,000} = 114 \text{ percent}$$

The Bonus Fee would then be an amount equal to 20 percent of the sum of Base Fees payable under Sections 5.1(b)(1) and (2).

(c) **Aggregate Cap.** Notwithstanding anything to the contrary in this Agreement, in no event shall the total fees payable to SMG under this Agreement in any Fiscal Year beginning on or after July 1, 2006, whether with respect to its services in connection with the Arena, the Superdome or otherwise, exceed \$1,500,000 as adjusted under Sections 5.1(d), (e), and (g) (the "Aggregate Cap").

(d) **CPI Adjustments.** The amount of Base Fees payable under Sections 5.1(b)(1) and (2) in the Fiscal Year beginning July 1, 2006, the amount of the First Tier in that Fiscal Year, and the amount of the Aggregate Cap for that Fiscal Year shall be adjusted for that Fiscal Year in proportion to increases in the Consumer Price Index published for June 2006 over that published for June 2003, and shall be increased annually thereafter in proportion to increases in the Consumer Price Index published for the June immediately preceding the start of the Fiscal Year over that for the previous June; provided, however, that no such increase in such amounts from one Fiscal Year to the next shall exceed 4%.

(e) **Adjustments for Outstanding Manager's Capital.** The Aggregate Cap stipulated in Section 5.1(c), as adjusted under Section 5.1(d), shall be increased by an amount equal to 30 percent of the total Manager's Capital provided by SMG under Section 7.5(b), and the resulting sum shall be adjusted as provided in Section 5.1(g). The Superdome Base Fee and the Arena Base fee stipulated in Section 5.1(b) shall be increased by an amount equal to 7 percent and 3 percent, respectively of the total Manager's Capital provided by SMG under Section 7.5(b), and the resulting sum shall be adjusted as provided in Section 5.1(g). Thus, for example, if SMG furnishes Manager's Capital of \$3,000,000, the Superdome Base Fee would be \$910,000 and the Arena Base Fee would be \$390,000, before the adjustments made under Sections 5.1(d) and (g). If there is no Manager's Capital outstanding as of the start of a Fiscal Year, then the Aggregate Cap for that Fiscal Year and succeeding Fiscal Years will be \$1,500,000, before the adjustments made under Sections 5.1(d) and (g) and the Superdome Base Fee and the Arena Base Fee will be \$700,000 and \$300,000, respectively, before the adjustments made under Sections 5.1(d) and (g); provided, however, that if the State accepts any amount of Manager's Capital but repays it to SMG on or before July 1, 2006, then such adjustments to the Aggregate Cap and the Superdome and Arena Base Fees under this sentence shall be effective only for Fiscal Years following the Fiscal Year beginning July 1, 2006.

(f) **Dark Period.** If, at any time during the Extended Term or the Second Extended Term, the Superdome is closed for renovations for a continuous period of three months or more (the "Dark Period"), the Annual Incentive Fee for the applicable fiscal year shall be computed on a basis that includes as Adjusted Net Income for the Dark Period the average Adjusted Net Income for that same period of time in the two preceding years, unless, before the start of the Dark Period, the State notifies SMG in writing that it has elected instead to extend the then current term for an additional year, in which case the term (whether the Extended Term of the Second Extended Term, as the case may be) shall be so extended and no adjustment shall be made with respect to the Dark Period in computing the Annual Incentive Fee."

(g) **Fee Increment Adjustments in Extended Term.** Beginning with the fiscal year beginning July 1, 2006 and continuing throughout the six fiscal years of the Extended Term, the initial Superdome Base Fee, Arena Base Fee and Aggregate Cap in the Extended Term shall be adjusted by reference to the amount (the "Fee Increment") by which fees paid to Manager under Section 5.1(a) for the three fiscal years ending June 30, 2004, 2005 and 2006 exceed the fees that would have been payable to Manager in those same fiscal periods under Sections 5.1(b), (c), (d), and (f) if they had been effective throughout those fiscal periods, without regard to any adjustment that might have been made under Section 5.1(e), as follows:

- (1) The initial annual Superdome Base Fee shall be the amount stipulated in Section 5.1(b)(1), adjusted as therein provided, minus one-sixth of 70 percent of the Fee Increment;
- (2) The initial annual Arena Base Fee shall be the amount stipulated in Section 5.1(b)(2), adjusted as therein provided, minus one-sixth of

30 percent of the Fee Increment; and

- (3) The initial Aggregate Cap shall be the amount stipulated in Section 5.1(c), adjusted as therein provided, minus one-sixth of the entire Fee Increment.

5.2 Time of Payment. Fees due to SMG hereunder shall be payable as follows: for the first Fiscal Year, SMG shall be paid Seventy-five Thousand Dollars (\$75,000) per quarter, which sum shall be adjusted at the end of the first Fiscal Year in accordance with the actual fee earned. For the second and succeeding Fiscal Years, SMG shall be paid each quarter twenty-five percent (25%) of the actual fee earned during the preceding Fiscal Year.

"For Fiscal Years beginning on or after July 1, 2006:

- (1) The Superdome Base Fee and the Arena Base Fee shall be payable in four equal quarterly installments on or before the end of each quarter of the Fiscal Year.
- (2) Incentive Fees shall be payable to SMG as follows: on or before the end of each fiscal quarter in a Fiscal Year, 25 percent of the annual Incentive Fees that have been earned in the preceding Fiscal Year (or, with respect to the Fiscal Year beginning July 1, 2006, the amount that would have been earned if Section 5.1(b)(2) had then been in effect). The payment made at the end of the first quarter in a Fiscal Year shall be adjusted to take into account any overpayment or under payment of the Incentive Fee for the prior Fiscal Year.
- (3) Bonus Fees, if any, shall be paid annually on or before the end of the first quarter of the succeeding Fiscal Year."

5.3 Louisiana Superdome Marketing and Promotional Fund. SMG shall, as additional consideration for the renewal of this agreement for the ten-year term commencing July 1, 1982, and option to renew for an additional ten-year term commencing July 1, 1992, establish a Marketing and Promotional Fund, to be entitled "Louisiana Superdome Marketing and Promotional Fund", hereinafter referred to as "Fund". Fund shall not be, or construed to be, an agent, partner, joint venturer or instrumentality of the State, any political subdivision thereof or a political subdivision thereof.

5.4 Establishment of Fund. The Fund shall be established within 60 days from the execution of this amendment by the opening of an account so entitled as above in a bank in the City of New Orleans to be selected by SMG.

5.5 Control and Management of Fund. The control, management and supervision of said Fund shall be vested in a Board of Managers composed of the following persons: An

officer of SMG so designated by SMG, the Chairman of the Louisiana Stadium and Exposition District Board of Commissioners, or his designee from the Board of Commissioners, and the Executive Vice President of the Greater New Orleans Tourist and Convention Commission.

5.6 Purpose of Fund. The sole purpose of the Fund shall be to market and promote the Louisiana Superdome for all of its respective intended uses and functions as established by law, to attract new and additional event activity to the Louisiana Superdome that will generate significant peripheral economic benefit in the form of increased convention and tourist activity to stimulate the general economy within the Superdome market area and the State of Louisiana and to subsidize any event that the Board of Managers, in its sole discretion, deems to be beneficial to the operation of the Louisiana Superdome and/or the State of Louisiana, economically or otherwise. All references in this Section to "the Louisiana Superdome" shall refer to the Superdome and to the New Orleans Arena.

5.7 Initial Payments to Fund by SMG. Commencing with Fiscal Year ended June 30, 1983 and each Fiscal Year through Fiscal Year ending June 30, 1987, SMG shall, within five (5) days (excluding Saturdays, Sundays and legal holidays) after SMG receives its quarterly fee payment, pay into the Fund thirty (30%) per cent of said quarterly fee payment.

Commencing with Fiscal Year ending June 30, 1988 and each Fiscal Year through Fiscal Year ending June 30, 1992, SMG shall, within five (5) days (excluding Saturdays, Sundays and legal holidays) after SMG receives its quarterly fee payment, pay into the Fund thirty-five (35%) per cent of said quarterly fee payment.

5.8 Subsequent Payments to Fund by SMG. In the event that the second ten-year period renewal option is exercised, then commencing with the Fiscal Year ending June 30, 1993, and each Fiscal Year through Fiscal Year ending June 30, 1997, SMG shall, within five (5) days (excluding Saturdays, Sundays and legal holidays) after SMG receives its quarterly fee payment, pay into the Fund forty (40%) per cent of said quarterly fee payment.

Commencing with Fiscal Year ending June 30, 1998 and each year through Fiscal Year ending June 30, 2006 SMG shall, within five (5) days (excluding Saturdays, Sundays and legal holidays) after SMG receives its quarterly fee payment, pay into the Fund forty-five (45%) per cent of said quarterly fee payment.

5.9 Use of Fund Surplus. In the event that there are any unexpended monies that have not been committed which exceed ONE HUNDRED THOUSAND (\$100,000) DOLLARS that remain in said Fund at the expiration of any Fiscal Year beginning with Fiscal Year ending June 30, 1984, said monies shall be used to reduce the Operating Costs of the Louisiana Superdome for the Fiscal Year during which the unexpended monies accrued. Any and all interest accruing to the Fund shall be for the benefit of the Fund.

5.10 Contributions to Fund from Excess Fees. If the management fee due SMG less

all amounts paid by SMG to the Fund exceeds an amount of TWO MILLION (\$2,000,000) DOLLARS in Fiscal Year ending June 30, 1983 (the "Adjustment Amount"), SMG shall pay seventy-five (75%) per cent of the excess of its fee over the Adjustment Amount to the Fund. In each Fiscal Year thereafter, the Adjustment Amount will be revised by applying a percentage to the Adjustment Amount, which percentage shall be computed as the ratio of the average consumer price index for the then current Fiscal Year to the average consumer price index for the Fiscal Year ended June 30, 1983. The index applied shall be that issued by the United States Department of Labor applicable to the New Orleans area and the average shall be computed on an annual basis, utilizing the most current index available.

5.11 **Fund Payments to Saints.** Fifty percent (50%) of all sums to be paid into the Fund by SMG as provided in the preceding sections of this Article V shall instead be paid by SMG to the Saints in accordance with Section 8.9 of the Fifth Amendment to the New Orleans Saints/Superdome Stadium Lease dated May 23, 1985.

ARTICLE VI CAPITAL IMPROVEMENTS BUDGET

6.1 **Budget Submittal.** Not later than 90 days before the beginning of each Fiscal Year (180 days before the beginning of each such Fiscal Year if there are not available in the Renewal and Replacement Reserve Fund sufficient funds for proposed Capital Expenditures), SMG shall submit to the State a budget for the Fiscal Year setting forth projected Capital Expenditures. This budget will be subject to the procedures customarily employed in connection with the development, approval and implementation of budgets for operating agencies of the State. In addition, when SMG becomes aware, SMG will advise the State of any unanticipated condition which jeopardizes the structural soundness of the Superdome, or the ability of SMG to perform under this agreement, and the State agrees to make available the funds necessary to correct such conditions, within such time as is required under the circumstances.

ARTICLE VII FUNDING OF OPERATIONS BY STATE

7.1 **State Funding.** The State will provide to SMG, from time to time, and one or more times, sums needed to meet Operating Costs of the Superdome, premiums for insurance maintained in accordance with Article XII, quarterly payments of the annual fee payable to SMG under Section 5.1 and other sums payable to SMG under this Agreement, and any sums payable from state funds to lessees or users of the Superdome as an inducement to locate or remain therein ("Lease Inducement Payments"), including the sums payable to the Saints or to other lessees or users of the Superdome; provided, however, that in no event shall the State be required to fund in any Fiscal Year an aggregate amount (the "maximum deficit commitment") more than the greater of (i) Six Million (\$6,000,000.00) Dollars or (ii) in any Fiscal Year, the product found by multiplying Six Million Dollars by a fraction with a numerator of the Consumer Price Index most recently published as of December 1 of the Fiscal Year and a denominator of the Consumer

Price Index for the same period in 1977. Failure by the State to make such funds available on a timely basis will constitute a default under the Agreement. It is the intent of the parties to this Agreement that SMG shall at no time during the term of this Agreement be required to fund the operations of the Superdome with its own capital.

7.2 Agreement to Adopt Procedures. The parties agree to develop mutually acceptable procedures necessary to carry out the foregoing provisions prior to the effective date of this agreement.

7.3 Insufficiency of Funds. In the event that the funds agreed to be provided by the State as set forth above are insufficient to meet projected Operating Costs, SMG may, at SMG's option:

- A. Fund any such deficiency with its own money, in which case, SMG shall be entitled to repay itself in the following fiscal year, but only to the extent that such repayment does not require the provision of funds by State in an excess of six million dollars (\$6,000,000), or create or increase a Deficit Year.
- B. Elect not to fund any deficiency, and so notify the State provided, however, that the State shall have no right to terminate this Agreement if the deficiency that SMG has declined to fund consists of undischarged obligations to make Lease Inducement Payments. Under this election, SMG will use its best efforts to notify the State at least sixty (60) days in advance of the anticipated deficiency, but in the event SMG is unable to give such sixty-day advance notice, the notice shall be given as soon as is reasonable under the then prevailing circumstances. Upon receipt of said notice, the State shall have the option to terminate the contract within thirty (30) days, with no penalty to SMG, or to the State, or the State may agree to fund the amount of the deficiency and retain SMG under this agreement. Should the State opt to fund the deficiency, the amount of such funding shall be carried over to the next Fiscal Year as an Operating Cost. In the event that the State fails or refuses to furnish funds sufficient to discharge on a timely basis all costs described in Section 7.1, SMG shall pay from State funds available therefor, or reserve for payment of, such costs in the following order of priority: (i) first, quarterly installments of the annual fee payable under Section 5.1; (ii) second, premiums for insurance required to be maintained under Article XII; (iii) third, Operating Costs; and (iv) finally, Lease Inducement Payments.

7.4 Adjustment to State Funding. The SIX MILLION (\$6,000,000) DOLLARS limitation in Paragraph 7.1 of this Agreement will be adjusted each Fiscal Year after Fiscal Year ending June 30, 1977 by a percentage, which percentage shall be computed as the ratio of the average consumer price index for the then current Fiscal Year to the average consumer price index for the Fiscal Year ended June 30, 1977. The index applied shall be that issued by the United States Department of Labor applicable to the New Orleans area and the average shall be

computed on an annual basis, utilizing the most current index available.

(a) **Manager's Capital.** The Governor of the State shall have the right and option to require SMG to contribute up to \$3,000,000 to the State, in one or more installments of \$500,000 or integral multiples thereof, payable by SMG at any time between July 1 2003 and July 1, 2004, to be applied by the State, in its discretion, to obligations of the LSED or the State relating to the Superdome or the Arena. This right and option may be exercised only by written notice that (i) is signed by the Governor, (ii) is delivered to SMG at least 20 days in advance of the date on which the requested installment of Manager's Capital is to be paid, and (iii) states the date as of which the installment is to be paid, which may not be sooner than July 1, 2003 or later than July 1, 2004. The aggregate amount furnished by SMG under this Section is referred to as the "Manager's Capital." The Manager's Capital is not a loan, shall accrue no interest and shall be non-refundable; provided, however, that in case of the expiration or termination of this Agreement before June 30, 2016, the State shall be obligated to pay SMG, in addition to any other amounts owing in connection with such expiration or termination, a termination fee in an amount equal to the product found by multiplying Manager's Capital by a fraction (i) with a numerator equal to the number of months between the date of termination or expiration and July 2016 and (ii) with a denominator of 120.

(b) **Refund of Manager's Capital.** The State shall have the right and option, by refunding to SMG all of the Manager's Capital at any time during a Fiscal Year, to reduce the Aggregate Cap and the Superdome and Arena Base Fees as provided in Section 5.1(e) and (f) for succeeding Fiscal Years.

ARTICLE VIII EXISTING CONTRACTS

8.1 **Fulfillment of State Contracts.** SMG takes cognizance that the State, prior to the date of the Original Agreement, entered into certain box suite and event contracts the terms of which, as of the date of this Agreement, have not yet terminated, with Ad-Art of Jefferson, Ogden Food Service Corporation, Philip Morris, Inc., Pitney Bowes, Rolex Watch U.S.A., Inc., Tulane Educational Fund, Loyola University (WWL), National Electrical Contractors Association (October 19-28, 1988), and the New Orleans Saints Limited Partnership, and SMG agrees, subject to the limitations set forth below, to perform and discharge the State's obligations thereunder. The State hereby assigns to SMG all of its rights under any such contracts and grants to SMG the exclusive right, power and authority to enforce, terminate, extend, or amend any such contract, to sue in its own name to enforce any such contract, and otherwise to act in respect thereto; provided however that the State shall at all times remain responsible for any payments or expenditures provided for under said contracts, or resulting from said contracts, and the State shall hold harmless and indemnify SMG, and its officers, directors, employees, agents and independent contractors engaged by it, from any such claims arising out of said contracts, as provided under Section 14.1, except for such claims as are caused by the fault of the person seeking indemnification and for which SMG is obligated to indemnify the State under Section

10.1.

8.2 Termination of Certain State Contracts. As relates to those service contracts with Superdome Services, Inc. and Building Engineering Services Company, Inc., SMG shall have the right during the term of this agreement to request that the State terminate either or both of the said contracts. Upon receipt by the State of such written request by SMG, the State binds and obligates itself to terminate any one or both of the said contracts, in such a manner that no later than ninety (90) days from the date of receipt of said written request, the effective removal of SSI and/or BESCO from the Superdome shall be completed. Provided further, that should the State be required to pay either Superdome Services, Inc. or Building Engineering Services Company, Inc. any amount of money for, or on account of, the termination of either or both of the said contracts, the amount so paid shall be amortized as an Operating Cost over the remaining period of this agreement. In no event, however, shall said amount to be amortized as an Operating Cost exceed the sum of One Hundred Thousand Dollars (\$100,000) per Fiscal Year, or the cumulative sum of One Million Dollars (\$1,000,000) for all Fiscal Years.

ARTICLE IX DEFICIT YEARS

9.1 Payment of Deficit. If the Deficit during any Fiscal Year of this agreement is greater than the Adjusted Base Deficit, SMG may pay the deficiency, which payment shall be made to the State within thirty (30) days from the date when the Deficit Year is certified by the Auditor, in which event, SMG may continue in the operating of this agreement. If SMG fails to make the payment of the deficiency within the time required, the State may terminate this agreement.

9.2 Repayment of Deficit Amounts. Any such payments made by SMG may be repaid by SMG during the following Fiscal Year, but only to the extent that such repayment does not create or increase either a deficiency under Article VII, or a Deficit Year.

9.3 Termination of Contract. In the event of any Deficit Year, SMG may terminate this contract. Should SMG elect to terminate, it shall notify the State no later than sixty (60) days from the date of receipt of the audit disclosing the occurrence of a Deficit Year, in which event, the termination shall be effective at the end of the Fiscal Year following the Deficit Year.

ARTICLE X SMG's INDEMNITY TO THE STATE

10.1 Indemnification by SMG. SMG agrees to indemnify and hold harmless the State and its respective agents, officers, employees and directors (herein collectively called "State Indemnitees") from and against any and all liability, loss, damages, interest, judgments and liens growing out of, and any and all costs and expenses (including, but not limited to, counsel fees and disbursements) arising out of, or incurred in connection with, any and all claims, demands, suits, actions or proceedings which may be made or brought against any of the

State Indemnitees by reason of or as a result of (a) the lack of exercise of reasonable care by SMG in the employment of any of its employees, or the lack of reasonable care in the supervision of the employees' ongoing employment, or (b) from the willful act or omission, or gross negligence of SMG.

Additionally, any amounts paid as a result of the foregoing shall not be considered as an Operating Cost.

10.2 Limitation of Liability. SMG shall not be liable to the State for any other claim or liability to third parties arising hereunder, and any amounts so paid shall be considered as an Operating Cost.

10.3 Payments by Insurers. Payments made by insurers under applicable policies of insurance shall not be considered "amounts paid" under either of the foregoing sections.

ARTICLE XI COVENANTS OF SMG

11.1 Best Efforts. SMG agrees to exert its best efforts in operating the Superdome so as to minimize Operating Costs and maximize revenues. The parties recognize and acknowledge that the interests of the State require a booking policy which takes account not only of those events which generate substantial direct revenues for the Superdome, but as well of those which produce less direct revenue, but generate significant peripheral economic benefits in the form of increased tourist revenues and the general economic stimulation of the State of Louisiana. The State recognizes that SMG, or its affiliates, may enjoy indirect economic benefits from the operating of the Superdome. However, SMG agrees that it will perform its obligations under the agreement in a manner consistent with the best interests of the State and will take no action designed primarily to benefit it or any other SMG affiliate.

11.2 Maintenance of Superdome. To the extent that the State has made funds available, SMG agrees to maintain the Superdome and all its facilities in the condition received, reasonable wear and tear excepted, and agrees to continue maintenance procedures which will, subject to availability of funds, keep the Superdome in good condition and working order.

11.3 Production of Information. SMG shall make available to the State such information as is reasonably required, concerning SMG's use and operation of the Superdome. The State will have the right to approve any use of the Superdome of expenditure in connection therewith, which constitutes a material variation from the historical levels of expenditure or types of use during its operation by the State or LSED.

11.4 Relationship. In connection with its activities under the agreement, SMG will be acting in its own right and not as an agent or otherwise on behalf of the State; provided, however, that in the event that the agreement expires or is otherwise terminated, all obligations incurred by SMG within the scope of its authority will be assumed by the State, and the State will hold SMG

harmless in connection therewith.

11.5 Application of Revenues. SMG will apply all revenues generated by the Superdome towards the payment of Operating Costs, insurance premiums, and fees due SMG hereunder.

11.6 Compliance with Law. SMG will comply with all local, State and federal ordinances, statutes, rules and regulations, provided that the State will cooperate to the extent possible to assure compliance by SMG.

11.7 Business Restrictions. SMG may engage in business activities other than the operation and management of the Superdome, provided that SMG shall engage in no activity that is directly competitive with the Louisiana Superdome and detrimental to the interest of the State.

ARTICLE XII INSURANCE

12.1 Insurance to be Maintained by the State. The State shall maintain, at its sole expense, such commercial insurance policies or self-insurance programs as it deems appropriate or necessary but in any event with amounts, coverages and limits not less than the greater of (i) those customarily maintained with respect to facilities similar to the Superdome, (ii) those required by any bond indenture to which the LSED is subject, or (iii) the following:

(1) Workers' Compensation. Insurance covering all employees meeting statutory limits in compliance with all applicable State and federal laws. The Workers' Compensation coverage must include Employer's Liability with a minimum limit of one million dollars (\$1,000,000) for each accident/illness.

(2) Commercial General Liability and Public Liability. Coverage shall have minimum limits of fifty million dollars (\$50,000,000) Per Occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This Commercial General Liability coverage shall include Premises and Operations, Broad form Property Damage, XCU Coverage, Independent Contractors, Products and Completed Operations, sprinkler leakage and water damage liability, and Contractual Liability. This Commercial General Liability coverage policy shall be endorsed to include and cover Host Liquor Liability and Public Liability.

(3) Boiler and Machinery Insurance Coverage. Coverage against loss or damage by explosion of steam boilers, pressure vessels and similar apparatus in the Superdome in an amount not less than \$15,000,000, which coverage shall include business interruption insurance.

(4) Business Auto Liability. Coverage shall have minimum limits of five million dollars (\$5,000,000) Per Occurrence, combined single limit for Bodily Injury

Liability and Property Damage Liability. This Business Auto Liability policy shall include and cover: Owned Vehicles, Hired and Non-Owned Vehicles, Employee Non-Ownership, and such other coverage as is necessary to protect the parties against liability for the operation of the Arena.

(5) Crime and Fidelity Coverage for SMG. At least \$500,000 per occurrence of coverage for SMG in favor of the State.

(6) Crime and Fidelity Coverage for SMG employees. At least \$50,000 per occurrence of coverage for (i) employee dishonesty; (ii) forgery or alteration; (iii) theft, disappearance and destruction inside and outside the Superdome; and (iv) robbery and safe burglary inside and outside the Superdome.

The State, the LSED and SMG shall be named as insureds under all such policies of insurance.

12.2 Insurance to be Maintained by SMG. SMG shall secure, pay for and maintain during the term of this Agreement such insurance coverages with respect to the Superdome as SMG, in its discretion, may deem prudent or necessary, the premiums and other costs of which shall not be considered as Operating Expenses. All such insurance shall name the State and the LSED as additional insureds. SMG shall also require all licensees and other persons renting the use of the Superdome to secure insurance policies with such coverages and amounts as are customarily required of persons licensing or renting facilities such as the Superdome, which policies shall be designated as primary and shall name as additional insureds SMG, the State and the LSED.

12.3 Waiver of Subrogation. The parties release each other and their respective Authorized Representatives, from any claims (including those under Section 10.1) for damage to any person, the Superdome or any fixtures, personal property, improvements and alterations of either party in or about the Superdome that are caused by or result from risks insured against under any insurance policies or programs required to be carried by the parties under this Agreement. The parties agree to cause the issuers of the insurance policies or programs required or permitted to be maintained by them hereunder to include waivers of the rights of recovery and subrogation.

12.4 Indemnity. Subject to the provisions of Section 12.3 and solely to the extent of any insurance coverage maintained or required to be maintained under this Article 12, the State hereby indemnifies and agrees to defend and hold harmless SMG, its Affiliates and their respective officers, agents, employees, directors, and shareholders (the "SMG Indemnitees") of, from, and against any and all claims, demands, suits, liabilities, causes of action, damages, costs, and expenses (including reasonable attorneys' fees and costs of court), including claims for personal injury, that any or all of the SMG Indemnitees may hereafter suffer or incur in connection with, related to, or in any way, directly or indirectly, arising out of (a) SMG's performance of its obligations under this Article but excluding claims, demands, suits, liabilities,

causes of action, damages, costs, and expenses suffered by any of the SMG Indemnitees caused by gross negligence or intentional misconduct or knowing violation of law on the part of SMG or a Material Breach of this Article on the part of SMG or (b) acts taken or omitted by SMG at the written direction of the State or the Contract Administrator.

12.5 **Survival.** All obligations of the State and SMG under this Article XII shall survive the expiration or early termination of this Agreement.

**ARTICLE XIII
GUARANTEE OF FACILITY MANAGEMENT GROUP, INC.**

[deleted]

**ARTICLE XIV
STATE'S INDEMNITY TO SMG**

14.1 **Indemnification by State.** The State agrees to indemnify and hold harmless SMG and its respective agents, officers, employees and directors (herein collectively called "SMG Indemnities") from and against any and all liability, loss, damages, interest, judgments and liens growing out of, and any and all costs and expenses (including, but not limited to, counsel fees and disbursements) arising out of, or incurred in connection with any and all claims, demands, suits, actions or proceedings which may be made or brought against any of the SMG Indemnities by reason of or as a result of any acts or omissions of the State or any of its employees or agents (other than SMG), or by reason of the failure or omission of the State to observe and perform any of its obligations, covenants and warranties to be observed or performed by it under the terms and provisions of this agreement or by reason of the execution of this agreement.

**ARTICLE XV
PURCHASE OF EQUIPMENT AND SUPPLIES**

15.1 **Best Price.** SMG shall have full authority and discretion as to the purchase of all equipment, materials, supplies and inventories reasonably required by it in the management of the Superdome but shall endeavor to make all such purchases at the best price available as known to SMG, considering the quantities required and the quality desired, at the time available for the delivery, the sources of supply and other commercially reasonable considerations whenever possible as part of a volume purchase by SMG. To the maximum extent allowed by law, SMG shall not be subject to any public bid or other law regulating the purchase of goods or services by municipal or other governmental authorities. Any property acquired by SMG under authority of this Section shall be owned by the LSED as an asset allocated for the use of the Superdome or the Arena.

15.2 **Contracts for Services.** SMG may contract with, or avail itself of the services of affiliate corporations, for any of the work or services to be performed by it hereunder, but only if

the prices charged and services rendered are competitive with others in the field. To assure compliance in this respect, SMG agrees to obtain at least two (2) other competitive bids from parties other than SMG affiliates, whenever any SMG affiliate is considered for providing services hereunder.

ARTICLE XVI DEFAULT

16.1 **Material Breach** Each of the following shall constitute a "Material Breach" under this Agreement (including Article XXVI):

- (1) Failure to pay when due any amount required to be paid under this Agreement, if the failure continues for 15 days after notice has been given to the breaching party.
- (2) Failure to perform any other material obligation under this Agreement, if the failure to perform is not cured within 30 days after notice has been given to the breaching party, except that if the breach cannot reasonably be cured within 30 days, a Material Breach shall not be deemed to have occurred if the breaching party begins to cure the breach within the 30 day period and diligently and in good faith continues to pursue the cure of the breach.
- (3) SMG's offer, gift, or agreement to give any employee of the State or former employee of the State a gratuity or offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of any purchase request, influence in the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity, in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, under this Agreement or in connection with the operation of the Arena or the Superdome.

16.2 **Interest on Delinquent Payments.** Interest shall accrue on any sums not paid when due under this Article from the date on which a default notice is given until paid at an annual rate equal to the judicial rate of interest.

16.3 **Breach Notices.** The State or SMG, as applicable, shall promptly notify the other party of any acts or omissions believed by the State or SMG to be a breach by such other party under this Article. In order to be effective for purposes of this Article XVI, a notice of a breach must state that it is a notice of breach and must specify in reasonable detail the acts or omissions alleged to constitute a breach of this Article.

16.4 **Rights Upon Breach.** If a Material Breach by a party occurs and is not waived in writing by the State (in the case of a breach by SMG) or by SMG (in the case of a breach by the State), then such other party shall have the following remedies, which are exclusive of any other

remedies now or later allowed by law or in equity:

- (1) The right to cure, at the breaching party's cost and expense, any Material Breach and recover such costs together with interest thereon as provided in Section 16.2, together with reasonable attorney's fees and costs of court;
- (2) The right to sue to collect any sums not paid when due, together with interest accrued thereon as provided in Section 16.2, together with reasonable attorney's fees and costs of court incurred in collecting the same;
- (3) The right to sue to collect damages suffered by such other party by reason of the occurrence of a Material Breach other than breach in the payment of money, together with reasonable attorney's fees and costs of court incurred in such proceedings;
- (4) The right to terminate this Agreement upon written notice of termination being given to the breaching party by such other party; and
- (5) The right to injunctive relief, including seeking specific performance of the breached obligation, together with reasonable attorney's fees and costs of court incurred in such proceedings.

16.5 Remedies Exclusive. The remedies set forth above are intended by the parties to be the exclusive remedies available for breach by any party of its obligations under this Agreement.

16.6 Waiver. If a non-defaulting party fails to assert or exercise any right or remedy with respect to any Material Breach within one year from the date of the party's actual or constructive notice of the facts constituting a Material Breach, the non-defaulting party shall be held to have waived its rights with respect to such right or remedy and any claim with respect to that Material Breach shall be deemed prescribed. Except as provided in the first sentence of this subsection, no other waiver shall be effective unless in writing and then it shall be effective only in the specific instance for which given. In no event shall any waiver with respect to a breach constitute a waiver of future rights, remedies or privileges to which a party may be entitled hereunder by virtue of any other breach.

16.7 Good Faith Disputes. In the event that either party disputes, in good faith, that any act or omission on its part constitutes or will constitute a Material Breach, such party may give the other party notice, specifying in reasonable detail the basis for the dispute, and may, thereafter, withhold payment or other action with respect to the amount or matter in dispute (to the extent it is in dispute) and shall not be deemed to be to have committed a Material Breach under this Agreement by reason thereof unless and until such dispute is determined adversely to the non-performing party and such party does not thus promptly remedy its breach under subsections (1) or (2) of Section 16.1 within 15 days or 30 days, as the case may be.

**ARTICLE XVII
RELATIONSHIP OF PARTIES**

17.1 **Independent Contractor.** The State and SMG agree that the only relationship created hereby is one for supplying services and that SMG is an independent contractor and not an agent (except as otherwise herein specifically provided) or partner of the State.

**ARTICLE XVIII
WAIVER**

18.1 **Failure to Assert Rights.** In the event of any breach of any representation, covenant, warranty, or provision herein by either party, failure by the non-breaching party to assert or exercise any right, remedy or privilege hereunder, within one (1) year from the date when actual or constructive notice or knowledge of the breach is received or obtained shall constitute a waiver of such right, remedy or privilege. No other waiver shall be effective, unless in writing, and then it shall be effective only in the specific instance for which given. In no event shall any waiver constitute a waiver of future rights, remedies or privileges to which a party may be entitled hereunder by virtue of any breach.

**ARTICLE XIX
CONTRACTS BEYOND MANAGEMENT TERM**

SMG shall not, except upon the written approval of the State, enter into any contract the term of which extends beyond the term of this Agreement, except for single-event agreements entered in the ordinary course of business or agreements terminable after the end of the then current term of this Agreement by SMG or its successor on not more than one year's written notice.

**ARTICLE XX
EQUAL OPPORTUNITY EMPLOYMENT**

20.1 **Affirmative Action.** SMG shall carry out applicable State affirmative action policies and shall participate in the State's affirmative action program, so long as SMG is not barred from complying therewith by any orders or regulations of any other governmental agency having jurisdiction thereof. SMG shall, in this connection, cooperate with the State's staff and such consultants as the State may specify concerned with any of the State's affirmative action programs.

20.2 **Discrimination Prohibited.** Neither SMG, nor any affiliate of SMG performing services hereunder pursuant hereto, will discriminate against any employee or applicant for employment because of race, creed, sex, color, or national origin, and SMG and such affiliates will take affirmative action to insure that they are afforded equal employment opportunities without discrimination because of race, creed, sex, color, or national origin. Such action shall be taken with reference, but not be limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation

and selection for training or retraining, including apprenticeship and on-the-job training.

20.3 Termination of Agreement. This agreement may be forthwith terminated, for cause in whole or in part, by the State upon the basis of a final determination by the appropriate State or Federal Governmental authorities that SMG be declared ineligible for future contracts made by or on behalf of the State or a public authority or agency of the State or housing authority until it has satisfied the State that it has established and is carrying out a program in conformity with the provisions of this non-discrimination section.

ARTICLE XXI ARBITRATION

21.1 Resolution of Disputes. It is mutually understood and agreed upon by and between the parties that should any dispute arise hereunder between the State and SMG, which shall not be resolved by any cure provision found in this agreement, the parties shall submit said dispute to arbitration in New Orleans, Louisiana, by three (3) arbitrators in accordance with the rules of the American Arbitration Association and the Louisiana Arbitration Law, for full and final adjudication. It is further agreed that the selection of the arbitrators shall be accomplished in the standard manner provided by the American Arbitration Association. By the inclusion of this Article, the parties specifically agree to be bound by any determination rendered by said Association.

ARTICLE XXII TERMINATION

22.1 Surrender of Superdome. Upon expiration or termination of this agreement, SMG shall promptly surrender the Superdome to the State, leaving all equipment, supplies, manuals and inventories which are the property of the State, as received, normal wear and tear excepted, provided the State has made funds available to do so, and the State shall simultaneously make all payments due SMG as set forth in this agreement.

22.2 Continuation of Performance. In the event of termination of this agreement, SMG, at the State's option, shall continue to perform under the provisions of this agreement for a reasonable time as reasonably determined by the parties, so that a replacement firm might be found by the State, provided, however, that SMG shall not be required to perform for a period of time to its detriment or for a period during which SMG's actual Operating Costs are not promptly and timely funded by the State.

22.3 Surrender of Improvements. Upon the expiration or termination of this agreement or of any renewal thereof, at the end of the period of performance by SMG under Paragraph 22.2 of this Article, all improvements made to or upon the Superdome by SMG and all equipment, materials, supplies and inventories purchased by SMG for carrying out this agreement shall be promptly surrendered to the state and title thereto shall rest in the State, without any compensation therefor from the State.

**ARTICLE XXIII
FORCE MAJEURE**

23.1 **Prevention of Performance.** Except as otherwise provided, neither party shall be obligated to perform hereunder and neither shall be deemed to be in default if performance is prevented by (i) fire, earthquake, flood, act of God, riot, civil commotion, or other matter or condition of like nature, including the unavailability of sufficient fuel or energy to operate the Superdome, or (ii) any law, ordinance, rule, regulation or order of any public or military authority stemming from the existence of economic controls, riot, hostilities, war or governmental law and regulations.

23.2 **Strike.** In the event of a labor dispute which results in a strike, picket or boycott affecting any of the facilities or services described in the agreement, SMG shall not be deemed to be in default or to have breached any part of this agreement.

**ARTICLE XXIV
SCOPE OF AGREEMENT**

24.1 **Governing Law.** This agreement; (a) comprises the entire understanding between the parties; (b) supersedes all prior agreements; (c) shall be governed by the laws of the State of Louisiana; (d) and may not be amended except by agreement in writing.

24.2 **Severability of Provisions.** If any provision or item of this agreement or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this agreement which can be given effect without the invalid provisions, items, or applications, and to this end the provisions of this agreement are hereby declared severable provided, however, that if any provision or item of this Amendment to the Management Agreement or the application thereof is held invalid, then all of the provisions of the amendment shall simultaneously become null and void.

**ARTICLE XXV
NOTICES AND CONSENTS**

25.1 **Notice.** Any notice or directive required or permitted by this agreement shall be deemed given on date of receipt if mailed by United States registered or certified mail (return receipt requested) addressed to the proper party at its address set forth in this Section or to such other address as last designated by such party in a notice given in accordance with the provisions of this paragraph.

STATE: Office of the Governor
 Commissioner of Administration
 Division of Administration
 P. O. Box 94095

Baton Rouge, Louisiana 70804-9095

SMG: General Manager
Louisiana Superdome
Sugar Bowl Drive
New Orleans, Louisiana 70112

25.2 Consents. Whenever the consent or other action is required or permitted to be given by the State, the consent of the Governor or his Executive Counsel or other designee as the representative of the State for purposes of this contract, or of the Commissioner of Administration shall be sufficient. Whenever the consent or other action is required or permitted to be given by SMG, the consent or other action of the president of SMG or any person to whom he delegates such authority in writing shall be sufficient.

ARTICLE XXVI NEW ORLEANS SPORTS ARENA

26.1 Scope Of Article

This Article shall govern the parties' respective rights and obligations with respect to the management and operation of the multipurpose civic and sports arena being constructed adjacent to the Louisiana Superdome, which arena is more particularly described on Exhibit A to this Amendment, and which arena, with all facilities, machinery, attachments and appurtenances attaching thereto, is hereinafter referred to as the "Arena." Notwithstanding anything to the contrary in this Agreement, this Article incorporates in full all of the terms and conditions of this Agreement that apply to the operation and management of the Arena, and, unless and to the extent otherwise specified in this Article, none of the terms and conditions of Articles I through XXV of the Agreement apply to the Arena.

26.2 Definitions

The following words as used in this Article XXVI shall, unless the context otherwise requires, have the meanings ascribed to them below.

"Affiliate" of a specified person means a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the specified person.

"Advertising" shall mean all announcements, acknowledgments, banners, signs, showbills, and other audio or visual commercial messages displayed, announced or otherwise presented in the Arena including, without limitation, video messages.

"Agreement" shall mean this Management Agreement, as amended.

"Arena" shall have the meaning ascribed to it in Section 26.1 and specifically includes all of the parking areas and garages hereafter constructed appurtenant thereto (but does not include the Louisiana Superdome parking garage in the form existing on the Commencement Date).

"Arena Management Fee" shall have the meaning provided in Section 26.8.1.

"Arena Reserve Fund" shall mean the fund required to be maintained by SMG under Section 26.6.3.

"Authorized Representative" shall mean any officer, agent, employee or independent contractor retained or employed by either party, acting within the scope of authority given such person by such party.

"Budget" shall mean any budget to be prepared by SMG under the provisions of Section 26.5.5 or Section 26.5.6 and approved in accordance with Section 26.5.7.

"Capital Expenditures" shall mean all expenditures for building additions, alterations or improvements, and for purchases of additional or replacement furniture, machinery or equipment, the depreciable life of which, according to generally accepted accounting principles, is in excess of one year, and expenditures for maintenance or repairs which extend the useful life of the assets being maintained or repaired for a period in excess of one year.

"Commencement Date" means the date first set forth above, which is the date as of which this Amendment has been executed and becomes effective.

"Contract Administrator" shall mean the Executive Counsel to the Governor of the State or other person designated by the Governor of the State in accordance with Section 26.3.4.

"Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers - All Items U.S. Cities Average (1982-1984 = 100) published by the Bureau of Labor Statistics, United States Department of Labor; provided, however, that (a) if the Consumer Price Index is changed so that the base year differs from that in effect as provided above, such index shall be converted in accordance with the conversion factor published by the Bureau of Labor Statistics, United States Department of Labor, and (b) if the Consumer Price Index is discontinued or otherwise revised during the term of this Article, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Consumer Price Index had not been discontinued or so revised.

"Depository" shall mean the bank domiciled in the State of Louisiana in which SMG shall maintain its bank accounts for the funds required to be maintained under this Agreement.

"Emergency Expenditure(s)" shall have the meaning set forth in Section 26.4.6.

"Extraordinary Expenditure(s)" shall mean any Operating Expense to the extent not included within a Budget or the Pre-Opening Expense Budget and not expected by SMG to be incurred but which SMG believes in good faith to be a necessary or desirable Operating Expense (or Pre-Opening Expense) in the management or operation of the Arena; provided, however, that any such Extraordinary Expenditure shall be subject to the prior written approval of the Contract Administrator. SMG shall use reasonable efforts to budget all expenditures that may be reasonably anticipated as Extraordinary Expenditures in an effort to minimize Extraordinary Expenditures by providing a contingency line item in each Budget for such purposes, the State recognizing that such contingency line item will be an estimate only.

"Event(s)" shall mean all revenue or non-revenue producing sports, entertainment, cultural, civic and other activities and events which are conducted at the Arena and scheduled by SMG.

"Fiscal Year" shall mean a period of 12 months time beginning on July 1 and ending on the immediately following June 30, inclusive, of any year, or such other fiscal year as shall be established from time to time by the State for the Arena.

"Grand Opening Date" shall mean that date on which the first revenue producing event is held at the Arena, provided that (a) a final and unconditional certificate of occupancy or other similar governmental permit or license has been issued for the entire Arena or (b) if requested by the State, a temporary certificate of occupancy or similar governmental permit or license permitting an event to be conducted at the Arena has been issued.

"Governmental Entities" shall mean the federal government, the State of Louisiana, Orleans Parish, the Louisiana Stadium and Exposition District, or any municipality (or any entity created by a municipality), governmental or quasi-governmental entities having jurisdiction or other authority over the Arena.

"FML" shall have the meaning assigned to it in the preamble to this Amendment.

"LSED" shall mean the Louisiana Stadium and Exposition District.

"Management Fees" shall mean those fees and expenses payable to SMG under Section 26.8.

"Material Breach" shall have the meaning provided in Section 26.11.1.

"Material Contract(s)" shall be those contracts which (i) permit a user or promoter to use the Arena for more than 25 event days in any Fiscal Year; (ii) have a term extending beyond June 30, 2006 (including renewal options exercisable by any party other than the State) and

which may not be cancelled on or before that date by SMG or the State without penalty or premium; (iii) involve the use of the Arena by a professional sports organization or collegiate sports team or program for more than 8 event days in any Fiscal Year; (iv) involve the primary or master food and beverage concession agreement for the Arena; or (v) involve the licensing or other granting of naming rights for the Arena.

“Operating Expenses” shall mean and include all expenditures or obligations of whatever kind or nature made or incurred by SMG in connection with or arising from the management, operation and marketing of the Arena in any specified period during the Term of this Article following the Grand Opening Date, within, or reasonably believed by SMG in good faith to be within, the scope of SMG’s authority or responsibility under this Article, including any Extraordinary Expenditure and any Emergency Expenditure; but excluding Pre-Opening Expenses, any Capital Expenditures, amortization, depreciation, expenditures for the personal benefit and account of SMG, Operating Costs as defined in Article I of the Agreement and any loss or damage suffered by SMG or its Authorized Representatives as a result of (1) any act or omission of SMG not in good faith or involving gross negligence (unless the cost thereof is covered by insurance pursuant to Section 26.9), intentional misconduct, or knowing violation of law; (2) any transaction from which SMG or any of its Affiliates derives an improper personal benefit; or (3) any Material Breach on the part of SMG.

“Operating Fund” shall mean the fund required to be maintained by SMG under Section 26.6.1.

“Operating Revenues” shall mean all receipts including, without limitation, seat user fees and surcharges, revenues, income and cash received or collected following the Grand Opening Date, as determined on an accrual basis, by SMG (1) for the use of, operation, or admission to, the Arena or any portion thereof; (2) for the right to sell, or in respect of the sale of, any product or Advertising in the Arena, including all rents, royalties and concessions from tenants, concessionaires, and licensees of the Arena; (3) from interest on or proceeds of any operating accounts maintained by SMG under this Article XXVI including, without limitation, bank accounts maintained for box office receipts; (4) for rental or use of the Arena equipment; (5) from (a) the lease or rental of any luxury suites located in the Arena, (b) the sale of personal seat licenses in the Arena, and (c) the sale or licensing of naming rights of the Arena; (6) as fees for services rendered at the Arena, including ticket/box office proceeds and surcharges and parking revenues; but excluding, in all events, sums received or collected by SMG for and on behalf of, and actually paid to, a user of the Arena; or (7) proceeds of business interruption insurance with respect to any loss included as an Operating Expense; provided, however, that there shall not be included in Operating Revenues any receipts attributable to contracts with third parties (whether or not Affiliates of SMG) paying a commission for marketing services rendered on behalf of SMG for the sale, lease, rental or licensing of suites or premium seating at the Arena unless the execution of such contract has received the prior approval of the Contract Administrator.

“Pre-Opening Expense Budget” shall mean the budget described in Section 26.5.8.

"Pre-Opening Expenses" shall mean and include all expenditures or obligations of whatever kind or nature made or incurred by SMG in connection with its obligations under this Article, and which are either included in the Pre-Opening Expense Budget or otherwise approved by the Contract Administrator pursuant to Section 26.5.8, prior to the Grand Opening Date, including, but not limited to, the costs and expenses incurred in reviewing any agreements contemplated by this Agreement, including, without limitation, any naming rights license agreement and the luxury suite user license agreements; travel, lodging and related out-of-pocket expenses for SMG directors, officers and employees; salaries; general administration expenses and grand opening ceremony expenses.

"Renewal and Replacement Reserve Fund" shall mean the fund required to be maintained by SMG under Section 26.6.2.

"SMG" shall have the meaning assigned to it in the preamble to this Amendment.

"State" shall have the meaning assigned to it in the preamble to this Amendment.

"Term of this Article" shall have the meaning provided in Section 26.3.3.

26.3 Grant Of Authority

26.3.1 Grant of Authority. The State hereby grants to SMG, and SMG hereby accepts, the exclusive right and obligation, in its own name, as an independent contractor and not as an agent of the State, to manage, operate, market and administer the Arena in accordance with this Article and, in connection therewith, to perform or furnish or cause to be performed or furnished, subject to the provisions hereof, and subject to the availability of funds (provided, however, that SMG shall use reasonable efforts to notify the Contract Administrator whenever such funds become, in SMG's reasonable judgment, insufficient for SMG to discharge its duties hereunder), all of such management services all upon the terms and subject to the limitations of this Article. SMG may delegate, subject to the requirements of Section 26.12.4, certain specific and limited responsibilities related to the management and operation of the Arena to third parties; provided, however, that SMG shall at all times retain the exclusive authority and responsibility (subject to the terms of this Article) for performing its duties with respect to the management and operation of the Arena.

26.3.2 Nature of Relationship. The parties agree that the only relationship created by this Article is that between the State, as the State, and SMG, as an independent contractor, for management, operating, marketing and administrative services under this Article and that SMG is an independent contractor, not an agent, employee, joint venturer or partner of the State.

26.3.3 Term. The term of this Article XXVI shall be the term of this Agreement as provided in Article III, as from time to time extended.

26.3.4 Contract Administrator. SMG and FML acknowledge and agree that the State may from time to time appoint an individual or entity (which entity must appoint an individual who shall have the sole, absolute and unfettered right and authority to act on the entity's behalf hereunder) to serve as Contract Administrator under this Article (the "Contract Administrator") to monitor SMG's performance under this Article in the management of the Arena so as to assure the efficient operation of the Arena to the benefit of the State. The Contract Administrator will also act as liaison and contact person between SMG and the State and the LSED in all matters concerning this Article. The Contract Administrator and his or her representatives and agents shall, with reasonable notice, have full access at all times during normal business hours to the books and records and personnel of SMG relating to its management of the Arena. The State covenants and agrees that with respect to any matter requiring the approval of the Contract Administrator, such approval shall not be unreasonably withheld or delayed. The State further covenants and agrees to indemnify and hold SMG harmless against any loss, liability or damage caused by any act taken or omitted by SMG at the written direction of the Contract Administrator.

26.6.5 No Solicitation or Employment by State or LSED. From the Commencement Date through the first anniversary of the expiration or termination of this Article, except with SMG's prior written consent, neither the State nor the LSED shall solicit for employment, or hire, any of the senior management personnel employed by SMG at the Arena or the Louisiana Superdome, including, without limitation, the general manager, director level employees and department heads. In addition to any other remedies that SMG may have under this Article or otherwise, specific performance in the form of injunctive relief shall be available for the enforcement of this section.

26.4 Responsibilities Of SMG

26.4.1 Standard of Performance.

(a) Subject to the limitations set forth in this Article, the Pre-Opening Expense Budget, and each Budget, SMG shall exercise its best, good faith efforts in managing and operating the Arena and the Louisiana Superdome so as to minimize aggregate Operating Expenses and Operating Costs (as defined in Article I of this Agreement) and maximize aggregate Operating Revenues (as defined in this Article) and Operating Revenues (as defined in Article I of this Agreement). In this connection, the parties recognize and acknowledge that the interests of the State require a booking policy that takes account not only of those events that generate substantial direct revenues for the Arena, but also of those that produce less direct revenue but generate significant peripheral economic benefits in the form of increased tourist revenues and the general economic stimulation of the State of Louisiana. Scheduling of events by SMG in the Arena or the Louisiana Superdome will be done with the objective described in this paragraph (a). Similarly, a reasonable allocation of expenses and parking revenues shall be made between the Arena and Louisiana Superdome, but with the same objective, provided that the Louisiana Superdome shall not be charged for its use of staging areas.

(b) Subject to the limitations set forth in this Article, SMG shall perform (or cause to be performed) during the Term of this Article all aspects of the management and operation of the Arena, including without limitation the performance of the following matters:

(i) Work with the State through the Contract Administrator to establish goals, objectives, strategies, areas of responsibility and lines of communication;

(ii) Attend regular meetings with the LSED as reasonably necessary to facilitate communications and coordination of activities relating to the Arena;

(iii) Attend regular meetings at the Arena or the Louisiana Superdome with the Contract Administrator at which any business regarding the Arena may be discussed;

(iv) Advise the Contract Administrator with respect to the enforcement of any agreements with any architects, the construction manager, trade contractors, trade subcontractors and design professionals providing services at the Arena;

(v) Assist in establishing lines of communications among SMG, the Contract Administrator, the design professionals and all other persons responsible for implementing the completion of the construction of the Arena and the development of the Arena;

(vi) Assist the State, the Contract Administrator, the LSED and all other persons responsible for developing the Arena in facilitating the transition from construction to actual use, occupancy and operation of the Arena;

(vii) Disseminate to the Contract Administrator monthly written reports concerning SMG's activities under this Article, all as reasonably required by the Contract Administrator;

(viii) Coordinate with the architect selected by State the procurement of all furniture, fixtures and equipment for the Arena, subject to the requirements, if any, of applicable law, and the limitations of the applicable Budget or Pre-Opening Expense Budget;

(ix) Develop and deliver to the Contract Administrator prior to January 1, 1999 a preliminary revenue and expense pro-forma projection for the first year of operation of the Arena;

(x) Coordinate with the Contract Administrator, and with any concession consultant that may be hired by or on behalf of the State or the LSED, the identification of prospective food, beverage, souvenir, novelty and program concessionaires for the Arena and the Louisiana Superdome and negotiate and, with the prior approval of the Contract Administrator, execute contracts with those concessionaires;

(xi) Plan and coordinate grand opening ceremonies for the Arena in cooperation with the LSED and the Contract Administrator;

(xii) Assist the State in determining funding needs for the completion of the Arena and the equipping thereof (including all Pre-Opening Expenses), develop alternatives for any needed financing for such purposes to be presented to the Contract Administrator for approval and use commercially reasonable efforts (but without any obligation to expend its own funds in doing so) to implement or assist the State or the LSED in implementing any and all such approved proposals or other third-party financing arrangements reasonably proposed by the State;

(xiii) Exercise good faith efforts to sell, lease, rent or license premium seats and suites at the Arena;

(xiv) Negotiate and, with the approval of the Contract Administrator, execute one or more contracts with one or more sales marketing firms for the sale of advertising and signage rights, sponsorships and naming rights for the Arena;

(xv) Immediately commence negotiations and exercise reasonable care and diligence to execute a license or rental agreement with Tulane University for the playing of "home" basketball contests at the Arena;

(xvi) Coordinate with the City of New Orleans (the "City") the use of the Arena by the City in accordance with Cooperative Endeavor Agreement dated December 20, 1996 among the State, the LSED and the City (the "Cooperative Agreement");

(xvii) Contract for the Arena's use in a manner that will promote and further the purposes for which it is being constructed;

(xviii) Monitor actual and projected Pre-Opening Expenses and Operating Expenses and advise the Contract Administrator if projected costs exceed to any material extent the amounts set forth in the Pre-Opening Expense Budget or any other Budget;

(xix) Make payment of all Operating Expenses within 30 days after the receipt of the applicable invoice therefor (or after resolution of any good faith dispute by SMG of such invoice) from funds available for that purpose under Section 26.6;

(xx) Devise and implement procedures (including preventive maintenance procedures) reasonably designed to keep the Arena in good order and condition, subject to ordinary wear and tear, and maintain the Arena in such order and condition; and

(xxi) Cooperate in the orderly transition of SMG's functions hereunder to any successor during the period prior to the termination of this Article.

26.4.2 Compliance with the Law; Duty. SMG shall comply with all applicable laws, rules, regulations and ordinances relating to the use and operation of the Arena. SMG shall be qualified to do business in the State of Louisiana. SMG shall perform its obligations hereunder in conformity with the standard to which an operator of a comparable multi-purpose public sports and entertainment facility would operate, given the limitations of the Budgets, the Pre-Operating Expense Budget, and this Article. SMG shall promptly and fully discharge all of its obligations under this Article. SMG represents and warrants to the State, and hereby agrees, that SMG and any items or services purchased or used hereunder by or at the direction of SMG will be "Year 2000 compliant," as defined in Executive Order MJF 96-50 on or before July 1, 1999.

26.4.3 No Construction or Design Responsibilities. Notwithstanding SMG's review of and recommendations with respect to the design, plans, and specifications for the Arena, SMG will not have responsibility to the State or any other person for or authority concerning the same and will not supervise or be responsible in any manner for construction related to the Arena. Notwithstanding SMG's advice relating to the identification or selection of the following persons, the parties acknowledge and agree that SMG shall not be responsible for the selection of trade contractors, trade subcontractors or suppliers; the prosecution of the work; the compliance of the work with the plans and specifications for the Arena or applicable law, rules, regulations, or codes; the completeness, adequacy, accuracy, reasonableness, or appropriateness of those plans or specifications; or otherwise with respect to the construction, improvement or renovation of the Arena. The State acknowledges that SMG's recommendations, if any, are based solely upon SMG's practical experiences in the operation of public assembly facilities similar to the Arena. The State acknowledges and agrees to look to the construction manager, trade contractors, trade subcontractors, architects, engineers and other design professionals for all matters related to the design and construction of any such construction work and not to SMG.

26.4.4 Duty and Liability. SMG shall owe to the State a duty to perform its obligations under this Agreement and to conduct the management and operation of the Arena at all times with integrity and good faith and in a manner that it reasonably believes in good faith to be in the best interests of the Arena and the State and the LSED (as the owner of both the Arena and the Louisiana Superdome) and consistent with the terms of this Article. SMG shall not be liable, responsible, or accountable in damages or otherwise to the State or to any other person for any act or omission that is within the scope of its authority under this Article except that SMG agrees to indemnify and hold harmless the State and the LSED, and their respective agents, officers, employees and directors (herein collectively called "State Indemnitees"), from and against any and all liability, loss, damages, interest, judgments and liens growing out of, and any and all costs and expenses (including, but not limited to, counsel fees and disbursements) arising out of, or incurred in connection with, any and all claims, demands, suits, actions or proceedings that may be made or brought against any of the State Indemnitees by reason of or as a result of (i) the lack of exercise of reasonable care by SMG in the employment of any of its employees or the lack of reasonable care in the supervision of the employees' ongoing employment, (ii) acts or omissions of SMG not in good faith or involving gross negligence, intentional misconduct, or knowing (i.e., conscious awareness of officers, directors, employees or agents) violation of law,

(iii) any transaction from which SMG or any of its Affiliates derives an improper personal benefit, or (iv) any Material Breach on the part of SMG. Any amounts paid as a result of the foregoing shall not be considered as an Operating Expense.

26.4.5 Funding Limitations. Notwithstanding anything to the contrary set forth in this Article, the State recognizes and agrees that performance by SMG of its responsibilities under Section 26.4 and otherwise under this Article is in all respects subject to and conditioned upon the provision of funds to SMG for such purposes as hereinafter provided, in addition to the Management Fees payable by the State to SMG hereunder, to enable SMG to fulfill such responsibilities, and in all respects is limited by the Budgets and the Pre-Opening Expense Budget as approved by the Contract Administrator from time to time, and SMG is under no obligation to advance or apply its own funds for any such purposes. Throughout the Term of this Article, SMG shall use reasonable efforts to notify the Contract Administrator and the LSED whenever the funds available to SMG become insufficient, in SMG's reasonable judgment, for SMG to discharge its duties hereunder.

26.4.6 Emergency Expenditures and Extraordinary Expenditures. Notwithstanding anything to the contrary set forth in this Agreement, if SMG at any time becomes aware of any condition that jeopardizes the structural soundness or operational capability of the Arena, or the public safety, SMG shall use reasonable efforts to advise the Contract Administrator and the LSED in writing and the State shall, within such time as is reasonable under the circumstances, arrange to make available the funds (each an "Emergency Expenditure" and collectively "Emergency Expenditures") necessary to correct such condition; provided, however, that SMG shall have the right to expend any available funds to prevent or attempt to prevent or mitigate an imminent danger of damage to property or injury or death to persons; and further provided, that if the State shall elect not to arrange to provide such Emergency Expenditures, the State shall indemnify and hold harmless SMG against any and all claims by third parties relating to such conditions. Furthermore, SMG is authorized to pay Extraordinary Expenditures in connection with the management and operation of the Arena subject to the terms of this Article.

26.5 Records, Accounts And Reports

26.5.1 Books. SMG shall maintain adequate books of account with respect to its management and operation of the Arena in accordance with generally accepted accounting principles and industry standards. Such books of account must also be kept in a manner that facilitates the state's ability to review and analyze expenses and revenues attributed to or otherwise allocated between the Louisiana Superdome and the Arena.

26.5.2 Access to Information. The State shall have the right to obtain from SMG, at any time upon reasonable prior notice, such information and to inspect such books and records

concerning the management and operation of the Arena as may be necessary or reasonably requested to inform the State concerning the Arena and its operations.

26.5.3 Annual Audit. As soon as practicable at the close of each Fiscal Year, SMG shall furnish to the State (through the Contract Administrator) and the LSED an inventory of the Arena assets and further, with respect to the Arena only, as though it were a separate entity, a balance sheet, a statement of the profit or loss of the Arena and a statement of changes in financial condition, prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an opinion of the independent certified public accountant preparing the report, which shall be the same firm that audits the LSED financial statements in accordance with applicable State law. The cost of this audit shall be treated as an Operating Expense.

26.5.4 Monthly Reports. Within 30 days after the end of each month, SMG shall furnish to the State (through the Contract Administrator) and the LSED an operating income and expense statement substantially in the form attached hereto as Exhibit B, with such changes and other information as may be reasonably requested or approved by the Contract Administrator.

26.5.5 Capital Improvements Budget. Not later than 90 days before the beginning of each Fiscal Year after the Grand Opening Date (180 days before the beginning of each such Fiscal Year if there are not available in the Renewal and Replacement Reserve Fund sufficient funds for the proposed Capital Expenditures), SMG shall submit to the Contract Administrator, for the Contract Administrator's approval, a budget for projected Capital Expenditures for such Fiscal Year. This budget shall be prepared and presented in a form acceptable to the Contract Administrator. The Capital Expenditures budget shall be contained in and constitute a part of the applicable Budget for such Fiscal Year.

26.5.6 Annual Operating Budgets. Not later than 90 days prior to the Grand Opening Date, with respect to the partial Fiscal Year next ending, and thereafter not later than 90 days before the beginning of each full Fiscal Year beginning on or after the Grand Opening Date, SMG shall submit to the Contract Administrator and the LSED for their approval an annual operating budget for such partial or full Fiscal Year, as the case may be, listing all projected Operating Revenues and Operating Expenses by category (and, as provided above, the Capital Expenditures budget). SMG may at any time submit to the Contract Administrator for its approval amendments to a Budget to reflect unanticipated revenues or expenses or other changes.

26.5.7 Budget Approval. The Contract Administrator and the LSED shall promptly review all proposed Budgets and any amendments thereto that are submitted by SMG pursuant to Sections 26.5.5 and 26.5.6, and shall promptly communicate to SMG any comments or suggested revisions thereto. The Contract Administrator shall, in any event, complete its Budget review and deliver its comments within 60 days after SMG's submission of the Budget to the Contract Administrator. Final approval of any Budget shall, except for amendments thereto that are not material, be prepared and presented in a form acceptable to the Contract Administrator. If a

proposed Budget has not been approved prior to the first day of the period to which it relates, the most recent Budget or Pre-Opening Expense Budget approved by the State or the Contract Administrator under this Section 26.5.7 shall continue to control.

26.5.8 Pre-Opening Expense Budget. SMG shall promptly (but in no event later than June 30, 1998) prepare a Pre-Opening Expense Budget substantially in the form attached as Exhibit C to this Amendment, which shall serve, upon approval of the Contract Administrator, as the controlling budget for all activities at the Arena during the Term of this Article prior to the Grand Opening Date. SMG may at any time submit to the Contract Administrator for its approval amendments to the Pre-Opening Expense Budget to reflect unanticipated revenues or expenses or other changes.

26.6 Funds And Accounts

26.6.1 Operating Fund. After the Commencement Date, SMG shall collect all Operating Revenues and deposit them in an account maintained by SMG in its name in the Depository (the "Operating Fund"). ~~The Operating Fund shall remain the property of the LSED; however, SMG shall have complete control and authority as to the Operating Fund, subject only to the provisions of this Article.~~ Moneys in the Operating Fund and any interest thereon shall be applied to the payment of any unpaid Pre-Opening Expenses, Operating Expenses and Management Fees. The balance shall be retained in the Operating Fund as reserve for payment of future Operating Expenses. If, at the end of any Fiscal Year, there shall be a balance in the Operating Fund in an amount in excess of the anticipated working capital needs and Operating Expenses for the first month of the ensuing year, SMG shall transfer such excess (up to \$500,000 per Fiscal Year, on a cumulative basis (the "Renewal and Replacement Reserve Amount")) to the Renewal and Replacement Reserve Fund described in Section 26.6.2 on or before the 15th day of such month, subject to the provisions of this Article. In addition, if at the end of any such Fiscal Year, the balance in the Operating Fund in excess of the anticipated working capital needs and Operating Expenses for the first month of the ensuing year exceeds the Renewal and Replacement Reserve Amount, SMG shall transfer such excess amount to the Arena Reserve Fund described in Section 26.6.3 on or before the 15th day of such month, subject to the provisions of this Article.

26.6.2 Renewal and Replacement Reserve Fund. In order to provide the working capital necessary to permit SMG to perform its obligations hereunder with respect to Operating Expenses not funded by moneys in the Operating Fund, and to provide for SMG's repair and replacement of Arena property in accordance with this Article, SMG shall create an interest-bearing account in the Depository to be held and administered by SMG in SMG's name (the "Renewal and Replacement Reserve Fund"), into which the Operating Revenues required to be deposited in such account pursuant to Section 26.6.1 shall be deposited. Expenditures from the Renewal and Replacement Reserve Fund must be included in a Budget or otherwise approved by the Contract Administrator and the LSED. Moneys held in the Renewal and Replacement Reserve Fund shall remain the property of the LSED.

26.6.3 Arena Reserve Fund. In order to provide available funds for Capital Expenditures, operational enhancements (including in-house promotion of events), potential operating deficits, and for any other purpose related to the Arena (all of which expenditures must be included in a Budget or otherwise approved by the Contract Administrator and the LSED), including without limitation Capital Expenditures relating to the construction of a parking facility for the Arena, SMG shall create an interest-bearing account in the Depository to be held and administered by SMG in SMG's name (the "Arena Reserve Fund"), into which the Operating Revenues required to be deposited in such account pursuant to Section 26.6.1 shall be deposited. Moneys held in the Arena Reserve Fund shall remain the property of the LSED.

26.6.4 Use of Moneys Deposited in the Renewal and Replacement Reserve Fund and the Arena Reserve Fund. Moneys deposited in the Renewal and Replacement Reserve Fund and the Arena Reserve Fund, including any interest thereon, shall be used solely in the manner and for the purposes described in Sections 26.6.2 and 26.6.3, respectively. SMG shall require of the Depository that all funds held in any account maintained under this Section 26.6 be secured to such an extent and in such a manner as is required by applicable law in connection with the deposit of funds of the LSED, but shall have no liability or responsibility for the failure of any Depository or the failure by a Depository properly to secure such funds and SMG shall have no liability with respect to any such investment made in accordance with the terms hereof. Money on deposit in the Operating Fund, the Renewal and Replacement Reserve Fund and the Arena Reserve Fund may be retained uninvested and on deposit in fully secured demand deposit accounts or may be invested in accordance with guidelines provided by the State from time to time.

26.7 Power And Functions

26.7.1 Powers. Subject to the terms of this Article, SMG shall have the exclusive right and authority to exercise, or delegate the exercise of, all rights, powers and duties conferred or imposed on SMG in this Article. The powers of SMG with respect to the Arena shall be as set forth in this Article and are subject only to the limitations expressly set forth in this Article.

26.7.2 Sale of Property. SMG shall have no authority to sell or otherwise alienate any portion of the Arena consisting of movable or immovable property without the prior written consent of the State (and any such sale approved by the State must be accomplished in accordance with applicable law or the procedures established by the State that apply generally to the sale of property by the State or the LSED). The proceeds resulting from the sale of any property pursuant to this Section 26.7.2 shall not be considered Operating Revenue.

26.7.3 Capital Improvements Requiring Approval. Except for the Capital Expenditures set forth in the applicable Budget (or involving less than \$50,000 in the aggregate in any Fiscal Year) and any Emergency Expenditures, SMG shall have no authority to make any alterations or any capital improvements to the Arena without the prior written consent of the Contract Administrator.

26.7.4 Contracts Requiring Approval. SMG shall have no authority, without the prior written approval of the Contract Administrator, to enter into, modify, renew, or extend (i) any Material Contract; (ii) any contract with any Affiliate of SMG for the purchase of goods or services for the Arena or the management, marketing, operation or administration of the Arena, or (iii) any contract with any sponsorship or sales marketing firm with respect to the Arena.

26.7.5 Employees. Employees now or hereafter hired by SMG in connection with the management services provided by SMG shall be employees of SMG and not of the State, although the employment costs of such employees (including, without limitation, wages, salary, benefits, and the costs of complying with local, state and federal employment laws) shall be part of the Operating Expenses. SMG shall have complete and absolute discretion and authority with respect to the number, functions, qualifications, compensation and other terms and conditions relating to its employees, subject to the applicable Budget or Pre-Opening Expense Budget.

26.7.6 Purchase of Supplies and Services. SMG shall have full authority and discretion as to the purchase of all equipment, materials, supplies and inventories reasonably required by it in the management of the Arena but shall endeavor to make all such purchases at the best price available as known to SMG, considering the quantities required and the quality desired, at the time available for the delivery, the sources of supply and other commercially reasonable considerations whenever possible as part of a volume purchase by SMG. SMG may, subject to the Contract Administrator's prior written approval, acquire property or services from or otherwise transact business with its Affiliates for any of the goods to be purchased or services to be performed by it under this Article, but only if the prices charged and services rendered are competitive with those obtainable from others rendering comparable services in the field. To insure compliance in this respect, SMG agrees to (i) obtain at least two other competitive bids from persons other than SMG's Affiliates whenever SMG considers transacting business with an Affiliate for providing goods or services under this Article and (ii) maintain and make available to the Contract Administrator, as may be reasonably requested by the Contract Administrator, records of all bids involving the purchase of goods and services from its Affiliates. To the maximum extent allowed by law, SMG shall not be subject to any public bid or other law regulating the purchase of goods or services by municipal or other governmental authorities. Any property acquired pursuant hereto shall be owned by the LSED as an asset allocated for the exclusive use of the Arena.

26.7.7 Multi-Location Bookings and Services. SMG has advised the State that SMG performs facility services similar to those outlined herein for other public assembly facilities. In order to maximize utilization of the Arena, SMG may from time to time book the same event at a number of the facilities it operates. If SMG desires to book events at the Arena while at the same time booking such events under the same contract (or one or more contracts executed concurrently) for other facilities for which SMG is providing services (including the Louisiana Superdome), then before finalizing such contract, SMG shall allocate fairly such contracts' expenses between the Arena and the other facilities. Similarly, if SMG desires to acquire goods or services in bulk for the Arena and one or more of the other facilities for which SMG performs

services (including the Louisiana Superdome), SMG shall allocate fairly the costs thereof between the Arena and the other facilities. In no event, however, shall SMG allocate to or impose upon the Arena any costs or expenses related to its corporate offices or other facilities that are not directly related to SMG's provisions of management services to the Arena.

26.7.8 Pre-Opening Expenses in Excess of Pre-Opening Expense Budget. SMG shall not, without written authorization by the Contract Administrator, knowingly incur any obligations for Pre-Opening Expenses aggregating in excess of 110% of the amount of total Pre-Opening Expenses contemplated by the Pre-Opening Expense Budget, but not including Emergency Expenditures and Extraordinary Expenditures. Any Pre-Opening Expenses in excess of 110% of the amount of total Pre-Opening Expenses approved in the Pre-Opening Expense Budget, if any, that are incurred by SMG, shall be paid by SMG, excluding, however, (i) any expenses or costs that would reasonably and typically be out of SMG's direct control including, but not limited to, Emergency Expenditures, Extraordinary Expenditures, expenses relating to utilities, legal fees, insurance, extraordinary repair and reimbursable Event expenses and (ii) Pre-Opening Expenses aggregating in excess of 110% which have been authorized by the Contract Administrator. The State and SMG acknowledge and agree that any cost savings in any line-item of the Pre-Opening Expense Budget may be applied by SMG to any excess costs in any line-item of such budget for purposes of calculating any Pre-Opening Expenses in excess of 110% of total Pre-Opening Expenses approved in the Pre-Opening Expense Budget.

26.7.9 Operating Expenses in Excess of Budget. SMG shall not, without written authorization by the Contract Administrator, knowingly incur in any Fiscal Year obligations for Operating Expenses aggregating in excess of 110% of the amount of total Operating Expenses contemplated by a Budget approved by the Contract Administrator, but not including Emergency Expenditures and Extraordinary Expenditures. Any Operating Expenses in excess of 110% of the amount of total Operating Expenses approved in the Budget, if any, that are incurred by SMG, shall be paid by SMG, excluding, however, (i) any expenses or costs that would reasonably and typically be out of SMG's direct control including, but not limited to, Emergency Expenditures, Extraordinary Expenditures, expenses relating to utilities, legal fees, insurance, extraordinary repair and reimbursable Event expenses and (ii) Operating Expenses aggregating in excess of 110% which have been authorized by the Contract Administrator. The State and SMG acknowledge and agree that any cost savings in any line-item of the Budget may be applied by SMG to any excess costs in any line-item of the Budget for purposes of calculating any Operating Expenses in excess of 110% of total Operating Expenses approved in the Budget.

26.7.10 Covenants. The State covenants and agrees that, unless otherwise requested by or consented to by SMG (which consent shall not be unreasonably withheld and shall be deemed granted with respect to the actions of the Contract Administrator that are authorized under this Article), neither it nor its Authorized Representatives shall interfere in any manner with SMG's exclusive right and authority under this Article, no such person shall initiate or intervene in any manner whatsoever in negotiations with existing or prospective lessees, users, advertisers, service contractors or other persons doing business or seeking to do business with the Arena, and

no such person shall solicit, request or seek any services, contributions, gifts, favors, tickets, gratuities or other benefits from SMG or any person doing business with the Arena.

26.7.11 Settlement of Claims. SMG has been advised by the State (and the State shall continually keep SMG apprised of) of the State's procedures and requirements in respect of settlement of third party claims filed against the State or with respect to the Arena. SMG agrees to comply with such settlement claims and procedures as it has been advised of in writing by the State.

26.8 Fees And Expenses

[This Section 26.8 is superseded by Section 5.1(b) effective July 1, 2006]

26.8.1 Annual Management Fees after the Grand Opening Date. For services to be performed by SMG under this Article after the Grand Opening Date, the State shall pay to SMG for each Fiscal Year beginning after the Grand Opening Date, a fixed fee equal to \$250,000 for each such Fiscal Year, prorated for any partial Fiscal Year beginning after the Grand Opening Date based on the actual number of days elapsed (the "Arena Management Fee"), payable on September 30 following each Fiscal Year. SMG shall not be entitled to receive any fees or other payments for its services with respect to the Arena under this Article XXVI other than the Arena Management Fee and the reimbursement of expenses pursuant to a Budget.

26.8.2 CPI Adjustments. The \$250,000 Arena Management Fee described in Section 26.8.1, the \$500,000 annual Renewal and Replacement Reserve requirement set forth in Section 5.1, and the cap on fees imposed by Section 26.8.3, shall each be increased annually for proportionate annual changes in the Consumer Price Index commencing with the Fiscal Year ending June 30, 2001, provided however that no such increase in such amounts from one Fiscal Year to the next shall exceed 4% of the prior Fiscal Year's amounts

26.8.3 Fee Limitation. Notwithstanding anything to the contrary in this Agreement, in no event shall the total fees payable to SMG under this Agreement in any Fiscal Year beginning after the Grand Opening Date, whether with respect to its services in connection with the Arena, the Louisiana Superdome or otherwise, exceed the sum of \$150,000 plus the amount of total fees paid to FML under Article V of the Agreement for the Fiscal Year ended June 30, 1997 net of amounts paid by FML in respect of such Fiscal Year to the Louisiana Superdome Marketing and Promotional Fund and to the Saints as described in Article V of this Agreement (the "Aggregate Cap").

26.8.4 Adjustments in Louisiana Superdome Management Fee for Concession Shortfall. For purposes of calculating the Management Fee under Article V of the Agreement, if operation of the food and beverage concession at the Louisiana Superdome is granted under a combined contract for operating the food and beverage concession at the Arena and the Louisiana Superdome, then there will be included in Operating Revenues (as defined in Article I of the Agreement) for such Fiscal Year the greater of (a) 37% of the gross sales of food and beverages

in the Louisiana Superdome in such Fiscal Year (being the five-year average of the ratio that net revenues received by the State under the terms of the Concession Agreement dated July 18, 1990, between FML and ARA Leisure Services, Inc. bore to gross sales of food and beverages at the Louisiana Superdome in such years) or (b) the actual amount of such sales actually paid to and retained by the State.

26.8.5 Adjustment in Net Operating Income of the Arena in Respect of City Dates. For purposes of calculating the Benchmark Amount in any Fiscal Year, if in performing the obligations incurred by the LSED and the State to the City under the Cooperative Agreement, SMG incurs Operating Expenses that exceed the payments made to SMG by the City in respect thereof for the Fiscal Year, fifty percent of the difference shall be subtracted from Operating Expenses for purposes of computing the Net Operating Income of the Arena.

26.8.6 Adjustments in Louisiana Superdome Management Fee for Concession Shortfall. For purposes of calculating the Management Fee under Article V of the Agreement, if operation of the food and beverage concession at the Louisiana Superdome is granted under a combined contract for operating the food and beverage concession at the Arena and the Louisiana Superdome, then there will be included in Operating Revenues (as defined in Article I of the Agreement) for such Fiscal Year the greater of (a) 37% of the gross sales of food and beverages in the Louisiana Superdome in such Fiscal Year (being the five-year average of the ratio that net revenues received by the State under the terms of the Concession Agreement dated July 18, 1990, between FML and ARA Leisure Services, Inc. bore to gross sales of food and beverages at the Louisiana Superdome in such years) or (b) the actual amount of such sales actually paid to and retained by the State.

26.9 Insurance

26.9.1 Insurance to be Maintained by the State. The State shall maintain such commercial insurance policies or self-insurance programs as it deems appropriate or necessary but in any event with amounts, coverages and limits not less than the greater of (i) those customarily maintained with respect to facilities similar to the Arena or (ii) the following:

(a) Workers' Compensation. Insurance covering all employees meeting statutory limits in compliance with all applicable State and federal laws. The Workers' Compensation coverage must include Employer's Liability with a minimum limit of one million dollars (\$1,000,000.00) for each accident/illness.

(b) Commercial General Liability and Public Liability. Coverage shall have minimum limits of five million dollars (\$5,000,000.00) Per Occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This Commercial General Liability coverage shall include Premises and Operations, Broad form Property Damage, XCU Coverage, Independent Contractors, Products and Completed Operations, and Contractual Liability. This Commercial General Liability coverage policy shall be endorsed to include and cover Host Liquor Liability and Public Liability.

(c) **Business Auto Liability.** Coverage shall have minimum limits of five million dollars (\$5,000,000.00) Per Occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. This Business Auto Liability policy shall include and cover: Owned Vehicles, Hired and Non-Owned Vehicles, Employee Non-Ownership, and such other coverage as is necessary to protect the parties against liability for the operation of the Arena.

(d) **Crime and Fidelity Coverage for SMG.** At least \$500,000 per occurrence of coverage for SMG in favor of the State.

(e) **Crime and Fidelity Coverage for SMG employees.** At least \$50,000 per occurrence of coverage for (i) employee dishonesty; (ii) forgery or alteration; (iii) theft, disappearance and destruction inside and outside the Arena; and (iv) robbery and safe burglary inside and outside the Arena.

The cost of such insurance or self-insurance programs shall be an Operating Expense.

26.9.2 Insurance to be Maintained by SMG. SMG shall secure, pay for and maintain during the Term of this Article such insurance coverages with respect to the Arena as SMG, in its discretion, may deem prudent or necessary, the premiums and other costs of which shall not be considered as Operating Expenses. All such insurance shall name the State and the LSED as additional insureds. SMG shall also require all licensees and other persons renting the use of the Arena to secure insurance policies with such coverages and amounts as are customarily required of persons licensing or renting facilities such as the Arena, which policies shall be designated as primary and shall name as additional insureds SMG, the State and the LSED.

26.9.3 Waiver of Subrogation. The parties release each other and their respective Authorized Representatives, from any claims for damage to any person, the Arena or any fixtures, personal property, improvements and alterations of either party in or about the Arena that are caused by or result from risks insured against under any insurance policies or programs required or permitted to be carried by the parties under this Article. The parties agree to cause the issuers of the insurance policies or programs required or permitted to be maintained by them hereunder to include waivers of the rights of recovery and subrogation.

26.9.4 Indemnity. Subject to the provisions of Section 26.9.3 and solely to the extent of any insurance coverage maintained or required to be maintained under this Section 26.9, the State hereby indemnifies and agrees to defend and hold harmless SMG, its Affiliates and their respective officers, agents, employees, directors, and shareholders (the "SMG Indemnitees") of, from, and against any and all claims, demands, suits, liabilities, causes of action, damages, costs, and expenses (including reasonable attorneys' fees and costs of court), including claims for personal injury, that any or all of the SMG Indemnitees may hereafter suffer or incur in connection with, related to, or in any way, directly or indirectly, arising out of (a) SMG's performance of its obligations under this Article but excluding claims, demands, suits, liabilities, causes of action, damages, costs, and expenses suffered by any of the SMG Indemnitees caused

by gross negligence or intentional misconduct or knowing violation of law on the part of SMG or a Material Breach of this Article on the part of SMG or (b) acts taken or omitted by SMG at the written direction of the Contract Administrator.

26.9.5 Survival. All obligations of the State and SMG under this Section 26.9 shall survive the expiration or early termination of this Article.

26.10 Termination

26.10.1 Surrender of Improvements. Upon expiration or earlier termination of this Article pursuant to Section 26.11.4, SMG shall promptly surrender the Arena to the State, leaving all equipment, supplies, manuals, books, records and inventories that are the property of the State or the LSED or from funds made available by the State or the LSED, as the case may be.

26.10.2 Continuation of Performance. In the event of early termination of this Article, SMG, at the State's option, shall continue to perform under the provisions of this Article for a reasonable time as determined by the parties to enable the State to make arrangements for a successor Arena manager; provided, however, that SMG shall not be required to perform for a period of time or for a period during which the Management Fees or any applicable expenses or funds payable to or required by SMG under this Article are not promptly and timely funded and paid by the State, and in no event, more than six months following such termination.

26.10.3 Termination Upon Securing an NBA or NHL Franchise. The parties acknowledge that it is possible that, during the term of this Article, an NBA or NHL franchise will desire to play its "home" games at the Arena and that such NBA or NHL franchise may request to control the management of, or the revenue stream from, the Arena as a condition to its agreement to locate there. In such event, the State and SMG agree to negotiate in good faith reasonable terms for the early modification or termination of this Article.

26.11 Breach

[This Section 26.11 was deleted

by Section 15 of the Sixth Amendment]

26.12 Miscellaneous

26.12.1 Title and Captions. All articles or section titles or captions in this Article are for convenience of reference only. They should not be deemed to be part of this Article or to in any way define, limit, extend or describe the scope or intent of any provisions of this Article. Except as specifically otherwise provided, reference to "Articles" and "Sections" are to be Articles and Sections of this Agreement, as amended hereby.

26.12.2 Severability. Each provision of this Article shall be considered to be severable, and if for any reason, any such provision or any part thereof, is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this Article that are valid, but this Article shall be construed and enforced in all respects as if the invalid or unenforceable provision or part thereof had been omitted.

26.12.3 Successors. This Agreement (and not just this Article 26) shall be binding upon and inure to the benefit of the parties and their respective successors and assigns but this provision shall not be deemed to permit any assignment by a party of any of his rights or obligations under this Agreement except as expressly provided herein.

26.12.4 Assignment. SMG shall not assign or encumber its interest in this Article or this Agreement (whether voluntarily, through merger or consolidation, by operation of law, bankruptcy or otherwise) without first obtaining the State's written consent, except in a merger, consolidation or other transaction effecting a transfer of all or substantially all of its assets as an entirety to a transferee that has a net worth at least equal to that of SMG. Any assignment or encumbrance without the State's consent shall be voidable and, at the State's election within 30 days of its actual knowledge of an assignment or encumbrance, shall constitute a Material Breach and a default under this Article. The provisions of this Section 26.12.4 shall not prohibit or restrict SMG's entering into subleases, contracts, concessions or licenses for the operation of any portion of the Arena or of the business conducted in the Arena, subject to the terms of this Article. Furthermore, SMG shall have the right to pledge its rights to receive the fees (but not the right to assume the performance of any obligations hereunder) to be paid SMG hereunder to any bank, insurance company, savings association, federal savings bank or other institutional lender providing credit to SMG of any of its Affiliates.

26.12.5 Force Majeure. Neither party hereto shall be liable or responsible to the other party for delay, damage, loss, failure or any inability to perform any respective obligations, covenants, and conditions caused by "Force Majeure" if notice is provided to the other party within ten days after actual knowledge of the event of Force Majeure that such party is unable to perform. The term "Force Majeure" as used in this Article shall include the following: an act of God, strikes, war, lock-outs, riot, explosions, industrial disturbances, acts or restraints of any government authority (civil or military), acts of the public enemy, laws, rules and regulations of Governmental Entities, wars or warlike action (whether actual, impending, or expected in law de jure or de facto), civil commotion, blockades, insurrections, acts of terrorists or vandals, earthquakes, landslides, sink holes, hurricanes, washouts, breakage or accident to equipment or machinery, any material interruption of utilities at the Arena not willfully caused by a party hereto, confiscation or seizure, by any governmental or public authority, nuclear reaction or radiation, radioactive contamination, accident, repairs, epidemics, lightning, fire or other casualty, storm, floods and any other cause whether of the kind specifically enumerated above or otherwise which is not reasonably within control of the parties hereto and which by the exercise of due diligence could not be reasonably prevented or overcome. In no event, however,

shall the failure to pay any liquidated sum of money by either party be an event of Force Majeure under this Article 26.

26.12.6 Notice. Any notice, delivery or directive required or permitted by this Article shall be deemed given on date of receipt if personally delivered or mailed by United States registered or certified mail (return receipt requested), addressed to the proper party at its address set forth in this Section or to such other address as last designated by such party in a notice given in accordance with the provisions of this paragraph.

IF TO THE STATE: Office of the Governor
 Commissioner of Administration
 Division of Administration
 P.O. Box 94095
 Baton Rouge, Louisiana 70804-9095

With a copy to the
Contract Administrator: _____ [TO BE FURNISHED]

IF TO THE CONTRACT
ADMINISTRATOR: _____ [TO BE FURNISHED]

IF TO SMG: Doug Thornton, General Manager
 SMG
 Louisiana Superdome
 Sugar Bowl Drive
 New Orleans, Louisiana 70112

With a copy to SMG
Corporate Office: Wes Westley, President
 SMG Corporate Headquarters
 701 Market Street, Suite 4400
 Philadelphia, Pennsylvania 19106

If there is no Contract Administrator at the time of any notice, delivery or directive to the Contract Administrator required or permitted hereunder, then such notice shall be given to the State as provided above.

26.12.7 Waivers and Consents. All waivers, consents, authorizations, approvals and other determinations required by or from the parties hereto shall be given respectively by:

IF REQUIRED FROM
THE STATE (or if at the
time there is no Contract
Administrator in office
to give a consent required
to be received from the
Contract Administrator
under this Article):

Office of the Governor
Commissioner of Administration
Division of Administration
P.O. Box 94095
Baton Rouge, Louisiana 70804-9095

IF REQUIRED FROM
CONTRACT
ADMINISTRATOR:

[TO BE FURNISHED]

IF REQUIRED
FROM SMG:

Doug Thornton, General Manager
SMG
Louisiana Superdome
Sugar Bowl Drive
New Orleans, Louisiana 70112

26.12.8 Discrimination Prohibited. SMG agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Act of 1972, and SMG agrees to abide by the requirements of the Americans with Disabilities Act of 1990. SMG agrees not to discriminate in its employment practices, and will render services under this Article without regard to race, color, religion, sex, national origin, veteran status, political affiliate or disabilities. Any act of discrimination committed by SMG, or failure to comply with these statutory obligations when applicable, shall be grounds for termination of this Article.

26.12.9 Resolution of Disputes. It is mutually understood and agreed upon by and between the parties that should any dispute arise hereunder between the State and SMG, which shall not be resolved by an cure provisions found in this agreement, the parties shall submit said dispute to arbitration in New Orleans, by three (3) arbitrators in accordance with the rules of the American Arbitration Association and the Louisiana Arbitration Law, for full and final adjudication. It is further agreed that the selection of the arbitrators shall be accomplished in the standard manner provided by the American Arbitration Association. The parties specifically agree to be bound by any determination rendered by said Association.

26.13 Assignment to SMG

FML hereby assigns and transfers to SMG and SMG hereby accepts, all of the rights, liabilities and obligations of FML and SMG under this Article and the Agreement, precisely as if the same had been contracted directly by SMG originally. SMG hereby irrevocably submits to the exclusive jurisdiction of any Louisiana state court or federal court sitting in the State of Louisiana over any action or proceeding arising out of or relating to this Article and the transactions contemplated hereby and agrees that all claims in respect of such action or proceeding shall be heard and determined in such Louisiana state or federal court. SMG hereby (i) consents to personal jurisdiction in Louisiana, and (ii) irrevocably waives, to the fullest extent legally possible, the defense of an inconvenient forum to the maintenance of such action or proceeding and (iii) agrees to pay and perform all of FML's liabilities and obligations under the Agreement, whether arising before or after the date hereof. The other parties to this Amendment hereby consent to this assignment and transfer.

* * *

2. This Amendment shall be governed by and construed in accordance with the laws of the State of Louisiana applicable to contracts made and to be performed wholly within such state.

3. Except to the extent specifically amended by this Amendment, the Agreement shall remain in full force and effect in accordance with its terms.

4. This Amendment may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

5. This Amendment and any exhibits specifically incorporated herein by reference constitute the entire agreement between the parties with respect to the subject matter hereof.

6. The LSED intervenes in this Amendment to express its consent to and approval of the terms hereof and its agreement to be bound by the terms of the Management Agreement, as hereby amended.

7. The Interim Emergency Board of the State and the State Division of Administration, through their duly authorized undersigned representatives, intervene herein in accordance with Section 5 of Act 64 of the 1977 Regular Session of the Louisiana Legislature to express their consent to and approval of the terms of this Amendment and their recommendation that the Management Agreement be amended as herein set forth.

26.14 Hornets

The obligations of the Manager set forth in this Agreement are hereby modified to the extent necessary or appropriate to comply with the provisions of the Arena Use Agreement dated April __, 2002 among the Manager, the State, and the Charlotte Hornets NBA Limited Partnership.