NAMING RIGHTS AGREEMENT BETWEEN THE RUSHMORE PLAZA CIVIC CENTER AND RAPID CITY REGIONAL HOSPITAL, INC., D/B/A MONUMENT HEALTH RAPID CITY HOSPITAL

This Agreement is made and entered into on this 26th day of November, 2019, by and between the RUSHMORE PLAZA CIVIC CENTER (the “RPCC”), a department of the City of Rapid City, a South Dakota municipal corporation, located at 444 N. Mt. Rushmore Road, Rapid City, South Dakota 57701, and RAPID CITY REGIONAL HOSPITAL, INC., D/B/A MONUMENT HEALTH RAPID CITY HOSPITAL, for itself and its corporate affiliates, (“Monument Health”), a South Dakota non-profit corporation, located at 353 Fairmont Drive, Rapid City, South Dakota 57701.

RECITALS

WHEREAS, the RPCC is a 250,000 square foot complex with multiple arenas, convention halls, meeting rooms and a fine arts theater all under one roof in Rapid City, South Dakota; and

WHEREAS, the City and RPCC have undertaken the construction of a new arena with a maximum capacity of over 10,000 seats (the “Expansion Arena”) as an addition to the existing complex; and

WHEREAS, the Expansion Arena will be the principal venue in Rapid City, the Black Hills, and western South Dakota for concerts, athletic events, conventions, trade shows, and other large entertainment activities; and

WHEREAS, the RPCC solicited requests for proposals from any interested party for the Naming Rights of the Expansion Arena and/or the entire facility; and

WHEREAS, after reviewing the proposals the RPCC selected MONUMENT Health’s Naming Rights proposal for both the Expansion Arena and the existing RPCC and its individual components; and

WHEREAS, MONUMENT Health is a community based health care system which serves 20 communities in western South Dakota and eastern Wyoming; and

WHEREAS, MONUMENT Health believes in carrying out its mission by investing in the communities it serves through partnerships, sponsorships, contributions, and volunteerism; and

WHEREAS, the parties believe naming the premiere entertainment venue in western South Dakota with the premiere healthcare provider in the region will be mutually beneficial to both organizations.

NOW THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement, the parties hereby agree as follows:
1. **Definitions.**

a. **EXPANSION ARENA:** the new arena to be constructed as an addition to the existing Rushmore Plaza Civic Center complex, generally to be located to the west of the existing Barnett Arena.

b. **VENUE:** all structures and facilities located at the existing Rushmore Plaza Civic Center complex, generally located at 444 N. Rushmore Rd., Rapid City, South Dakota, including but not limited to, the Fine Arts Theater, the Ice Arena, the area currently known as the Barnett Arena, the Expansion Arena, Rushmore Hall, and La Croix Hall.

c. **VENUE NAMES:** refers to the agreed upon name of the VENUE and the individual components of the complex.

2. **Exclusive Naming Rights.**

From and after the ratification of this Agreement, Monument Health shall have the exclusive right to name the Venue as a whole and the individual components, as set out in the definition of "Venue" above, subject to the terms and conditions set forth herein.

3. **Term of the Agreement.**

This Agreement shall commence on the date that it has been ratified by all parties. Since the Expansion Arena will not be completed until sometime in 2021, the parties have agreed that the effective date for measuring the term of the Agreement will be July 1, 2021. This Agreement shall be for a term of ten (10) years from the effective date ending on June 30, 2031, unless sooner terminated or extended in accordance with the terms of this Agreement.

4. **Naming Rights Fee.**

a. **Base Fee:** The fee for the naming rights and privileges granted herein shall be Three Hundred and Sixty Thousand dollars ($360,000) per year. The payments will be made pursuant to the schedule shown in Exhibit B. All payments are due and payable on, or before the date shown in Exhibit B. Such payments will be made directly to the RPCC at the address identified in this Agreement.

b. **Delinquent Payments:** In the event any installment is not paid on, or before, the date it is due and payable, the amount will be delinquent. Delinquent amounts will bear interest from the date of delinquency to the date full payment is received by the RPCC at a rate equal to the prime rate (published as the United States national average prime rate in the WALL STREET JOURNAL, or other similar publication if the WALL STREET JOURNAL ceases publication, on the payment due date) plus 1%, but in no event greater than the maximum amount permitted by applicable law.

In consideration for the payment of the Naming Rights fee set out above, the RPCC grants to Monument Health the right to name the Venue as a whole and the right to name the individual components as described above and subject to the terms and conditions contained herein. The final name and the design, style, appearance, and color of any logos shall be reviewed and approved by the RPCC. The RPCC’s approval under this provision will not be unreasonably withheld and in the event RPCC withholds its approval, it shall provide the specific reasons therefore to Monument Health in writing.


a. In addition to the right to name the Venue, Monument Health will have the right to place advertising at locations within the Venue as described in Exhibit A. The RPCC, at its expense, will prominently include and display the Venue Names and logos, where appropriate, on all publications, advertisements, promotions, billboards, banners, posters, postcards, letterhead, tickets, directory listings, websites, brochures, business cards, schedules, uniforms and equipment relating to the Venue or the events held in the Venue.

b. The RPCC will provide brand standards to any entity conducting an event at the Venue and will cause any such entity to refer to the Venue by the appropriate name in print, electronic, and broadcast media advertising or announcements for such events.

c. Monument Health shall have the right to use RPCC conference rooms without charge.

d. Monument Health shall be provided a minimum for 2,000 square feet of space, in high traffic areas of the Venue for the purpose of quarterly health fairs. The space shall be provided in conjunction with major events held at the RPCC each quarter, such as, the Stock Show, Powwow, LNI, Sports Show, etc. The events and space will be negotiated on a good faith basis by both parties.

e. Tickets.

   (i) Monument Health shall receive, without charge, a minimum of eight (8) tickets to all events in the Venue. The location of the tickets shall be mutually agreed upon by the parties.

   (ii) Monument Health will receive the use of one (1) Theatre Box to accommodate 12 persons in the Expansion Arena, with associated signage per the brand standards.

   (iii) Monument Health will receive the use of one (1) Ice Arena Suite to accommodate 12 persons, with associated signage per the brand standards.

7. Signage.

a. General Provisions: All signage for the Venue shall be designed, constructed, and installed based on mutually agreeable specifications. The RPCC and Monument Health will work together in a commercially reasonable manner to develop the design of the signage and recognition items contemplated in this Agreement. The designs will be subject to the mutual approval of the RPCC and Monument Health. Approval of
signage designs and specifications shall not be unreasonably withheld, delayed, or denied by either party. Monument Health will manage and be responsible for the cost to design, construct, and install all Monument Health Venue signage covered under this Agreement. Once installed, all signage will become the property of the RPCC without the necessity of delivering a bill of sale. All signage will be transferred free and clear of security interests, liens, and claims. Monument Health will also transfer any applicable manufacturer’s warranties, which warranties must be effective upon transfer to the RPCC. The RPCC will be responsible for the cost to operate and maintain all signage once it has been installed except as otherwise agreed herein.

b. Maintenance: Monument Health shall be responsible for the cost of ongoing maintenance, repair, or replacement of the exterior signage. The RPCC will be responsible for the ongoing maintenance and repair of the interior signage. The parties shall at all times during the term of this Agreement maintain all signage installed hereunder in good and operable condition. If the exterior signage installed pursuant to this Agreement is in need of maintenance or repair and Monument Health fails to remedy the issue within a reasonable time, the RPCC may remedy the issue and bill the Monument Health for the reasonable costs of such work.

c. Replacement of Signage: Monument Health will pay for the replacement of the Venue’s signage, including the cost of removing the previous signage and installing the new signage in the event: (1) Monument Health desires to change the name of the Venue during the term of the Agreement, subject to the RPCC’s approval which shall not be unreasonably withheld; or (2) the exterior signage has been damaged or deteriorated beyond repair, without regard to cause. To the extent the RPCC receives insurance proceeds based on damage to the Venue signage, the RPCC will use all such proceeds to fund the replacement or repair of any damaged signage. Monument Health shall pay a proportionate share of the deductible for any claims made under this provision. The proportionate share of the deductible will be determined by determining the percentage of any insurance proceeds attributable to the exterior signage covered under this Agreement with the overall insurance proceeds received pursuant to the claim for which the deductible is paid. Such percentage will be determined to the hundredth decimal point.

c. Compliance with Law: The signage contemplated by this Agreement will be required to obtain all necessary permits and be designed, installed, and operated in compliance with all federal, state, and city laws. RPCC shall cooperate and assist Monument Health as necessary to obtain such permits and to complete design and installation as required by law.

d. Design & Fabrication: The RPCC and Monument Health will work diligently to approve designs and specifications for the Venue signage. Upon approval of the designs for the signage and recognition items, and receipt of any necessary approvals, Monument Health will cause the approved signage to be fabricated and will work with RPCC and its contractors to ensure that the signage and recognition items
contemplated in this Agreement are properly installed in conjunction with the approved construction schedule for the Expansion Arena.

8. **Future Name Change.**

Notwithstanding any other provision of this Agreement, Monument Health shall have the right to change the Venue Names, as provided herein. In the event of a change in ownership or a change in Monument Health’s name, logos, color schemes, or depictions, Monument Health may change the Venue Names, logos, color schemes, or depiction of the Venue Names with the written consent and approval of the RPCC, which consent shall not be unreasonably withheld or delayed, and also subject to the following conditions:

a. The RPCC may withhold consent because the proposed name is not an actual name used by Monument Health and is associated with public health and safety concerns or significant controversy, and in that event, the RPCC's withholding of consent will be considered "reasonable."

b. The RPCC may withhold consent if the proposed name or the company it represents interferes with the operations or operating policies of the Venue. For example, and without limitation, the proposed name should not conflict with the products or services provided by an advertiser or vendor with a pre-existing long-term contract at the Venue. RPCC agrees the initial proposed name and derivations thereof are acceptable.

c. Monument Health agrees that all costs associated with any name change will be its sole responsibility, including those costs identified above in Section 7 and Exhibit A, and specifically including, without limitation, all costs related to removal of existing signage and design, fabrication, and installation of new signage. Monument Health will further be responsible for reasonable replacement cost of any pre-printed or pre-produced stationary, brochures, promotional materials, tickets, advertising, marketing materials, equipment, and uniforms, but only if the RPCC could not in good faith have avoided those costs.

d. If all the conditions of this section are satisfied, the RPCC will agree to consent to the Venue Name changes in writing within thirty (30) days of the satisfaction of the conditions. When Venue Names are changed, the new names shall become the Venue names for all purposes of this Agreement from that day forward, including without limitation, the licenses granted hereunder to use the Venue Names.

9. **Sports Medicine Provider.**

As additional consideration for entering into this Agreement, Monument Health will be the exclusive sports medicine provider for all events that meet the specified criteria at the Venue. The RPCC agrees to exclusively use and to require those using the Venue to employ Monument Health’s medical providers for all events which require sports
medicine coverage and which have a planned attendance of 1,000 or more people. Monument Health will provide qualified and appropriately trained personnel for the events at which it provides sports medicine pursuant to this Agreement. The medical services provided pursuant to this section shall be provided by Monument Health at no additional cost to the RPCC or those holding events at the Venue. This provision does not prevent Monument Health for charging for follow up services arising out of this Section, or services which are provided off-site of the Venue. The current tenant hockey team is exempt from this provision. RPCC will provide Monument Health, to the greatest extent possible, the opportunity to negotiate sports medicine services for the existing tenant hockey team upon expiration of the existing sports medicine contract. RPCC will require any new tenants of the Venue who need sports medicine services to obtain such services from Monument Health Sports Medicine as part of any agreements for use of the Venue. The parties further understand that this provision will not prohibit visiting teams and shows from using their own pre-existing medical staff, or medical provider, when they are participating in a sporting event, or otherwise performing at the Venue.

10. **Additional Sponsorship Opportunities.**

a. Monument Health recognizes that the RPCC may permit other persons or entities to purchase advertising or otherwise sponsor portions of the Venue, except for the larger individual components of the complex specifically identified in the definition of "Venue.” Monument Health recognizes the importance of the RPCC’s efforts to maximize the involvement and participation of other businesses and the community in general with the Expansion Arena and the Venue as a whole. Monument Health does not desire through this Agreement to limit the ability of the RPCC to partner with other businesses to advertise and promote the Venue, so long as such businesses or organizations are not competitors of Monument Health. The RPCC may enter into advertising contracts and/or sponsorship agreements with any business or organization except for those substantially engaged in the provision or sale of health care services and products, including, but not limited to hospitals, medical clinics, or other health care providers, but not including dental, orthodontic, or oral surgery services or products. RPCC must receive advance approval from Monument Health for any sponsorships or advertising that are health care products or services. The RPCC acknowledges its obligation to manage the Venue in a manner that recognizes and protects Monument Health’s investment in the Venue.

b. Monument Health specifically acknowledges that the RPCC does not have control over certain signage in the current Ice Arena, which is under the control of the tenant hockey team. Since the RPCC does not sell or have control over this advertising, any advertising on team controlled mediums which would otherwise violate this Agreement is exempted and shall not constitute a breach by the RPCC. If the RPCC regains control of the advertising within the Ice Arena, it will bring all advertising into compliance with the terms of this Agreement unless otherwise legally prevented from doing so by an existing agreement which in that case compliance will occur at the expiration or renewal of any such agreement.
c. High school state tournaments and national touring events which have pre-existing sponsorship agreements which would otherwise be prohibited by this Agreement, which may include those of health services entities, will be permitted to have temporary signage in the Venue and in materials promoting the event within the Venue. Pre-existing sponsorship agreements means sponsorship agreements which are applicable to the tour as a whole and which are not entered into specifically with respect to the Venue event. The RPCC will work with Monument Health and the event organizer to insure that any signage or promotional materials allowed under this exception are appropriate in light of Monument Health’s investment in the Venue.

11. Trademarks & Licensing.

   a. Ownership: Monument Health will be the Owner of the Venue Names and logos. The use by the RPCC of the Venue Names, and all of Monument Health’s trademarks, trade names, and logos, whether or not they are registered, pursuant to this Agreement will inure solely and exclusively to Monument Health and its subsidiaries. The RPCC and Venue will not acquire any goodwill or other interest in them. Monument Health hereby grants to the RPCC, and to any third party who has been authorized or required by the RPCC to use the Venue Names, and/or any of Monument Health’s logos, trademarks, or trade names, a limited, royalty free license to use and sub-license for the purpose of identifying the Venue and activities, events, or performances at the Venue. Monument Health may use the Venue Names and logos for its own purposes, but agrees it will not license any of the foregoing to any other person or entity. The RPCC agrees that it will not use any other logos or designs for the portions of the Venue to which Monument Health has exclusive naming rights during the term of this Agreement, except the logos and designs jointly approved by the RPCC and Monument Health. Upon termination of this Agreement, and receipt by the RPCC or its successors in interest, of a written request from Monument Health to cease use of such trademarks, tradenames, and/or logos, the RPCC or its successors will cease use of the same in accordance with the terms and provisions of the written request from Monument Health.

   b. Infringement: The RPCC will give Monument Health prompt notice of any infringement claim related to the Venue Names or logos, and the content of any signage, panels, promotions, or advertising displayed and/or broadcast hereunder where it is alleged by a third party to infringe on the intellectual property rights of the third party. Monument Health has the obligation to defend against, or settle, the infringement claim, or change the infringing material. If Monument Health is unable to successfully defend or settle the infringement claim, then Monument Health must cease using the infringing material and change the infringing material in accordance with the provisions of this Agreement. If Monument Health fails to do so, then it will be in default under the terms of this Agreement and the RPCC may proceed with its rights and remedies under Section 13 below.
12. **Indemnification.**

a. *By Monument Health:* Subject to the terms and conditions of this Agreement, Monument Health hereby agrees to indemnify, defend, and hold harmless the RPCC, its elected and appointed officials, agents, officers, employees, and volunteers, and their respective successors and assigns from and against all costs, damages, liabilities, claims, causes of action, and expenses, of any kind or nature resulting from: (1) the content of any signage, recognition items or any messages or promotions displayed and/or broadcast hereunder in the form furnished and/or approved solely by Monument Health, including without limitation, claims, demands, or litigation alleging that signage, recognition items, promotions, or messages are defamatory, constitute illegal competition, or unfair trade practices, contain infringement of trademarks, trade names or service marks, constitute a violation of intellectual property rights or constitute a violation of rights of privacy or infringement of copyrights and other proprietary rights; (2) the alleged willful misconduct and alleged negligent acts, errors and omissions of Monument Health and its respective officers, directors, employees, agents, and contractors related to the installation or replacement of any of Monument Health’s signage or advertisements covered under this Agreement; and (3) any medical services provided pursuant to Section 9 of this Agreement. The RPCC will give Monument Health notice of any losses for which it may seek indemnification pursuant to this provision within a reasonable time after becoming aware of any such loss. If Monument Health is defending the RPCC pursuant to this provision it will provide the RPCC with full and complete updates regarding the claims and will not enter into any settlement or compromise without the RPCC’s written consent, such consent shall not be unreasonably withheld. Monument Health’s obligations under this section will survive the termination or expiration of this Agreement until all of the losses are resolved, or the relevant statute of limitations have expired, whichever occurs later.

b. *By the RPCC:* Subject to the terms and conditions of this Agreement, the RPCC hereby agrees to indemnify, defend, and hold harmless Monument Health, its affiliated entities and all of their respective trustees, directors, officers, employees, agents, successors and assigns from and against all costs, damages, liabilities, claims, causes of action, and expenses, of any kind or nature resulting from: (1) an allegation the rights granted to Monument Health under this Agreement violate the advertising, naming, sponsorship rights for Venue granted by the RPCC to any other party; (2) the ownership or management of the Venue, or the business operations of events conducted in the Venue; (3) the alleged willful misconduct and alleged negligent acts, errors and omissions of the RPCC and its respective officers, directors, employees, agents, and contractors related to the installation or replacement of any of Monument Health’s signage or advertisements covered under this Agreement. Monument Health will give the RPCC notice of any losses for which it may seek indemnification pursuant to this provision within a reasonable time after becoming aware of any such loss. If the RPCC is defending Monument Health pursuant to this provision it will provide Monument Health with full and complete updates regarding the claims and will not enter into any settlement or compromise.
without Monument Health’s written consent, such consent will not be unreasonably withheld. The RPCC’s obligations under this section will survive the termination or expiration of this Agreement until all of the losses are resolved, or the relevant statute of limitations have expired, whichever occurs later.


a. Monument Health’s Defaults & Material Breaches: Each of the following will constitute a breach and material default of this Agreement by Monument Health:

   (i) Failure to pay the Base Fee, or any other payment default, under this Agreement, plus any interest due, within forty-five (45) days of its due date.

   (ii) failure to correct, remedy, or cease any default or violation of this agreement, except for a failure to make payment pursuant to 13(a)(i), within sixty (60) days following receipt of notice of default from the RPCC.

   (iii) The commencement of bankruptcy or insolvency proceedings by or against Monument Health which has not been dismissed within 90 days of the commencement thereof. Upon the occurrence of such an event, the RPCC has the right to immediately sell any and all rights contained in this Agreement.

b. The RPCC's Right to Cure a Breach by Monument Health. In the event Monument Health is in breach or material default of this Agreement as set forth in Section 13(a) above, the RPCC may either: (i) terminate this Agreement, subject to the RPCC's remedies under Section 13(c) below, and terminate the identification of the Venue by the Venue Names; or (ii) if the failure can be cured by expending funds to resolve an infringement claim or the losses, or to replace an item which is the responsibility of Monument Health, the RPCC may, in its sole discretion, advance and pay for the item, in which event the costs expended by the RPCC for the item will become due and owing by Monument Health to the RPCC within thirty (30) days after the RPCC invoices Monument Health for the item. Any invoice not paid within thirty (30) days shall accrue interest as specified in Section 4(b).

c. The RPCC's Remedies. In the event Monument Health is in breach and material default of this Agreement, the RPCC may terminate this Agreement, avail itself of the other rights granted the RPCC under this Agreement and avail itself of all other remedies which may be available to the RPCC at law or in equity. Upon the RPCC’s termination of this Agreement, RPCC, without any further proceedings, may grant and license the Naming Rights to the Venue to one or more other persons or entities during any portion of the term remaining under this Agreement and receive license fees therefor. Notwithstanding termination, if Monument Health’s rights under this
Agreement are terminated pursuant to this Section 13, the RPCC will make a good faith effort to obtain fair value license fees for the Naming Rights which are licensed to any third party or parties claiming that portion of what would have been the remaining term of this Agreement but for the termination of Monument Health's rights. Monument Health will pay to the RPCC the difference between the remaining amounts due from Monument Health to the RPCC under this Agreement and the sum the RPCC receives for the Naming Rights from other persons or entities during the period beginning on the date Monument Health's rights under this Agreement are terminated and ending on the scheduled expiration date of this Agreement. Such payments will be remitted by Monument Health to the RPCC in accordance with the schedule of annual Base Fee installment payments as set forth in Section 4. Monument Health will also pay to the RPCC the cost of removing Monument Health's signage and other recognition items. The payment reimbursing the RPCC for its costs and expenses, as identified herein, will be made within thirty (30) days after the date of the RPCC's sends notice to Monument Health demanding payment. The termination and payment will be the sole remedy to RPCC for all damages caused by Monument Health's default of its obligations under this Agreement. Effective on termination, Monument Health will cease use of any products or campaigns referencing the Venue and making references to Monument Health being a Venue advertiser.

d. **RPCC's Defaults and Material Breaches.** Each of the following will constitute a breach and material default of this Agreement by the RPCC:

(i) Unreasonably denying Monument Health's chosen name for the Venue or any of the components of the Venue pursuant to the terms of this Agreement.

(ii) Failure of the RPCC to correct, remedy, or cease any default or violation of this Agreement within sixty (60) days following receipt of notice of default from Monument Health.

(iii) Failing to commence construction of the venue by June 1st 2020. Once construction has commenced, suspending construction for more than One Hundred and Eighty (180) days. Failure to substantially complete the Expansion Arena by December 31st 2021. For purposes of this section “substantial completion” will have the same meaning as the term is defined in Section 9.8 of the General Conditions of the Contract for Construction (Document A201-2007) for this project. If substantial completion of the Expansion Arena is delayed beyond September 1, 2021, the parties will work in good faith to negotiate a no cost extension based on the length of time between the anticipated date of substantial completion and the actual date of substantial completion.
(iv) Failure to maintain the Venue in a first class condition.

(v) Failure by the City to sufficiently fund the operations of the RPCC so that the Venue’s ability to host events throughout the year at a level similar to or higher than it is able to host at the time of this Agreement, or if the City substantially alters the management structure of the Venue without first consulting with and getting input into the Venue’s management structure from Monument Health.

e. **Monument Health’s Right to Cure the RPCC’s Breach.** In the event the RPCC is in breach and material default of this Agreement as set forth in Section 13(d) above Monument Health may either: (i) terminate this Agreement subject to Monument Health’s remedies under Section 13(f) below or (ii) if the failure can be cured by expending funds to maintain or repair signage or a recognition item which is the responsibility of the RPCC, Monument Health may, in its sole discretion advance and pay for the maintenance or repair and the costs expended by Monument Health, together with interest thereon at the rate of interest specified in Section 4(b) above from the date the item is paid for by Monument Health, will become due and owing by the RPCC to Monument Health within thirty (30) days after Monument Health invoices the RPCC for the item. In this event, Monument Health will have no obligation to make any payments to the RPCC for the period from the date of the notice until the item has been maintained or repaired. Monument Health may offset any expenses, including applicable interest, incurred in connection with the maintenance and repairs against any amounts due and owing from Monument Health to the RPCC under the terms and provisions of this Agreement.

f. **Monument Health’s Remedies.** In the event RPCC is in breach and material default of this Agreement as set forth in Section 13(d) of this Agreement, Monument Health may terminate this Agreement and avail itself of all remedies which may be available to Monument Health at law or in equity, except as otherwise modified by this Agreement. The rights available to Monument Health include the right to seek specific performance of any term of this Agreement. If Monument Health provides notice of default pursuant to this Agreement and such default is not cured by RPCC within any timeframes established in this Agreement, or such additional time as may be mutually agreed upon, Monument Health may seek an equitable adjustment to the pro rata base fee for the period of time from when it notified RPCC of the breach until the breach was cured. If Monument Health terminates this Agreement, in addition to being released from its obligation to make future payments, it shall be entitled to a refund of the pro rata share of any fees incurred pursuant to Section 4(a) of this Agreement which were prepaid. If Monument Health terminates the Agreement pursuant to this Section, the RPCC will be responsible for the cost of removing and replacing all Venue signage and associated branding items containing the Venue Names owned by Monument Health.
g. **Waiver of Certain Damages.** Except as otherwise specifically allowed in this Agreement, neither party will be liable to the other party for incidental, indirect, consequential, or punitive damages.

14. **Force Majeure; Substantial Damage.**

a. **Force Majeure Events.** In the event either Party to this Agreement is unable to perform its obligations under this Agreement, or to enjoy any of its benefits because of the substantial damage or destruction of the Venue due to any cause, including a natural disaster or action or decree of a governmental body with appropriate jurisdiction (hereinafter referred to as "Force Majeure Event"), the Party which has been so affected will immediately give written notice to the other Party of and will do everything possible to resume its performance. Upon receipt of notice, each Party's obligations under this Agreement will be suspended for the period of the Force Majeure Event and, if applicable, the installment payment of the Base Fee for the year in which the Force Majeure Event occurs will be reduced pro rata and Monument Health will receive a credit to be applied to future installment payments for the difference between the installment payment paid and the amount of the reduced payment. No action or inaction of the RPCC or City of Rapid City may constitute a Force Majeure Event as described in this Section.

b. **Extension of Term Due to a Force Majeure Event.** At Monument Health’s sole option, this Agreement will be automatically extended for a period equal to the number of days during which the Venue was closed due to a Force Majeure Event.

c. **Termination Due to a Force Majeure Event.** If the Force Majeure Event lasts for a period of two or more years from and after the date the other party receives notice of the Force Majeure Event, and the party who received the notice has been able to perform its obligations despite the Force Majeure Event, the party who received the notice may terminate this Agreement by giving notice stating its desire to terminate the Agreement to the party unable to perform because of the Force Majeure Event.

d. **Proration of Base Fees Due to Force Majeure Event.** If the RPCC is unable to fulfill its obligations due to a Force Majeure Event and chooses not to rebuild or reopen the Venue, the Base Fees payable pursuant to Section 4 of this Agreement will be prorated to the date of the Force Majeure Event.

15. **Insurance.**

a. **By the RPCC.** The RPCC will maintain a property policy of insurance subject to a deductible determined by the RPCC in its sole discretion, covering the Venue and Monument Health’s signage and recognition items. The proceeds, if any, received by the RPCC for a casualty loss of Monument Health’s signage and recognition items will be used to pay the costs of repair or replacement of the damaged signage and recognition items subject to the terms of Section 7 of this Agreement.
The RPCC will maintain commercial general liability insurance subject to deductibles reasonably standard for municipalities.

b. *By Monument Health,* Monument Health agrees it and its contractors will maintain commercial general liability insurance and other policies of insurance as is agreed upon by Monument Health, its contractors and the RPCC prior to the installation or replacement of any signage by Monument Health or its contractors on its behalf. Upon the RPCC's request, the RPCC will be named as an additional insured on the policies of insurance, where appropriate.

c. *Waiver of Subrogation.* Notwithstanding any other provision of this Agreement, the parties waive their respective rights to recover from each other property damage losses, including lost revenues and profits, due to the other party's negligent acts, errors and omissions or otherwise to the extent of any recovery received from their respective insurance companies.

16. **Notices.**

Any notice or communication to be given by one party to the other under this Agreement must be in writing. If notice is given by registered or certified mail, it will be deemed to have been given and received on the third business day following the date on which a registered or certified letter containing the notice, properly addressed, with postage prepaid, is deposited in the United States mail, but if given otherwise than by registered or certified mail, it will be deemed to have been given when received by the party to whom it is addressed. Notices will be delivered or sent to the following respective addresses or to such other addresses as the parties, from time to time, may specify in writing:

To RPCC:  
Craig Baltzer  
Rushmore Plaza Civic Center  
444 N. Mt. Rushmore Road  
Rapid City, SD 57701

With a copy to:  
City Attorney  
City of Rapid City  
300 Sixth Street  
Rapid City, SD 57701

To Monument Health:  
Attention: Robin Zebroski  
P.O. Box 6000  
Rapid City, SD 57709

With a copy to:  
Attention: General Counsel  
P.O. Box 6000  
Rapid City, SD 57709

17. **Amendments.**

No addition to, deletion from, or other modification of any of the provisions of this Agreement will be valid unless made in writing and signed by an authorized representative of each of the parties.
18. Applicable Law; Venue; Miscellaneous Provisions.

a. Applicable Law. This Agreement will be construed under the laws of the State of South Dakota, without regard to conflict of law principles.

b. Legal Venue. The parties agree the legal venue for any action arising out of this Agreement or incident thereto will be proper in a court of competent jurisdiction in Pennington County, South Dakota, and each party waives any objection to such venue.

c. Venue Management. Monument Health acknowledges the RPCC shall manage the Venue without input from Monument Health, except as to the matters specifically identified in this Agreement. Specifically, RPCC shall have sole control over events scheduled at the Venue without regard to Monument Health’s preferences. In all cases, RPCC shall undertake its management responsibilities with diligence and commercially reasonable efforts to operate the Venue so as to maximize the exposure of the Venue and Monument Health to the community.

d. No Third Party Beneficiaries. This is not a third party beneficiary contract. No person or entity other than a party signing this Agreement will have any rights under this Agreement.

e. No Partnership or Joint Venture. Nothing in this Agreement will be construed to create a partnership or joint venture, nor to authorize any party to act as agent for or as a representative of any other party to this Agreement. Each party will be deemed an independent contractor and no party will act as, or hold itself out as acting as, an agent for any other party.

19. Captions.

The title of the articles, sections, and subsections of this Agreement are for convenience only, and do not define or limit the contents.

20. Waivers.

No action other than a written notice by one party to the other specifically stating the notice has the effect of a waiver, will constitute a waiver of any particular breach or default of the other party. No notice of waiver from either party will waive the other party’s failure to fully comply with any other term, condition, or provision of this Agreement, irrespective of any knowledge any RPCC or Monument Health, officer, employee, or agent may have of any breach or default of, or noncompliance with, a term, condition, or provision of this Agreement. No waiver of full performance by either party may be construed, or operate as a waiver of, any subsequent default of any of the terms, covenants, and conditions of this Agreement. The payment or acceptance of Base Fees or other amounts for any period after a default will not be deemed a waiver of any future right or acceptance of defective performance in the future. Upon written request of the RPCC, Monument Health may, in the exercise of its sole and absolute discretion, waive
any of its rights hereunder, including without limitation any prohibitions as they relate to any Monument Health Entity.

21. **Cumulative Rights.**

All remedies available at law or in equity to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies.

22. **Entire Agreement.**

The parties to this Agreement acknowledge it is a negotiated agreement, they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and the terms and conditions of this Agreement are not to be construed against any party on the basis of either party's draftsmanship of this Agreement. This Agreement constitutes the entire agreement among the parties respecting the subject matter hereof, and there are no understandings or agreements among the parties respecting the subject matter hereof, written or oral, other than as set forth in this Agreement.

23. **Agreement Counterparts.**

This Agreement may be simultaneously executed in several counterparts, each of which will be deemed to be an original having identical legal effect and may be delivered by electronic delivery of a digitized signature or by facsimile.

24. **RPCC Representations and Warranties.**

The RPCC represents to Monument Health the following:

a. The RPCC has full authority to execute, deliver, and perform the obligations of this Agreement.

b. Once this Agreement has been signed by the approved by the RPCC Board of Directors and signed by the RPCC Executive Director, the RPCC will have taken all actions, and obtained all approvals, in accordance with and as required by all applicable law to make this Agreement a fully binding and legally enforceable obligation of the RPCC.

c. Subject to Subsection 24(b) above, the terms and provisions of this Agreement will be legally binding on the RPCC; and will not violate the terms or provisions of any other agreement or document binding on the RPCC.

d. The RPCC expects to substantially complete the construction of the Expansion Arena and all necessary infrastructure to support the Arena on or about September 1, 2021.
25. **Monument Health’s Representations and Warranties.**

Monument Health represents to the RPCC the following:

a. Monument Health has the full authority to execute, deliver, and perform its obligations set forth in this Agreement;

b. Monument Health has taken all corporate action to approve this Agreement and make this Agreement a fully binding and legally enforceable obligation of Monument Health;

c. The terms and provisions of this Agreement do not violate the terms and provisions of any other agreement to which Monument Health is a party.

26. **Option to Renew**

Upon expiration of the term of this Agreement, the parties shall have the right to extend this Agreement for an additional term of up to ten (10) years, subject to renegotiation of the payment terms contained herein. If either of the parties wish to negotiate an extension of this Agreement, it shall give notice to the other party, as specified in Section 16, no later than June 30, 2030 and no earlier than one hundred and eighty (180) days prior to this date. If no such notice is received by June 30, 2030, RPCC shall be free to negotiate a successor agreement with another party. In the event RPCC and Monument Health are unable to agree on the terms of a successor agreement, this Agreement shall terminate.

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REMAINDER OF PAGE INTENTIONALLY BLANK SIGNATURE PAGES TO FOLLOW
THE RUSHMORE PLAZA CIVIC CENTER

Daniel Kline, Board Chairman

Craig Baltzer, Executive Director

State of South Dakota )
ss.
County of Pennington )

On this the _____ day of __________________, 2019, before me, the undersigned officer, personally appeared Daniel Kline, Chairman of the Rushmore Plaza Civic Center Board, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that being duly authorized to do so he executed the foregoing instrument for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, __________________

My Commission Expires:
(SEAL)

State of South Dakota )
ss.
County of Pennington )

On this the _____ day of __________________, 2019, before me, the undersigned officer, personally appeared Craig Baltzer, Executive Director of the Rushmore Plaza Civic Center, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that being duly authorized to do so he executed the foregoing instrument for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, __________________

My Commission Expires:
(SEAL)
MONUMENT HEALTH

Paulette Davidson, President and CEO

State of South Dakota )
                   ss.
County of Pennington )

On this the _____ day of ______________, 2019, before me, the undersigned officer, personally appeared Paulette Davidson, President and Chief Executive Officer of Monument Health, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that being duly authorized to do so she executed the foregoing instrument for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, ___________________

My Commission Expires:

(SEAL)