

MANAGEMENT AGREEMENT FOR THE ORPHEUM, STATE AND PANTAGES THEATRES

THIS AGREEMENT made and entered into as of this ____ day of _____, 2001, by and between the MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY, a public body corporate and politic under Minnesota law (“Owner”), and HISTORIC THEATRE GROUP, LTD., a Minnesota corporation (the “Manager”).

RECITALS:

WHEREAS, Owner, a public body corporate and politic under Minnesota law, is the Owner of: (a) the Orpheum Theatre, 910 Hennepin Avenue, Minneapolis, Minnesota (“Orpheum Theatre”); (b) the State Theatre, located at 805 Hennepin Avenue, Minneapolis, Minnesota (the “State Theatre”); and (c) the Pantages Theatre, located at 701 Hennepin Avenue, Minneapolis, Minnesota (the “Pantages Theatre”) and

WHEREAS, the Owner and Manager did enter into that certain “Management Agreement for the Orpheum and State Theatres” dated January 1, 1995, and entered into that certain “First Amendment,” dated January 1, 1997, and entered into that certain “Second Amendment,” dated January 1, 1998, all of which extend the services of the Manager through December 31, 1999; and

WHEREAS, the Owner and Manager did enter into that certain “Management Agreement for the Orpheum and State Theatres” dated January, 1, 2000 for a term of one year; and

WHEREAS, the Owner and the Manager did enter into that certain “Management Agreement for the Orpheum and State Theatres” dated January 1, 2001 for a term of one year; and

WHEREAS, Owner desires to utilize the services of Manager to manage the operations of the Orpheum Theatre, the State Theatre and the Pantages Theatre (collectively, the “Theatres”) in accordance with the provisions hereof.

WITNESSETH:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and other consideration herein contained, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

1.1 “*Advance Payment*” shall mean the payment collected pursuant to Section 4.1 (f) hereof.

1.2 “*Annual Budget*” shall mean the Owner's annual budget for the operation of each of the Theatres.

1.3 “*Annual Operating Deficit*” shall mean for any given operating year, the amount by which the sum of Selected Operating Expenses paid, less any Surplus Funds from prior years in the Operating Account, and less any purchases of equipment or improvements over \$1,000 paid from the Operating Account (as determined by the Theatre Coordinating Committee) exceed the Combined Revenues, as established by an annual audit of the Operating Account.

1.4 “*Annual Operating Profit*” shall mean for any given operating year, Combined Revenues (less any unreimbursed contributions from Owner for the operating year as provided in Section 4.1) in excess of the sum of Selected Operating Expenses paid from the Operating Account, less any purchases of equipment or improvements that cost in excess of \$1,000 paid from the Operating Account (as determined by the Theatre Coordinating Committee) as established by an annual audit of the Operating Account.

1.5 “*Capital Expenditures*” shall mean any purchase of any tangible article necessary to the conduct of business, costing over \$10,000.00 and expected to last for a period of years including, but not limited to the following: (a) office equipment used in the administration of the business such as furniture, computers, safes, copy and fax machines and the like; (b) sales equipment used in the sale of ticket, merchandise or concessions such as shelves, bars, merchandise stands, cash registers and the like; (c) hall equipment used and vital to the operation of a public theatre such as chairs, lighting equipment, sound equipment, musical instruments, followspots, risers and the like; (d) physical plant equipment or systems used and vital in the operation of any facility such as heating and cooling systems, plumbing fixtures, windows, doors and the like; and (e) major repairs to any asset that extends the life of that asset. All of the items heretofore listed to be contracted for and paid pursuant to Sections 4.1 (b) and 4.2 (e)

1.6 “*Combined Revenues*” shall be the sum of Gross Licensing Revenues plus Gross Concession Revenues plus Gross Box Office Revenues plus Interest realized from the Settlement Account.

1.7 “*Declaration*” shall mean collectively the Declaration of Reciprocal Easements, Covenants and Operating Agreements by LaSalle Partners Limited Partnership dated as of May 31, 1989, as it may be amended from time to time, together with any operating agreements entered into with respect to maintenance and cost allocations for the LaSalle Plaza project.

1.8 “*Employee*” shall mean and include physical plant supervisors, accounting personnel, box office staff, maintenance personnel, concession workers, ushers, technicians and all other personnel of the Manager who are required to operate the Theatres.

1.9 “*Employee Costs*” shall mean salaries, wages, fees, health insurance, accrued vacation compensation, workers’ compensation insurance, employment taxes including federal and state withholding, social security, and unemployment compensation taxes, all as indicated in the Manager’s hiring plan which shall indicate the Employee Costs for each Employee.

1.10 “*Event*” shall mean a program or performance or rehearsal of whatever nature, including filming, videotaping, recording, and meetings, whether produced, sponsored or offered by a profit or nonprofit entity at the Orpheum Theatre, Pantages Theatre or at the State Theatre.

1.11 “*Gross Box Office Revenues*” shall mean revenues generated through ticket sales, including amounts charged to show promoters for the sale of tickets, ticket and group sale commissions, setup fees and ticket printing fees.

1.12 “*Gross Concession Revenues*” shall mean all revenues generated through the sale of food and beverage items at the Theatres, less the cost of the food and beverage items.

1.13 “*Gross Licensing Revenues*” shall mean total proceeds of whatever nature from Use Agreements pertinent to the Theatres, including base fees, percentage fees, equipment fees, administrative fees, forfeited deposits, rent for non-ticketed events, and commissions or incentives.

1.14 “*Gross Merchandise Revenues*” shall mean all revenues generated through the sale of show related merchandise at the Theatres.

1.15 “*Historic Theatres Accounting Policy and Procedures Manual*” or “*Manual*” shall mean the manual written and updated from time to time by the consensus of the Theatre Coordinating Committee to specifically regulate accounting policies and procedures as set forth in Section 4.1 (s).

1.16 “*Interest*” shall mean the income paid by a financial institution for the use of money held by the Manager, which money may consist of Combined Revenues and the Owner’s Reserve.

1.17 “*Maintenance*” shall mean the cost of sweeping, washing, vacuuming floors and carpeting, washing windows, cleaning and stocking restrooms, maintaining lighting fixtures, keeping walks, fire escapes, exit corridors and egress corridors free of snow and ice, and disposing of trash and refuse and the like. Payment of maintenance expenses will be made pursuant to Section 1.15, Section 4.1 (b), Section 4.2 (d), and Section 4.2 (e).

1.18 “*Management Agreement*” shall mean this agreement between the Owner and Manager and any amendments thereto.

1.19 “*Management Fee*” shall mean the fee payable to Manager pursuant to Section 5.1 hereof.

1.20 “*Master Use Agreement*” shall mean a form of agreement providing for exclusive rights to present a Broadway Season at the theatres, which as of the date of this Agreement is the Master Use Agreement by and between Owner and Theatre Live! dated August 23, 1998 and which may be extended and amended from time to time.

1.21 *“Operating Account”* shall mean an account designated by Manager, separate from the Manager’s personal or general business account, which shall be for the deposit of Combined Revenues and disbursement of designated sums for Selected Operating Expenses.

1.22 *“Operating Account Fund Balance”* or *“Fund Balance”* shall mean the cash amount contained in the Operating Account with the minimum and maximum amounts provided in Section 4.1 (n).

1.23 *“Owner’s Reserve”* shall mean the reserve maintained by the Owner to fund the Operating Account Fund Balance, Owner’s energy center capacity charge, Capital Expenditures as set forth in Section 4.1 (b)(3), Section 4.1 (b)(4), Section 4.2 (d), and Section 4.2 (e), and any other expense or obligation approved and incurred by Owner for the operation, administration or promotion of the Theatres.

1.24 *“Periodic Fixed Fee”* shall mean a stated dollar amount as set forth herein for services rendered by Manager for a specified period of time as allowed within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended, relating to guidelines for management contracts issued by government entities for projects financed by tax exempt bonds.

1.25 *“Proposed Annual Budget”* and *“Revised Proposed Annual Budget”* shall mean the annual budget prepared by the Manager in accordance with the Historic Theatres Accounting Policy and Procedures Manual and as further detailed at Section 4.1 (dd).

1.26 *“REOA”* shall mean the Declaration of Reciprocal Easements and Operating Agreement for the Pantages Theatre and the adjoining Stimson Building, which contains the formula for common area maintenance assessments.

1.27 *“Repairs”* shall mean the cost of fixing or replacing broken theatre seats, windows, doors, fire escape components, air conditioning elements, heating elements, plumbing fixtures, existing safety equipment such as fire extinguishers and other fixtures and equipment or parts thereof which are vital to the operation of a public theatre. Repairs will be treated in accordance with Section 1.15, Section 4.1 (b), Section 4.2 (d) and Section 4.2 (e).

1.28 *“Selected Operating Expenses”* shall mean, and be limited to, (a) Maintenance, Repair and Employee Costs as provided in Sections 4.1 (a) and 4.1 (b) hereof and subject to the limitations of 4.2 (d) and 4.2 (e) hereof; (b) utility expenses (gas, electricity, water, steam, chilled water, and local telephone services); (c) any assessments for maintenance and operating expenses made pursuant to the Declaration; (d) the acquisition of any new, non-Capital Expenditure equipment that costs up to and including \$10,000 for the Theatres that Owner and Manager agree may be used to generate additional revenues; (e) the Periodic Fixed Fee portion and the variable portion of the Management Fee paid pursuant to Section 5.1; and (f) Capital Expenditures other than as described in Section 4.1 (b)(3). The Management Fee is not a Selected Operating Expense.

1.29 *“Settlement Account”* shall be the account designated by Manager as further defined in the Historic Theatres Accounting Policy and Procedures Manual.

1.30 “*Surplus Funds*” shall mean those amounts retained in the Operating Account as allocated in Section 4.1(p).

1.31 “*Theatre Coordinating Committee*” shall mean the Director of Economic Development, three additional employees of the Owner and three Manager’s representatives including the Manager’s President and Chief Financial Officer.

1.32 “*Use Agreement*” shall mean an agreement entered into by the Manager and each party that schedules an Event at, or otherwise leases or uses one of the Theaters, the form of which is attached hereto as Exhibit B and which may from time to time be amended by the Theatre Coordinating Committee.

1.33 The following Exhibit A through Exhibit E should be considered a list of Exhibits, in their entirety:

- Exhibit A – User Rate Schedules
- Exhibit B – Use Agreement
- Exhibit C – Form for Monthly Financial Reporting
- Exhibit D – Vendor Purchase Order
- Exhibit E – Example of Management Fee Determination

ARTICLE II ENGAGEMENT OF MANAGER

2.1 **Engagement.** The Owner does hereby engage the Manager as the exclusive manager of the Theatres and the Manager does hereby agree to perform all of the terms and conditions contained in this Agreement.

2.2 **Independent Contractor.** The Manager shall be an independent contractor and shall determine all the conditions and terms of its work except as otherwise provided in this Agreement.

ARTICLE III TERM

The term of this Agreement (“Initial Term”) shall commence on January 1, 2002, and continue through and including December 31, 2006, subject to earlier termination in accordance with Article III and Article VIII hereof.

Owner may, without cause or penalty, terminate this Agreement during the Initial Term or any “Renewal Term” (as defined below) as of December 31 of any year by providing to Manager at least two years notice in writing of such desire to terminate the Agreement.

Following the Initial Term or any Renewal Term, this Agreement shall automatically renew for additional terms of five years each (each a "Renewal Term"), unless either party provides the other party with written notice of its intention not to renew the Agreement at least two years prior to the end of the Initial Term or any Renewal term, as the case may be.

Notwithstanding the foregoing, Owner may, without cause or penalty, elect to terminate the Initial Term of this Agreement as of December 31, 2004, by notifying Manager of such election in writing on or before December 31, 2003, or for any Renewal Term by notifying Manager of such selection by December 31 of the second year of the Renewal Term for termination at the end of the third year of any Renewal Term.

ARTICLE IV DUTIES AND POWERS OF MANAGER

4.1 Duties. The Manager shall exercise all of the following powers and duties:

(a) Employees. The Manager shall hire and supervise Employees who are required to operate the Theatres on a regular Event basis. These Employees shall not be deemed employees of the Owner, and the Manager shall be responsible for and shall make timely payment of all Employee Costs. The Manager will submit by November 15 of each year a confidential hiring plan and salary amount for each and all Employees job title to the MCDA Theatre Coordinating Committee members. The assumptions of the hiring plan and salary scale will be reflected in the Revised Proposed Annual Budget. The Manager shall provide Owner with evidence that proper workers' compensation insurance is maintained throughout the term hereof. The Manager shall reimburse the Operating Account for any time spent by Employees on Manager related activities as set forth in Section 4.1 (h) and for any unearned vacation attributable on a percentage basis to Manager-related activity taken and not reimbursed prior to the resignation or termination of any Employee. Accrued vacation balances of Employees attributable on a percentage basis as an Employee Cost for Theater-related activities shall be a liability of the Operating Account.

(b) Maintenance and Repairs, Notification and Correction of Defects, Capital Replacement and Improvements.

- (1) General Maintenance and Repairs. The Manager shall cause the Theatres, including with respect to the Orpheum Theatre and Pantages Theatre exterior areas such as exterior walls, fire escapes, sidewalks and grounds, to be maintained in good order and repair in accordance with acceptable standards of sanitation, safety and comfort, subject to Section 4.2 (d) and 4.2 (e) hereof. Definitions of Maintenance and Repair are set forth in Section 1.17 and Section 1.27. All Maintenance shall be performed in a prompt and timely manner and in accordance with any specific instructions from Owner.
- (2) Defects. The Manager, to the best of its ability, shall advise the Owner of any defects in the Theatres' construction or equipment, including installation thereof, to the extent known or discovered by the Manager.

Subject to Sections 4.2 (d) and 4.2 (e) hereof, the Manager shall cause the immediate repair of any such defect which is substantial or is likely to result in further substantial damage or destruction of any of the Theatres; provided, however, that if such repair would exceed the limits set out in Sections 4.2 (d) and 4.2 (e) hereof, the Manager shall be restricted to using only those contractors selected by Owner, whose names shall be provided to Manager upon their selection, and if there is no such selected contractor capable of performing such repair, the Manager is further restricted to notifying the Owner only.

- (3) Capital Replacement and Improvements. Capital Expenditures (as defined in Section 1.5) over \$10,000 will be the sole responsibility of the Owner to procure and pay for. In addition, the Owner will be required to cause and pay for all Capital Expenditures which are: (i) required by federal or state laws, rules and regulations; or (ii) required to maintain the structural integrity of the Theatres and otherwise make then usable for their intended use. The Owner will have the authority to make other Capital Expenditures and renovations deemed necessary to insure that the Theatres are competitive facilities of their type and will consider making improvements and renovations for this purpose upon request by the Manager or its major users. Upon request of the Manager, the Theatre Coordinating Committee will review and determine whether the Owner from its funds, or the Manager from the Operating Account, is responsible for paying for purchases of equipment or improvements that cost in excess of \$1,000, but less than \$10,000.

Before undertaking any Capital Expenditures or other expense which is not of any emergency nature, and which costs in excess of \$10,000, the Owner will consult with the Manager as to the need for, purpose, costs, intended schedule, contractors to be engaged and the source for financing the Capital Expenditures.

If the Capital Expenditures or expense is not of an emergency nature and costs in excess of \$10,000, the Owner will determine the necessity for further studies to confirm the need for, purpose, costs, schedule and operating impact of the Capital Expenditures or expense and forward to the Manager any and all studies, estimates, or other information pertaining to the Capital Expenditures or expense prior to entering into a contract. In all cases the Manager and Owner will meet and confer on the necessity and impact of any Capital Expenditures or expense.

- (4) Payment. All expenses relating to Maintenance and Repair of the Theatres as set forth in this Section 4.1 (b), and the Historic Theatres Accounting Policies and Procedures Manual, together with all Employee Costs, shall be Selected Operating Expenses payable on behalf of the Owner from Operating Account funds. On Owner's behalf, Manager shall pay

Employee Costs, Maintenance and Repair, defects, major repairs, Capital Expenditures, and improvements and renovations up to and including \$10,000 from the Operating Account pursuant to and in accordance with Sections 4.1 (m), 4.2 (d) and 4.2 (e) hereof. Any Capital Expenditures and Repair expenses over \$10,000 will be the contractual obligation and financial responsibility of the Owner and will be eligible to be paid from the Owner's Reserve or such other source of funding other than the Operating Account, as Owner deems appropriate. Manager shall use its best efforts to obtain the lowest price possible for purchase of goods and services required for maintenance and repairs.

- (5) Standard of Maintenance and Repair. Manager shall cause the Theatres to be maintained and repaired in a manner such as to keep the Theatres in a condition comparable to other first class facilities. The standard of maintenance and repair shall be determined by Owner in its sole discretion.

(c) Theatre Use. The Manager shall use its best efforts to schedule Events and to maximize the use of the Theatres. The Manager shall enter into written licensing agreements ("Use Agreements") with third parties (collectively, "Users" or individually a "User") for use of the Theatres for both profit and nonprofit Events in accordance with the rate schedules attached hereto as Exhibit A. The rate schedule is subject to review and amendment from time to time by the Theatre Coordinating Committee. The rate schedules shall also be reviewed and, if necessary, revised prior to any extension or renewal of this Management Agreement. In negotiating Use Agreements with third parties, the Manager shall be permitted to deviate from the rate schedule without Owner's prior written consent so long as such deviation would not result in a rate which is twenty percent (20%) less than the scheduled rate; a reduction of greater than twenty percent (20%) must be approved in writing by the Owner's Theatre Coordinating Committee members, whose approval shall not be unreasonably withheld. Whenever the Manager has a financial or other pecuniary interest as promoter of an Event pursuant to Section 4.2 (b) hereof, Manager shall not deviate at all from said rate schedule without the prior written consent of Owner. Gross Licensing Revenues shall be accounted for in accordance with Section 4.1 (l) hereof.

(d) Licensing Beyond Term. Owner and Manager acknowledge that the booking of events into the Theatres requires a long lead time and that these events often are placed on sale six to twelve months prior to the dates of performance. The attraction and servicing of these events requires a substantial effort on the part of the Manager. Manager and Owner agree that Manager's efforts to book events beyond the end of Manager's Term is in the best interest of the Owner and Manager should be compensated for efforts made from which the Owner, after the term of this Agreement, will benefit. In consideration of this acknowledgement, the Manager shall use its best efforts to license the Theatres for use on dates, which fall beyond the date on which this Agreement terminates and shall be compensated for such at a flat rate of \$1,000.00 per Broadway and \$1,500.00 for non-Broadway Events (the "Post-Term Fee"). However, upon notification of non-renewal of the Management Agreement by either party, the Manager will refer all post-term booking inquiries to the new management entity or to another representative

designated by the Owner. Any bookings made by the Manager prior to the time of notification of non-renewal, are eligible for a Post-Term Fee provided: (1) a signed Use Agreement to use the Theatre during the one year period following the notice of non-renewal is obtained before the end of the Management Agreement termination date; and (2) Manager has notified Owner in writing of such booking by no later than the date thirty (30) days after the notification of non-renewal.

At the end of Manager's term, Manager shall submit to Owner, for payment of Post-Term Fees, copies of signed Use Agreements consistent with the provisions of Section 4.1 (c) hereof to rent a Theatre for any bookings beyond the end of Manager's term. The Post-Term Fee will be paid to the Manager by the twenty-fifth (25th) day of the month following the month in which the Event was scheduled and occurs, during the one-year period following the Owner's delivery of the notice of non-renewal of this Management Agreement. Owner may apply any Post-Term Fees against any loss or damage resulting from any default by Manager hereunder.

(e) Licensing Agreements. On Owner's behalf, Manager shall enter into a written Use Agreement with each party wanting to use a Theatre. The Manager shall employ and pay for legal services as needed to draft and review Use Agreements or contracts pertaining to theatre use. The Owner shall retain and pay for work performed on Master Use Agreements by Owner's private counsel or other legal services contracted by Owner for Master Use Agreements. Unless otherwise approved by Owner, the Manager shall without deviation, use the standard contract form of Use Agreement for the State Theatre, the Orpheum Theatre and the Pantages Theatre. Manager shall provide one copy of all executed Use Agreements for Events in which the Manager has a financial or pecuniary interest to Owner at least seven days in advance of said Event. Manager shall provide one original Use Agreement to all other users and shall retain one original copy in the Manager's file available for inspection by Owner at any time. Additionally, the Manager shall make available to Owner at Owner's request evidence of insurance required under each Use Agreement.

(f) Advance Payment. The Manager shall collect an Advance Payment from each party entering into a Use Agreement for a non-ticketed Event or for a ticketed Event whose revenue is expected to fall short of expected expenses. The Advance Payment shall cover estimated expenses incurred on behalf of the User. The procedures for collecting and disbursing Advance Payments are outlined in the Historic Theatres Accounting Policies and Procedures Manual.

(g) Deposit. To confirm the rental of any Theatre space for a specific date and time, the Manager shall collect a deposit of an amount appropriate for the length and type of rental in accordance with guidelines set forth in the Historic Theatres Accounting Policies and Procedures Manual. All deposits are nonrefundable.

(h) Marketing. The Manager shall use its best efforts, consistent with marketing practices in the industry, to disseminate information and bring the Theatres to the attention of a broad base of potential users including profit and nonprofit groups. The marketing best efforts may include: (a) advertising in trade publications; (b) including the Theatres in event booking websites, which are accessible to and share available dates with national promoters; (c)

membership in trade associations such as the League of American Theatres and Producers, the League of Historic American Theatres, and IAAM; (d) personal contacts by Manager with national promoters, producers, and booking agencies; and (e) involvement in local civic organizations such as the Minneapolis Downtown Council and the St. Paul Chamber of Commerce. Manager, at its sole expense (not reimbursable from the Operating Account), shall periodically report to the Theatre Coordinating Committee on its ongoing efforts to market the Theatres.

(i) Concessions. During all Events, the Manager shall maintain and operate food and beverage concessions and may maintain and operate merchandise concessions on the premises of the Theatres. Manager shall be responsible for obtaining a liquor license for the sale of alcoholic beverages at the Theatres. Upon the termination of this Agreement, the Manager shall, at no cost to Owner, leave at the Theatres all food and beverage inventory and all concessions. Gross Concessions and Gross Merchandise Revenues shall be accounted for in accordance with Section 4.1 (l) hereof.

(j) Supervision. The Manager shall supervise, either directly or by delegating such obligation to a responsible, adult Employee of Manager, every performance that is held at the Theatres.

(k) Maintenance of Operating Account. The Manager shall maintain the Operating Account for the benefit of Owner at a federally-insured financial institution acceptable to Owner and, in so doing, shall use its best efforts to obtain an interest-bearing account. The Operating Account shall be designated as being held “in trust for” the Owner. In the event that any deposit shall cause the balance in the Operating Account to exceed the limits of federal insurance, the uninsured, excess amount shall be collateralized or deposited in a separate institution in a manner acceptable to Owner. Manager shall implement and adhere to such safeguards as are required by the applicable financial institution or by Owner, including the provisions of Section 4.2 (f) hereof. All monies deposited in the Operating Account shall be deemed property of Owner, shall not be deemed the property of, or earned by Manager, and shall be disbursed from said account strictly pursuant to the terms outlined herein and in accordance with the Historic Theatres Accounting Policies and Procedures Manual. All expenses incurred in maintaining the Operating Account shall be paid from funds in the account as a Selected Operating Expense.

(l) Deposit into Operating Account. The Manager shall make deposits and allocate funds as outlined herein and in the Historic Theatres Accounting Policies and Procedures Manual.

(m) Allocation of Funds in and Disbursements from Operating Account. The Manager shall allocate and disburse funds from the Operating Account as outlined herein and in accordance with the Historic Theatres Accounting Policies and Procedures Manual. The Manager shall cause all Selected Operating Expenses to be paid to the obligees thereof in a timely manner from the Combined Revenues collected and deposited in the Operating Account. Within twenty (20) days after the end of each calendar month during the term hereof, Manager shall provide Owner with a statement (a “Monthly Statement”), prepared on an accrual basis and in form acceptable to Owner, setting forth the Combined Revenues earned and Selected

Operating Expenses incurred. In addition to the “Monthly Statement,” the Manager will submit to the Owner a monthly balance sheet and income statement prepared on a “cash basis.” Combined Revenues earned netted against Selected Operating Expenses incurred in any calendar month shall be referred to as the Operating Account Fund Balance and handled in the manner set forth in Section 4.1 (n) below.

(n) Fund Balance. The Manager shall maintain in the Operating Account the Operating Account Fund Balance which shall be funded from Combined Revenues as set forth in Section 4.1 (m) above and shall be held at a maximum of \$300,000 (this amount is deemed to be a reasonable estimate of two (2) months of Combined Revenues and Selected Operating Expenses).

- (1) Maximum Fund Balance. The Manager shall cause any Fund Balance over \$300,000 at year end to be paid to the Owner forty-eight (48) hours after approval by the Owner of the Theatres’ year end financial report to be submitted by February 7 for the prior year end. The Owner shall deposit any excess Fund Balance in the Owner’s Reserve which shall be held by the Owner to be available for funding expenses as listed in Section 1.23. At the end of the contract term any and all Fund Balance will revert to the Owner after a final audit of the prior contract year and after repayment of any amounts still due to Manager.
- (2) Minimum Fund Balance. The Owner will maintain a minimum Fund Balance of \$100,000 in the Operating Account or in such amount as the Theatre Coordinating Committee may from time to time establish. At the end of the Management Agreement term, any contributions made by Owner which are over the Fund Balance available at the termination of the Management Agreement will be an Operating Account operating loss. It is the intent of the Owner and Manager to further outline the manner and order of payment of Owner’s contribution to maintain the minimum Fund Balance or pledge to cover operating losses in the Historic Theatres Accounting Policies and Procedures Manual.

(o) Responsibility for Annual Operating Deficits. Beginning January 1, 2002, for any operating year, Manager shall be responsible for funding fifty percent (50%) of any Annual Operating Deficit as described in Section 1.3, and Owner shall be responsible for funding fifty percent (50%) of any Annual Operating Deficit. In calculating the Annual Operating Deficit for operating years 2002 and 2003, Selected Operating Expenses shall not include: (a) any costs paid from the Operating Account relating to public events surrounding the opening of the Pantages Theatre not reimbursed from revenues generated by such events, (b) any costs relating to the Pantages Theatre which are incurred prior to the issuance of a Certificate of Occupancy and turn-over of the theatre to Manager, and (c) any expenses paid out of the Operating Account for F F & E items required for the initial operation of the Pantages Theatre. Manager and Owner shall remit such amounts to the Operating Account as may be preliminarily determined by the Theatre Coordinating Committee by January 31 of each year immediately following the year for which an Annual Operating Deficit has been established. The amounts due and payable by either will

be finally determined following completion of an annual audit. Any additional payments required by either party upon completion of the annual audit to fulfill their respective responsibilities under this paragraph shall be due to the Operating Account not later than thirty days after review of the annual audit by the Theatre Coordinating Committee.

(p) Distribution of Annual Operating Profits. Beginning January 1, 2002, for any operating year for which an Annual Operating Profit has been established as described in Section 1.4, fifty percent (50%) of such Annual Operating Profit shall remain in the Operating Account's Surplus Funds and the remaining fifty percent (50%) of any such Annual Operating Profit shall be remitted to Owner by January 31 of the following year.

(q) Nonreimbursable Expenses. Manager shall pay for, and Owner shall not be responsible for, any costs or expenses other than expenses related to Combined Revenue, Selected Operating Expenses, and expenses outlined in Section 4.1 (q). Nonreimbursable costs and expenses shall include, but are not limited to, long-distance telephone charges unrelated to the performance of Manager's Duties and Powers under this Agreement, promotional and marketing expenditures per Section 4.1 (h), complimentary tickets, late charges or penalties of any kind relating to late payments of expenses related to Combined Revenues or Selected Operating Expenses, any Employee Costs for time spent on activities unrelated to the management of the Theatres and all costs and expenses specifically allocated to Manager elsewhere in this Agreement.

(r) Reimbursable Expenses. Selected Operating Expenses eligible for repayment may be paid to the Manager from the Operating Account on a monthly basis after review and approval of the Monthly Statement by the Theatre Coordinating Committee. In the event Manager has not been reimbursed by the termination date of the Management Agreement and the Operating Account Fund Balance is insufficient to cover unreimbursed advances, Owner and Manager will operate in accordance with Section 4.1 (o) and Section 4.1 (p) hereof.

(s) Records. The Manager shall use an accounting system approved by Owner and shall prepare and maintain all records as may be required by Owner. The "Historic Theatres Accounting Policies and Procedures Manual" is hereby incorporated into this Management Agreement and shall provide guidance for specific accounting procedures to be followed in the operation of the Theatres. It is recognized and acknowledged that the Theatres are a growing and dynamic business and because of this, certain terms of this Agreement will need to change or be eliminated to more appropriately track or regulate ongoing activity. To accommodate this fact, this manual will be updated as needed, and will supersede any nonmaterial, contrary language contained within this Agreement. Manager shall provide to Owner, within 20 days after the end of each calendar month, monthly reports of accounts in accordance with generally accepted accounting principles and certified by Manager as true and correct, in the form attached hereto as Exhibit C or as otherwise required pursuant to the Historic Theatre Accounting Policies and Procedures Manual, and all records required to be kept by Manager shall be available to Owner upon request. Manager shall submit all required records, together with evidence of compliance with the terms of this Agreement, to an annual full scope audit by an independent certified public accountant specified by Owner. All records must be made available by February 7 of each fiscal year. The cost of the annual audit shall be an expense of the Owner and paid for

from funds other than the Operating Account. Manager shall, however, be responsible for and shall pay for any additional audit, accounting or legal costs incurred by either party due to additional investigation warranted because of fraud, theft or gross negligence on the part of the Manager. Notwithstanding the fact that for purposes of this Agreement all revenues, expenses, fees and earnings shall be calculated on an integrated basis combining the operations of the Theatres, Manager shall nonetheless also maintain records for Owner's information that reflect the actual amounts allocated to each Theatre. Manager shall also maintain schedules of all fixed assets purchased and all capital improvements to the Theatres.

(t) Fidelity Bond. The Manager shall purchase from a company acceptable to the Owner, at Manager's expense, a Fidelity bond in an amount equal to the Annual Budget's projected Fund Balance, or a minimum of \$200,000 indemnifying the Owner against any fraud or dishonest acts of the Manager, its agents or its employees, individually or in collusion with others. Manager shall maintain such bond until Owner consents to its removal following a final audit of Manager's records at the end of the contract term.

(u) Confer. The Manager shall routinely confer with Owner about all matters affecting the viability of the Theatres. Additionally, Manager shall participate in meetings of the Theatre Coordinating Committee (the "Committee"). The Committee shall meet once each month to review and approve the Monthly Statements of the Operating Account, and establish policies and amend the Historic Theatres Accounting Policies and Procedures Manual and to exchange information with the Manager on the day-to-day operations of the Theatres.

(v) Affirmative Action. The Manager shall comply with the provisions of all applicable laws and regulations pertaining to nondiscrimination including the provisions of Chapter 139 of the Minneapolis Code of Ordinances and Minnesota Statutes, Section 181.69, as now enacted or hereafter amended.

(w) Insurance. The Manager shall purchase a minimum of Five Million Dollars (\$5,000,000) in Combined Single Limit ("CSL") general liability insurance, covering bodily injury (including personal injury), property damage liability and, contractual liability, and naming the Owner as an additional insured. The premium with respect to the first \$1,000,000 worth of such insurance for both Theatres shall be the Manager's expense and the premium for the next \$4,000,000 shall be the obligation of the Owner. The Manager shall provide the Owner with an invoice from the insuring company showing the cost of both the first \$1,000,000 and the next \$4,000,000 and Owner shall make payment directly to the insuring company with respect to Owner's obligation out of funds other than the Operating Account. Such insurance shall be in effect at all times except for periods when insurance is provided by an Event pursuant to Section 4.1 (e) hereof.

(x) Laws. The Manager shall comply with all laws, statutes, ordinances and rules of all applicable governmental authorities unless the Owner is contesting or has affirmed its intention to contest any such law, statute, ordinance, rule, regulation, order, or requirements pursuant thereto.

(y) Taxes and Fees. The Manager shall pay or cause to be paid all sales tax and other taxes and fees attributable to operation of the Theatres.

(z) Fire Safety Procedures. The Manager shall maintain written plans, acceptable to Owner, for the emergency evacuation of the Theatres. The Manager shall instruct all current staff members and thereafter all newly hired staff members each calendar quarter; provided, however, that such fire drills also ensure that at least one employee trained and qualified to administer CPR is present at the Theatre to monitor safety procedures and to report the status of such procedures to Owner on a biannual basis, and at such other times as Owner may reasonably request.

(aa) Manager's Other Activities; Management Entity. Manager may engage in the operation of theatres other than the Theatres. However, Fred Krohn shall during the term hereof remain an owner and officer of Manager and shall devote such time to Manager's obligations hereunder as shall be necessary to operate the Theatres in a first class manner.

(bb) Ticketmaster Agreement. Manager acknowledges that Owner has entered into that certain Licensed User Agreement dated as of September 4, 1991, as amended September 24, 1991; as amended October 26, 1993; and as further amended September 25, 1998 and December 28, 1998 (the "Ticketmaster Agreement") with Ticketmaster-Minneapolis/St. Paul, Inc. ("Ticketmaster") with respect to the sale of tickets for Events. The current Ticketmaster Agreement expires on August 31, 2003, and may be extended, renewed or replaced by the Owner after consultation with Manager. Manager agrees to comply with provisions of the Ticketmaster Agreement.

(cc) Settlement Account. The Manager shall maintain a Settlement Account at a financial institution acceptable to Owner from which all Event settlement expenses are paid. Monies transferred to the Settlement Account will be evidenced by invoices and Event Settlement Forms. The specifics regarding the collection and disbursements of funds in the Settlement Account are outlined in the Historic Theatres Accounting Policies and Procedures.

(dd) Annual Budget. The Manager will submit to the Owner a Proposed Annual Budget on or before September 1 of each year during the term hereof. The Proposed Annual Budget will cover the combined operations of the Theatres for the period January 1 through December 31 of the following year. The Proposed Annual Budget will include estimates of Combined Revenues as well as Selected Operating Expenses. The Proposed Annual Budget will be approved by the Theatre Coordinating Committee and subsequently incorporated into the MCDA's Annual Budget request. A Revised Proposed Annual Budget will be submitted by Manager to the Theatre Coordinating Committee on or before November 15 of each year. The Revised Proposed Annual Budget as reviewed and recommended by the Theatre Coordinating Committee will be used to update the September 1 Proposed Annual Budget and the Management Fee as set forth in Section 5.1. The Revised Proposed Annual Budget will be approved by City Council as part of the MCDA's annual budget request. Manager shall also prepare and present for the Theatre Coordinating Committee's approval a revised Annual Budget after each quarter of the year, with the revision following the third quarter to be further presented to the City Council for approval as the Annual Budget.

(ee) Maintenance of Surplus Funds. The Manager shall maintain in the Operating Account such Surplus Funds as may become available.

(ff) Restoration Fee. Owner, in its sole discretion, may impose a Historic Theatre Restoration Fee (“Restoration Fee”) to be added to the price of tickets for Events at the Theatres. Manager shall include the Restoration Fee requirement in all Use Agreements and ticket sale agreements for the Theatres and shall remit the net Restoration Fee proceeds to Owner as provided in the Historic Theatres Accounting Policy and Procedures Manual, as may be amended. As of the date of this Agreement, the Restoration Fee is \$3.00 per ticket sold for performances with a top ticket price of \$50.00 or greater and \$2.00 per ticket sold for performances with a top ticket price of less than \$50.00; provided, however, that the Theatre Coordinating Committee may authorize the sale of a limited number of tickets per calendar year with a reduced or no Restoration Fee. Owner may increase the Restoration Fee from time to time after prior consultation with Manager and upon ninety days written notice of such increase.

4.2 Powers. The Manager shall have the following authority and powers under this Agreement:

(a) Choice of Events. The Manager shall have discretion to make the Theatres available for suitable Events; provided, however, that the Manager shall not make any Theatre available for any Event which the Executive Director of the Owner, in his or her sole discretion, determines is not in the best interests of the City of Minneapolis. Manager acknowledges that the Theatres are intended to be operated as first class facilities and that Events that are generally viewed as obscene or offensive are not appropriate. In the event the Manager desires to present an Event that contains any material that could be regarded as obscene, generally offensive or contrary to the image of the Theatres as first class public entertainment facilities, Manager shall first discuss the proposed Event with Owner, and the presentation thereof shall be subject to Owner’s determinations to the appropriateness of the Event.

(b) Promoter. Manager or entities with whom Manager has a financial interest may act as promoter of Events which are scheduled at the Theatres; provided, however, that Manager at all times shall impose upon such persons the same terms and obligations which would be imposed upon disinterested third party promoters and shall not deviate at all from the applicable rate schedule attached hereto as Exhibit A without the prior written approval of Owner. Manager or entities with whom Manager has a financial interest also may act as promoters of Events which are scheduled at theaters other than the Theatres so long as Manager uses its best efforts to first place such events at one of the Theatres.

(c) Incentives. The Manager may grant licensing fee volume discounts, allowances and incentives subject to Section 4.1(c) hereof or upon the prior written approval of Owner and subject to Section 4.1 (n) and Section 4.1 (o) hereof. Further, the Manager may accept commissions and rebates provided that such sums are included in Gross Licensing Revenues.

(d) Hiring. To carry out performance of its duties under Section 4.1 (b) hereof, including its duty to make emergency repairs, the Manager shall be authorized to contract for, discharge and supervise, all on Owner’s behalf, any and all labor and services performed by laborers, subcontractors, independent contractors, agents or any other person, firm, or legal entity

performing a service for consideration for the benefit of any of the Theatres; provided, however, that Manager shall enter into a written contract, in the form of the purchase order attached hereto as Exhibit D, with each party or entity so providing labor or services (“Vendor”), and that execution of said purchase order shall be a condition precedent to Owner’s liability to fund the costs of such labor and services up to \$10,000 from the Operating Account. Failure to fully execute said purchase order prior to the performance of labor or service shall make the Manager solely liable for the costs thereof, provided further, that Manager may not incur on Owner’s behalf a cost in excess of \$10,000 for the performance of any single service or labor. In addition, any costs for services or labor may be incurred on behalf of Owner only in accordance with Owner’s procurement policies and procedures. Specifically, Manager may not incur on Owner’s behalf a cost for any single service or labor in excess of \$1,000.00 without having first obtained two written quotations. It is the intent of the parties hereto that the Manager shall make a reasonable effort to obtain the best price possible in selecting said parties to perform necessary services. In no event shall any Vendor be deemed an employee of Owner. Owner, as stated in Section 4.1 (b)(3) will be solely responsible for the procurement and hiring of service or labor for any Repair or Capital Expenditure in excess of \$10,000. Owner will pay for such items out of the Owner’s Reserve or any source, other than the Operating Account, as Owner deems appropriate.

(e) Purchases. To carry out performance of its duties under Section 4.1 (b) hereof, including its duty to make emergency repairs, the Manager shall be authorized to contract on Owner’s behalf for the purchase of goods, materials, fixtures, tools, supplies, equipment, implements, appliances and other products (collectively, “Goods”) needed for the Maintenance and Repair of the Theatres; provided, however, that Manager shall enter into a written contract, in the form of the purchase order attached hereto as Exhibit D, with each party or entity from which it makes any such purchase (“vendor”), and that execution of said purchase order shall be a condition precedent to Owner’s liability to fund the cost of such purchases up to \$10,000 from the Operating Account. Failure to fully execute said purchase order prior to such purchase, shall make the Manager solely liable for the costs thereof; provided, further, that Manager may not incur a cost in excess of \$10,000 for any such item of Maintenance or Repair. In addition, Manager may incur costs for Repair or Maintenance on behalf of Owner only in accordance with Owner’s procurement policies and procedures. Specifically, Manager may not incur on Owner’s behalf a cost for Repair or Maintenance in excess of \$1,000 without having first obtained two written quotations. It is the intent of the parties hereto that the Manager shall make a reasonable effort to obtain the best price possible in purchasing said Goods. All purchases of Goods shall be procured, accounted for and handled in accordance with Owner’s purchase order and inventory policies which are outlined in the Historic Theatres Accounting Policies and Procedures Manual. Owner shall be solely responsible for the procurement and payment of Goods or Capital Expenditures per Section 4.1 (b)(3) of such items over \$10,000. Owner will pay for such items out of the Owner’s Reserve or any source, other than the Operating Account, as Owner deems appropriate.

(f) Signing Checks. The Operating Account shall contain the following restrictions which shall be complied with by the Manager. To carry out performance of its duties under Sections 4.1 (a), 4.1 (b), 4.2 (d), and 4.2 (e) hereof, the Manager shall be authorized to make deposits to and to withdraw sums from the Operating Account for any payment authorized to be

made by Manager to discharge obligations incurred pursuant to this Agreement, including payment of the Management Fee and Selected Operating Expenses in accordance with Section 4.1 (m) hereof and the Historic Theatres Accounting Policies and Procedures Manual. Manager shall designate up to three people, approved by Owner, who shall be authorized to sign drafts on the Operating Account. For amounts due to the Manager for payment of the Management Fee or reimbursement of Manager's advance payment of Selected Operating Expenses, drafts shall require two signatures, one of which shall be one of the two authorized employees of Owner designated by Owner's Executive Director, and the second of which shall be by the authorized representative of Manager; provided, however, that notwithstanding the foregoing provision, drafts may be signed exclusively by employees of Owner.

(g) Box Offices. Manager shall operate full-service box offices on the premises of the Theatres for the sale of tickets to Events at the Theatres in accordance with the procedures set forth in the Historic Theatres Accounting Policies and Procedures Manual. Manager shall have sole and exclusive control and supervision of the box offices and their personnel. All receipts from the sale of tickets purchased at the Theatres' box offices, other than proceeds actually deposited into the accounts as set forth in the Historic Theatres Accounting Policies and Procedures Manual, shall be under the absolute control, disposition and supervision of Manager, and Owner shall incur no liability for the same. By the twentieth day of each month during the term hereof, Manager shall deliver to the Owner an accounting setting forth in detail the revenues and expenses for the preceding month with respect to box office operations. In no event may Manager operate any auxiliary or other box offices to sell tickets to Events without Owner's prior consent.

(h) Sponsorships. Manager may without cost to Owner pursue theatre sponsorship relationships with various commercial enterprises and is hereby provided with the exclusive right to do so during the term of this Agreement. All proposed sponsorship relationships proposed by Manager will be reviewed and approved by the Theatre Coordinating Committee prior to Manager's formalizing of any sponsorship relationship involving the Theatres. No sponsorship relationship shall violate the covenants set forth in Section 9.10 hereof.

ARTICLE V MANAGEMENT FEE

5.1 Management Fee. As compensation for the services rendered under this Agreement and within the limitations of Section 141 of the Internal Revenue Code of 1986, as amended, the Owner shall pay to the Manager, in the manner prescribed in Sections 4.1 (m) and 5.3 hereof, an exclusive Management Fee which shall consist of: (a) a Periodic Fixed Fee of 14% of the budgeted Combined Revenue; and (b) an incentive fee (the "Incentive Fee").

No Incentive Fee shall be payable if the Manager does not achieve annual Combined Revenues at least equal to 40% of budgeted Combined Revenues. The Incentive Fee shall be determined as follows: (i) if the Manager realizes Combined Revenues equal to at least 40% and not more than 60% of Proposed Annual Budgeted Combined Revenues, then the Manager shall receive an Incentive Fee equal to 10% of said percentage increment; and (ii) if the Manager

realizes Combined Revenues in excess of 60% and not more than 80% of Proposed Annual Budgeted Combined Revenues, then the Manager shall receive an additional Incentive Fee equal to 15% of said percentage increment; and (iii) if the Manager realizes Combined Revenues in excess of 80% and not less than 100% of Proposed Annual Budgeted Combined Revenues, then the Manager shall receive an additional Incentive Fee equal to 25% of said percentage increment of Combined Revenues; and (iv) if the Manager realizes Combined Revenues in excess of 100% of Proposed Annual Budgeted Combined Revenues, then the Manager shall receive an additional Incentive Fee equal to 35% of the percentage increment of Combined Revenues in excess of 100% of Proposed Annual Budgeted Combined Revenues. (See Exhibit E for numerical example of Fixed Fee and Incentive Fee determination).

Provided, however, the Periodic Fixed Fee may not be less than \$200,000 per year, and the total amount of the Incentive Fee in any year may never exceed the Periodic Fixed Fee. For the purpose of computing the Management Fee, the budgeted Combined Revenue will be as determined by the November 15 Revised Proposed Annual Budget as approved by the Theatre Coordinating Committee and the City Council as described in Section 4.1(dd) hereof.

5.2 Annual. For purposes of this Article V, “annual” shall correspond to the calendar year, and for purposes of this Agreement, the fiscal year shall be the calendar year.

5.3 Payment. The Manager shall be paid the Periodic Fixed Fee of Management Fee as determined pursuant to Section 5.1 in monthly increments. The Incentive Fee of the Management Fee shall be paid to the Manager from the Operating Account by the Theatre Coordinating Committee on a monthly basis based upon Manager’s achievement of the percentage of actual Combined Revenues when compared to budgeted Combined Revenues as provided in Section 5.1.

ARTICLE VI POWERS AND DUTIES OF OWNER

6.1 Improvements. The Owner may make continuing improvements to the Theatres, at Owner’s discretion and cost; provided, however, that Owner shall coordinate, consult and cooperate with Manager in scheduling such improvements to minimize disruptions of scheduled Events.

6.2 Restoration. The Owner may cause the continuing restoration of the Theatres to occur in a time and manner which it, in its sole discretion, deems suitable. In undertaking restoration improvements, Owner shall coordinate, consult and cooperate with Manager in scheduling such improvements to minimize disruption of scheduled Events. Owner agrees that it will consult periodically with Manager during the renovation activities at the Pantages Theatre in preparation for its re-opening.

6.3 Insurance. The Owner shall insure the Theatres against casualty losses, either through self-insurance or a purchased insurance policy. Premiums for such insurance, if any, shall be paid by Owner from funds other than those held in the Operating Account.

ARTICLE VII NOT A LEASE

This Agreement is not intended to be a lease nor to give Manager the rights of a lessee, and it is the intention of the Owner and the Manager that the Orpheum Theatre and the State Theatre and their respective operations be exempt from ad valorem real estate taxes.

ARTICLE VIII TERMINATION

8.1 Default of Manager. If any of the Theatres is deserted, vacated or abandoned due to the fault of the Manager; or if the Manager sells, assigns, or pledges this Agreement; or if the Manager defaults in the performance of any of the covenants and agreements to be performed by the Manager pursuant to this Agreement including, without limitation, Manager's obligation to pay Selected Operating Expenses or the Manager's share of any annual "Operating Deficit" in a timely manner and to perform its maintenance obligations in a prompt and timely manner as set forth herein or as otherwise required by Owner; or if the Manager fails to procure the bonds and insurance referenced in Section 4.1(t) and 4.1(w); or if the Manager misappropriates Owner's funds or engages in any other illegal act; or if Manager fails to comply with any of the statutes, ordinances, rules, orders, regulations or requirements of the federal, state or city governments; or if the Manager files a petition in bankruptcy, or makes an assignment for the benefit of creditors or takes advantage of any insolvency act; or the Manager fails to abide by the terms and conditions of any existing or anticipated "reciprocal easement and operating agreements" ("REOA") to which one of the Theatres is subject as a result of their ownership by the Owner; then the Owner shall provide written notice of such default to Manager. If such default is not cured within twenty (20) days (or, if the default is not susceptible to cure within said twenty-day period, the Manager does not commence to cure the default during the twenty-day period and complete said cure within a reasonable time) after said notice is mailed or delivered to Manager, the Owner may terminate this Agreement and the Manager shall compensate Owner for the loss in revenue suffered by reason of such termination.

8.2 Default of Owner. If a default by the Owner in the performance of any of the covenants and agreements to be performed by the Owner pursuant to this Agreement causes the cancellation of an Event or Events, the Owner shall compensate the Manager for the loss of estimated Management Fees and incurred expenses suffered by reason of such default. Upon the occurrence of any other default by the Owner in the performance of any of the covenants and agreements to be performed by the Owner pursuant to this Agreement, Manager shall provide written notice of such default to Owner. If such default is not cured within twenty (20) days (or if the default is not susceptible to cure within said twenty-day period, the Owner does not commence to cure the default within the twenty-day period) after said notice is mailed or delivered to Owner, the Manager may terminate this Agreement.

8.3 Damage or Destruction. Either Owner or Manager may terminate this Agreement with respect to each Theatre upon the damage or destruction of such Theatre to an

extent which interferes with the regular and customary operation of the Theatre, unless Owner shall diligently undertake to repair, restore, rebuild or replace such damage or destruction within sixty (60) days after such damage or destruction occurs.

8.4 Vacation of Premises. Upon expiration or earlier termination of this Agreement, the Manager shall immediately: (a) vacate all Theatres, including offices and box offices, and shall not damage any part of the Theatres during such vacation; (b) deliver to Owner all records, accounts, contracts and other information held or obtainable by Manager in connection with the use or operation of the Theatres; and (c) cooperate with Owner and any successor manager in accomplishing a transition of management that minimizes to the extent possible any disruption in the operation of the Theatres.

ARTICLE IX MISCELLANEOUS PROVISIONS

9.1 Assignment. Owner may assign its interest in this Agreement to a governmental, nonprofit, or for profit entity (the “Owner Assignee”), in its sole discretion. In the event that Owner assigns its interest in this Agreement to Owner Assignee, then Manager, in its sole discretion, may terminate this Agreement as of the effective date of the Owner’s assignment. In the event that Manager determines in its sole discretion not to terminate this Management Agreement due to Owner’s assignment, then Owner Assignee shall be required, as a condition of Owner’s assignment, to agree to honor the terms of this Management Agreement for the remainder of the term, or to negotiate directly with Manager for an early Termination of the Management Agreement.

Manager may assign all or a portion of its interest in this Agreement to another Management entity (the “Manager Assignee”), but only if:

(a) The assignment is to a Manager Assignee which has the capability to carry on the operation of the Theatres in substantially the same manner as Manager;

(b) The Manager Assignee agrees to assume all the rights and obligations assigned, and to keep and perform all the provisions and obligations of this Agreement;

(c) The Manager Assignee will be bound by and continue to uphold any agreement in force and effect as of the date of the Assignment entered into by and between Manager and Employees pursuant to rights granted in Minnesota Statutes, Section 179.10, nor engage in any activities described in Minnesota Statutes, Section 179.12, in order to abrogate or terminate said agreement;

(d) Manager agrees to guarantee the performance of its obligations under this Agreement not assumed by the Manager Assignee, and to reaffirm this guarantee simultaneously with the assignment; and

(e) Manager has the written consent of Owner, such consent to be granted by Owner in its sole discretion; and

(f) Manager's president remain a part of the Manager Assignee during the Initial Term of the Management Agreement.

Subject to the foregoing, this Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective permitted successors and assigns.

9.2 Notices. All transfers of funds which the Manager may be required or may desire to give to the Owner shall be delivered to Owner personally or sent by registered or certified mail return receipt requested, addressed to Owner at the following address:

Minneapolis Community Development Agency
Crown Roller Mill, Suite 200
105 Fifth Avenue South
Minneapolis, Minnesota 55401-2534
Attention: Accounting Coordinator

All bills, statements, accounting records and other notices, or communications which the Manager may desire or be required to give to the Owner shall be deemed sufficiently given or rendered if in writing and either delivered to Owner personally or sent by registered or certified mail, return receipt requested, addressed to Owner at the following address:

Minneapolis Community Development Agency
Crown Roller Mill. Suite 200
105 Fifth Avenue South
Minneapolis. Minnesota 55401-2534
Attention: Project Manager – Orpheum, State and Pantages Theatres

Any notice by Owner to Manager shall be served by registered or certified mail addressed to Manager at the following address:

Historic Theatre Group, Ltd.
805 Hennepin Avenue
Minneapolis, Minnesota 55403
Attention: Theatre Manager

9.3 Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

9.4 Rights Cumulative. The rights and remedies hereby created are cumulative, and the use of one remedy shall not be taken to exclude or waive the right to use of another.

9.5 Severability. In the event that any provision of this Agreement shall be held invalid or unenforceable, no other provisions of this Agreement shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect pursuant to the terms hereof.

9.6 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Minnesota.

9.7 Entire Agreement. This Agreement is the entire agreement of the parties and replaces and supersedes any prior agreements or understandings between the parties.

9.8 No Additional Rights. By entering into this Agreement the Manager shall obtain no additional rights or privileges in the future regarding the operation or use of either Theatre and the Owner shall not be deemed to have waived or abrogated any power or discretion it has regarding the operation or ownership of either Theatre upon the expiration or termination of this Agreement.

9.9 Mutual Indemnification.

(a) As and from the date hereof, Manager agrees to defend, indemnify and hold the Owner harmless from any and all claims, damages, causes of action, losses, injuries or lawsuits that may arise from the acts or omissions of, or breach of this Agreement by Manager or Manager's independent contractors, agents, employees or delegees, including Owner's reasonable attorneys' fees.

(b) As and from the date hereof, Owner agrees to defend, indemnify and hold the Manager harmless from any and all claims or lawsuits that may arise from the negligent acts or omissions by the Owner or Owner's independent contractors, agents, employees or delegees, including Manager's reasonable attorneys' fees.

9.10 Conditional Obligations. Neither the Owner nor the Manager will knowingly take any action which will cause the bonds issued to finance the improvements at the Theatres to be "private activity bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

MANAGER:

HISTORIC THEATRE GROUP, LTD.

By _____
Its President

OWNER:

**MINNEAPOLIS COMMUNITY
DEVELOPMENT AGENCY**

By _____
Its Deputy Executive Director

By _____
Its Finance Officer

Approved as to form:

By _____
Its Assistant Development Counsel

EXHIBIT E

Form of Fixed Fee and Incentive Fee Determination

	<u>Actual Combined Revenues</u>	Budgeted Combined Revenues	
	\$2,400,000	\$2,300,000	
Fixed Fee: (14% of Proposed Annual Budgeted Combined Revenue)		\$2,300,000	Management Fee \$322,000
 <u>Incentive Fee:</u>			
	Dollar Increment	Percentage of Dollar Increment	Management Fee
i. Actual Combined Revenue between 40% and 60% of Proposed Annual Budgeted Combined Revenues	\$920,000-\$1,380,000	10%	\$46,000
ii. Actual Combined Revenue in excess of 60% and not more than 80% of Proposed Annual Budgeted Combined Revenues	\$1,380,001-\$1,840,000	15%	\$69,000
iii. Actual Combined Revenue between in excess of 80% and not more than 100% of Proposed Annual Budgeted Combined Revenues	\$1,840,001-\$2,300,000	25%	\$115,000
iv. Actual Combined Revenue in excess of 100% of Proposed Annual Budgeted Combined Revenues	\$2,300,001-\$2,400,000	35%	\$35,000
			<hr/> <hr/> \$587,000*

*Total Management Fee – Sum of Fixed Fee and Incentive Fee