

DRAFT August 1, 2002
FOOD SERVICE MANAGEMENT AGREEMENT

This Agreement is made and entered into as of this ___ day of August, 2002, by the City of Overland Park, a municipal corporation organized under the laws of the State of Kansas and having its principal place of business at City Hall, 8500 Santa Fe Drive, Overland Park, Kansas 66212-2899 (hereinafter referred to as "City") and Fine Host Corporation, a Delaware corporation having its principal place of business at 3 Greenwich Office Park, Greenwich, CT 06831 (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the City is currently constructing, and owns and operates, the Overland Park Convention Center located at premises bounded by I-435 on the North, College Boulevard on the South, Lamar Avenue on the West and Woodson Road on the East, in Overland Park, Kansas (the "Facility"); and

WHEREAS, the City has engaged Global Spectrum, L.P. ("Global Spectrum" and together with its successors and assigns, the "Convention Center Operator") to manage and operate the Facility, on behalf and for the benefit of the City, pursuant to the Convention Center Operating Agreement dated as of November 20, 2000 (the "Convention Center Operating Agreement"), and has also engaged Global Spectrum to perform certain specified pre-opening services with respect to the Facility pursuant to the Pre-Opening Services Agreement dated September 1, 2000; and

WHEREAS, the Convention Center Operator has been assigned the responsibility to oversee day-to-day operations at the Facility pursuant to the Convention Center Operating Agreement, working with the City's Contract Administrator (as defined therein); and

WHEREAS, the City desires to engage the Contractor to provide Food Services (as hereinafter defined) at the Facility; and

WHEREAS, Contractor is in the business of providing concessions and catering food and beverage services at places of public gathering such as the Facility and desires to accept such engagement.

NOW, THEREFORE, in consideration of the premises and of the terms, covenants and conditions hereinafter contained to be kept and performed by the respective parties, it is agreed as follows:

SECTION 1 DEFINITIONS

1.1 “Accounting Period” shall refer to the Contractor’s either four- or five-week accounting cycle for which there are 12 periods totaling 52 or 53 weeks in each fiscal year, as applicable. The first Accounting Period shall include all days from the Grand Opening through and including the last day of the applicable accounting cycle of the Contractor. It is understood and agreed that inasmuch the first Contract Year begins on the Grand Opening Date, in each Contract Year there will be a short Accounting Period at each of the beginning and the end of the Contract Year, so that each Contract Year includes eleven (11) full Accounting Periods, and also includes (2) partial Accounting Periods which together contain four or five weeks, as applicable.

1.2 “Alcoholic Beverages” shall mean any alcoholic liquor, beer, cereal malt beverage, non-alcoholic malt beverage, spirits, or wine as those terms are defined in Overland Park Municipal Code Section 11.48.100, regardless of where within the Facility they are provided or to whom they are provided.

1.3 “Annual Management Fee” shall refer to the amount earned by Contractor and calculated in accordance with Section 4 hereof and paid to the Contractor by City for managing the Food Services at the Facility.

1.4 “Catering Services” shall mean the preparation and sale of all food and beverages, including Alcoholic Beverages, at the Facility (and, with the approval of City, outside the Facility), including banquet services and hors d’oeuvres and all food and beverages (including Alcoholic Beverages) served at events where the obligation to make payment for the entire function rests with one individual, company, or entity. Catering Services shall not include outside catering as described in Section 2.1.2.

1.5 “Concession Services” shall refer to the preparation and sale of all food and beverages, including Alcoholic Beverages served or sold from permanent or portable concession stands or roving vendors to individual customers at the Facility. These items include, but are not limited to, sodas, hot dogs, popcorn, candy bars, hot and cold sandwiches, potato chips and pretzels, and all beverages, including Alcoholic Beverages to the extent permitted hereby.

1.6 “Contract Year” means the eleven (11) full and two (2) partial Accounting Periods each year during the term hereof, as described in the definition of Accounting Period set forth in Section 1.1, commencing with the Accounting Period beginning on the Grand Opening Date and ending with the Accounting Period ending on the last day before the anniversary of the Grand Opening Date. The first Contract Year shall commence on the Grand Opening Date and end on the last day before the first anniversary of the Grand Opening Date.

1.7 “Contractor Incentive Fee” means an amount payable to Contractor as set forth in Section 4.2.

1.8 “Direct Operating Costs” are the actual out-of-pocket costs of the Food Services operation incurred by Contractor at the Facility. These costs include, but shall not be limited to, the actual expense of all food, beverage and supplies, on-site payroll, payroll taxes, fringe benefits, reasonable and approved employee relocation and severance costs, reasonable and approved bonuses for employees, and all other on-site operating expenses including, but not limited to, insurance, external certified annual audit fees, license fees, pest control, permits, cleaning expenses, smallwares, uniforms, repairs and maintenance, cleaning and office supplies. Direct Operating Costs shall also include actual out-of-pocket costs incurred by Contractor during the Pre-Opening Period (as defined below), including the payroll, fringe benefit, and reasonable travel and temporary living expenses incurred by Contractor for all approved field and operations personnel assigned to perform services at the Facility. Relocation expenses and travel and temporary living expenses will be capped at such level as the City or Convention Center Operator may direct. Direct Operating Costs shall not include Contractor’s income taxes, franchise taxes or business profit taxes, the Contractor's supervision and support services (account and payroll services (provided, that external payroll processing and delivery services fees and expenses shall be a Direct Operating Cost), facility planning and design, auditing, legal, purchasing, personnel, public relations, etc.), payments to management recruiting companies, other general corporate administrative and overhead expenses, replacement of smallwares in excess of 1.5% of Gross Receipts, performance, fidelity and payment bonds, or any payments made by Contractor to the City, if any, in accordance with Sections 4.2 or 16; Contractor will be responsible to pay these costs from its own funds as part of Contractor's administrative and overhead expenses. Direct Operating Costs shall include expenditures for goods, services, and other items of the type described in the line items of the Operating Budget together with any other costs reasonably related thereto. Service charges collected from Catering Services customers, which service charges are included in the definition of Gross Receipts.

1.9 “Director of Food and Beverage” means the individual hired by the Contractor to be responsible for the day-to-day management and supervision of the Food Services operation.

1.10 “Executive Chef” means the individual hired by the Contractor to be responsible for operation and supervision of food production facilities and food production personnel.

1.11 “Food Services” shall refer to the Contractor’s operation, service and sale of Catering Services, Concession Services and Novelty Services at the Facility.

1.12 “Grand Opening” shall refer to the first date that the newly constructed Facility is open to the public for attendance at events.

1.13 “Gross Receipts” shall refer to the total amount of money, including service charges, collected by the Contractor, the Convention Center Operator or the City as a result of Food Services from any source whether collected or uncollected, accruing from or realized by the Contractor, whether for cash or credit, less (i) sales taxes, gross receipts tax, or similar tax, the amount of which is determined by the amount of sales made, and which is directly payable to the taxing authority by Contractor, and (ii) service or discount charges on credit card sales.

Gross Receipts does not include revenues associated with food and beverages served at internal business meetings held by the Convention Center Operator where the purpose of such meetings is management of the Facility.

1.14 "Lessee" shall refer to any person or entity that may from time to time enter into any agreement with the City or the Convention Center Operator for the use of the Facility for a particular purpose.

1.15 "Novelty Services" shall refer to responsibility for vending machines in the Facility and responsibility for coat check services and oversight of novelty sales in connection with events at the Facility.

1.16 "Operating Account" means an account at a bank in the Overland Park, Kansas area acceptable to City into which the City or the Convention Center Operator will transfer funds as provided in Section 16.1, and from which funds shall be drawn by the Contractor as needed to pay Direct Operating Costs, the Annual Management Fee and other amounts payable from the Operating Account under this Agreement. The foregoing notwithstanding, Contractor will establish a separate account at a bank in the Overland Park, Kansas area acceptable to the City for the purpose of paying payroll and fringe benefit expenses (the "Payroll Account"). Contractor may deposit funds into the Payroll Account, including the transfer of funds from the Operating Account into the Payroll Account, to pay payroll and fringe benefit expenses.

Within seven (7) days of execution of this Agreement, the City shall promptly deposit a sum based on the Pre-Opening Budget and as agreed to between the parties as a working capital advance to cover authorized draws of funds and amounts needed to pay Direct Operating Costs from time to time as needed during the term hereof. In the event Contractor sustains working capital shortfalls, City shall deposit such funds as may be needed to offset such shortfalls. Any funds so deposited by the City pursuant to this item shall be returned (to the extent it is unused and available) to the City at the end of the term hereof.

1.17 "Operating Budget" shall mean the budget to be submitted by Contractor to City on an annual basis as more fully described in Section 16.

1.18 "Operating Term" shall mean that period of time referred to in Section 3 hereof.

1.19 "Pre-Opening Period" shall refer to the period commencing on the date of execution of this Agreement and ending on the date of the Grand Opening of the Facility.

SECTION 2 SERVICES PROVIDED

2.1 Contractor shall have the exclusive right to operate the Food Services, including the service and sale of Alcoholic Beverages, at all areas of the Facility at which food and/or beverage services is permitted by City (which areas shall be designated by the City from time to time and are herein called the “Service Areas”) in accordance with the terms and provisions set forth herein, except as provided below. The City shall control advertising and sponsorship rights and food selections.

2.1.1 The City shall retain the right to designate specific areas of the Facility at which food and beverages may not be served, it being understood that neither the City nor any third party shall be permitted to serve food and beverages in such areas.

2.1.2 Notwithstanding the provisions of this Section 2, the exclusive rights granted to the Contractor hereunder shall not be construed so as to prevent or prohibit the City from engaging in or contracting for, outside catering services privileges for Facility sponsored events, special events or events at the discretion of the City or the Convention Center Operator, not to exceed six (6) per year. Any revenues from such outside catering services as provided in this Section 2.1.2 shall not be included in Gross Receipts.

2.1.3 It is understood and agreed that the Contractor will be called upon from time to time by the City and/or the Convention Center Operator to arrange for the delivery of specialized food service requirements at the Convention Center such as preferred Kosher catering and authentic Kansas City BBQ, in accordance with a special operation plan as provided in the Manual.

2.2 This Agreement shall apply to all events conducted at the Facility during the term of this Agreement, except as otherwise provided herein. This shall not prevent any exhibitor from providing free samples (of sample size portions) of food and beverage products to customers of the Facility, or from selling food items for consumption off the premises.

2.3 It is further understood that any outside caterers to third parties providing food and non-alcoholic beverage services wishing to use the Food Service Premises at the Facility shall be required to (a) pay City a reasonable fee for use of the Food Service Premises; (b) furnish such insurance coverage as may reasonably be requested by Contractor, City or Convention Center Operator; (c) agree in writing to indemnify and hold Contractor, the Convention Center Operator and the City harmless from and against any injury or damage to persons or property arising from or related to their use of the Food Service Premises, which indemnity shall cover all loss, damage, liability, claims, judgments, settlements, and expenses (including attorneys’ fees); and (d) pay to Contractor a deposit to cover the cost of cleaning the Food Service Premises, which deposit shall be returned to the caterer or third party provided the

Food Service Premises are returned to Contractor in the condition they were in prior to the caterer or third party's use of the Food Service Premises.

2.4 During the Pre-Opening Period, Contractor will provide certain pre-opening services to City, including but not limited to the following: consultation regarding construction of food service areas and equipment installation, hiring and training of staff, development of management team, preparation for Grand Opening, development of pre-opening timeline, preparation of the Manual as described in Section 2.5 (in consultation with Convention Center Operator and City), menu, menu design, sales material (void of Fine Host name or logo), sales and marketing plan as described in Section 2.5, Operating Budgets (Grand Opening Date through December 31, 2002 and calendar year 2003), recipe file, establishment of Johnson County Community College (JCCC) internship program, JCCC scholarship fund program (\$2500), food bank program, recycling program and energy management program, and development of FF&E services, inventory management (to include smallwares), and replacement scheduling (also to be annual duties). During the Pre-Opening Period Contractor shall reimburse itself for Direct Operating Costs from the Operating Account on a monthly basis. The Direct Operating Costs of the Contractor during the Pre-Opening Period shall be based on the Pre-Opening budget approved by the City Manager and in no event shall exceed \$250,000.

2.5 On such date as shall be set forth in the herein-defined Manual, the Contractor shall conduct an annual food and beverage equipment inventory, documenting any damaged and/or missing equipment. The Contractor shall identify any equipment that has met the end of its useful life and request written approval from the Convention Center Operator to scrap such equipment.

Smallwares Replacement - On January 1 and June 1 the Contractor is responsible for replacing damaged, lost, and missing service ware as required to maintain the original inventory levels. Actual replacement expenses of up to 1.5 percent of Gross Receipts are considered a Direct Operating Cost and the Contractor will be solely responsible for replacements over 1.5 percent of Gross Receipts as a non-Direct Operating Cost.

The Contractor shall by October 1, 2002, as a professional entity engaged in the operation of food and beverage services at the Facility, prepare and submit to the City and the Convention Center Operator a draft of a Convention Center Food Services Operations Manual (the "Manual"). The Contractor shall complete the development of the Manual in consultation with the City and the Convention Center Operator and shall have the Manual in place by the Grand Opening Date. The Manual is to set policy and procedures and establish minimum acceptable operational standards. It is understood and agreed that the Manual may be revised from time to time, as agreed upon by the Contractor, the City and the Convention Center Operator, as needed for proper delivery of Food Services at the Facility. The City will have final authority in determining the minimum acceptable operational standards.

The Contractor is responsible for the development and execution of an acceptable sales and marketing program for the catering and concessions services at the Facility. All advertising

and promotional material requires the prior approval of the City and Convention Center Operator before it is printed, published, or broadcast. The Contractor shall not use its corporate name or logo on any Facility sales brochures, menus or uniforms, business cards, letterhead or other materials. The marketing program shall include participation in the web site maintained by the Facility.

SECTION 3 TERM AND TERMINATION

The term of the Agreement shall be for a period of five (5) years commencing on the Grand Opening Date and expiring at 11:59 p.m. the day immediately preceding the fifth (5th) anniversary of the Grand Opening Date (the "Operating Term"). This Agreement shall terminate at the expiration of the Operating Term unless sooner terminated as provided herein. This Agreement may be earlier terminated only as provided in Section 13 and 14 hereof. It is agreed and understood that the Operating Term shall commence simultaneous to the Grand Opening of the Facility. Contractor shall provide the services set forth in Section 2 during the Pre-Opening Period.

SECTION 4 CONSIDERATION

4.1 Contractor shall receive the following fixed Management Fee: (1) During the first and second Contract Years, Contractor shall receive a Management Fee of Seventy-five Thousand and 00/100 (\$75,000.00) per annum, payable in monthly installments of Six Thousand Two Hundred Fifty and 00/100 (\$6,250.00) Dollars; (2) During the third and fourth Contract Years, Contractor shall receive a Management Fee of One Hundred Thousand and 00/100 (\$100,000.00) per annum, payable in monthly installments of Eight Thousand Three Hundred Thirty-three and 33/100 (\$8,333.33) Dollars; (3) During the fifth Contract Year, Contractor shall receive a Management Fee of One Hundred Twenty-five Thousand and 00/100 (\$125,000.00) per annum, payable in monthly installments of Ten Thousand Four Hundred Sixteen and 66/100 (\$10,416.66) Dollars. In addition, Contractor shall receive the Contractor Incentive Fee described in 4.2 below.

4.2 In any Contract Year in which Gross Receipts exceed One Million and 00/100 (\$1,000,000.00) Dollars (the "Gross Receipts Benchmark"), the Contractor will be entitled to a Contractor Incentive Fee, which may include a Benchmark Incentive Fee and a Qualitative Incentive Fee. The total Contractor Incentive Fee to Contractor in any Contract Year shall not exceed the total Management Fee paid to the Contractor for such Contract Year. The Benchmark Incentive Fee and the Qualitative Incentive Fee will be calculated as follows:

4.2.1. Contractor shall be entitled to a Benchmark Incentive Fee equal to Four Percent (4%) of Gross Receipts in excess of One Million and 00/100 (\$1,000,000.00)

Dollars in the then-current Contract Year, which shall be payable by City on a monthly basis after Gross Receipts in the then-current Contract Year shall have met or exceeded the Gross Receipts Benchmark.

Once the Gross Receipts Benchmark has been achieved, the Benchmark Incentive Fee shall be payable monthly, in arrears as described below, based on Gross Receipts received in the month of calculation over the Gross Receipts Benchmark.

When the Gross Receipts Benchmark has been achieved, the Contractor shall so certify to the City, and shall provide the City with a calculation of Gross Receipts supporting the certification as to the achievement of the Gross Receipts Benchmark. Thereafter, the Contractor shall submit an invoice to the City for payment of the Benchmark Incentive Fee by the last day of the following month, and shall attach thereto a calculation of the amount of the month's Gross Receipts and Benchmark Incentive Fee. The City shall pay such Benchmark Incentive Fee within 30 days of the invoice date; provided that the City has the right to require the Contractor to provide supporting documentation as to the calculation of Gross Receipts and Benchmark Incentive Fee and to adjust the Benchmark Incentive fee to reflect actual Gross Receipts received over the Gross Receipts Benchmark in the month of calculation.

4.2.2. Contractor shall be entitled to a Qualitative Incentive Fee of (i) not to exceed One Percent (1%) of Gross Receipts in excess of One Million and 00/100 (\$1,000,000.00) Dollars and less than or equal to One Million Five Hundred Thousand and 00/100 (\$1,500,000.00) Dollars in the then-current Contract Year, (ii) not to exceed One and One-Half Percent (1.5%) of Gross Receipts in excess of One Million Five Hundred Thousand and 00/100 (\$1,500,000.00) Dollars and less than or equal to Two Million and 00/100 (\$2,000,000.00) Dollars in the then-current Contract Year, and (iii) not to exceed Two Percent (2%) of Gross Receipts in excess of Two Million and 00/100 (\$2,000,000.00) Dollars in the then-current Contract Year. The Qualitative Incentive Fee will be determined based on the Contractor's performance with respect to customer satisfaction during the Contract Year. The Qualitative Incentive Fee, if any, will be payable as a single payment for services performed by the Contractor during the Contract Year after measurement by the City of the Contractor's performance with respect to customer satisfaction.

The City will conduct measurement of customer satisfaction at the end of the Contract Year pursuant to the procedures set forth in Section 4.2.3. below or in the Manual, as applicable, and will pay the Contractor the Qualitative Incentive Fee for such Contract Year, if any, within one (1) month of the end of the Contract Year.

4.2.3. For the first Contract Year, the methodology for measuring customer satisfaction and determination of the amount of the Contractor Incentive Fee, if any, shall be determined as described in Section 4.2.4. Upon the request of the City given on or before June 1, 2003, the parties will negotiate a replacement methodology for measuring

customer satisfaction and determining the amount of the Contractor Incentive Fee for subsequent Contract Years, which replacement methodology will be set out in the Manual. The parties hereby agree that such performance evaluation shall, at all times during the term of this Agreement, be designed, to the greatest extent possible, to solicit evaluations of Contractor's performance and the quality of the services provided and to avoid any impact upon such evaluation based upon the prices for which the services are rendered.

4.2.4. Contractor shall solicit catering customer ratings of catering services on an overall grading scale based upon rating categories of "excellent," "above average," "average" and "below average." Each customer contracting for Contractor's catering services at the Facility will be requested by the City to complete and return to the Convention Center Operator a "Performance Evaluation Questionnaire" including such grading scale and substantially in the form attached hereto as Attachment Questionnaire, which form may, from time to time, be modified upon the mutual agreement of the parties.

A copy of all completed and returned questionnaires will be provided to the Contractor, the City and the Convention Center Operator.

- (i) The Contractor shall, within fifteen (15) days after the end of the first Contract Year, tally all properly completed and returned questionnaires by:
 - (a) awarding to Contractor one hundred (100) points for each overall rating of excellent;
 - (b) awarding to Contractor eighty-five (85) points for each overall rating of above average;
 - (c) awarding to Contractor seventy-five (75) points for each overall rating of average; and
 - (d) awarding to Contractor sixty (60) points for each overall rating of below average.
- (ii) Within fifteen (15) days after the end of the first Contract Year, the Contractor shall determine the overall score based on the questionnaires for the one year period ending on the last day of such Contract Year by calculating a fraction the numerator of which shall be the total number of points awarded to Contractor pursuant to clause (i) herein during such Contract Year, and the denominator of which shall be the number of returned and properly completed questionnaires in connection therewith, which fraction shall be multiplied by one hundred (100). The Contractor shall notify the City and Convention Center Operator in writing of the overall score, and agrees that the City and Convention

Center Operator shall independently verify the calculation of such score.

(iii) If the overall score is 90 or more, Contractor shall earn 100% of the Incentive Fee.

(iv) If the overall score is between 89 and 85, Contractor shall earn 90% of the Incentive Fee.

(v) If the overall score is between 84 and 80, Contractor shall earn 80% of the Incentive Fee.

(vi) If the overall score is between 79 and 75, Contractor shall earn 75% of the Incentive Fee

(vii) If the overall score is below 75, Contractor shall earn 0% of the Incentive Fee.

4.2.5. Promptly following the availability of the audited annual financial statements for an Operating Year, the Contractor shall recalculate the total Contractor Incentive Fee payable for that Operating Year based on actual Gross Receipts received during such Operating Year. In the event that the amount of the total Contractor Incentive Fee which was paid based on the Contractor's invoices differs from such recalculated amount, the Contractor shall promptly remit to the City any excess amount that was paid, or the City shall promptly pay the shortfall, as the case may be.

4.3 The Management Fee shall be paid to Contractor in accordance with Section 16 below. The Contractor Incentive Fee shall be paid to Contractor in accordance with Section 4.2 above.

SECTION 5 MAINTENANCE

5.1. Contractor, as a Direct Operating Cost, shall repair (other than repair of structural wear or deterioration, which shall be the responsibility of the City), clean and provide normal day-today maintenance and repair, as necessary, to floor, walls, equipment, fire protection system, improvements and fixtures, provided by the City for Contractor's use. Contractor, as a Direct Operating Cost, is responsible for all sanitation and maintenance of the Service Areas, including maintenance of all equipment used in the Food Services operation in accordance with scheduled maintenance standards of such equipment. Contractor shall pump grease traps quarterly at a minimum. City shall be responsible for all other maintenance, repairs and cleaning within the Facility.

5.2 City shall supply all electricity, gas, local telephone, long distance telephone and

data lines, water, and other utilities used by the Food Services operation. Contractor shall deposit into the trash compactor located on the dock next to the kitchen or into any other receptacle on the premises designated by the City, all waste, garbage and refuse which shall accumulate in the concession stands, kitchen and commissaries and shall keep the stands, commissaries, store rooms, locker rooms and other facilities and space allotted to it in good, clean and sanitary condition. Trash removal from the Facility is the responsibility of the City.

5.3 Contractor will comply with and observe all federal, state and local laws, ordinances and regulations as to sanitation and the purity of food and beverages or otherwise relating to the Food Services operation.

SECTION 6 PERSONNEL

6.1 The Contractor shall employ, train and supervise personnel with appropriate qualifications and experience in sufficient numbers to provide all services appropriate for the Food Services operation. Employees shall receive alcohol training pursuant to State of Kansas standards. The City has the right to approve personnel being employed by the Contractor. The Contractor and its employees shall obey the rules and regulations established by City, but such employees shall be exclusively the employees of Contractor and not of the Convention Center Operator or the City.

6.2 The Contractor shall employ a highly skilled professional full-time, on-site management staff possessing the necessary experience and expertise to provide the overall management of a first class catering operation. During each annual budget process during the term of the Agreement, the Contractor will present, for approval by the City and the Convention Center Operator, a management organizational chart detailing each position and the salary and benefits to be paid. The City has the right to approve staffing levels sufficient to provide a first class Food Services operation at the Facility. The Contractor will employ a highly skilled professional for each approved position. Full time management expense that has not received prior approval will not be a Direct Operating Cost. The Contractor shall select the number, function, qualifications, and compensation, including salary and benefits, of its employees and shall control the terms and conditions of employment relating to such employees, subject to the provisions of this Section 6. The City or the Convention Center Operator may request the removal of any of the Contractor's employees and approval of said request will not be unreasonably withheld.

6.3 Contractor's employees shall be admitted to the Facility without payment of an admission or parking fee at an entrance to be designated by City, in such numbers as Contractor may reasonably require for conducting its operations.

6.4 The Contractor will submit to the City the names of qualified candidates for the positions of Director of Food and Beverage and Executive Chef. The Contractor will be

responsible for hiring the Director of Food and Beverage and Executive Chef upon the approval of the City.

6.5 City acknowledges that Contractor has invested considerable amounts of time and money in training its supervisory employees in the systems, procedures, methods, forms, reports, formulas, computer programs, recipes, menus, plans, techniques and other valuable information which is proprietary and unique to Contractor's manner of conducting its business and that such information is available, on a confidential basis, to the Contractor's supervisory employees. Therefore, City agrees that supervisory employees of Contractor will neither be hired by City nor by any facility affiliated with City for the term of this Agreement and 12 months thereafter, nor will City permit supervisory employees of Contractor to be employed on City's premises or on the premises of any facility affiliated with City for a period of 12 months subsequent to the termination of this Agreement (unless such employees were formerly employees of City) whether as an individual or as owner, partner, majority stockholder, director, officer or employee of a food service provider. For the purpose of this prohibition, "supervisory employees" shall be defined as those persons who have been employed by Contractor as Director of Food and Beverage or Executive Chef at the Facility at any time during the 12 month period immediately preceding termination of this Agreement. In addition, City agrees that if it violates the conditions set forth in the immediately preceding paragraph, then City shall pay to Contractor and Contractor shall accept as liquidated damages and not as a penalty for such breach, an amount equal the annual salary of the Contractor supervisory employee hired by or allowed to work in City's premises in violation of the terms of this Agreement.

SECTION 7 PRODUCTS AND PRICES

7.1 Contractor shall order, stock, prepare, and pay for all food and beverage products and related supplies from the Operating Account. Contractor warrants and represents that all consumables shall be first quality, wholesome and pure, and all products on hand shall be stored and handled with due care for sanitation, in full compliance with City and State of Kansas regulations, including the Kansas Food Code, K.A.R. 28-36-101 et seq. and all other applicable requirements. Contractor shall follow approved procurement procedures, which shall be set forth in the Manual.

7.2 During all events where cash sales are made, the Contractor shall post signs and provide menus advertising the prices of items offered for sale. Both of such menus and prices shall be subject to the prior approval of the City.

7.3 The Contractor shall notify City of all proposed price increases during the Operating Term. Price increases will require approval of the City.

7.4 The types of functions at which Alcoholic Beverages are sold shall be subject to regulations established by the City. The Contractor shall have the responsibility to decide

whether service of Alcoholic Beverages to an individual is permitted under applicable law.

SECTION 8 LICENSES AND TAXES

The Contractor shall apply for, obtain and maintain all licenses and permits necessary for performance of its obligations hereunder, as a Direct Operating Cost. The Contractor shall be required to obtain and hold all pertinent permits and licenses as a Direct Operating Costs for the sale of all Alcoholic Beverages. The said Alcoholic Beverage permits and licenses must be limited to the Facility and the Contractor's interest in same must terminate simultaneously with the expiration or termination of the Agreement. The privilege to sell Alcoholic Beverages shall be subject to the provisions of the Alcoholic Beverage Laws of the City and the State of Kansas. The City shall have the sole right to determine at which events Alcoholic Beverages may be sold.

SECTION 9 HOURS/DAYS OF OPERATION

Contractor shall perform its services hereunder during the hours as may be required to properly provide the Food Services for events at the Facility.

SECTION 10 INSPECTION

The City shall have the right to enter the Service Areas at any time for any reason, including but not limited to the purpose of examining the state of repair and condition of the Service Areas and the equipment located therein.

SECTION 11 INDEMNITY AND INSURANCE

11.1 The Contractor shall indemnify, hold harmless and defend the City, the Convention Center Operator and their respective agents, servants, and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of error, omission or negligent act of Contractor, its agents, servants or employees in the performance of services under this Agreement.

11.2 The execution of this Agreement by the Contractor shall obligate the Contractor to comply with the foregoing indemnification provision. Notwithstanding any other term or

condition of this Agreement, the above indemnification provision shall survive the termination of this Agreement.

11.3 The Contractor agrees to obtain insurance coverage in the manner and amounts as set forth in Exhibit A which is attached hereto. The cost of the insurance will be paid as a Direct Operating Cost.

11.3.1 The Contractor agrees to maintain such referenced insurance during the life of this Agreement. No modification or change from these specifications shall be made without the City's approval.

11.3.2 All insurance policies shall be rated no less than A VIII, in the most recent "Best" insurance guide and shall be licensed in the state of Kansas or as otherwise agreed by the parties, and shall be in such form and contain such provisions as are generally considered standard for the type of insurance involved to the extent not otherwise required by this Agreement.

11.3.3 The commercial general liability policy, automobile liability insurance policy, liquor liability policy and umbrella or excess liability policy shall name City and Convention Center Operator as additional insureds. The workers compensation policy shall contain a waiver of all rights of subrogation against City.

11.3.4 Each insurance policy shall include a requirement that the insurer provide at least thirty (30) days' written notice of cancellation or material change in the terms and provisions of the applicable policy.

11.3.5 If Contractor subcontracts any of the Food Services provided for under this Agreement, Contractor shall either:

- Cover all subcontractors under its policies of insurance;
- Or
- Require each subcontractor not so covered to secure insurance that will protect against applicable hazards or risks of loss as and in the minimum amounts designated herein.

Whichever option is chosen, Contractor shall indemnify and hold harmless the Convention Center Operator and City as to any and all damages, claims or losses, including attorney's fees, arising out of the negligence or other actionable fault of its subcontractors.

SECTION 12
PROVISION OF FOOD SERVICE PREMISES TO CONTRACTOR

No less than ten business days prior to the Grand Opening, City shall make available to Contractor the space and facilities in the Facility fully adequate in all respects for it to render the Food Services required by this Agreement (the "Food Service Premises"). The Food Service Premises provided shall at all times include major kitchen, catering, and concession facilities and equipment adequate for service required hereunder as well as space for portable units as may be required. Included in the Food Service Premises shall be office space that shall be adequate in all respects for the Contractor's accounting, record-keeping, sales, office operations and money counting functions. All equipment shall be delivered to Contractor clean and in good working order. The Food Service Premises shall also include storage and commissary space for stock and equipment. The Contractor shall make no alterations to the Food Service Premises without the prior written consent of the City. During the Pre-Opening Period, the City shall make space available to the Contractor, either within or without the Convention Center, for the Contractor to carry out its Pre-Opening Period responsibilities. Such space will include adequate office space and equipment, as well as computers, fax machines, copier, and telephone and data lines.

SECTION 13
TERMINATION FOR CONVENIENCE

13.1 The City may without reason or without cause terminate this Agreement at any time for the convenience of the City.

13.2 The City shall notify the Contractor 120 days prior to the termination date if it decides to terminate the Agreement pursuant to Section 13.1, provided however, the Agreement shall terminate immediately upon notification to the Contractor by the City in the event that the City, in its sole discretion, decides not to build or not to complete the building of the Convention Center.

13.3 In the event termination pursuant to Section 13.1 above is effected by the City, the Contractor will be paid for work performed to date of termination plus expenses incurred to the date of termination. In addition, City shall pay Contractor actual ordinary and necessary expenses, if any, incurred not to exceed One Hundred Twenty Thousand Dollars (\$120,000). Such ordinary and necessary expenses shall include costs associated with (i) severance pay not to exceed six (6) months for the Director of Food and Beverage ; (ii) severance pay not to exceed three (3) months for the Executive Chef, Director of Sales, Director of Operations and Office Manager, and (iii) household relocations for no more than three (3) employees of Contractor. The City's payment of such ordinary and necessary expenses will occur following receipt and review of written documentation of expenses by the Contractor.

13.4 In the event termination pursuant to Section 13.1 is effected by the City prior to the first anniversary of the Grand Opening, the City shall pay to Contractor the salary and fringe benefit expenses incurred by Contractor for time spent at the Facility by Corporate Personnel from the date of the execution of this Agreement until the date of the receipt by the Contractor of the termination notice. Such payment shall be due within thirty (30) days of receipt of Contractor's invoice therefor. For purposes of this provision, Corporate Personnel are defined as those Contractor employees who are assigned to Contractor's corporate office, field operations, and other unit locations, and who have provided services at the Facility but whose salary and fringe benefits are not otherwise paid under this Contract. The amount to be paid Contractor for such expense shall be computed as follows: the time spent at the Facility (converted to weeks) divided by 52 times the amount of the annual salary and fringe benefits. For example, if Contractor's Regional Vice President is at the Facility for three weeks between the date of the execution of the Agreement and the end of the first Contract Year, but prior to the Contractor receiving notice of termination, the reimbursement attributed to his or her service at the Facility would consist of 3/52 of salary (including fringe benefits). The aggregate reimbursement under this paragraph shall not exceed \$50,000.

13.5 Upon the effective date of a termination notice pursuant to Section 13.1 above, the Contractor shall, unless the notice directs otherwise:

a. Delivery of Premises. Contractor shall remove its property from the Facility and shall deliver to the City the Service Areas, and all property thereon belonging to the City, in such condition as is the same as that which existed at the time the premises and property were delivered to Contractor, except ordinary wear and tear, loss or damage occurring without the negligence or fault of Contractor, and damage occurring as a result of fire, flood, or other, like unavoidable casualty or occurrence occurring without the negligence of Contractor.

b. Final Accounting. Contractor shall deliver to the City, within thirty (30) days of the effective date of termination, a final accounting and shall remit to City all amounts owed as of the effective date of termination, after withholding all amounts to which Contractor may be entitled under this Article or elsewhere under this Agreement.

SECTION 14 TERMINATION FOR DEFAULT

14.1 The City shall have the right to terminate this Agreement if the Contractor fails to perform or comply with any of the terms, covenants, agreements or conditions hereof and such failure continues for more than thirty (30) days after written notice thereof from the City; provided that certain failures of performance shall permit immediate termination as provided herein. The City shall have the right to terminate this Agreement immediately (i) upon an event of default specified in Section 14.6, (ii) if, as a result of a breach by the Contractor of the terms, covenants, agreements or conditions set forth in Sections 5.3 and/or 17 of this Agreement, Contractor loses its license or permit to carry out Food Services operations at the Facility or

regulators direct that the Contractor cease Food Services operations at the Facility, or (iii) if the insurance maintained by the Contractor for Food Services operations at the Facility is cancelled or otherwise no longer in force.

14.2 The Contractor may terminate this Agreement prior to the expiration of the Term in the event of a material breach on the part of the City of any provision of this Agreement, and the failure of the City to cure the same within thirty days of receipt from the Contractor of written notice describing the breach with specificity. In the event the City elects to continue performance, it shall cure the breach. If the breach is not cured within thirty days of such notice, this Agreement may be terminated by the Contractor upon thirty days written notice.

14.3 In the event termination pursuant to Section 14.1 or 14.2 above is effected by the City or the Contractor, the Contractor will be paid for work performed to the date of termination, including any Management Fee and Incentive Fee earned by the Contractor to the date of termination, plus any expenses incurred to date of termination, less the cost to the City of making good any deficiencies, and correcting all work improperly performed.

14.4 Upon the effective date of a termination notice pursuant to Section 14.1 or 14.2 above, the Contractor shall, unless the notice directs otherwise:

a. Delivery of Premises. Contractor shall remove its property from the Facility and shall deliver to the City the Service Areas, and all property thereon belonging to the City, in such condition as is the same as that which existed at the time the premises and property were delivered to Contractor, except ordinary wear and tear, loss or damage occurring without the negligence or fault of Contractor, and damage occurring as a result of fire, flood, or other, like unavoidable casualty or occurrence occurring without the negligence of Contractor.

b. Final Accounting. Contractor shall deliver to the City, within thirty (30) days of the effective date of termination, a final accounting and shall remit to City all amounts owed as of the effective date of termination (to the extent of any amounts held by the Contractor), after withholding all amounts to which Contractor may be entitled under this Article or elsewhere under this Agreement.

14.5 In the event of termination pursuant to Section 14.1 above, the City may, in its discretion, assume the work and see that the same is completed by agreement with another party, including subcontractors of the Contractor, or otherwise, all without liability to the Contractor.

14.6 In addition to the events of default set forth in Section 14.1, the following shall constitute events of default upon the occurrence of which the City may immediately terminate this Agreement:

14.6.1 The occurrence of any act or omission on the part of the Contractor that deprives it of the rights, powers, licenses, permits, and authorizations necessary for the lawful and proper conduct and operation of the services and

activities authorized;

14.6.2 The filing by or against the Contractor of any petitions in bankruptcy;

14.6.3 The abandonment or discontinuance by the Contractor, without written consent of the City, of any or all of the operations and services permitted or required; and

14.6.4 The commission of any criminal or fraudulent act by the Contractor.

14.7 The exercise by the City or Contractor of remedies and rights provided herein shall in no way affect any other right or remedy available to the City or Contractor; provided however, that the Contractor's and the City's liability for consequential damages, if any, shall be limited to \$225,000 each in any Contract Year.

SECTION 15 ASSIGNMENT, SUBLEASE

The Contractor shall not transfer, convey, assign nor permit the use of the rights, privileges or premises granted under this Agreement in whole or in part to any other person, firm or corporation without written authorization of the City, and any attempt to do so shall be void. The foregoing notwithstanding, the Contractor shall be permitted to subcontract for any portion of the Food Services to be provided pursuant to this Agreement upon the approval of the City, such approval not to be unreasonably withheld or delayed.

SECTION 16
PROCEDURES FOR HANDLING INCOME, FISCAL RESPONSIBILITY,
ACCOUNTING STATEMENTS AND RECORDS
AND BUDGET

16.1 Pursuant to the Manual and such procedures as shall be established by the City, all Gross Receipts will be deposited into the City's Facility Lockbox Fund as soon as practicable upon receipt (but not less often than once each business day, and in any event within one (1) business day of receipt). The City will periodically transfer to and/or retain in the Operating Account the budgeted Direct Operating Costs for the applicable period, which may be accessed by the Contractor for the purpose of paying Direct Operating Costs, which transfers will be made from amounts in the Facility Lockbox Fund or other funds of the City as determined by the City. The remaining funds in the City's Facility Lockbox Fund shall be held in trust by the City for the benefit of the City, and amounts in excess of the budgeted operating costs for the applicable period may be applied by the City in such manner as the City may determine in its sole discretion, including but not limited to, retained in the Facility Lockbox Fund for the payment of future Direct Operating Costs or transferred by the City to the City General Fund or to such other City fund or account as the City may determine, provided that the City shall at all times cause the Operating Account to have adequate funds on hand to pay budgeted expenses for the then-current month of operations. The Contractor shall use funds in the Operating Account to cover Direct Operating Costs.

16.2 In addition to any other financial reports that may be required by this Agreement, the Contractor shall furnish to the City and the Convention Center Operator within twenty-eight (28) days of the end of each Accounting Period an accounting statement signed by an authorized representative of the Contractor. The reports shall include a report for the Accounting Period stating Gross Receipts by source of sales, the portion of the Annual Management Fee earned and Direct Operating Costs. At the time of submission of such reports, Contractor shall pay itself from the Operating Account the monthly portion of the Management Fee as described in Section 4.

16.3 The Contractor shall maintain a separate set of books and records for its operations at the Facility in accordance with generally accepted accounting principles. The Contractor must keep original invoices for all materials brought on the premises of the Facility and must submit sales statements as support for the required accounting statements as reasonably requested from time to time. No materials shall be brought on the premises of the Facility without such invoices. The Contractor shall also maintain payroll summaries, copies of payroll tax returns, Facility Lockbox Fund and Operating Account deposit receipts and disbursements and bank statements for the Food Services at the Facility, all of which shall be available to the City and the Convention Center Operator at all reasonable times for inspection, audit, examination, and copying; *provided, however*, the City and the Convention Center Operator shall also be entitled to conduct spot audits or examinations of the same at the Facility without prior notice from time-to-time.

16.4 Contractor agrees within sixty (60) days following the end of each fiscal year to provide to the City a certified audit report on the accounts and records as kept by the Contractor for Food Services at the Facility. The cost of this certified audit report will be paid as a Direct Operating Cost from appropriate funds set aside in the Operating Budget. The Contractor shall utilize an external auditor approved by the City, which approval will not be unreasonably withheld or delayed, to conduct this audit of the accounts and records of Food Services in accordance with generally accepted auditing standards. A letter from said accounting firm expressing its opinion as to the effectiveness of internal controls and a management letter will accompany the audit report. At the option of the City and at its expense, additional audits may be performed.

16.5 The Contractor shall prepare and provide to the City financial reports in the format and according to the time frame required by the City. The Contractor shall utilize software which is compatible with the software used by the Convention Center Operator; as of the date of execution of this Agreement the Contractor shall utilize CCBreeze software. It is the intent of the City that Lessees of the Facility receive a combined invoice prepared and submitted by the Convention Center Operator for all services associated with an event. Accordingly, the Contractor shall provide the Convention Center Operator with all information required for the timely preparation of event billing, all as may be set forth more fully in the Manual.

16.6 The Contractor shall keep complete and accurate inventory control records before and after each event as well as sales reports for each event held at the Facility.

16.7 The Contractor agrees that it will each year in accordance with the procedures set forth in the Manual prepare and present a proposed line item Operating Budget which budget will follow and comply with the existing City budget process or such other procedures which the City and the Convention Center Operator may require. Said budget shall include, at a minimum, a projected income and expense statement including all income and expense items spread by Accounting Period, projected year-end balance sheet and statement of projected sources and applications of funds. The Contractor shall ensure that its representatives are present at all necessary meetings of the budget approval process related to the Facility. The annual Operating Budget shall receive the prior approval of the City and the Convention Center Operator, which approval shall not be unreasonably withheld or delayed. The Contractor shall have an approved Operating Budget effective January 1st of each fiscal year. The first Operating Budget shall cover the period from the Grand Opening Date through December 31, 2003. The City acknowledges that certain of the expenses described in each Operating Budget will vary based on the number and size of events occurring at the Facility. The Contractor may submit to the City and the Convention Center Operator for their approval an interim budget to reflect any significant adjustments to the approved Operating Budget. Subject to the provisions pertaining to supplementation, revision, and amendment of the Operating Budget contained in this Section 16.7, the Contractor shall not exceed, commit or contract to expend any sums in excess of those amounts allowed in the approved Operating Budget without the approval of the City or the Convention Center Operator. It is anticipated that procedures for the development of the Operating Budget will be set forth in the Manual.

At any time prior to the close of a Contract Year, the Contractor may submit to the City and the Convention Center Operator a supplemental or revised Operating Budget for such Contract Year. Upon the approval by the City and the Convention Center Operator of such supplemental or revised Operating Budget, which approval shall not unreasonably be withheld or delayed, the Operating Budget for such Contract Year shall be deemed amended to incorporate such supplemental or revised annual operating budget. In addition to amendment of the Operating Budget in accordance with this paragraph or the following paragraph, the Contractor shall have the right to amend the Operating Budget as may be necessary or appropriate as the result of the scheduling by the Contractor of additional Food Services events at the Facility (and the incurrence of additional Direct Operating Costs arising from the scheduling of such additional Food Services events) as long as prior to the scheduling of such Food Services events, the Contractor had a good faith belief that the projected net operating loss/profit for the Contract Year as set forth in the Operating Budget would not be increased or decreased, as appropriate, as a result of such additional Food Services events.

In the event that it appears reasonably likely, in any Contract Year hereunder, that the actual net operating loss/profit for such Contract Year will be larger in the case of a net operating loss, or smaller, in the case of a net operating profit, than projected in the Operating Budget for such Contract Year, the City and the Convention Center Operator may request from the Contractor a plan for reduction of Direct Operating Costs to a level consistent with the budgeted net operating loss/profit amount, provided that such plan does not materially interfere with the provision of first-class Food Services. The Contractor shall forthwith comply with any such expense reduction requested by the City and the Convention Center Operator, and the Operating Budget for such Contract Year shall be modified accordingly.

16.8 The Contractor shall designate up to four (4) Contractor employees to be authorized signatories on the Operating Account and any other account established hereunder or pursuant to the Manual. The number of signatories required for checks to pay expenses shall be as set forth in the Manual. All Contractor employees designated as authorized signatories on any Facility accounts shall be sufficiently insured as a Direct Operating Cost to protect the Contractor's and the City's interests, as shall the Director of Food and Beverage and such other managerial level employees as may be designated in the Manual. Such insurance shall be in an amount as set forth in Exhibit A and shall name the City as an additional insured as its interest may appear.

16.9 It is the intent of this Agreement that cash control for Food Services operations shall be accomplished through a combination of rigid accounting procedures and internal audit tests and an annual audit by an independent public accounting firm selected by the City. Payrolls shall be processed through a separate impressed bank account in the name of the Contractor, reconciled monthly and tested via internal audit procedures. Each event shall be accounted for using an event accounting system, with budgets and final reports prepared for each event as provided in the Manual, and reimbursable expenses for each event shall be coded for accurate accumulation to ensure all applicable costs shall be paid by the users of the Facility.

Advance deposits covering rentals and estimated costs shall be required as provided in the Manual to minimize collection programs.

SECTION 17
LAWS, REGULATIONS, AND DIRECTIVES

17.1 The Contractor will use the Facility for no purpose other than specified in the Agreement, and the business conducted hereunder will be operated in strict compliance with all laws of the United States, the State of Kansas, and with all food service, health and fire codes and all applicable rules and regulations issued pursuant to said laws.

17.2 Contractor shall not permit the Facility, or any part thereof, to be used for any unlawful or immoral purpose or in any manner as to injure persons or property in, or on or near said premises, and upon termination of this Agreement it shall deliver to the City the premises and fixtures in as good condition and repair as the same shall be found at the beginning of the term, subject to normal wear and tear.

SECTION 18
CASH BASIS LAW

The City is obligated only to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purpose as set forth in this Agreement during the City's current budget year. In the event the City does not so budget and appropriate the funds, the parties shall be relieved from all obligations, without penalty, under this Agreement.

SECTION 19
COMPLIANCE WITH EQUAL OPPORTUNITY LAWS,
REGULATIONS AND RULES AND OTHER LAWS

19.1 Contractor shall observe the provisions of the Kansas Act against Discrimination, K.S.A. 44-1001 et seq., as amended, and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, disability, national origin ancestry, or age;

19.2 In all solicitations or advertisements for employees, Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");

19.3 If Contractor fails to comply with the manner in which Contractor reports to the Commission in accordance with the provision of K.S.A. 44-1031 and amendments thereto, Contractor shall be deemed to have breached the present Agreement and it may be canceled,

terminated or suspended, in whole or in part, by the contracting agency;

19.4 If Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, Contractor shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and

19.5 Contractor shall include the provisions of paragraphs (1) through (4) above in every subcontract so that such provisions will be binding upon such subcontractor.

19.6 Contractor further agrees that the contractor shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all federal, state, and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

SECTION 20 PROHIBITION AGAINST CONTINGENT FEES

20.1 Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for Contractor, 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, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City may terminate this Agreement without liability or may, in its discretion, deduct from the Contract Price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

20.2 Contractor warrants that it will not accept any fee, commission, percentage, gift, or other consideration from any third party for the performance of any work under the Agreement.

SECTION 21 FORCE MAJEURE

Except as otherwise provided herein, neither party shall be obligated to perform, and neither party shall be deemed to be in default of its performance, if prevented by: (a) fire not caused by negligence of either party, earthquake, hurricane, wind, flood, act of God, riot, or civil commotion occurring at the Convention Center, or; (b) any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities, war, act of terrorism, or governmental law and regulation; or labor dispute which results in a strike or work stoppage affecting the Convention Center or services described

in this Agreement other than those occurring as a result of an act or omission of the Contractor.

SECTION 22 ASSIGNMENT

The City is entering into this Agreement in recognition of and in reliance on the expertise, reliability, and competence of the Contractor and its management in matters pertinent thereto. The performance of the obligations imposed upon the Contractor under the Agreement will not be assignable by it to any other party unless the City, within its sole discretion, consents to said assignment in writing. Any purported assignment in contravention of this Section shall be void.

SECTION 23 SEVERABILITY

If a court of competent jurisdiction or an arbitrator determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement (and the application of this Agreement to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

SECTION 24 WAIVERS, MODIFICATIONS, REMEDIES

No failure or delay by a Party to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent on a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. Neither this Agreement nor any of its terms may be changed or modified, waived, or terminated (unless as otherwise provided hereunder) except by an instrument in writing signed by the Party against whom the enforcement of the change, waiver, or termination is sought. No waiver of any breach shall affect or alter this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity.

SECTION 25 MISCELLANEOUS

25.1 This Agreement is governed by and enforceable in accordance with the laws of the State of Kansas without giving effect to its choice of law principles.

25.2 All notices under this Agreement shall be addressed in care of:

to City:

City of Overland Park

8500 Santa Fe Drive

Overland Park, Kansas 66212-2899

Attention: City Manager or his/her designee as Facility Contract Administrator

to Global Spectrum:

Global Spectrum, L.P.

10601 US Hwy 19 North

Pinellas Park, FL 33782-3426

Attention: Michel Sauers, President/CEO

with a copy to

Global Spectrum, L.P.

Overland Park Convention Center

6000 College Boulevard

Overland Park, Kansas 66211

Attention: General Manager

and to Contractor:

Fine Host Corporation

3 Greenwich Office Park

Greenwich, CT 06830

Attention: Group President

with a copy to:

Fine Host Corporation

3 Greenwich Office Park

Greenwich, CT 06830

Attention: General Counsel

25.3 The relationship created by this Agreement is that of principal and independent contractor. Nothing herein contained shall be construed in such a way as to constitute Contractor and the City joint venturers or partners. No officer, employee, agent, servant or independent contractor of Contractor shall at any time be deemed to be an employee, servant or agent of the City for any purpose whatsoever. Contractor shall require all such persons to refrain from making any representation by word or act whereby it might be understood or believed that they are employees, servants or agents of the City.

Neither Contractor nor the City has made any (and each hereby disclaims all) representations or warranties in respect to the amount of Gross Receipts or Net Profits (if any) which may be earned by the City or the volume or frequency of events at the Facility.

SECTION 26
DISPUTE RESOLUTION

City and Contractor agree that disputes relative to the Services performed should first be addressed by good faith negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute Contractor shall proceed with the Services as per the Agreement as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the parties' express written consent.

SECTION 27
ENTIRE AGREEMENT

The terms and conditions contained herein, the Request for Proposals (RFP) For Food Services, dated March 12, 2002, and the Contractor's response to the RFP constitute the entire and exclusive Agreement between the Parties, and are hereby full incorporated by reference and made a part of this Agreement. In the event of a conflict between any terms or conditions in this Agreement, the RFP or the response to the RFP, the terms and conditions of the Agreement shall take precedence. If the subject of such conflict is not addressed in this Agreement, the terms and conditions of the RFP shall take precedence if not contrary to the terms and conditions of this Agreement. If the subject of such conflict is not addressed in this Agreement or the RFP, the terms and conditions of the response to the RFP shall take precedence if not contrary to the terms and conditions of this Agreement. If the subject of such conflict is not addressed in this Agreement, the RFP or the response to the RFP, the policies and procedures of the Facility as established by the City and the Convention Center Operator shall take precedence if not contrary to the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective, duly authorized officers the day and year first above written.

THE CITY OF OVERLAND PARK

FINE HOST CORPORATION

By: _____
Title: _____

By: _____
Title: _____

EXHIBIT A INSURANCE

At all times during this Agreement, Contractor shall:

- a) maintain commercial general liability insurance, including products and completed operations, bodily injury and property damage liability, liquor liability, contractual liability, independent contractors' liability and personal and advertising injury liability against claims occurring on, in, or about the Convention Center, or otherwise arising under this Agreement;
- b) maintain umbrella or excess liability insurance of a minimum of \$50,000,000 (Limit may be reduced to \$5,000,000 if coverage is limited to the specific location and operations set forth in this Agreement);
- c) maintain commercial automobile liability insurance, including coverage for the operation of owned, leased, hired and non-owned vehicles;
- d) maintain appropriate workers compensation and employer's liability insurance as shall be required by and be in conformance with the laws of the State of Kansas;
- e) maintain professional liability including employment practices with minimum limits of \$5,000,000 each wrongful act.

The following are a summary of the minimum liability insurance requirements as of the Effective Date:

Commercial General Liability

\$1,000,000 per occurrence

\$1,000,000 personal and advertising injury

\$1,000,000 general aggregate

\$1,000,000 products-completed operations aggregate

Automobile Liability

\$1,000,000 per accident (BI and PD combined single limit)

\$1,000,000 uninsured/underinsured motorist

Liquor Liability

\$1,000,000 per occurrence and aggregate

Umbrella or Excess Liability

\$50,000,000 per occurrence and aggregate for commercial general, automobile and liquor liability coverages as noted above (Limit may be reduced to \$5,000,000 if coverage is limited to the specific location and operations set forth in this Agreement)

Workers Compensation

Workers Compensation: Statutory

Employer's Liability: \$100,000 each accident-bodily injury by accident

\$500,000 policy limit-bodily injury by disease

\$100,000 each employee-bodily injury by disease

Commercial Crime

Type: Employee Dishonesty Coverage

Limit: \$1,000,000 per loss

* City as Joint Loss Payable