

**21667**

**LONG BEACH CONVENTION & ENTERTAINMENT CENTER**

**CITY OF LONG BEACH  
SMG  
LONG BEACH ARENA CONSTRUCTION, LLC  
ARTISAN BUILDERS  
CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES**

**CLOSING BINDER**

<u>Document</u>	<u>Tab No.</u>
Fifth Amendment to Management Agreement by and between the City of Long Beach and SMG .....	1
Service Agreement by and between the City of Long Beach and Long Beach Arena Construction, LLC .....	2
Construction Contract by and between Long Beach Arena Construction, LLC and Artisan Builders .....	3
Use License Agreement by and between SMG and Christian Congregation of Jehovah's Witnesses .....	4
Indemnity Agreement by Christian Congregation of Jehovah's Witnesses in favor of Long Beach Arena Construction, LLC .....	5

DOCUMENT 1

FIFTH AMENDMENT TO  
MANAGEMENT AGREEMENT  
BY AND BETWEEN  
THE CITY OF LONG BEACH AND SMG

THIS FIFTH AMENDMENT TO MANAGEMENT AGREEMENT (hereinafter "this Amendment") is made as of this 25<sup>th</sup> day of June, 2001, by and between the CITY OF LONG BEACH, a municipal corporation (the "City"), and SMG, a Pennsylvania general partnership (formerly known as Spectacor Management Group) ("SMG"), to that certain Management Agreement dated as of February 12, 1991, by and between the City and SMG, as amended (collectively, the "Original Agreement").

BACKGROUND

The parties hereto desire to amend certain terms and conditions contained in the Original Agreement relating to SMG's obligations under the Original Agreement in connection with a proposed use license agreement (a form of which is attached hereto as Exhibit A, the "Use License Agreement"), to be entered into by and between SMG and Christian Congregation of Jehovah's Witnesses ("CCJW"), as more specifically set forth herein. Except as otherwise expressly defined herein, any capitalized terms used herein shall have the meanings ascribed to them in the Original Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises and covenants set forth below, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Amendment to Original Agreement.

Commencing as of the date of this Amendment, the Original Agreement is hereby amended to add a new Section 18, which Section 18 shall read in its entirety as follows:

"18. Christian Congregation of Jehovah's Witnesses ("CCJW") Use License Agreement. Notwithstanding any other provision to the contrary contained in this Agreement (including, but not limited to, (i) the sixth sentence of Section 4, (ii) the first sentence of Section 4.2, (iii) Section 4.5, (iv) the first sentence of Section 5.2.5, and (v) Section 5.12), (a) Contractor shall have no liability or obligation to any party (including City) for any losses, liabilities, claims, damages, and/or expenses (including reasonable costs of investigation and attorneys' fees) (collectively, the "Losses") incurred and/or asserted by any party (including City) arising out of or in connection with the acts, errors, omissions, and/or misconduct of CCJW in, on, at, near, or around the Center, except and only to the extent solely caused by the negligent acts, errors, omissions, and/or willful misconduct of Contractor, (b) City acknowledges that it has reviewed a copy of that certain Use License Agreement (the "Use License Agreement") to be entered into by and between Contractor and CCJW (a copy of which is attached to the Fifth Amendment to Management Agreement as Exhibit A), providing for, among other things, the use by CCJW of the Center, and City hereby authorizes and approves in all respects the Use License Agreement, (c) upon the termination or expiration of this Agreement at any time, City shall assume (or cause a successor management company to assume) from Contractor, and Contractor shall assign and delegate to City (or a successor management company of City), all of Contractor's rights and obligations under the Use License Agreement (including, but not limited to, the provisions of Section 11 thereof), (d) City shall be solely liable for any payments due to CCJW under Section 11 of the Use License Agreement in the event of a "Force Majeure" or "Demolition Right" (as such terms are defined in the Use License Agreement), and (e) City agrees to indemnify, defend, and hold harmless Contractor and its partners, officers, directors, agents, and employees from and against any and all Losses arising from the matters described in this Section 18."

2. Effect of Amendment.

Except as amended in paragraph 1 hereof, the Original Agreement and all terms and conditions thereof shall remain unaltered and in full force and effect and are hereby ratified and confirmed in all respects, as hereinabove amended. Any reference in the Original Agreement or in any instrument, documents or consideration executed or delivered pursuant to the Original Agreement to "this Agreement", "hereof", "hereto", and "hereunder" and similar references thereto shall be deemed and construed to be a reference to the Original Agreement, as further amended by this Amendment.

3. Miscellaneous.

A. The provisions of Section 17.6 of the Original Agreement (relating to governing law) and Section 16 (relating to arbitration) are hereby incorporated herein by reference and shall be construed as if set forth in full herein.

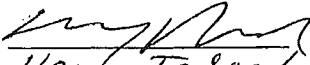
B. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which, together, shall constitute one and the same document.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed and delivered as of the day and year first written above.

ATTEST:

THE CITY OF LONG BEACH

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title: \_\_\_\_\_

By:   
Name Henry Tardada  
Title: City Manager

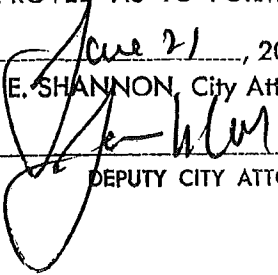
ATTEST:

SMG

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM

June 21, 2001  
ROBERT E. SHANNON, City Attorney  
By   
DEPUTY CITY ATTORNEY

2. Effect of Amendment.

Except as amended in paragraph 1 hereof, the Original Agreement and all terms and conditions thereof shall remain unaltered and in full force and effect and are hereby ratified and confirmed in all respects, as hereinabove amended. Any reference in the Original Agreement or in any instrument, documents or consideration executed or delivered pursuant to the Original Agreement to "this Agreement", "hereof", "hereto", and "hereunder" and similar references thereto shall be deemed and construed to be a reference to the Original Agreement, as further amended by this Amendment.

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ATTEST:

THE CITY OF LONG BEACH

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

SMG

By: John F. Burns  
Name JOHN F. BURNS  
Title: Sr. VP

By: H. Westley  
Name H. Westley  
Title: President

## EXHIBIT A

### Form of Use License Agreement for CCJW

#### USE LICENSE AGREEMENT

**THIS USE LICENSE AGREEMENT** (together with the Exhibits attached hereto, this "Agreement") is dated as of the [ ] day of \_\_\_\_\_, 2001, by and between SMG, a Pennsylvania general partnership, with an address at 701 Market Street, 4<sup>th</sup> Floor, Philadelphia, PA 19106 ("SMG") and Christian Congregation of Jehovah's Witnesses ("CCJW"), with an address at 25 Columbia Heights, Brooklyn, NY 11201-2483, referred to as the "Licensee".

#### BACKGROUND

SMG is the manager of a facility commonly known as the Long Beach Convention and Entertainment Center (the "Facility"), located at 300 East Ocean Boulevard, Long Beach, California, which is owned by the City of Long Beach, a municipal corporation and tide and submerged lands grantee of the State of California (the "City").

Pursuant to the terms of a certain Construction Contract of even date herewith, by and between Long Beach Arena Construction, LLC ("LBAC"), and Artisan Builders ("Artisan"), (the "Construction Contract"), Artisan performed certain Services (as defined in the Construction Contract) at the Facility in exchange for credit to Licensee to use the Facility in accordance with the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual promises, covenants, and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Use of the Facility.

(a) As a condition precedent to this Agreement, the Services performed by Artisan must have been completed by delivery to LBAC of a Certificate of Occupancy by the applicable agency of the City of Long Beach.

(b) SMG hereby grants Licensee, upon the terms and conditions hereinafter expressed, a license to use those areas of the Facility described on Exhibit A attached hereto (the "Authorized Areas"), including all improvements, furniture, fixtures, utilities, easements, rights of ingress and egress, and appurtenances thereto, for a total of one hundred fifty-one and two-tenths (151.2) Convention Weekends (as hereinafter defined). One Convention Weekend shall equal one "Use Credit," and all 151.2 Convention Weekends is hereinafter referred to as "Total Use Credit." The term "Convention Weekend" as used in this Agreement shall mean any weekend, starting from the third (3<sup>rd</sup>) weekend of May through the second (2<sup>nd</sup>) weekend of September during any calendar year in which the Facility has been made available for use by CCJW, as provided further in clause 1 (c), below, each such Convention Weekend commencing at 7:00 a.m. with a Thursday move-in and followed by three consecutive days (Friday, Saturday,

and Sunday) but in no event shall include any weekend on or after sixteen (16) years after the date hereof. Subject to the foregoing, Licensee shall be entitled to twelve (12) Convention Weekends per calendar year. On mutual written agreement by SMG and Licensee, Licensee may use the Facility for its conventions for as many as fourteen (14) Convention Weekends in any given year, subject to the Total Use Credit. It is expressly understood by the parties hereto that the Facility shall be vacated by Licensee and all persons participating in or attending a convention held by Licensee at or prior to 11:59 p.m. on the Sunday of such Convention Weekend (the "**Expiration Time**") and, as such, Licensee shall arrange to have all conventions and activities related thereto cease within a reasonable time prior to the Expiration Time to allow ample time for the Facility to be completely vacated on or prior to the Expiration Time. If multiple conventions are held, and if no other events are scheduled to use the same portion of the Facility between Licensee's conventions, Licensee may leave its convention setup intact between conventions at no additional charge. Should Licensee decide to leave its convention setup intact, SMG shall not be responsible for any damage to or for items lost or stolen from Licensee's property at the Facility.

(c) By November 15 of each year, Licensee will confirm with SMG which dates on hold for Licensee's use of the Facility will be used for the following Summer. By November 15 of each year, SMG will provide Licensee the dates from which Licensee may choose to place on hold with first right of refusal for its use of the Facility for the second year thereafter. For example, by November 15, 2001, Licensee, which will already have dates on hold for the Facility by SMG for Summer, 2002, will confirm with SMG which of the held 2002 Summer dates Licensee will use the Facility. By the same November 15, 2001 date, SMG will provide Licensee with dates for the Summer of the year 2003 that are available for Licensee to place on hold with first right of refusal. By November 15, 2002, Licensee will confirm with SMG which of the Summer, 2003 dates Licensee will use.

(d) SMG and Licensee acknowledge that, in connection with SMG's management and operation of the Facility, SMG utilizes the services of certain third-party independent contractors ("**Third Party Contractors**"). SMG shall require said Third Party Contractors to carry a minimum of One Million (\$1,000,000.00) in liability insurance coverage for any damages that may be done by any principals, employees, or agents of said Contractors, and will provide Licensee a list of Contractors and copies of the Contractors' liability insurance certificates in force for each annual period of Licensee's Summer use of the Facility.

(e) SMG and Licensee acknowledge that the Facility is one component of a planned complex (such other non-Facility areas are collectively referred to herein as the "**Complex**"). SMG will use its best efforts to prevent any inconvenience or disturbance to Licensee's conventions which may result from the operation, construction, expansion, renovation, and/or other use of the Complex by anyone authorized, approved or licensed by SMG.

(f) Floor Plans and Descriptions. Attached hereto as Exhibit B is a full and complete copy of the floor plan for Licensee's conventions to be held at the Facility, together with information relating to room and hall set-ups and staging (the "**Floor Plan**"). In the event

Licensee desires at any time to deviate from the Floor Plan, Licensee shall obtain the prior approval of SMG.

2. Purpose.

(a) The Facility is to be used solely for the purpose of the Licensee's conventions. Licensee shall not use the Facility, or permit the Facility to be used by any of its officers, directors, agents, employees, Event attendees, volunteers, or invitees, for any unlawful or immoral purpose or in any manner so as to injure persons or property in, or on, the Facility.

(b) Licensee shall be liable for any and all Losses occurring at the Facility caused to SMG, the City, and/or persons and/or property in or on the Facility at any time during the licensed Convention Weekends, by (i) Licensee's failure to comply with any and all federal, state, local, and municipal regulations, ordinances, statutes, rules, laws, constitutional provisions, and common laws (collectively, the "Laws") to the extent such Laws are applicable to Licensee's performance of this Agreement and/or activities at the Facility, (ii) any unlawful acts on the part of Licensee or its officers, directors, agents, employees, subcontractors, Event attendees, or invitees, (iii) the negligent, reckless or grossly negligent acts, errors and/or omissions or the willful misconduct of Licensee or its officers, directors, agents, employees, subcontractors, Event attendees, volunteers, or invitees, or (iv) the breach or default by Licensee or its officers, directors, agents, volunteers or employees of any provisions of this Agreement, including, without limitation, the provisions of Section 7 hereof (relating to intellectual property matters), Section 14 hereof (relating to the Civil Rights Act), and Section 15 hereof (relating to the Americans with Disabilities Act), to the degree such Laws apply to Licensee. Mention of specific laws is not meant to imply that any portion of such laws is applicable to Licensee, which, as a religious organization, may have constitutional protections that bar application of some of such laws to Licensee; nor is mention of said laws meant to create obligations on the part of Licensee that do not now exist under law. The provisions of this Agreement are merely intended to require Licensee to obey those laws applicable to Licensee, to the degree they apply.

(c) Licensee shall conduct business in the Facility in a dignified and orderly manner with full regard for public safety and in conformity with all local fire regulations, as are in effect. Without limiting the foregoing, Licensee shall obtain prior written approval from SMG's General Manager at the Facility for any pyrotechnic displays which Licensee anticipates may be performed at the Facility during the term of this Agreement.

3. Condition of Facility.

(a) Licensee acknowledges that Licensee has seen and previously used the Facility for its conventions, and that Licensee is satisfied with and has accepted the Facility in its present condition.

(b) SMG shall have the continuing obligation and responsibility to maintain and keep the Facility in good order and repair, normal wear and tear excepted; provided, however, that (i) the failure by SMG to accomplish the foregoing because of circumstances



beyond the control of SMG shall not be considered a breach of this Agreement by SMG, and (ii) any damage to the Facility and/or its appurtenances caused by Licensee or its officers, directors, agents, employees, licensee, or invitees, shall be repaired by Licensee to the satisfaction of SMG.

(c) Licensee shall not make any alterations or improvements to the Facility without the prior written consent of SMG. Any alterations or improvements of whatever nature made or placed by Licensee to or on the Facility, except movable trade fixtures, shall, at the option of SMG, (i) be removed by Licensee, at Licensee's expense, immediately upon the conclusion of each Convention Weekend and the Facility shall be restored to its original condition, or (ii) become the property of the City.

(d) Licensee shall keep, or cause to be kept, the Facility and all aisles, corridors, passages, vestibules, halls, elevators, stairwells and escalators adjacent thereto, in a neat, clean, and sanitary condition at all times, and shall neither commit nor permit any waste or nuisance thereon. SMG agrees to provide Licensee the necessary cleaning supplies as regularly used by SMG at no cost to Licensee. SMG agrees to provide for disposal and/or removal of all trash generated during the course of Licensee's conventions at no additional cost to Licensee.

#### 4. Term of License.

The license granted in Section 1 above will be effective as of the date of Completion of the Services (as defined in the Construction Contract) under the Construction Contract and will continue in effect, unless earlier terminated as set forth in Section 11 below, upon the earlier of (i) the use by Licensee of its Total Use Credit hereunder, or (ii) sixteen (16) years from the effective date of the Completion of the Services (as defined in the Construction Contract).

#### 5. Consideration for License; Reimbursable Service Expenses.

(a) In consideration of the grant of the license in Section 1 above, the Services performed by Artisan under the Construction Contract must have been completed, by which is meant the delivery to LBAC of a Certificate of Occupancy by the applicable agency of the City of Long Beach.

#### (b) Non-reimbursable and Reimbursable Service Expenses.

(i) SMG agrees that Licensee's qualified volunteers shall be allowed to provide, as required for each convention, the following services, at no expense to SMG: parking and building attendants, ushers, carpenters, electricians, plumbers, stagehands, guards, first aid personnel, lost and found, cleaning, installation, checkroom, and any other internal functions necessary for Licensee's convention. SMG grants permission to Licensee to use all of its utilities, including but not limited to the sewer system, water, electricity, air conditioning and/or heating, all of which SMG shall provide for Licensee at SMG's expense. Licensee is granted permission to operate its own food and/or beverage service concessions in conjunction with its convention and to have full use of the Authorized Areas for this purpose. Licensee, at its expense, may bring in and set-up temporarily, any additional equipment necessary and incidental

for the operation thereof. Also, Licensee is hereby granted exclusive rights to operate all concessions in the Authorized Areas (including rights of egress, ingress, and designated parking areas) during Licensee's convention, provided, however, that SMG shall have the right to operate its food and/or beverage service concessions in any other areas (including the restaurant) to the extent necessary in SMG's sole reasonable discretion, to service other events being held at the Facility. Licensee will hold SMG harmless against any losses or damage to such equipment used by it, normal wear and tear excepted. Licensee's attendees may bring their own food and beverage into the Facility. Licensee may at no additional cost use the public address system presently at the Facility, if any, which it may augment with its own equipment, if desired, which may be operated by Licensee's volunteers who are qualified, or Licensee may install and operate entirely its own public address system. SMG shall provide Licensee with all restroom supplies, including paper goods, at no charge to Licensee.

(ii) Licensee may make temporary connections to the Facility's utilities in the Authorized Areas for Licensee's use, provided they are removed by Licensee at the conclusion of each Convention Weekend, except when Licensee is able to leave its convention connections intact as referred to in Clause 1(b) above. When Licensee's connections have been left intact between Convention Weekends, Licensee shall remove its connections at the close of the last of that year's Convention Weekends. At any time that SMG has scheduled some other event (a "**Conflicting event**") between Licensee's conventions, Licensee shall remove its connections before the Conflicting event's move-in. All expense of such temporary installations will be borne by Licensee and performed by qualified volunteers as directed by Licensee.

(iii) Any services not specified in this Agreement requested in writing by Licensee to be provided by SMG ("**Reimbursable Services**") shall be paid for by Licensee at the reasonable and customary fee or charge for such additional service or item, not exceeding the applicable rates published by SMG for the Facility, in accord with the Payment Terms below.

6. Payment Terms.

(a) Reimbursable Service Expenses. For any Reimbursable Services provided by SMG as requested by Licensee per Clause 5(b)(iii) above, SMG shall invoice Licensee. Licensee shall pay such invoice within thirty (30) days of receipt thereof unless properly disputed in good faith by Licensee in writing. In case of a dispute over any part of an invoice, Licensee shall pay the undisputed portion of such invoice within thirty (30) days of receipt thereof.

(b) Late Charges. If Licensee fails to pay any undisputed or improperly disputed amounts when due under this Agreement, Licensee shall pay SMG a late charge of 1.5% per month on the unpaid balance.

7. Revenues and Costs.

(a) For each Convention Weekend, Licensee shall be debited the flat, all-inclusive rate of one Use Credit from the Total Use Credit (see paragraph 1(b) above) due Licensee at the start of this Agreement. Licensee will separately pay SMG for any Reimbursable Services requested in writing by Licensee.

(b) At the conclusion of the last of Licensee's Convention Weekends for each year, SMG shall provide Licensee a credit balance showing the use credit that remains (the "Use Credit Balance").

(c) Licensee shall bear all expenses incurred by Licensee in connection with the use of any patented, trademarked or copyrighted materials, processes or dramatic rights used on or incorporated in the conduct of a convention. Licensee shall obtain all necessary licenses and shall pay all costs and fees arising from use of copyrighted music or dramatic materials, or any other property subject to any trademark, patent, or other proprietary right which is used or incorporated in a convention. Licensee shall indemnify, defend, and hold harmless SMG and all other indemnitees designated in Section 10(a) of this Agreement from any liability, claim, cost, or attorney's fee, arising from the use of any such materials or any claims of infringement or violation of the rights of the owner thereof.

8. Taxes.

SMG shall not be liable for the payment of any applicable taxes, late charges, or penalties of any nature relating to any convention or any revenue received by, or payments made to, Licensee in respect of any convention, except as otherwise provided by law. Licensee shall pay and discharge as they become due, promptly and before delinquency, all applicable taxes, assessments, rates, damages, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this Agreement.

9. Insurance.

(a) Licensee shall, at its own expense, secure and deliver to SMG not less than thirty (30) days prior to the commencement of this Agreement and shall keep in force at all times during the term of this Agreement:

(i) commercial general liability insurance in form acceptable to SMG, including public liability and property damage, covering Licensee's activities hereunder, in the amount of One Million Dollars (\$1,000,000) for bodily injury and One Million Dollars (\$1,000,000) for property damage, including blanket contractual liability. The foregoing general liability insurance policy shall not contain exclusions from coverage relating to the conventions hereunder or for any sporting events, rap concerts, performers, volunteers, animals, and fireworks or other pyrotechnical devices;

(ii) comprehensive automotive bodily injury and property damage insurance in form acceptable to SMG for business use covering all vehicles operated by Licensee, its officers, directors, agents, volunteers and employees in connection with its activities hereunder, regardless of by whom owned, with a combined single limit of One Million Dollars (\$1,000,000).

(iii) applicable Worker's Compensation insurance for Licensee's volunteers and employees, if and as required by applicable law.

(b) The following shall apply to the insurance policies described in clauses (i) and (ii) above:

(i) SMG and the City shall be named as additional insureds thereunder. Prior to the execution and delivery of this Agreement, Licensee shall deliver to SMG certificates of insurance evidencing the existence thereof, all in such form as SMG may reasonably require. Each such policy or certificate shall contain a valid provision or endorsement stating: "This policy will not be canceled or materially changed or altered without first giving thirty (30) days' written notice thereof to each of SMG, Risk Management Director, 701 Market Street, 4<sup>th</sup> Floor, Philadelphia, PA 19106, and the City of Long Beach, City of Long Beach Manager, and City Attorney for City of Long Beach, Long Beach, CA 90802. If any of the insurance policies covered by the foregoing certificates of insurance will expire prior to or during the time of a convention, Licensee shall deliver to SMG at least thirty (30) days prior to such expiration a certificate of insurance evidencing the renewal of such policy or policies.

(ii) The coverage provided under such policies shall be occurrence-based, not claims made.

(iii) The coverage limits contained on such policies shall be on a per-occurrence basis only. No aggregate limit stated on any such policy shall provide less than two million dollars (\$2,000,000.00) in liability coverage per annum.

(c) The terms of all insurance policies referred to in this Section 9 shall preclude subrogation claims against SMG, and the City and each of their respective partners, members, officers, directors, employees, and agents, except with respect to the liability assumed by SMG pursuant to Paragraph 10(b) below.

#### 10. Indemnification.

(a) Licensee shall indemnify, defend, and hold harmless SMG, the City, and each of their respective partners, members, officers, directors, agents, volunteers, and employees from and against any and all Losses arising from (i) the matters described in Section 2(b) hereof, and/or (ii) personal or bodily injury to or death of persons or damage to the property of SMG or the City to the extent caused by the negligent, reckless, or grossly negligent acts, errors and/or omissions or the willful misconduct of Licensee or its officers, directors, agents, employees, volunteers, subcontractors, Event attendees, or invitees on or in the Facility.

(b) SMG shall indemnify, defend, and hold harmless Licensee and its members, officers, directors, agents, employees, and volunteers from and against any and all Losses arising from personal or bodily injury to or death of persons or damage to the property of Licensee to the extent caused by the negligent, reckless, or grossly negligent acts, errors and/or omissions or the willful misconduct of SMG or its officers, directors, agents, and employees, other than and apart from any damage to or destruction of property that may occur between conventions when Licensee leaves its convention setup intact, as provided in Paragraph 1 (b).

(c) For claims arising during the term of this Agreement, the provisions set forth in subparagraphs (a) and (b) above shall survive termination or expiration of this Agreement.

11. Other Remedies.

(a) Material Default.

Any material breach of the terms, covenants, or conditions of this Agreement shall allow the non-breaching party to terminate this Agreement if, after written notice to the defaulting party, the defaulting party has failed, within ten days of receipt of said notice to commence a cure of the material breach. Notwithstanding the foregoing, if the breach by either party or any of its officers, directors, employees, volunteers or agents of such term, covenant, or condition is such that it threatens the health, welfare, or safety of any person or property, then the other party may, in its discretion, require that such breach be cured in less than ten (10) business days or immediately.

(b) Non-Default Termination Right of Parties.

(i) Demolition Right. Notwithstanding anything to the contrary set forth in this Agreement, on or after October 1, 2008, SMG shall have the right, but not the obligation, in its sole discretion, to demolish and raze the Arena portion of the Facility and/or existing on-site parking areas at the Facility without being in default of this Agreement (the "**Demolition Right**"). In the event SMG intends to exercise this Demolition Right: (A) SMG shall provide to Licensee written notice of such intent at least twelve months (12) prior to such demolition and razing taking place; (B) SMG shall pay to Licensee an amount as calculated in clause (iv) of Section 11(b); and (C) this Agreement shall be terminated upon such payment by SMG to Licensee, without any further obligation of the parties hereto, except those obligations that are expressly stated to survive the termination or expiration of this Agreement.

(ii) Force Majeure. Notwithstanding anything to the contrary set forth in this Agreement, and subject to the provisions set forth in this Section 11(b), in the event of a Force Majeure (defined as any event that is not directly or indirectly within the control of SMG or Licensee, including, but not limited to, fire, action of the elements, catastrophe, any seismic event and any natural or unnatural event) that renders a significant portion of the Authorized Areas unusable by or inaccessible to Licensee the following shall apply:

(A) If the Arena portion of the Facility and/or on-site parking available to Licensee for its conventions is unusable or inaccessible for a period of at least 365 consecutive days in two calendar years or reasonably anticipated to exceed 365 consecutive days in two calendar years, at licensee's option, the obligations of SMG and Licensee under this Agreement shall be terminated upon payment by SMG to Licensee the amount calculated in Clause 11(b)(iv) below, and the parties hereto shall have no further obligation to one another except those obligations that are expressly stated herein to survive the termination or expiration of this Agreement.

(iii) Proration of Convention Weekend/Use Credit Balance. If for any reason not caused by Licensee it becomes impossible or impractical for Licensee to complete a convention that has been held for one or two of its scheduled three days, Licensee's Use Credit Balance shall be reduced by the fraction of the Convention Weekend that was completed. For example, a convention terminated by force majeure after two days shall result in the deduction of 2/3 of one Convention Weekend from Licensee's Use Credit Balance.

(iv) Calculation of Payment. Each Convention Weekend, for purposes of this clause, shall be valued at Eighteen Thousand, Nine Hundred Dollars (\$18,900.00). If SMG becomes obligated to pay Licensee as set forth herein, the amount SMG shall pay Licensee will be calculated as follows: The Use Credit Balance shall be multiplied by \$18,900, to determine the **Principal Due**. The Principal Due shall be multiplied by the greater of 5.95% per annum or .1144% per week, compounded annually, commencing from the date of Completion of the Services as defined in Paragraph 4(a) of the Construction Contract, to derive the **Earned Interest Due**. The Principal Due and Earned Interest Due shall be paid in cash to Licensee. In the alternative, Licensee and SMG may mutually agree to Licensee's conventions being held at some other facility under the same terms and conditions herein.

(c) Injunctive Relief. SMG and Licensee shall each have the right to seek to enjoin any breach or threatened breach and/or obtain specific performance of this Agreement by the other upon meeting its burden of proof of such breach or threatened breach as required by applicable statute or rule of law.

(d) Evacuation of The Facility. If it becomes necessary, in the judgment of SMG, to evacuate the Facility because of a bomb threat or for other reasons of public safety:

(i) After such evacuation, Licensee may resume use of the Facility for sufficient time to complete its convention, provided such resumed use does not interfere with the use of the Facility by another licensee, at no additional charge or debit beyond the normal debit against Licensee's Use Credit Balance. In the event such an extension is not possible, Licensee's Use Credit Balance shall be prorated as per Paragraph 11(b)(iii) above and Licensee waives any and all claims for damages or compensation from SMG and/or City arising from such evacuation; or

(ii) If an evacuation causes termination of a convention before completion, Licensee may upon agreement with SMG be given another alternative use date at the

Facility to complete the remainder of its Convention Weekend at the earliest open weekend date, at no additional charge or debit beyond the normal debit against Licensee's Use Credit Balance.

12. Representations and Warranties.

Each party hereby represents and warrants to the other party, and agrees as follows:

(a) It has the full power and authority to enter into this Agreement and perform each of its obligations hereunder;

(b) It is legally authorized and has obtained all necessary corporate and regulatory approvals for the execution, delivery, and performance of this Agreement; and

(c) No litigation or pending or threatened claims of litigation exist which do or might adversely affect its ability to fully perform its obligations hereunder or the rights granted by it to the other party under this Agreement.

13. Covenants.

Licensee hereby covenants as follows:

(a) Licensee shall not occupy or use the Facility except as provided in this Agreement.

(b) Licensee shall comply with all legal requirements which arise in respect of the Facility and the use and occupation thereof.

(c) Licensee shall not cause or permit any Hazardous Material to be used, stored, or generated on, or transported to and from the Facility. "Hazardous Material" shall mean, without limitation, those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," or "solid waste" in any applicable state or federal environmental law.

(d) Licensee may record by means of audio tape and/or video tape, and may broadcast any or all of its convention from the Facility or otherwise over radio and/or television stations without cost to Licensee or SMG, since public service time is used and Licensee receives no revenue therefrom; and may advertise the holding of its said convention in the magazines *The Watchtower* and *Awake!*, and in other reputable electronic or print media.

(e) Licensee shall not cause or permit beer, wine, or liquors of any kind to be sold, given away, or used upon the Facility except upon prior written permission of SMG.

(f) Licensee shall not operate any equipment belonging to SMG or the City without the prior written approval of SMG. Licensee shall not tie into the Facility's electrical or plumbing services without SMG's prior approval.

(g) Licensee, its officers, directors, employees, agents, volunteers, members, or other representatives shall not "scalp" tickets for a convention, to the extent applicable.

(h) No portion of any passageway or exit shall be blocked or obstructed in any manner whatsoever, and no exit door or any exit shall be locked, blocked, or bolted while the Facility is in use. All designated exitways shall be visible at all times.

(i) Licensee shall not encumber, hypothecate, or otherwise use as security its interests in this Agreement for any purpose whatsoever without the express written consent of SMG.

(j) Licensee may distribute, within the Authorized Areas, free of charge, by convention volunteers, leaflets, convention programs, Bibles, books, booklets, magazines, all as an integral part of its convention proceedings.

(k) Licensee may place signs inside and outside the Facility of such size and content which, in its opinion, may be necessary for the purpose of properly and adequately operating its conventions and identifying and advertising the same. The time of the placement of such signs and the location and manner of construction and removal of same is to be determined by Licensee with approval of SMG, which approval shall not be unreasonably withheld. Installation and placement of such signs shall be accomplished in a manner that will not mar or deface the Facility. Subject to and other than the foregoing, Licensee shall not advertise, paint, post, or exhibit, nor allowed to be advertised, painted, posted, or exhibited, signs, advertisements, show bills, lithographs, posters, or cards of any description inside or outside or on any part of the Facility except upon written permission of SMG. Further subject to the foregoing, Licensee will not permit anyone to drive any nails, hooks, tacks or screws in any part of the Facility or to alter the Facility in any respect, and will not permit anyone to affix any material to the walls, floors, doors or ceilings or to alter the Facility in any respect without prior written approval of SMG. If, with or without SMG's approval, Licensee damages the Facility, Licensee will promptly repair the Facility to SMG's satisfaction. All advertising of Licensee's conventions shall be accurate and true in all respects. All advertising space in the Facility is the exclusive property of SMG. Advertising of conventions by Licensee in Facility's publications, readerboards or other advertising media under the control of SMG shall be provided as availability permits with no guaranty that such advertising space shall be available. All in-house (SMG and/or Facility) publications and advertising in such publications are the exclusive property of SMG.

(l) Licensee shall have sole and exclusive right to the care, custody and control of all lost and found items during the course of its use of the Facility. SMG will notify Licensee of any remaining items that have been overlooked after move-out and grants Licensee 24 hours for removal of said items before SMG disposes of them.



(m) Licensee may place voluntary contribution boxes within the Authorized Areas, limited to inside the portion in which Licensee is holding an Event and in the immediate surrounding areas, for receipt of voluntary donations and have the exclusive care, custody and control of any moneys received.

(n) Non-Cancellation. If for any reason Licensee cancels a convention within one hundred, eighty (180) days of the scheduled Convention Weekend, Licensee agrees to forfeit one-half (1/2) of one Use Credit to be debited against its Use Credit Balance, if the dates are not re-scheduled at dates mutually agreed by SMG and Licensee for that same year, unless SMG is able to relet the Facility for the dates of the canceled Convention Weekend, in which case Licensee shall be debited a prorated portion of up to one-half of one Use Credit.

(o) If any governmental license or permit is required for the proper and lawful conduct of Licensee's business or other activity carried on, in or at the Authorized Areas, or if failure to obtain such a license or permit might in any way affect the operations of the Facility, then Licensee, at its own expense, shall obtain and maintain such license or permit and submit the same to inspection by SMG. Licensee shall at its own expense and cost comply at all times with the requirements of each such license or permit.

(p) Licensee may not use or transport any equipment, furnishings or other property belonging to SMG or City to any place outside the Facility.

(q) In no event shall attendance be permitted in excess of the established capacity of the Authorized Areas. Licensee shall not admit a larger number of persons than can safely and freely move about in the Authorized Areas. The decision of the City of Long Beach Fire Department in this respect shall be final.

(r) All persons, articles, exhibits, fixtures, displays and property of every kind shall be brought into and out of the Facility only at designated and approved entrances and exits.

(s) No flammable materials, such as bunting, tissue paper, crepe paper, etc., will be permitted to be used for decorations. All materials used for decorative purposes must be treated with flame-proofing and be in accordance with the City of Long Beach's fire and safety rules and regulations.

(t) Licensee will not bring onto the premises of the Facility any material, substance, equipment or object which is likely to endanger the life of or cause bodily injury to any person or which is likely to constitute a hazard to property thereon without the prior approval of SMG. SMG shall have the right to refuse any such material, substance, equipment or object to be brought onto the Facility and the further right to require its immediate removal therefrom if found thereon.

(u) SMG reserves the right to conduct site inspection tours of the Facility during the period of use in such manner that the tours do not interfere with Licensee's conventions.

(v) SMG reserves the right to make such announcements as SMG deems necessary at any time in emergency situations in the interest of public safety.

(w) SMG shall not be obligated to accept delivery of Licensee's property addressed to Licensee at the Facility. SMG shall not be liable for damage to such property and Licensee shall indemnify and hold harmless SMG for and against any loss of or damage to such property.

(x) Licensee shall open the doors for each convention at the advertised times.

(y) Licensee will uphold the "Non-Smoking" policy in compliance with Long Beach City Ordinance No. C-6918. Smoking is prohibited within the Facility and Licensee will be responsible to so notify its attendees, exhibitors and invitees.

(z) SMG shall provide to Licensee at no additional charge a platform or stage, folding tables, and chairs as are available at the Facility for Licensee's use for its conventions.

(aa) With respect to any Event at the Facility, Licensee shall comply fully with any and all federal, state, local, and municipal intellectual property statutes, laws, regulations, ordinances, rules, constitutional provisions, common laws, and rights of others in any copyrights or other intellectual property rights applicable to Licensee's activities at the Facility, including, without limitation, compliance with any licenses for the use of musical works and other matters protected by intellectual property rights of others.

14. Civil Rights Act.

During the performance of this Agreement, Licensee shall comply with Title VI and Title VII of the Civil Rights Act of 1964, as amended, and all other regulations promulgated thereunder, in addition to all applicable state and local ordinances concerning Civil Rights, if and to the extent such laws apply to Licensee.

15. Americans With Disabilities Act.

With respect to any convention at the Facility, if and to the extent that Licensee is subject to the provisions of Title III of the Americans With Disabilities Act, as amended ("ADA"), the following shall apply: a) Licensee shall be responsible for any violations of the ADA that arise from Licensee's reconfiguration of the seating areas or modification of other portions of the Facility in order to accommodate Licensee's usage, and for providing auxiliary aids and services ancillary to its usage of the Facility, and for ensuring that the policies, practices, and procedures Licensee applies in connection with its use of the Facility are in

compliance with the ADA; and (b) Licensee shall not be responsible for ensuring the Facility's compliance with the ADA except as set forth above.

16. Construction of this Agreement.

(a) Choice of Law. This Agreement shall be deemed to be made, governed by, and construed in accordance with the laws of the State of California, without giving effect to the conflict of law principles thereof.

(b) Paragraph Headings. The paragraph headings are inserted herein only as a matter of convenience and for reference and in no way are intended to be a part of this Agreement or to define, limit, or describe the scope or intent of this Agreement or the particular paragraphs hereof to which they refer.

(c) Entire Agreement; Amendments. This Agreement (including all Exhibits and other documents and matters annexed hereto or made a part hereof by reference) contains all of the covenants, agreements, terms, provisions, and conditions relating to the rights and obligations of SMG and Licensee with respect to the Facility. No alterations, amendments, or modifications hereof shall be valid unless executed by an instrument in writing by the parties hereto.

(d) Severability. If any provision or a portion of any provision of this Agreement is held to be unenforceable or invalid by a court of competent jurisdiction, the validity and enforceability of the enforceable portion of any such provision and/or the remaining provisions shall not be affected thereby.

(e) Successors. This Agreement shall be binding upon, and shall inure to, the benefit of the successors and assigns of SMG, and to such successors and assigns of Licensee as are permitted to succeed to the Licensee's right upon and subject to the terms hereof.

(f) Independent Contractor; No Partnership. SMG and Licensee shall each be and remain an "independent contractor" as that term is defined in law with respect to all rights and obligations arising under this Agreement. Nothing herein contained shall make, or be construed to make, SMG or Licensee a partner of one another, nor shall this Agreement be construed to create a partnership or joint venture between and of the parties hereto or referred to herein.

(g) Singular and Plural. Whenever the context shall so require, the singular shall include the plural, and the plural shall include the singular.

17. Miscellaneous.

(a) Waiver. The failure of any party to enforce any of the provisions of this Agreement, or any rights with respect hereto, or the failure to exercise any election provided for herein, will in no way be considered a waiver of such provisions, rights, or elections, or in any

way affect the validity of this Agreement. The failure of any party to enforce any of such provisions, rights, or elections will not prejudice such party from later enforcing or exercising the same or any other provisions, rights, or elections which it may have under this Agreement.

(b) Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned or transferred in any manner whatsoever by Licensee without the prior written notice to SMG. SMG shall be entitled, upon prior written notice to Licensee, to assign its rights and obligations hereunder to the City or to any other management company retained by the City to manage the Facility, and in such event, SMG shall have no further liability to Licensee hereunder for the performance of any obligations or duties arising upon or after the date of such assignment.

(c) Notices. Any notice, consent, or other communication given pursuant to this Agreement shall be in writing and shall be effective either (i) when delivered personally to the party for whom intended, (ii) upon delivery by an overnight courier services that is generally recognized as reliable, and the written records maintained by the courier shall be prima facie evidence of delivery, or (iii) on delivery (or attempted delivery) by certified or registered mail, return receipt requested, postage prepaid, as of the date shown by the return receipt; in any case addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith.

If to SMG: SMG  
Long Beach Convention and Entertainment Center  
300 East Ocean Boulevard  
Long Beach, CA 90802  
Attention: General Manager

with a copy to: SMG  
Independence Center  
701 Market Street, 4<sup>th</sup> Floor  
Philadelphia, PA 19106  
Attention: Director of Risk Management

If to Licensee: Christian Congregation of Jehovah's Witnesses  
25 Columbia Heights  
Brooklyn, NY 11201-2483  
Attention: Gerald D. Grizzle, Convention Office

(d) Cooperation/Mediation.

(i) The parties desire to cooperate with each other in the performance of their respective duties pursuant to the terms of this Agreement. In keeping with this cooperative spirit and intent, any dispute arising hereunder will first be referred to the parties' respective agents or representatives prior to either party initiating a legal suit, who will endeavor in good faith to resolve any such disputes within the limits of their authority and within thirty

(30) days after the commencement of such discussions. If and only if any dispute remains unresolved after the parties have followed the dispute resolution procedure set forth above, the matter will be resolved pursuant to Sections 17(d)(ii) and (iii) below.

(ii) If any dispute between the parties has not been resolved pursuant to Section 17(d)(i) above, the parties will endeavor before any litigation to settle the dispute by mediation under the then current rules of the American Arbitration Association or, if available, the Center for Public Resources ("CPR") model procedure for mediation of business disputes or, if such model procedure is unavailable in California, pursuant to some other mutually agreeable procedure. Within ten (10) business days from the date that the parties cease direct negotiations pursuant to Section 17(d)(i) above, SMG and Licensee shall jointly select a neutral third party mediator in Los Angeles County. If unable to agree to a mediator, the parties shall allow the American Arbitration Association or CPR, as applicable, to select the mediator for them. Each party will bear its own cost of mediation; provided, however, the cost charged by any independent third party mediator will be borne equally by the parties. Mediation shall be held in Los Angeles County, California.

(iii) The parties agree that any mediation proceeding (as well as any discussion pursuant to Section 17(d)(i) above) will constitute settlement negotiations for purposes of the federal and state rules of evidence and will be treated as non-discoverable, confidential, and privileged communication by the parties and the mediator. No stenographic, visual, or audio record will be made of any mediation proceedings or such discussions. All conduct, statements, promises, offers, and opinions made in the course of the mediation or such discussion by any party, its agents, employees, representatives, volunteers, or other invitees and by the mediator will not be discoverable nor admissible for any purposes in any litigation or other proceeding involving the parties and will not be disclosed to any third party.

(iv) The parties agree that this mediation procedure will be obligatory and participation therein legally binding upon each of them. In the event that either party refuses to adhere to the mediation procedure set forth in this Section 17(d), the other party may bring an action to seek enforcement of such obligation in any court of competent jurisdiction.

(v) The parties' efforts to reach a settlement of any dispute will continue until the conclusion of the mediation proceeding. The mediation proceeding will be concluded when: (i) a written settlement agreement is executed by the parties; (ii) the mediator concludes and informs the parties in writing that further efforts to mediate the dispute would not be useful; or (iii) the parties agree in writing that an impasse has been reached. Notwithstanding the foregoing, either party may withdraw from the mediation proceeding without liability therefor in the event such proceeding continues for more than forty-five (45) days from the commencement of such proceeding. For purposes of the preceding sentence, the proceeding will be deemed to have commenced following the completion of the selection of a mediator as provided in Section 17(d)(ii).

(vi) If any dispute has not been resolved pursuant to the foregoing, either party can initiate litigation and/or terminate this Agreement as provided in Section 11

herein. The procedure specified in this Section 17(d) shall be the sole and exclusive procedures for the resolution of disputes between the parties arising out of or relating to this Agreement; provided, however, that a party, without prejudice to the above procedures, may file a complaint to seek a preliminary injunction or other provisional judicial relief, if in its sole discretion such action is necessary to avoid irreparable damage or to preserve the status quo. Despite such action, the parties will continue to participate in good faith in the procedures specified in this Section 17(d).

(vii) All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this Section 17(d) are pending. The parties will take such action, if any, required to effectuate such tolling. Each party shall be required to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement, unless to do so would be impossible or impracticable under the circumstances.

(e) Contemporaneous Facility Use. SMG shall have the right to use or permit the use of any portion of the Facility not rented by Licensee to any person, firm or other entity regardless of the nature of the use of such other space, so long as SMG uses its best efforts to ensure that such use does not unreasonably disturb the use and normal operations by Licensee of the Facility for its pre-scheduled conventions.

(f) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, together, shall constitute one and the same document.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first written above.

**SMG**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CHRISTIAN CONGREGATION OF JEHOVAH'S  
WITNESSES**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT A TO USE LICENSE AGREEMENT

### Authorized Areas

ARENA, TERRAZZO  
PORTION OF ARENA  
LOBBY, ARENA  
CONCOURSE, CALIFORNIA  
ROOM, LOCKER ROOMS  
#1, #2, #3, #4, #5, #6 and #7,  
STORAGE ROOMS UNDER  
STAIRWELL #3 AND #6,  
AREA UNDER/NEAR  
STAIRWELL #1 (INCLUDES  
ROOM WITH COUNTER  
TOPS-INFORMATION),  
AND WHAT IS KNOWN AS  
THE ARENA SHOW  
MANAGERS OFFICE,  
ROOM #214 and #217 ON  
SECOND FLOOR, and  
PARKING LOT.

On-site parking for 3,000  
automobiles. See attached  
exhibit "B" confirming parking  
area. As to the Arena Lobby,  
the parties agree that if Exhibit  
Hall C or another area opposite  
the Arena is rented by SMG to  
another licensee, the other  
licensee may set up reasonably  
sized, non-obstructive exhibits  
and registration tables in the  
non-terrazzo-floored portion of  
the lobby, in addition to ingress  
and egress as needed.



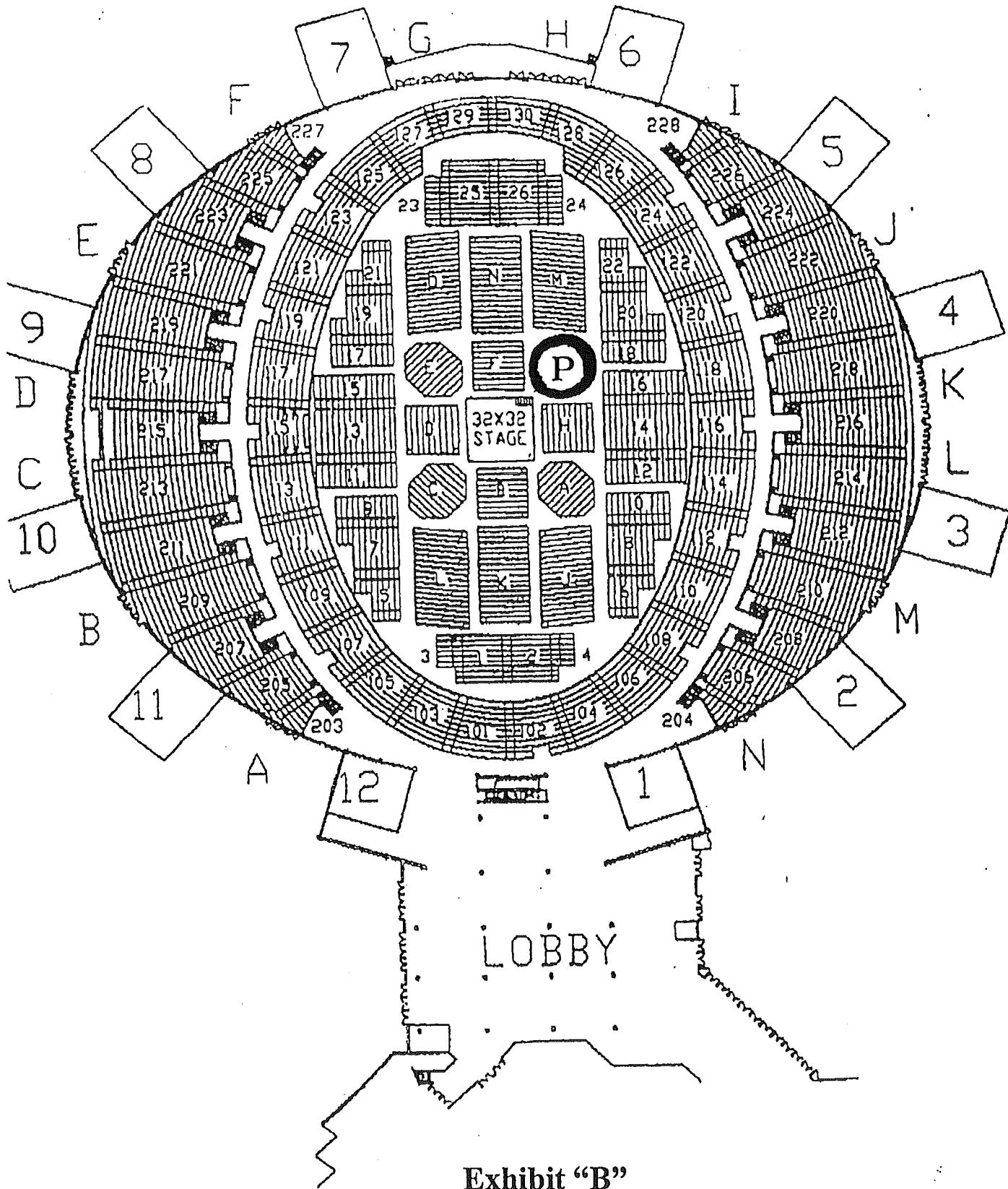
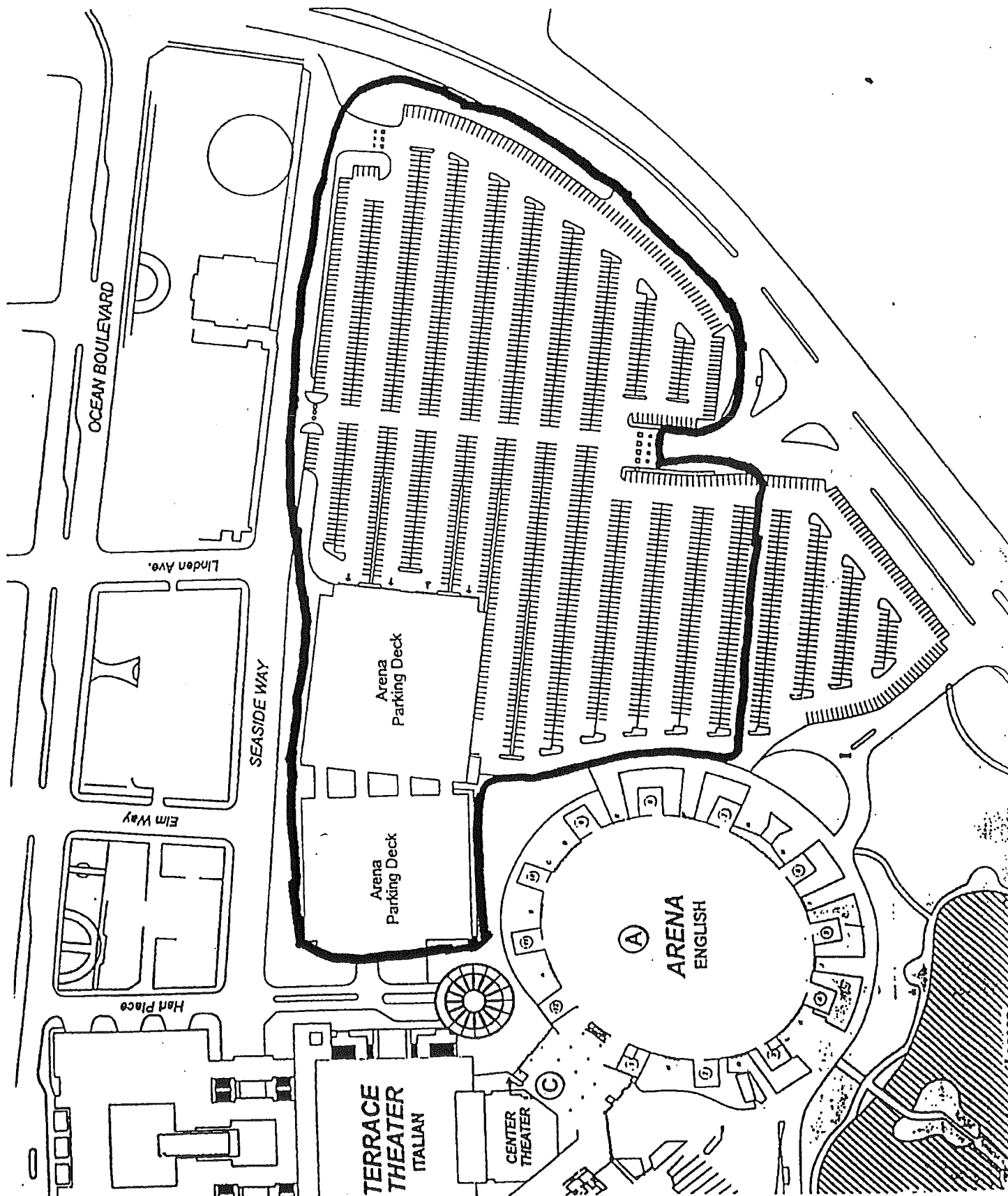


Exhibit "B"

Exhibit "C"



May 25 '93 05:12

Fax :

05/13/01 01:17