

**FIRST AMENDMENT
TO
MANAGEMENT AGREEMENT**

THIS FIRST AMENDMENT TO MANAGEMENT AGREEMENT ("First Amendment") is made and entered into this _____ day of _____, 2012, by and between the City of Lincoln, Nebraska, a municipal corporation, and SMG, a Pennsylvania general partnership.

RECITALS

I. The parties have previously entered into a Management Agreement dated June 7, 2012, regarding the City's grant to and SMG's acceptance of the exclusive right to manage, market, promote and operate the Facilities as provided in the Management Agreement.

II. The parties desire to enter into this First Amendment to modify and clarify SMG's insurance obligations as Reimbursable Expenses under the Management Agreement.

III. The parties further desire to enter into this First Amendment to amend the commencement date of the Term, allow SMG to conduct and incur Reimbursable Expenses for pre-opening activities, and to define the terms "Pre-opening," "Pre-opening Activities," and "Pre-opening Budget."

NOW, THEREFORE, in consideration of the above Recitals and the mutual benefits and conditions in this First Amendment, the City and SMG agree as follows:

1. That Section 3.24 of the Management Agreement be amended to read as follows:

3.24 Reimbursable Expenses are defined in Section ~~21.2~~ 22.2.

2. That the Management Agreement be amended to add a new Section 4.5 "Pre-Opening" to read as follows:

4.5 PRE-OPENING. Prior to commencement of the Term for Management Services, SMG desires to perform and the City hereby grants SMG authority to engage in those pre-opening activities needed to be performed prior to opening to ensure that the Pinnacle Bank Arena is ready for opening to the general public and full occupancy and use by the City and UNL for events at the Arena.

4.5.1 For the purposes of this section, the following definitions shall apply:

(a) **Pre-opening** shall mean the period of time from June 7, 2012 to the date the Management Term of this Agreement commences.

(b) Pre-opening Activities shall mean the acquisition and stocking of supplies, employment of necessary staffing, conducting employee training, and other pre-opening shakedown events, negotiating and entering into service contracts, vendor agreements, and booking commitments and other City approved activities.

(c) Pre-opening Budget shall mean the budget attached hereto marked as Exhibit E and incorporated herein by this reference.

4.5.2 During pre-opening, SMG is hereby granted the authority to engage in Pre-opening Activities and incur Reimbursable Expenses therefore subject to the following limitations:

(a) No Reimbursable Expenses shall be incurred by SMG until approved in writing by the City Finance Director:

(b) SMG's request to incur Reimbursable Expenses shall only be approved by the City Finance Director if SMG deposits funds in the SMG Operating Fund which has been created per this Agreement:

(c) The proposed Reimbursable Expenses are Pinnacle Bank Arena Pre-opening Activity Expenses included and provided for in the Pre-Opening Budget; and

(d) The City is not obligated to reimburse SMG for said Reimbursable Expenses until after commencement of the Management Term to be pro-rated over a period of ten (10) years unless the Management Agreement terminates prior to the end of the ten (10) year period, in which event the remaining Reimbursed Expenses shall be immediately due and payable.

4.5.3 SMG agrees that SMG is not entitled to any additional Management Fee for engaging in the Pre-Opening Activities.

3. That Section 16 of the Management Agreement be amended to read as follows:

16. MANAGEMENT TERM.

The Management Term of this Agreement shall commence on the earlier date of Substantial Completion (as defined in the Lease and Operating Agreement) of the Pinnacle Bank Arena or September 1, 2013 and shall continue in effect, unless earlier terminated as set forth in Sections 17 and 26 below, for a period of three years through August 31, 2016. In the event this Agreement is not canceled by the City by notifying SMG 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.

4. That Section 22.2(c) of the Management Agreement be amended to read as follows:

22.2 Reimbursable Expenses shall generally include the following:

...

(c) Operational Expenses including:

Utilities;
Supplies;
Uniforms/cleaning;
Insurance;
Building repair and maintenance;
Maintenance contracts;
Contract services;
HVAC repair and maintenance;
Vehicle costs for operations;
Equipment rental; and
Insurance coverages required under Sections 27.1, 27.2 and 27.4; and
Other Miscellaneous expenses reasonably or necessarily incurred by
SMG with prior approval by the City.

5. That Section 27 of the Management Agreement be amended to read as follows:

27. INSURANCE. SMG and the City shall obtain and maintain at least the following minimum insurance coverages (collectively "Policies") applicable to such party during the Term and any renewal(s) thereof which Policies shall be written with insurers licensed to do business in the State of Nebraska. Each party shall indemnify and hold harmless the other party from all costs, expenses, claims or damages resulting from any failure of a party to comply with this section.

27.1. In connection with the employment of its employees, SMG shall pay all applicable social security, unemployment, worker s compensation or other employment taxes or contributions of insurance, and shall comply with all federal and state laws and regulations relating to employment generally, minimum wages, social security, unemployment insurance and workers' compensation. SMG shall obtain and maintain the following minimum insurance coverage with respect to Workers' Compensation (including employees liability):

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

~~SMG shall indemnify and hold harmless the City from all costs, expenses, claims or damages resulting from any failure of SMG to comply with this subparagraph. The cost of providing such insurance shall be a Reimbursable Expense to the extent charged to the account or funds of the Arena.~~

27.2 SMG shall procure and maintain comprehensive general liability insurance against any damage, loss or liability arising or claimed to have arisen from the use or occupancy of the Facilities, including the operations of SMG at the Facilities, and shall name in a policy form providing no less comprehensive and no more restrictive coverage than provided under the ISO® form CG00010798 or newer with standard exclusions "a" through "o" and with minimum limits as provided below.

The required Commercial General Liability Insurance shall also include the following:

- Coverage for all premises and operations
- Endorsement to provide the general aggregate per project endorsement
- Personal and advertising injury included
- Operations by independent contractors included
- Contractual liability coverage included. This coverage shall include contractually assumed defense costs in addition to any policy limits.
- X.C.U. Coverage including coverage for demolition of any building or structure, collapse, explosion, blasting, excavation and damage to property below the surface of ground.
- Any fellow employee exclusions shall be deleted
- Coverage shall not contain an absolute pollution exclusion, and applicable remaining coverage shall apply for pollution exposures arising from products and completed operations.

- Coverage for products and completed operations maintained for duration of work and shall be maintained for a minimum of three years after final acceptance under the Contract or the warranty period for the same whichever is longer, unless modified in any Special Provisions.

Under the policy, SMG, its officers, directors, employees and affiliates as shall be the named insureds as their respective interests may appear. The City shall be named as an additional insured under the policy. All insurance shall be provided on an *on occurrence basis* and not on a claims made basis. Prior to commencement of the Term, SMG shall deliver to City a copy of the Policy, including all endorsements confirming the existence of the Policy and the required amount of coverage. Thereafter, annually or upon request, SMG shall deliver to City a certificate of insurance evidencing renewal of such Policy. The cost of providing such liability insurance shall be a Reimbursable Expense to the extent charged to the accounts or funds of the Arena. The amounts of such coverages shall be as follows:

(a) For bodily injury or damages, fatal or non-fatal, including product liability, liquor liability and automobile liability coverage, to any one person to the extent of \$1,000,000.

(b) For bodily injury or damages, fatal or non-fatal, including product liability, liquor liability and automobile liability insurance coverage, to two or more persons for any one accident to the extent of \$2,000,000.

(c) For property damage to the extent of \$250,000 each occurrence, \$500,000 aggregate.

(d) Umbrella or Excess Coverage in the amount of \$5,000,000.

27.3 Subject to Subsection ~~26.6~~ 27.6 below, the 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 SMG, its officers, directors, employees and affiliates as additional insureds as their respective interests may appear. ~~The cost of providing such property insurance shall be a Reimbursable Expense to the extent charged to the accounts or funds of the Arena.~~ It is understood and agreed that SMG has obtained and maintains its own insurance coverage for any personal or other property of SMG that SMG has determined is outside the contents and property coverages obtained by the City, and it is SMG's sole responsibility to obtain coverage, if any, at SMG's own cost and expense (and not as a Reimbursable Expense) for such additional property coverage.

27.4 SMG shall procure and maintain Garagekeeper's Insurance for the City Parking Facilities in the amount of \$500,000.00 per City Parking Facility. The cost of providing such property insurance shall be a Reimbursable Expense to the extent charged to the accounts or funds of the Arena. The City shall be named as an additional insured on said policy.

27.5 The City shall deliver to SMG certificates or other evidence as reasonably requested by SMG to establish that the insurance required above remains in full force and effect. Any failure to maintain the insurance coverages required hereby shall be a condition of breach under this Agreement.

27.6 SMG and the City expressly waive all rights and claims they may have against the other, their subsidiaries and affiliates for loss or damage arising or resulting from the operations at the Arena caused by fire or other perils normally covered in a standard form fire or all risk insurance policy, including without limitation business interruption and extra expenses. Each insurance policy procured by SMG and the City shall affirmatively state that it will not be invalidated because the insured waived its rights of recovery against any party prior to the occurrence of a loss.

27.7 SMG shall require suitable and adequate insurance coverage commensurate with the coverages required herein for every contracted event at the Facilities, including spectator and participant liability. The amounts and coverages of such insurance shall be subject to the City's Contract Administrator approval, including SMG's standard contract provisions for insurance coverage for contracted events.

27.8 SMG shall procure and maintain during the Term of this Agreement Fidelity Insurance covering all of SMG'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 SMG's employees.

27.9 SMG shall administer, defend, process and otherwise handle all claims up to the deductible or self insured retainer amount of any such policy or coverage obtained under this Agreement; provided that for any insurance coverage obtained by the City, the deductible or self insured retainer for such policy or policies shall not exceed \$1,500. Payment of any claim up to the amount of the deductible or self insured retainer shall be considered a Reimbursable Expense under this Agreement.

6. That all other terms and conditions of the Management Agreement shall remain in full force and effect.

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

Attest:

CITY OF LINCOLN, NEBRASKA
a municipal corporation,

City Clerk

By: _____
Chris Beutler, Mayor of Lincoln

SMG
a Pennsylvania general partnership

By: H. Wentley
Name: Harold Wentley
Title: President/CEO



SMG
PINNACLE BANK ARENA
PRE-OPENING BUDGET

FOR PERIOD PRIOR TO FACILITY OPENING-(July 1, 2012 - SEPT 1, 2013)

PRE OPENING GENERAL EXPENSES	\$	357,000.00
PRE OPENING STAFFING COST GRADUATED HIRING 7/2012 -8/2013	\$	1,095,000.00
PRE OPENING & BUILDING SHAKEDOWN EVENTS	\$	240,000.00
PRE OPENING SUPPLIES	\$	<u>308,000.00</u>
TOTAL EXPENSES	\$	<u>2,000,000.00</u>