



**Request for City Council Committee Action
From the Department of Community Planning & Economic Development**

Date: March 23, 2004

To: Council Member Lisa Goodman, Community Development Cmte
Council Member Barbara Johnson, Ways and Means/Budget Cmte

Prepared by: Phil Handy, Sr. Project Coordinator, Phone 612-673-5010

Presenter in Committee: Phil Handy, Sr. Project Coordinator

Approved by: Patrick Born, Finance Officer _____
Chuck Lutz, Deputy CPED Director _____

Subject: Assignment and Assumption of Target Center Lease, Operating, Management, Use and Assurances Agreement

- RECOMMENDATION:**
1. Approve the principal terms of an Agreement Regarding Assignment and Assumption of Arena Lease, Operating, Management, Use and Assurances Agreement by and among the Minneapolis Community Development Agency, Clear Channel Target Center Arena Mgmt LLC, and Midwest Entertainment Group LLC as described in this report.
 2. Authorize the proper City and MCDA officials to execute such Assignment and Assumption Agreement and conforming amendments to other Arena documents consistent with the approved principal terms.
 3. Refer this report to the MCDA Board of Commissioners for their approval.

Previous Directives: On March 10, 1995, the City Council and MCDA Board of Commissioners approved the terms and authorized the execution of the Target Center Purchase Agreement, related Lease and financing documents, and the issuance of \$84,650,000 in bonds. Included in the terms of the documents is the right of MCDA as owner of Target Center to terminate the Arena Lease, Operating, Management, Use and Assurances Agreement with the Operator, upon due notice and a defined termination payment. The Basketball Playing Agreement with Minnesota Timberwolves Basketball Limited Partnership grants the Partnership the right to assume the responsibilities of Operator under the Arena Lease or assign such rights and responsibilities to a third party acceptable to the Agency. On May 19, 2000, the MCDA Board of Commissioners authorized the issuance of a Notice of Termination to Ogden

Entertainment, Inc. and the execution of an Assignment and Assumption Agreement with SFX Entertainment Corporation and amendments to related Target Center documents for SFX to assume the duties and obligations of Operator.

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Other financial impact (Explain):
- Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact (Summarize below)

Ward: 5

Neighborhood Notification: N/A

City Goals: Maintain the physical infrastructure to ensure a healthy, vital and safe City.

Comprehensive Plan: N/A

Zoning Code: N/A

Living Wage/Job Linkage: N/A

Background/Supporting Information

As part of the Target Center purchase in 1995, the MCDA contracted with Ogden Entertainment, Inc., to be the operator and manager of the arena through the Arena Lease, Operating, Management, Use and Assurances Agreement (“Operating Agreement”) for a term that ends on June 30, 2025. Because Ogden had been the operator for the previous ownership of the Arena and had financed the concession improvements and equipment, it would have been necessary to buy out their lease and equipment to change operators at that time. A provision of the Operating Agreement gives MCDA the right to terminate the Agreement at any time upon 90 days notice and a defined termination payment to the operator.

The Arena Use Agreement, originally between the Taylor Partnership and Ogden, allocates Arena use rights and rights to certain Arena revenues between the operator and the team. Because of this critical partnership between the team and the arena operator, the Basketball Playing Agreement (“Playing Agreement”) between MCDA and the Taylor Partnership provides that the Taylor Partnership has the right to assume the rights and obligations of the operator under the Operating Agreement or to subcontract with a third party, acceptable to the MCDA, to assume and perform the Operating Agreement in the event that the Operator is ever anyone other than Ogden. Any such assignment and assumption would bind the new Operator to existing contracts and agreements, such as collective bargaining agreements.

In 2000, Ogden announced the pending sale of its Entertainment Division to Aramark Corporation. Due to the uncertainty of the timing and effect of the pending sale to Aramark, the Taylor Partnership requested MCDA to terminate the Operating Agreement with Ogden and to assign the Operating Agreement to SFX Entertainment Corporation. SFX agreed to pay the required termination payment to Ogden and to give a Guaranty to MCDA equivalent to the Guaranty given by Ogden. The Guaranty Agreements were required by MCDA because both Ogden and SFX set up shell corporation subsidiaries as the contracting and operating entity for Target Center. Since these subsidiaries held no significant assets or net worth of their own, MCDA looked to the respective parent corporations for assurances of financial capacity to operate the arena. Shortly after assuming the Operating Agreement, SFX was acquired by Clear Channel Entertainment (CCE), which then assumed the responsibilities of SFX under the Operating Agreement, the Arena Use Agreement, the Playing Agreement, and the Guaranty.

On January 30, 2004, MCDA received a request and proposal to consent to the assignment of the Operating Agreement from CCE to Midwest Entertainment Group LLC (“Midwest”), a Minnesota limited liability company to be formed for the specific purpose of managing and promoting Target Center for the remaining term of the Operating Agreement (June 30, 2025). Midwest will be owned 50% by a partnership comprised of the members of the Taylor Partnership, and 50% by a partnership comprised of James M. Nederlander and other Nederlander Company owners. Attached to this report as Exhibits A and B are statements from the Timberwolves and Nederlander Company regarding their credentials and purpose for forming Midwest to assume management and promoting responsibilities for Target Center.

Also included in the request is a signed statement from CCE consenting to and requesting approval of the assignment of the Operating Agreement to Midwest. Therefore, no termination notice or termination payment to CCE is required from MCDA to carry out this assignment.

Principal Terms of Assignment and Assumption Agreement

1. CCE will convey to Midwest the Arena's petty cash, Ogden's Concessions Equipment and Other Equipment (as defined in the Operating Agreement).
2. CCE will pay to Midwest any amount by which the Applicable Current Liabilities exceed the Applicable Current Assets.
3. CCE will assign to Midwest all CCE's rights and interests in and under the Operating Agreement, the Arena Use Agreement, the Other Principal Agreements, and other Assigned Agreements (including Labor Agreements).
4. Midwest will assume all of CCE's duties and obligations under the Operating Agreement, Arena Use Agreement, Other Principal Agreements, and other Assigned Agreements after the Effective Date of the Assignment.
5. MCDA will consent to and approve (i) the assignment and transfer of the Operating Agreement, the Arena Use Agreement, the Other Principal Agreements, and the Assigned Agreements from CCE to Midwest, as may be required by those documents.
6. MCDA will release CCE from any obligation or duties under the Operating Agreement incurred on or after the Effective Date of the Assignment, except for defined Retained Liabilities, and will release CCE from any obligations pursuant to the Guaranty, except for obligations incurred prior to the Effective Date.
7. Conditions precedent to execution of the Assignment and Assumption Agreement shall include:
 - a. Midwest, CCE, and Aramark execute assignment of the Arena Concession Management Agreement.
 - b. Taylor Partnership releases CCE from obligations under the Arena Use Agreement.
 - c. Taylor Partnership, Midwest, and CCE execute assignment of the Arena Use Agreement.
 - d. Taylor Partnership consents to Midwest's assumption of CCE's obligations under the Basketball Playing Agreement.
8. MCDA's consent will be required for any future assignment of either of the Taylor Partnership's or the Nederlander Partnership's interest in Midwest to an entity that is not an affiliate controlled by, controlling, or under common control with the respective Partnership.

9. In lieu of a Guaranty Agreement, Midwest shall include a liquidity covenant in the Assignment and Assumption Agreement requiring Midwest to maintain minimum operating capital of \$1,500,000 throughout the term of the Operating Agreement. At the Effective Date of the Assignment, liquid assets shall include a minimum of \$1,000,000 in cash or cash equivalents, and \$500,000 of the required quarterly working capital balance shall be cash or cash equivalents.

10. For the purposes of the non-competition provisions of the Operating Agreement, the parties forming Midwest shall be considered Affiliates as defined in the Operating Agreement.