# FOOD AND BEVERAGE SERVICES AGREEMENT
# FOR THE
# PINNACLE BANK ARENA
# AND RELATED FACILITIES

This Food and Beverage Services Agreement ("Agreement") is entered into as of the _____ day of April, 2012 by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation, under the laws of the State of Nebraska ("City"), and SMG FOOD AND BEVERAGE, LLC, a Delaware limited liability company d/b/a Savor ("SAVOR").

## RECITALS

The West Haymarket Joint Public Agency ("Agency"), is a joint public agency created pursuant to the Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency dated as of April 1, 2010 in accordance with the Nebraska Joint Public Agency Act, to construct, equip, furnish and finance a sports/entertainment arena ("Arena") located in the City of Lincoln, Nebraska and certain improvements related thereto, including parking garages and surface parking lots.

The City is a party to that certain Facilities Agreement dated September 8, 2010 ("Facilities Agreement") with the Agency, wherein the Agency has granted to the City the right to operate, maintain and manage the facilities described in the Facilities Agreement on the terms provided therein. Additionally, City has entered into that certain Lease and Operating Agreement ("Lease and Operating Agreement") by and between the Board of Regents of the University of Nebraska and the City for the lease of Basketball Space and other defined leased improvements within the West Haymarket Arena [n/k/a "Pinnacle Bank Arena"] ("Arena") and designated basketball related parking spaces in the Parking Improvements located on the Arena Site. The Lease and Operating Agreement was approved by Ordinance No. 19644 passed by the City Council for the City of Lincoln, Nebraska on November 7, 2011 and is on file in the office of the City Clerk and available for inspection during regular office hours.

Savor is in the business of managing and operating food and beverage concessions and catering operations in arenas and other facilities.

City and Savor desire that Savor manage and operate the food and beverage services at the Facilities in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, the parties agree, WITH THE INTENT TO BE LEGALLY BOUND HEREBY, as follows:

**1. CONTRACT DOCUMENTS.** The Contract Documents for the Food & Beverage Services consist of this Agreement, the Facilities Agreement and the Lease and Operating Agreement. In the event terms of the Facilities Agreement and the terms of the Lease and Operating Agreement, this Agreement, and the proposal are inconsistent then the Facilities Agreement shall prevail. In the event the terms of the Lease and Operating Agreement and the terms of this Agreement and the proposal are inconsistent, then the Lease and Operating Agreement shall prevail. In the event the terms and conditions of this Agreement and the terms and conditions of the proposal are inconsistent, then this Agreement shall prevail.

**2. DEFINITIONS.** The definitions in Section I. of the Lease and Operating Agreement including but not limited to the definition of Arena, Athletics, Basketball Season, Basketball Space, Basketball Teams, Concessions, Events by Category, Halo Area, Home Games, Maintenance, Merchandise, UNL and UNL Rent, are incorporated herein by this reference. Arena Events are defined under Events by Category to include any events or organized activity for public or private attendance whether formally sponsored, City or Third Party entity held at the Arena, but excluding UNL Events and Basketball team practices.

**3. DEFINITIONS – ADDITIONAL.**

In addition to the words and phrases defined elsewhere in this Agreement, the following words and phrases, when used in this Agreement, shall have the meanings given to them in this Section:

A. "Agreement" shall mean this Food and Beverage Services Agreement, together with all of the Exhibits attached hereto and made a part hereof, as the same may be amended from time to time as provided herein.

B. "Alcoholic Beverage Services" shall mean the sale, service, and distribution of alcoholic beverages at any event held at the Facilities.

C. "Arena Surface Lot" (a/k/a "Festival Space") shall mean the dual (parking and festival event) lot shown on Attachment B to the Lease and Operating Agreement designated as a 1,505 stall lot located 5.5 blocks from the Arena (the number of actual parking stalls are unknown at this time but are anticipated to be approximately 1,300 stalls).

D. "Base Fee" shall have the meaning set forth in Section 8A hereof.

E. "Capital Equipment" shall mean any and all furniture, fixtures, machinery or equipment, either additional or replacement, having a per item original cost of $5,000 or more or an expected useful life of more than one year.

F. “Capital Improvements” - any and all building additions, alterations, renovations, repairs or improvements that have an initial dollar cost of not less than $5,000 per project.

G. “Concessions.” In addition to the definition of Concessions in the Lease and Operating Agreement, Concessions shall mean the sale, catering, delivery, furnishing of food and beverages or consumable products including non UNL related merchandise sold or served at SAVOR operated events at Pinewood Bowl and/or the Festival Space.

H. “Fiscal Year” shall mean a fiscal year period commencing September 1 and ending on August 31 of every year during the Term.

I. “Facilities” shall mean collectively the Arena Site (including the Arena and Arena Garage), Arena, Festival Space and Pinewood Bowl.

J. “Gross Revenue” shall mean all revenue generated in connection with the Services, as calculated in accordance with generally accepted accounting principles, consistently applied (including, without limitation, (a) revenues from the sale of the Services to employees of the Facilities, and (b) amounts actually received by Savor from Subcontracted Services (i.e. not the listed price of food before discounts are applied), less all applicable sales taxes related thereto.

K. “Operating Expenses” shall mean all expenses and expenditures of whatever kind or nature incurred by Savor in providing the Services, including, but not limited to: employee compensation and related expenses (including severance), employee benefits and related costs, fringe benefits, the costs of food, alcoholic beverages, and non-alcoholic beverages, supplies, material and parts costs, costs of any interns and independent contractors, advertising, marketing and public relations costs and commissions, janitorial and cleaning expenses, data processing costs, dues, subscriptions and membership costs, the costs of procuring and maintaining the insurance referred to herein, amounts expended to procure and maintain permits and licenses, charges, taxes, excises and fees, professional fees, printing and stationery costs, postage and freight costs, bank services charges, fees and charges on credit card transactions, equipment rental costs, computer equipment leases and line charges, repairs and maintenance costs, security expenses, utility and telephone charges, travel and entertainment expenses in accordance with Savor's policies, the cost of employee uniforms, safety and medical expenses, exterminator and waste disposal costs, costs relating to the maintenance of signage inventory and systems, the cost of annual independent audits of the Facilities, the cost of compliance with laws and regulations, transition expenses prior to the beginning of the Term, and the Base Fee, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis; provided that Operating Expenses shall not include expenses or expenditures in connection with Capital Improvements and Capital Equipment purchases, and any

expenses relating to Savor personnel based in SAVOR's corporate headquarters in West Conshohocken, Pennsylvania or its regional field locations (other than the reasonable costs of travel by such corporate or regional personnel in connection with Savor's performance of the Services at the Facilities, which costs shall be Operating Expenses).

L. "Pinewood Bowl" shall mean the City's fenced amphitheater shown on **Exhibit A** attached hereto located in Pioneers Park.

M. "Remaining Funds" shall be as defined in Section 9.E.iii hereof.

N. SAVOR's Concession Report shall mean the document prepared by SAVOR in a form approved by the City's Contract Administrator for Concession Gross Revenue. For calendar month 1, SAVOR shall complete the report 10 days prior to the first day of calendar month 3. Thereafter SAVOR shall complete the report 10 days prior to the first day of the succeeding calendar month.

O. "Services" shall be as defined in Section 5.A. hereof.

P. "Subcontracted Services" shall mean services provided at the Facilities by third parties which are under contract with Savor pertaining to any part of the Services as provided in this Agreement.

Q. "Term" shall mean the term of this Agreement as defined in Section 4.

**4. TERM**. The term of this Agreement ("Term") shall commence on September 1, 2013 and shall continue in effect, unless earlier terminated as set forth in this Section or Section 20 below, for a period of three years until August 31, 2016. In the event this Agreement is not canceled by the City by notifying Savor in writing of such election at least 180 days prior to August 31, 2016, the term of this Agreement shall extend for an additional three year period ("Renewal Term"). Notwithstanding any provision above to the contrary, the City retains the right to cancel the Agreement at any time during the term, or the term as extended, at its sole option, upon one hundred eighty (180) days prior written notice to SMG.

**5. RIGHTS GRANTED TO SAVOR**.

A. Subject to the Lease and Operating Agreement and as provided below, City hereby grants to Savor (i) the right to manage, operate and oversee food and beverage services at the Facilities including but not limited to concessions and catering services throughout the Facilities, and (ii) the right to provide (A) food and beverage concessions at the Facilities by selling food and non-alcoholic beverages, (B) vending services at the Facilities, and (C) Alcoholic Beverage Services, to the extent permitted under Savor's

liquor license and all applicable laws. The provision of such services and the sale of such items collectively shall be defined and referred to as the "Services." In performing the Services SAVOR shall be responsible for all aspects of ordering and purchasing of inventories and supplies, staffing of concession stands, etc. In any such purchasing it is understood that SAVOR maintains its own suppliers which may include local suppliers (if local suppliers offer the same prices as the national suppliers, then the local supplier shall be utilized) but in any event may not be for the exclusive use or benefit of the Facilities, and no such suppliers shall be deemed to have any contractual relationship to the City or the Facilities, unless authorized by the City. Contracts with suppliers shall contain a provision acknowledging SAVOR is the contracting party and SAVOR has no authority to bind the City to such contract. SAVOR shall provide point of sale or other marketing for Concessions at the Facilities.

B. In the performance of the Services at the Arena, SAVOR, pursuant to the Lease and Operating Agreement, shall provide, at cost, basic concession food and beverage service to the locker rooms of the Basketball Teams and visiting teams at Home Games, UNL event staff and media members and officials. SAVOR understands that under the current Lease and Operating Agreement no alcohol sales shall be allowed during UNL Events.

C. In performance of the Services at the Festival Space SAVOR shall manage all food and beverage sales during festivals, football parking and pre and post event activities.

D. Notwithstanding any provisions to the contrary in Subsection 5.A above, SAVOR's right to provide Alcoholic Beverage Service is contingent upon SAVOR prior to the beginning of the Term, obtaining a public venue liquor license from the Nebraska Liquor Control Commission.

**6. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF CITY**. City hereby represents, warrants, and covenants to Savor that as of the date hereof and continuing throughout the Term:

A. No agreement or understanding between the City and any person or entity shall reserve or grant to such person or entity the rights granted to Savor hereunder.

B. City has been duly authorized to and may validly enter into this Agreement with Savor. Each individual executing this Agreement on behalf of City is duly authorized to do so.

C. The execution and delivery of this Agreement by City shall not cause City to breach or be in default under any material agreement to which City is a party or may be

bound thereby. City is not in default under any agreements or understandings pertaining to its right to construct, develop, use, or occupy the Facilities.

D. No consents or approvals which have not been obtained are necessary under any agreement to which City may be a party or be bound thereby in connection with the execution and delivery of this Agreement by City.

**7. REPRESENTATIONS AND WARRANTIES OF SAVOR**. Savor hereby represents and warrants to City that as of the date hereof:

A. Savor has been duly authorized to and may validly enter into this Agreement with City. Each individual executing this Agreement on behalf of Savor is duly authorized to do so.

B. The execution and delivery of this Agreement by Savor shall not cause Savor to breach or be in default under any material agreement to which Savor is a party or may be bound thereby.

C. No consents or approvals are necessary under any agreement to which Savor may be a party or may be bound thereby in connection with the execution and delivery of this Agreement by Savor.

**8. COMPENSATION**. Subject to all of the terms and conditions contained herein, and in consideration of the Services provided by Savor hereunder and City's grant to Savor of the right to provide the Services hereunder, Savor shall be compensated, without setoff, as follows:

A. City shall pay to Savor a base fee of four percent (4%) of the Gross (net of tax) Concessions Revenues ("Base Fee"). Payment of the Base Fee shall be made from Gross Revenues (net of tax) on the twenty-fifth (25th) day of each month in arrears for the most recently completed month during the Term.

**9. REPORTING, ACCOUNTING, AND PAYMENT OBLIGATIONS**.

A. Savor shall keep complete and accurate records of all receipts in connection with the Services and shall keep complete and accurate books of account with respect thereof. City shall have access, during business hours, to all books and records of Savor relating to its Gross Revenue and Operating Expenses. Savor will follow its established bookkeeping procedures and will make every effort to endeavor to comply with any City requests relating to the maintenance of records. City shall have the right, at any time and from time to time, to cause nationally or regionally recognized independent auditors selected by City and approved by Savor to audit all of the books of Savor relating to the

Services. If any such audit demonstrates that the amount due to the City as set forth in the Annual Statement (defined below in Section 9C) is misstated by more than five percent (5%), Savor shall pay to the City the cost of such audit. Any reconciling payments going to either the City or SAVOR shall be paid promptly.

B. Savor shall provide the City with the following statements of Gross Revenue, Operating Expenses, the Base Fee, and the Remaining Funds: (i) on or before the twenty-fifth (25th) day of each month during the Term and any Renewal Term ("Monthly Report"), covering such items for the immediately preceding month, and (ii) on or before ninety (90) days following each Fiscal Year during the Term and any Renewal Term ("Annual Statement"), covering such items for the immediately preceding Fiscal Year.

C. City shall have the right and obligation to review any Monthly Report or the Annual Statement within thirty (30) days of its receipt and shall address, during such thirty (30) day period, any perceived discrepancies in the Monthly Report or the Annual Statement, as the case may be, and seek their resolution.

D. All revenues collected by Savor from the operation of the Services shall be deposited into the Food and Beverage Operating Account, which shall be established and maintained by Savor at a financial institution located in Lincoln, Nebraska. Such revenues collected and deposited by Savor in the Food and Beverage Operating Account will be held in trust for the City and used in the manner provided herein.

E. The revenues collected and deposited in the Food and Beverage Operating Account shall be used as follows:

i. To pay Savor the Base Fee as provided in Section 8A hereof;

ii. To pay as they become due the Operating Expenses incurred by Savor; and

iii. To the extent that there is any balance left in the Food and Beverage Operating Account at the end of month ("Remaining Funds"), after taking into account the projected cash flow needs of Savor hereunder for the upcoming month, Savor shall pay the Remaining Funds to the City or the management company retained by the City to manage and operate the Facilities for deposit in the operating account relating to the management of the Facilities.

**10. TRAINING.** All Savor employees involved in the sale, service, and distribution of alcoholic beverages shall be trained by Savor in effective alcohol awareness, which includes training based on any applicable laws of the State of Nebraska.

## 11. SAVOR'S OPERATIONAL RESPONSIBILITIES.

A. Periods of Operations. Savor shall provide the Services at such times as shall be reasonably necessary to serve guests of the Facilities and shall maintain its liquor license in good standing so as to be able to provide the Alcohol Beverages Services.

B. Quality. All food and beverage items offered for sale by Savor in connection with the Services shall be of high quality. Savor shall not offer for sale any such food or beverage items which are spoiled, of poor quality, or otherwise unfit for consumption and any such items immediately shall be removed by Savor from any food preparation or service area upon notice or discovery thereof. Savor shall maintain a level of service that will provide an effective and convenient operation of such food and beverage services. All food, drinks, beverages, confections and other items sold or kept for sale in connection with the Services will conform in all respects to applicable federal, state, county and City regulations.

C. Notice of Health Code Violations. Savor will provide the City, immediately upon Savor's receipt, copies of any reports, citations, or notices that appear from the Lincoln-Lancaster County Health Department or the City of Lincoln Health Department, or any other body which has jurisdiction over the Facilities and/or the Services to be rendered by Savor hereunder, as well as copies of any Savor responses, including, inter alia, field inspection reports.

D. City's Right of Review. The City shall have the right to review all menu items and all changes thereto, prior to Savor's use of such menus.

**12. SUSTAINABILITY/WASTE MANAGEMENT OPERATIONS.** SAVOR and the City of Lincoln will work together to insure the Pinnacle Bank Arena is operated as one of the most environmentally sensitive civic facilities in the country through sustainable practices. In order to create an atmosphere that is conceptually and operationally supportive of sustainable practices, SAVOR shall implement the following:

A. Sustainability Policy. SAVOR will provide a written "Sustainability Policy," supported and signed by SMG's General Manager for the Arena that outlines the environmental vision, objectives and goals of the Arena as they relate to creating a sustainable arena environment. Policy should address communication and messaging of these objectives to staff, clients, vendors, concessionaires, and patrons.

B. Procurement Policy. SAVOR will provide a written policy to address and consider environmental issues during the procurement and purchasing process. SAVOR will purchase recycled content supplies and products for its operation to the extent it is

available, and will comply with any environmentally responsible purchasing policies established by the City for its facilities during the term of this contract. The policy should have a focus on buying regionally and using organic and sustainable materials when possible. This policy should include processes to communicate the "Sustainability Policy" and procurement plans to vendors and encourage their participation with the operator to address their product or services environmental impact.

C. Energy Conservation. SAVOR will use utility and mechanical systems software and operational practices to manage energy consumption and energy efficiency. Systems preventative maintenance policies and regular energy use tracking and audits will be required components. Close recording of utility usage over the first two years of operation will provide benchmarks for future conservation and efficiency review goals. SAVOR will provide to the City all energy use formation necessary for the City in its participation as an "Energy Star Partner" with respect to energy use in the Arena.

D. Cleaning chemicals, exterior spaces maintenance and staff training. SAVOR will provide written goals, procedures and specifications for using "green" cleaning chemicals. SAVOR must also demonstrate that SAVOR Arena staff are trained in the safe use of these materials and trained in the philosophy and policies about why "green" and sustainable cleaning processes are mandated.

E. Food and Beverage Service. SAVOR will provide an annual report highlighting "Sustainable Practices in Food and Beverage Service" including at least the following: composting of food waste; recovery of vegetable oil in concessions and processed for alternative uses; wine cork recovery; use of compostable paper and service ware; use of locally sourced food and beverages; level of recycling of cardboard from food and beverage service; use of bulk containers when possible to reduce package waste; and any purchasing policies used to purchase compostable or recyclable food service containers.

F. Waste Management: Reduction, Diversion, and Recycling. SAVOR will on an annual basis seek to divert up to 75% of the total waste recyclables generated by SAVOR at the arena from the City landfill. SAVOR shall provide to the City a comprehensive solid waste management plan every two years that identifies and plans for the diversion of the various waste streams created at the Arena and which seeks to meet this overall goal. Components of the plan shall include a facility waste audit, and waste diversion techniques including reuse, re-purposing, recycling, and composting. SAVOR may utilize for the Arena's operations the City's solid waste disposal and/or recycling contracts for services.

i. SAVOR will require SAVOR Arena staff to the extent practicable to recycle at the minimum glass, paper, plastic, cardboard, aluminum, pallets, printer cartridges, office paper, newspaper, rechargeable batteries, fluorescent bulbs and other products deemed appropriate during the term of the agreement.

ii. SAVOR will create a recycling and composting plan for each event held at the Arena that complies with the comprehensive solid waste management plan for the Arena and provides for recycling arrangements for, at a minimum, plastic #1 to #7 food and beverage containers; aluminum and steel cans; paper; cardboard; and organic and compostable waste.

iii. SAVOR will, at all events, use recycled and/or compostable food and beverage containers, utensils, and dishes to the extent available and practicable.

iv. The City of Lincoln will provide all necessary education on proper separation of recyclables for each large event sponsor to insure proper separation of waste by attendees of the event. SAVOR will distribute and display such information in cooperation with the City of Lincoln.

v. For all events SAVOR is encouraged to require reusable utensils and dishes unless this outweighs the environmental footprint of alternatives.

vi. SAVOR will collaborate with the City in purchasing waste management stations and/or recycling equipment funded through the Nebraska Environmental Trust (NET) and such equipment to be used in any solid waste management and recycling operations by SAVOR shall be owned by the City with continuing interest in the equipment held by the NET.

vii. SAVOR will collaborate with city on recycling and/or composting education in the Arena, including through the financial support of the NET.

viii. SAVOR will report progress on the solid waste management plan and goals on a quarterly basis to the City's recycling coordinator and to the Mayor's Office.

G. SAVOR will prepare an annual report and participate in an annual review with the City to verify that these Sustainable Practices, policies and procedures are in place and implemented in the operation of the Pinnacle Bank Arena.

**13. RESPONSIBILITIES OF CITY**.

A. Space; Access; Use of Facilities. City shall cause its manager of the Facilities ("Manager") to provide adequate space within the Facilities for the performance of the

Services and shall permit Savor and its employees and agents access to the Facilities in order to provide the Services. City shall also cause its Manager to make available to Savor and its employees and agents such common areas, fixtures, and equipment within the Facilities necessary for Savor to provide the Services as contemplated herein.

B. Utilities. City shall cause its Manager to provide without additional charge to Savor all utilities necessary for the provision of the Services, including without limitation heating, water, cooling, ventilation, air conditioning, general lighting and electricity for all areas used by Savor in providing the Services. In addition, City shall cause its Manager to provide to Savor all utility connections and hookups to permanent and portable locations, subject to the limits of the Facilities' existing utility capacity.

C. Repairs and Maintenance/Capital Improvements.

i. City shall timely make and pay for all maintenance of and repairs to all utilities systems within the Facilities and all improvements, equipment, fixtures and structural areas provided by City.

ii. The obligation to pay for, and authority to perform, direct and supervise Capital Improvements and Capital Equipment purchases shall remain with the City, and the costs thereof will not be considered Operating Expenses. Prior to each Fiscal Year, Savor will make recommendations for Capital Improvements and Capital Equipment purchases to be accomplished during the upcoming year and shall be accompanied by an estimate of the cost of all such items and projects and a request that the City budget funds therefor. The City shall retain the discretion to determine whether and to what level to fund Capital Improvements and Capital Equipment purchases to the Facilities.

D. Operating Expense Payment. To the extent that Gross Revenues during any Fiscal Year are, at any time, insufficient or expected to be insufficient to pay Operating Expenses incurred or accrued in such Fiscal Year (including, without limitation, the Base Fee), City shall advance funds to Savor as follows: Savor shall submit to City an invoice for the projected and/or actual insufficiency of Gross Revenues to pay Operating Expenses, and City shall advance such funds to Savor within five (5) days after receipt of such invoice. Any failure by Savor to perform its obligations under this Agreement shall not be a breach of or default under this Agreement if such breach or default results from City's failure to advance sufficient funds to Savor as provided for herein.

E. No Solicitation or Employment of Employees. During the period commencing on the date hereof and ending one (1) year after the termination of this Agreement, except with Savor's prior written consent, the City will not, for any reason, solicit for employment, or hire, any of the senior management personnel employed by

Savor at the Facilities, including, without limitation, the General Manager, director-level employees and department heads. In addition to any other remedies which Savor may have, specific performance in the form of injunctive relief shall be available for the enforcement of this provision.

**14. INSURANCE AND INDEMNIFICATION**.

A. Types of Coverage. Savor shall obtain and maintain at least the following minimum insurance coverages (collectively, the "Policies") during the Term and any renewal(s) thereof, which Policies will be written with insurers licensed to do business in the State of Nebraska:

i. Comprehensive general liability (including premises operations liability inclusive of broad form contractual liability, bodily injury, and property damage, personal injury, products and completed operations, independent contractors, medical payments and liquor liability), with policy limits of $1,000,000 per occurrence (to be supplemented by the umbrella policy referenced in Subsection 13.A.v. below).

ii. Workers' Compensation (including employer's liability) as required by applicable state and federal law with minimum limits as provided below covering all SAVOR's employees.

| Coverage | Listing | Min. Amount | Notes |
|---|---|---|---|
| Worker's Comp. | | | |
| | State | Statutory | |
| | Applicable Federal | Statutory | |
| Employer's Liability | | | |
| | Bodily Injury by accident | $1,000,000 | each accident |
| | Bodily Injury by disease | $1,000,000 | each employee |
| | Bodily Injury | $1,000,000 | policy limit |

iii. Business Automobile Liability, including owned, non-owned and hired and leased vehicles: $1,000,000 each person; $1,000,000 each occurrence (to be supplemented by the umbrella policy referenced in Section 13.A.v. below).

iv. Umbrella liability insurance with a limit of Five Million Dollars ($5,000,000). All such insurance of Savor shall be primary coverage; insurance of the City shall be excess and noncontributory.

B. Policies/Certificates of Insurance.

i. Savor shall be the named insured under all of the Policies, and City shall be an additional insured under the Policies, as its interests may appear, except the worker's compensation Policy. The Policies shall contain a provision covering SAVOR's contractual indemnification liabilities to the City.

ii. Prior to the commencement of the Term, Savor shall deliver to City a certificate(s) of insurance confirming the existence or issuance of the Policies and shall thereafter, annually or upon request, deliver to City a certificate(s) of insurance evidencing renewal of such Policies. 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 City, at the address provided herein and sent by certified mail, return receipt requested."

C. Waiver of Rights of Recovery. Savor hereby waives any and all rights of recovery it may hereafter have against City for any injuries or losses sustained by, or damages caused to Savor, its employees, property, or the property of others under Savor's control, to the extent that such loss or damage is covered under the terms of the Policies which provide primary insurance. City hereby waives any and all rights of recovery City may hereafter have against Savor for any injuries or losses sustained by, or damages caused to, City, and its employees, property, or the property of others under its control, to the extent that such loss or damage is covered under the terms of any primary insurance coverages maintained by City. If City decides not to maintain any such insurance, the waiver of City hereunder shall apply with respect to the amount of insurance that a reasonable party, as a owner of a public assembly facility, would maintain for a public assembly facility comparable to the Facilities. In addition, Savor and City will each notify their respective insurance companies of the provisions of this Subsection 13.C. and ensure that any such insurance policies include provisions which incorporate the terms of this Subsection 13.C.

D. Fidelity Insurance. Savor shall also procure and maintain during the Term and any Renewal Term fidelity insurance covering all of Savor's personnel under this Agreement in the amount of $1,000,000.00 for each loss, to reimburse the City for loss experienced due to the dishonest acts of Savor's employees performing the Services hereunder.

E. Property Insurance. City shall procure and maintain at replacement value for the Arena improvements and contents insurance against loss by fire, lightning, and other perils covered by the standard all-risk endorsement, and shall maintain insurance against such other hazards and in such amount as is customarily carried by owners and operators of similar properties and naming Savor, its officers, directors, employees and affiliates as additional insureds as their respective interests may appear. The cost of providing such property insurance shall be an reimbursable expense of the Arena to the extent charged to the accounts or funds of the Arena. It is understood and agreed that Savor has obtained and maintains its own insurance coverage for any personal or other property of Savor that Savor has determined is outside the contents and property coverages obtained by the City, and it is Savor's sole responsibility to obtain coverage, if any, at Savor's own cost and expense (and not as such reimbursable expense or an Operating Expense hereunder) for such additional property coverage.

F. Indemnification.

i. Savor shall indemnify, defend and hold harmless the City, the Agency, their respective boards, commissioners, officers, agents and employees from and against any and all Losses (hereinafter defined) arising from: (a) any default by Savor of its obligations specified herein, (b) any negligence by Savor in the provision of the Services hereunder, or (c) bodily injury to individuals and physical injury to the Facilities (including fire damage) in connection with Savor's provision of the Services hereunder. Notwithstanding the provisions of this Subsection 13.F.i. and to the extent such Losses do not arise out of any negligent or wrongful act or omission attributable to Savor, Savor shall have no obligation to indemnify the City, or otherwise be responsible to the City, for any Losses to the extent that such Losses arise out of:

(1) A failure or alleged failure to comply with all applicable laws, regulations or ordinances, including, but limited to, the Americans with Disabilities Act, 42 U.S.C. Sections 12101-12213 as amended by the Civil Rights Act of 1991 (42 U.S.C. Section 1981(a)), as it now exists and as it may be amended in the future by statute or judicial interpretation (collectively, the “ADA”), except for the care or treatment of customers in compliance with state or federal law, outside the scope of Savor's management and control under this Agreement, including such failures arising at any time prior to the commencement of the term hereunder relating to the operation of the Facilities and such failures at any time prior to, as of, or after the commencement of the term hereunder relating to Capital Improvements as provided for in Subsection 12.C.;

(2) Any condition on, above, beneath or arising from the premises occupied by any of the Facilities which might, under any such law, give rise to liability or which would or may require any "response," "removal" or "remedial action" (as such terms

are defined under the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act);

(3) Any structural defect or unsound operating condition with respect to the Capital Improvements as provided for in Subsection 12.C.or the premises occupied by any of the Facilities prior to, as of or after the commencement of the term hereunder; or

(4) Any services provided by architects, engineers, or other agents (other than SAVOR) under separate contract with the City in connection with capital or other improvements to any of the Facilities.

ii. City shall indemnify, defend, and hold harmless Savor, its members, officers, agents, and employees from and against any and all losses, liabilities, claims, damages and expenses (including reasonable attorneys' fees) (collectively, "Losses") arising from (a) any default by City of its obligations specified herein, or (b) any negligence by the City in the performance of its obligations hereunder.

iii. The provisions of this Subsection 13.F shall survive the termination or expiration of this Agreement.

G. Limitation of Savor Liability for the Funding of Services. Savor shall have no obligation to fund any cost, expense or liability with respect to the provision of the Services hereunder; provided, however, that this provision shall not exculpate Savor from any liability in connection with its failure to perform its indemnification obligations set forth in this Agreement.

## 15. LICENSES, PERMITS AND TAXES.

A. Licenses. Permits and Taxes for Alcoholic Beverage Services. Savor shall obtain and maintain in good standing at all times all legally required licenses and permits, including alcoholic beverage licenses required to be obtained by Savor to provide the Services. City shall cooperate with Savor in obtaining such licenses and permits.

B. Suspension or Revocation of Licenses. In the event Savor's authority to operate under its alcoholic beverage license is suspended or revoked as a result of Savor's actions (and not the result of the actions of City, or any other reason which is not in Savor's control), Savor will be considered in default of this Agreement as provided herein. In event of the suspension or revocation of such license as result of the actions of City, or any other reason which is not in Savor's control, City shall have the right to suspend Savor's rights hereunder only with respect to the provision of Alcoholic Beverage Services which

otherwise would be allowed under the suspended or revoked license, so that Savor shall continue to provide the Services in all other respects. Savor may, within thirty (30) days after suspension or revocation of the alcoholic beverage license and at the cost and expense of City (except for those costs and expenses which would have otherwise not been incurred but for the actions of Savor as described in the first sentence of this Section 14B), retain a third party which is reasonably acceptable to City and which possesses the right to operate in any area requiring Alcoholic Beverage Service until Savor's rights shall have been reinstated.

C. Payment for Permits, Licenses, and Taxes. Savor shall pay all Federal, State and local license and permit fees and collect, withhold, remit, and/or pay for all sales, use and excise taxes and compensation taxes relating to the provision of the Services. Any and all costs and expenses incurred by Savor in connection with the foregoing shall be deemed an Operating Expense hereunder.

**16. LAWS AND REGULATIONS**. Except as otherwise provided herein, Savor shall observe and comply, at its own expense, with all applicable Laws (including without limitation, the requirements of Title I of the Americans With Disabilities Act); provided, however, that, notwithstanding anything to the contrary contained herein, all structural modifications to the Facilities, or any part thereof, required by any applicable Laws, including without limitation Federal or State Occupational Safety and/or Health Acts, Titles II or III of the Americans With Disabilities Act, and building construction codes, have been or shall be made by City, and such modifications shall not be made at Savor's expense or liability.

**17. INDEPENDENT CONTRACTOR**. Savor and City are and each shall be deemed an independent contractor with respect to this Agreement. Neither Savor nor City is in any respect acting, nor shall either of them act, nor shall any person connected with either of them represent itself as an agent or employee of the other.

**18. CASUALTY LOSS**. In the event the Facilities or any part thereof is partially destroyed by fire or other casualty and such partial destruction materially affects the ability of Savor to provide the Services, City shall exercise its best efforts to restore or cause to be restored such damaged portions thereof, such that the Services may be resumed as promptly as possible. If complete operation of the Facilities must be suspended due to fire or other casualty and full operation is not resumed within ninety (90) days from the date of such suspension, either party shall have the right to terminate this Agreement by providing the other with sixty (60) days' prior written notice of its intention to do so. In the event that this Agreement is not terminated as provided under this Section 17, the Term shall be extended by the period of time in which Savor's Services hereunder were so affected by any such casualty.

**19. FORCE MAJEURE**. Neither party shall be obligated to perform hereunder and neither party shall be deemed to be in default if its performance is prevented by (i) fire, earthquake, flood, act of God, riot, civil commotion, or other occurrence or condition of a like nature; or (ii) any Law of any public or military authority stemming from the existence of economic controls, riot, hostilities, war or governmental policy.

**20. TERMINATION**.

A. Termination Upon Default. In addition to any other provision herein which confers a right of termination on City or Savor, either party may terminate this Agreement upon a default by the other party hereunder. A party shall be in default hereunder if (i) such party fails to pay any sum payable hereunder when due and such failure continues for more than fifteen (15) days after written notice thereof from the other party, or (ii) such party fails in any material respect to perform or comply with any of the other terms, covenants, agreements or conditions hereof and such failure continues for more than thirty (30) days after written notice thereof from the other party. In the event that a default (other than a default in the payment of money) is not reasonably susceptible to being cured within the thirty (30) day period, the defaulting party shall not be considered in default if it shall within such thirty (30) day period have commenced with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default.

B. Effect of Termination. If this Agreement is terminated as provided herein, (i) such termination shall be effective as of the date of the expiration of any cure period or on such other date as the parties may mutually agree, and (ii) such termination shall have the effect of terminating the provision of the Services by Savor hereunder; but, the rights of either party which have accrued prior to the date of termination shall survive termination, including without limitation any rights under Subsection 13.F. (with respect to indemnification). In addition upon termination of this Agreement, at the direction of City, Savor shall transfer its liquor license for the Facilities to a successor food and beverage service provider for the Facilities. Additionally, in connection with any such termination or expiration of this Agreement, without any further action on the part of Savor or the City, the City shall, or shall cause another concessionaire retained by it to, accept the assignment of Savor's rights, and assume and perform all of Savor's obligations, arising after the date of expiration or termination of this Agreement, under any contracts relating to the food and beverage concession and catering operations at the Facilities which have been executed by Savor hereunder, except (1) to the extent that any such contract was executed by Savor in violation of any of the restrictions applicable to Savor's right to execute such contracts contained in this Agreement and (2) for any such contract to which the consent of the other party thereto is required for such assignment and assumption unless such consent is obtained (in the case of any such consent, Savor will use commercially reasonable efforts to

obtain such consent and the City will cooperate in any reasonable manner with Savor to obtain such consent).

C. Delivery of SAVOR Records. SAVOR agrees to and does hereby transfer to the City all ownership rights to all financial records, contracts and any reports, studies, statistics or other information (collectively "SAVOR Records") prepared or produced under the terms of this Agreement. SAVOR agrees that upon termination or expiration of this Agreement to turn over the SAVOR Records to the City in a prompt and coordinated fashion.

**21. ASSIGNMENT; SUBCONTRACTING**.

A. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

B. Restriction on Assignment. Neither party may assign this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Savor acknowledges that the City has retained a management company to operate, manage, maintain and promote the Facilities and that such management company is authorized to administer the City's rights and obligations under this Agreement on its behalf.

C. Subcontracting. Savor shall be permitted to subcontract the provision of any of the Services hereunder, but Savor shall, in all such instances, remain fully responsible and liable for the provision of the Services in accordance with, as well as compliance with the terms and provisions of, this Agreement.

**22. NOTICES**.

A. Notices to City. All notices required to be given by Savor to City pursuant to this Agreement shall be in writing and personally delivered, sent by telefax, telegram or overnight courier, or sent by registered or certified mail, return receipt requested to:

To the City:

Finance Director
City of Lincoln, Nebraska
555 South 10th Street
Lincoln, Nebraska 68508

With a copy (which shall not constitute notice) to:

City Clerk
City of Lincoln, Nebraska
555 South 10th Street
Lincoln, Nebraska 68508

B. Notices to SAVOR. All notices required to be given by City to Savor pursuant to this Agreement shall be in writing and personally delivered, sent by telefax, telegram or overnight courier or sent by registered or certified mail, return receipt requested to:

To SAVOR:

SAVOR
300 Four Falls Corporate Center
300 Conshohocken State Road
West Conshohocken, PA 19428
Attention: President

With a copy (which shall not constitute notice) to:

Stradley, Ronon, Stevens & Young
2005 Market Street
Suite 2600
Philadelphia, PA 19103
Attention: William R. Sasso, Esq. or
Steven A. Scolari, Esq.

**23. CONFLICT OF INTEREST.** SAVOR warrants that it has not employed or retained any person or company other than a bona fide employee or legal counsel working for SAVOR to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee or legal counsel working for SAVOR, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the execution of this Agreement. For breach of this warranty the City shall have the right to annul or void this contract without liability or, in its discretion, to deduct from any fees due SAVOR under this Agreement the full amount of any such fees or other consideration.

**24. FAIR EMPLOYMENT.** In connection with the performance of work under this Agreement, SAVOR agrees that it shall not discriminate against any employee or applicant for employment with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status in accordance with the requirements of Lincoln Municipal Code Chapter 11.08 and *Neb. Rev. Stat.* § 48-1122, as amended.

**25. FAIR LABOR STANDARDS.** SAVOR shall maintain Fair Labor Standards in the performance of this Agreement as required by Neb. Rev. Stat. § 73-102 through 104 as amended.

**26. INDEPENDENT CONTRACTOR.** The City is interested only in the results produced by this Agreement. SAVOR has sole and exclusive charge and control of the manner and means of performance. SAVOR shall perform as an independent contractor and it is expressly understood and agreed that SAVOR is not an employee of the City and is not entitled to any benefits to which City employees are entitled, including, but not limited to, overtime, retirement benefits, workmen's compensation benefits, sick leave or and injury leave.

**27. AUDIT AND REVIEW.** SAVOR shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

**28. LIVING WAGE.** If the compensation for services provided pursuant to this Agreement is equal to or exceeds $25,000, this Agreement is subject to the Living Wage Ordinance of the Lincoln Municipal Code Chapter 2.81. The ordinance requires that, unless specific exemptions apply or a waiver is granted, SAVOR shall provide payment of a minimum living wage to employees providing services pursuant to this Agreement. Under the provisions of the Lincoln Living Wage Ordinance, the City shall have authority to terminate this Agreement and to seek other remedies for violations of this Ordinance.

**29. FEDERAL IMMIGRATION VERIFICATION.** In accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, SAVOR agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 USC 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized. SAVOR shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. 1324b. SAVOR shall require any subcontractor to comply with the provisions of this section.

**30. EXECUTIVE ORDER NO. 83319.** SAVOR agrees to comply with the requirements of Executive Order No. 83319.

**31. GOVERNING LAW**. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Nebraska, without giving effect to the principles of conflicts of law.

**32. NO WAIVER; REMEDIES**. The making or failure to make any payments, take any action, or waive any rights shall not be deemed an amendment of this Agreement, nor consent to such action or to any future action or failure to act, unless the party required to so consent or act expressly agrees in writing. Moreover, nothing contained in this Agreement shall be construed as a waiver of any rights either party hereto may have to seek damages, or specific performance, or other appropriate remedies from the other for breach of this Agreement.

**33. ENTIRE AGREEMENT**. This Agreement constitutes the entire agreement of the parties and supersedes all prior or contemporaneous agreements, whether oral or written, between the parties. In the event there is a conflict between the terms and conditions of this Agreement with the terms and conditions of the Lease and Operating Agreement, then the Lease and Operating Agreement shall prevail. This Agreement may not be amended or modified except in a writing signed by all of the parties hereto.

**34. SEVERABILITY**. If any paragraph, subparagraph, sentence, clause, phrase, or portion of this Agreement is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Agreement.

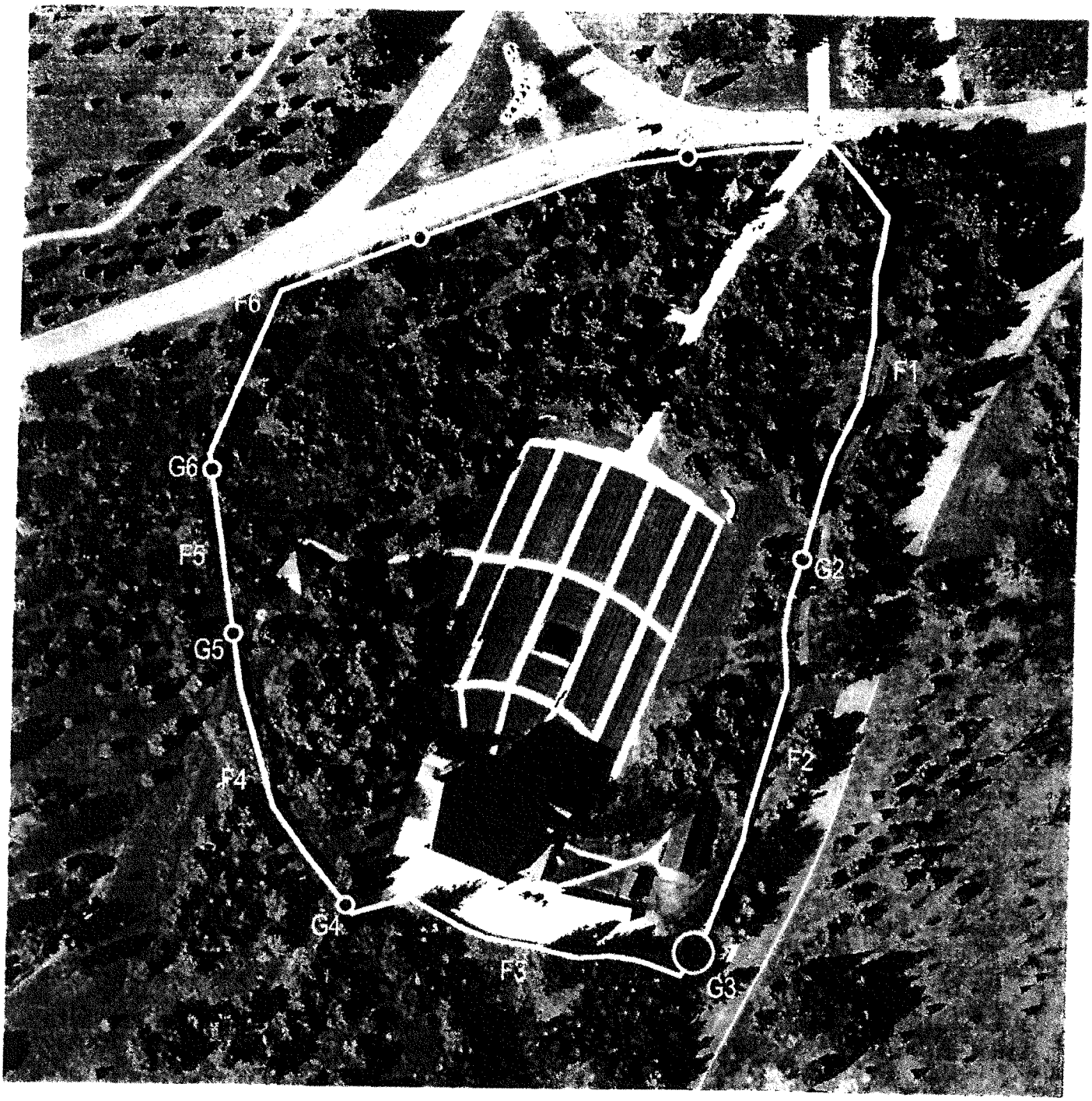
**35. CAPTIONS**. The captions in this Agreement are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

**36. FURTHER ACTS**. Each party agrees to perform any further acts and to execute, acknowledge and deliver any documents that may be reasonably necessary to carry out the provisions of this Agreement.

**IN WITNESS WHEREOF**, the undersigned have executed this Agreement as of the day and year first above written.

| | |
|---|---|
| Attest: | CITY OF LINCOLN, NEBRASKA<br>a municipal corporation, |
| _____ | _____<br>Mayor of Lincoln |
| Attest: | SMG FOOD AND BEVERAGE, LLC<br>a Pennsylvania general corporation, |
| _____ | _____<br>By:<br>Title: |

council/agr/smg/foodandbeverage




| GATE ID | WIDTH |
|---|---|
| G1 | 15' |
| G2 | 12 |
| G3 | 30' |
| G4 | 12' |
| G5 | 12' |
| G6 | 12' |
| G7 | 12' |
| G8 | 12' |

| FENCE ID | LENGTH |
|---|---|
| F1 | 330' |
| F2 | 287' |
| F3 | 266' |
| F4 | 212' |
| F5 | 111' |
| F6 | 243' |
| F7 | 199' |
| F8 | 81' |

TOTAL AREA INSIDE OF FENCE: 227,194 SF

SCALE: 1"=100' N

PINEWOOD BOWL:
PERIMETER FENCE QUANTITIES

EXHIBIT "A"