Kerry Smith
CEN SAVOR ORD
May 10, 2013
Version #2

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117790

AN ORDINANCE relating to the Seattle Center; authorizing the Seattle Center Director to execute a five year extension to an agreement with SMG, doing business as SAVOR, for the management of food and beverage services at Marion Oliver McCaw Hall at Seattle Center.

WHEREAS, in June 2003 McCaw Hall opened following a $127 million renovation of the Seattle Opera House; and

WHEREAS, the renovation was made possible through the joint efforts of the Pacific Northwest Ballet ("Ballet"), Seattle Opera ("Opera"), the Seattle Center Foundation and the City of Seattle; and

WHEREAS, in June, 2003, with the Mayor's concurrence, the Seattle City Council approved Ordinance 121206 authorizing joint management of McCaw Hall under the oversight of the Marion Oliver McCaw Hall Operating Board in recognition of the significant private funds raised for the building and the commitment to future use of McCaw Hall by the Ballet and Opera; and

WHEREAS, food service is integral to the patron experience in McCaw Hall; and

WHEREAS, the exclusive food service provider for McCaw Hall is SMG, doing business as SAVOR; and

WHEREAS, SAVOR was selected as the concessionaire as a result of a 2008 Request for Proposal process and entered into a 5 year agreement for the provision of food services, which agreement could, with the approval of the Seattle City Council, be extended for an additional five years; and

WHEREAS, SAVOR has provided excellent food service at McCaw Hall and the McCaw Hall Operating Board supports extension of the agreement; NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As requested by the Seattle Center Director and recommended by the Mayor, the Seattle Center Director is authorized to execute, for and on behalf of City of Seattle, an

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agreement with SMG d/b/a SAVOR substantially in the form of the agreement attached hereto as Attachment 1 and identified as "EXTENDED AND RESTATED AGREEMENT FOR THE MANAGEMENT OF FOOD AND BEVERAGE SERVICES AT MARION OLIVER MCCAW HALL AT SEATTLE CENTER BETWEEN THE CITY OF SEATTLE AND SMG" which specifies the terms and conditions under which exclusive food and beverage service will be provided to McCaw Hall by SMG.

Section 2. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

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Passed by the City Council the ____ day of _____, 2013, and signed by me in open session in authentication of its passage this _____ day of _____, 2013.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2013.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2013.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Extended and Restated Agreement for the Management of Food and Beverage Services at Marion Oliver Hall at Seattle Center between the City of Seattle and SMG.

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ATTACHMENT 1

EXTENDED AND RESTATED AGREEMENT FOR THE MANAGEMENT OF FOOD AND BEVERAGE SERVICES AT MARION OLIVER McCAW HALL AT SEATTLE CENTER

BETWEEN

THE CITY OF SEATTLE

AND

SMG

DIS CITY CLERK

EXTENDED AND RESTATED AGREEMENT FOR THE MANAGEMENT OF FOOD AND BEVERAGE SERVICES AT MARION OLIVER McCAW HALL AT SEATTLE CENTER BETWEEN THE CITY OF SEATTLE AND SMG

This Extended and Restated Agreement for the Management of Food and Beverage Services at Marion Oliver McCaw Hall ("Extended Agreement") is made this _____ day of _____, 2013 by and between SMG, a Pennsylvania general partnership d/b/a SAVOR ("SAVOR") and City of Seattle, a municipal corporation of the State of Washington ("City"), operating through its Seattle Center Department ("Seattle Center") and Seattle Center Director ("Director").

RECITALS

WHEREAS, Marion Oliver McCaw Hall is a world-class performance hall housing the Seattle Opera and Pacific Northwest Ballet, as well as a range of other events; and

WHEREAS, Seattle Opera, one of the nation's leading opera companies, is recognized nationally and internationally for its theatrically compelling and musically accomplished performances; and

WHEREAS, the Pacific Northwest Ballet is one of the five largest and most highly regarded ballet companies in the United States and one of the top three ballet training institutions in the country; and

WHEREAS, McCaw Hall creates an inviting and welcoming physical environment that honors audiences, as well as producers and performers, and enables patrons to share and experience the fine arts in our community together; and

WHEREAS, food and beverage service in McCaw Hall is vitally important in creating a world-class experience; and

WHEREAS, through a Request for Proposal process in 2008, SAVOR was selected as the food and beverage service provider for McCaw Hall; and

WHEREAS, on September 17, 2008, the City and SAVOR entered into that certain Agreement for the Management of Food and Beverage Services at Marion Oliver McCaw Hall (the "Master Agreement"); and

WHEREAS, the City and SAVOR have amended the Master Agreement by amendments fully executed on or about the following dates: January 20, 2009, May 11, 2009, January 6, 2011, and March 20, 2013; and

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WHEREAS, SAVOR has an outstanding reputation for providing quality food and beverage service reflecting the talents of professionals dedicated to providing unsurpassed customer experiences, and the McCaw Hall Operating Board supports SAVOR's continued engagement as the food and beverage services provider for McCaw Hall; and

WHEREAS, SAVOR and the City wish to extend the term of the Master Agreement, as amended, and to restate and clarify the terms and conditions that shall apply during the extended term as hereinafter set forth, all for the purpose of continuing the world-class venue and patron experience at McCaw Hall;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties, intending to be legally bound, hereby agree as follows.

ARTICLE I
DEFINITIONS

1.1 Definitions of Terms.

The capitalized words used below in this Agreement have the following meanings:

A. Café Sales means the sale of food and beverages to patrons of the McCaw Hall cafe.

B. Catering Services means the provision of food and/or beverages at a function where responsibility for payment for such food and/or beverage service rests with one individual or entity. Catering Services includes "no-host" bars provided in conjunction with catered events.

C. Concession Services means the sale of food and/or beverages to individual customers from, among other things, fixed and mobile concession units and roving vendors.

D. Contract Year means each twelve-month period that begins on August 1 and ends on July 31 during the Term of this Agreement.

E. Event Service Order means the form the City uses and prepares to outline a licensee's or tenant's event requirements at McCaw Hall.

F. Facility means Marion Oliver McCaw Hall ("McCaw Hall") at Seattle Center.

G. Food and Beverage Services means, collectively, the Concession Services, the Café Sales and the Catering Services and any other food and beverage sales and/or services provided by SAVOR hereunder.

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H. Food and Beverage Service Equipment means the food service equipment, mobile carts, catering furniture and related equipment used in providing the Food and Beverage Services. The Food and Beverage Service Equipment is identified in greater detail in Exhibit A, attached hereto. Food and Beverage Service Equipment does not include the computerized point-of-sale system and small wares and related equipment to be provided by SAVOR in accordance with Exhibit B.

I. Gross Sales means the total income that Savor earns in connection with providing the Food and Beverage Services, regardless of collections. Without limiting the generality of the foregoing, unless expressly excluded below, Gross Sales includes subcontracting income, gratuities not actually paid to employees, service and rental charges except for those charges that SAVOR passes on to customers without additional mark-up, and income from sales and services that SAVOR provides in Seattle Center facilities other than McCaw Hall, all whether by cash or credit and whether collected or not and regardless of shortages or shrinkage. Gross Sales does not include (i) the amount of all sales taxes or any excise or other tax collected by SAVOR from customers and paid by SAVOR to any governmental authority; (ii) the amount of gratuities or service charges added to client bills or statements which are paid over to SAVOR's employees; (iii) the amount of any charitable contribution collected by SAVOR on behalf of any customer; (iv) the amount of any actual refunds or credits made by SAVOR to the purchaser due to "over-rings," the sale of which was theretofore included in Gross Sales; and (v) income from Catering Services for Seattle Opera, Pacific Northwest Ballet, Seattle Center, and Seattle Center Foundation events provided at discounted rates as described in Sections 2.1 A(7), and 4.1.F, below. Gross Sales shall not be reduced by any credit card fees charged to SAVOR in connection with services provided hereunder.

J. Kitchen Equipment Reserve Fund means the account established pursuant to Section 10.3 hereof to fund the repair, maintenance and replacement of Food and Beverage Service Equipment and the furniture and other improvements directly associated with the Food and Beverage Services to be provided under this Agreement.

K. Premises means those portions of the Facility, identified more particularly in Exhibit C, that SAVOR may use and/or occupy in performing its services hereunder.

L. Seattle Center Client means any individual, organization, corporation or other legal entity with which the Seattle Center has an executed licensing agreement that specifies the use of one or more Seattle Center facilities and date(s) for such use by such Seattle Center Client.

M. Seattle Center Director or "Director" means the Director of City's Seattle Center Department or his or her designee.

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ARTICLE II
GRANT OF CONCESSION AND CATERING RIGHTS; LIMITATIONS

2.1 Grant of Food and Beverage Concession and Catering Rights.
Subject to all of the terms, conditions and limitations contained herein, City grants to SAVOR the following rights to provide Food and Beverage Services throughout the Term of this Agreement and SAVOR agrees to provide such services:

A. Exclusive Rights. SAVOR shall have the exclusive right to sell alcoholic beverages to patrons at McCaw Hall. In addition, SAVOR shall have the exclusive right to provide Food and Beverage Services, including the service of alcohol to patrons at McCaw Hall, except for the following:

(1) In certain backstage locations; specifically,
a. Stage Level dressing suites 1, 2 and 3, along with their associated dressing rooms;
b. Stage level rooms #'s 437, 438, 439 (Green Room), 440A, 440B, 440C, 440D, 444 (Props Room), 449, and corridor 420.
c. Lower Level Chorus dressing and production rooms #'s 121, 122, 123, 126, 127, 128, 129 and the associated hallway.
d. Rehearsal Hall, room # 520.

(2) Vending machine operations.

(3) Intentionally Left Blank.

(4) One gala event per year for each of Seattle Opera and the Pacific Northwest Ballet. For each such event, SAVOR will be invited to submit a proposal, which will be considered in good faith along with proposals from other caterers. If another caterer is selected, SAVOR shall allow such caterer to use those portions of the Premises necessary to conduct their operations and shall endeavor to accommodate such caterer's other reasonable requests at such caterer's expense. Such caterer may provide alcohol service, but not sales, pursuant to a WSLCB-issued Banquet Permit, so long as no sales of alcohol will occur for this event, nor is any other event scheduled in the Facility that day that requires alcohol sales or service, and SAVOR is able to relinquish its liquor license for that day, which it will do in this instance. Otherwise, SAVOR shall provide all alcohol sales and service for this event in accordance with this Agreement.

(5) Seattle Center-sponsored and co-sponsored events and Seattle Center Foundation events, at the City's discretion.

(6) Up to three (3) events per year for SIFF, so long as each such event takes place entirely in the Lecture Hall Lobby and has a guest count of no more than 250. For each such event, SIFF's caterer(s) shall be entitled to use the concession

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stand in the Nesholm Family Lecture Hall but shall not be entitled to use the kitchen or café portions of the Facility without SAVOR's consent. SIFF's caterer may provide alcohol service, but not sales, pursuant to a WSLCB-issued Banquet Permit, so long as there is not any other event scheduled in the Facility that day that requires alcohol sales or service, and SAVOR is able to relinquish its liquor license for that day, which it will do in this instance. Otherwise, SAVOR shall provide all alcohol sales and service for this event, in accordance with this Agreement. If SIFF requests that SAVOR provide alcoholic beverage service for the event, then SAVOR shall provide the same and all revenue therefrom shall be accounted for as Gross Sales. At SIFF's request, SAVOR may provide Catering Services for any such SIFF event. At City's sole discretion and request on an event-by-event basis, SAVOR agrees to extend to SIFF the same discount it provides to the Seattle Opera, Pacific Northwest Ballet, Seattle Center and the Seattle Center Foundation, as described in Section 4.1.F, and/or the corkage rate specified in Section 12.5. SAVOR agrees to consider additional SIFF events for exclusion on a case-by-case basis upon City's request.

(7) SAVOR shall be the only entity to sell alcoholic beverages anywhere in McCaw Hall during the term of this Agreement.

B. Non-Exclusive Rights. SAVOR may agree in its discretion to provide Concession Services elsewhere at Seattle Center, i.e., other than McCaw Hall, when requested to do so by the Seattle Center Director.

C. Pre-Approved Catering Status. In addition to the rights granted to SAVOR with respect to the Facility, the parties agree that:

(1) The City will include SAVOR on Seattle Center's list of pre-approved caterers for all other Seattle Center facilities and grounds except for KeyArena. Seattle Center facilities include the Armory Conference Rooms, the Northwest Rooms, the Seattle Center Pavilion, Fisher Pavilion and the Exhibition Hall.

(2) SAVOR shall have the non-exclusive right to provide catering services outside of McCaw Hall to any individual, organization, corporation or other legal entity with which the City has an executed licensing agreement ("Seattle Center Client(s)").

2.2 Facility Access and Use.

In performing its obligations under this Agreement, SAVOR shall have the right to use and occupy the Premises, as depicted on Exhibit C. Exhibit C identifies those portions of the Premises that SAVOR has the right to exclusively use and occupy and those portions of the Premises to which SAVOR has a nonexclusive right of access.

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2.3 Use of Kitchen and Related Equipment for Off-Site Catering and Other Services.

Except as otherwise provided in this Agreement or approved in advance by the Seattle Center Director (such approval not to be unreasonably withheld), SAVOR may not utilize the Premises or any Food and Beverage Service Equipment to provide off-site catering (i.e., off Seattle Center grounds) or other services of any kind.

2.4 Opportunity to Rent Kitchen Portion of Premises and Related Equipment to Others.

SAVOR may rent the kitchen portion of the Premises and its associated Food and Beverage Service Equipment to other City-approved caterers for food preparation in conjunction with events conducted at Seattle Center facilities. Rental of the kitchen to others shall be by written agreement and require the user to secure insurance in types and amounts sufficient to protect against damage to the Facility and equipment therein.

ARTICLE III
TERM

3.1 Term.

This Extended Agreement, shall be effective when fully executed by the parties ("Effective Date"), and shall extend the Term of the Master Agreement through July 31, 2018 (the "Term"). As of the Effective Date, this Extended Agreement shall supersede the Master Agreement and prior amendments, and all references to "Agreement" herein shall be deemed to mean this "Extended Agreement". Notwithstanding the foregoing, the Master Agreement and prior amendments shall remain in full force and effect for any rights or obligations that accrued thereunder prior to the Effective Date.

ARTICLE IV
SAVOR'S OPERATIONS

4.1 Service to Seattle Center Clients.

A. Whenever SAVOR agrees to provide Catering Services to a Seattle Center Client, it shall do so only pursuant to a written contract signed by the Seattle Center Client. SAVOR shall secure the City's approval (not to be unreasonably withheld) of the standard contract template SAVOR will use for doing business with Seattle Center Clients.

B. SAVOR shall notify the City of each Seattle Center Client event for which SAVOR has agreed to provide Catering Services at least seventy-two (72) hours before the event. SAVOR shall obtain from the City the Event Service Order number for that event.

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C. SAVOR shall prepare floor plans and secure assembly permits and/or approval of layouts for events from The City of Seattle fire marshal, as needed. SAVOR shall prepare a written catering estimate when requested to do so by either a Seattle Center Client or the Seattle Center sales staff and shall endeavor to do so within two (2) business days of the request. SAVOR shall also generate a banquet event order for each confirmed event. SAVOR shall provide a copy of each such estimate and banquet event order to the Seattle Center sales staff and McCaw Hall event servicing staff responsible for the event.

D. SAVOR shall supply all linens, tableware and other equipment that is required for Catering Services to be provided to any Seattle Center Client. Except in McCaw Hall, where SAVOR shall set and strike tables and chairs from the Facility inventory as necessary, the City shall supply tables and chairs in such numbers as are requested by the Seattle Center Client and as are available from the Seattle Center as determined by the Seattle Center Director.

E. For Catering Services provided in facilities other than McCaw Hall, SAVOR shall remove all trash and food waste and clean up any spills created as a result of providing Catering Services. If any facility used for Catering Services is not left clean with trash and food waste removed, SAVOR shall be charged a cleaning cost at the hourly rate of a Seattle Center Laborer as published in the then-current Seattle Center Personnel Rates Addendum or its successor publication. SAVOR may leave at such facility recycling products that are locally acceptable for recycling and which have been sorted into separate receptacles approved by the Director.

F. SAVOR shall offer price discounts of 30% from retail pricing for Catering Services provided directly to the Seattle Center, Seattle Center Foundation, Pacific Northwest Ballet and Seattle Opera.

G. Each Contract Year of this Agreement, SAVOR shall provide an in-kind donation of Food and Beverage Services valued at retail at up to $25,000 for events hosted by each of the Seattle Opera and the Pacific Northwest Ballet. Such in-kind donations shall not be included in SAVOR's Gross Sales. Seattle Opera and Pacific Northwest Ballet shall each provide recognition of SAVOR as a $25,000 institutional donor in a manner commensurate with the recognition provided to other $25,000 institutional donors to Seattle Opera and Pacific Northwest Ballet.

4.2 Surety Performance Bond.

At or prior to the execution of this Agreement, SAVOR shall furnish City with a performance bond or, with the approval of the Seattle Center Director (not to be unreasonably withheld), an irrevocable letter of credit for the duration of the Agreement, in the sum of $100,000.00 and in a format and from an entity reasonably acceptable to the Director, to secure SAVOR's performance hereunder. City agrees that it shall not seek recourse with respect to such bond or letter of credit unless SAVOR has materially

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defaulted under one or more of its obligations under this Agreement and has failed to timely cure such material default in accordance with the provisions of Section 19 hereof.

4.3 Duty to Provide Service; Waiver of Exclusive Catering Right.

SAVOR shall operate and conduct its business in a first-class and reputable manner consistent with industry standards. SAVOR shall provide the City and each of its licensees and tenants with the type, level, quality and quantity of Food and Beverage Services reasonably requested at the time and locations stated on an Event Service Order; provided, however, that irrespective of the request of a licensee or tenant, SAVOR shall not provide its services in a manner that violates the terms of this Agreement or in locations that the licensee or tenant has no right to occupy. Except for backstage catering, SAVOR shall make every effort to satisfy the specific needs of Seattle Center licensees and tenants with regard to customer service, menu choices and price. If SAVOR is unable to provide or subcontract for the specific Catering Services requested by a licensee or tenant, SAVOR shall waive its exclusive Catering rights with respect to such event and shall work cooperatively with another food service provider who will provide the requested services. Any revenues generated by a third-party caterer shall not be included in Gross Sales and the City shall collect any applicable commissions directly from such caterer.

4.4 Obligation to Actively Market for Catering Events.

In addition to the concession and catering opportunities that exist as a result of event bookings at the Facility, there are additional booking opportunities to be found in the Facility. Based on available dates and spaces in or around the Facility as determined by the City, and consistent with Seattle Center's booking policies, SAVOR shall actively and continuously market these catering opportunities throughout each year of the term of this Agreement and in particular, shall work with the Seattle Center sales team to promote, market, sell available dates, and provide post event follow-up for the Facility. SAVOR shall market the Facility through published print advertising, presence on SAVOR's website(s), including a website specifically devoted to SAVOR's operations at McCaw Hall, memberships in local event planning associations, and relationships with local event planning companies. SAVOR shall cross-market to its existing customers and include tag line messages regarding the Facility on outgoing e-mails and printed sales proposals. SAVOR shall host "familiarization" tours and events with potential customers and industry event planning professionals. All SAVOR marketing and business development efforts to promote catering opportunities at the Facility shall be planned and executed in coordination with Seattle Center's sales team. All printed and electronic marketing materials SAVOR develops and uses to promote catering opportunities at the Facility shall be subject to review and approval by the City prior to publication, which approval shall not be unreasonably withheld. SAVOR shall develop and present a specific marketing and business development plan and budget for each calendar year by November of the previous year for review and discussion with City. SAVOR shall report to the City on activities and expenditures against this plan and budget on no less than a quarterly basis.

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4.5 Additional Services Requested By City.

The City may request that SAVOR provide additional services not specifically contemplated hereunder. If agreement regarding such additional services can be reached, they shall be included in this Agreement by amendment.

ARTICLE V
PERCENTAGE OF GROSS SALES TO CITY IN EXCHANGE FOR GRANT OF FOOD AND BEVERAGE CONCESSION AND CATERING RIGHTS

5.1 Percentage of Gross Sales to City.

In exchange for the grant of rights set forth in Article II, SAVOR agrees to pay City a percentage of its Gross Sales each month throughout the Term of this Agreement, as set forth below:

For the Period January 1, 2013 – July 31, 2018:	
Café Services and Concession Services at McCaw Hall	11.5%
Catering Services at McCaw Hall	17.5%
Concession Services and Catering Services at Seattle Center except for McCaw Hall	7.5%
Gross sales from corkage fees for authorized non-profit organizations	10%

5.2 Annual Minimum Guarantee of Percentage of Gross Sales

Effective January 1, 2013, SAVOR shall pay City an annual minimum guarantee ("Minimum Guarantee") of two hundred fifty thousand dollars ($250,000) from the percentage of Gross Sales during each calendar year. Beginning on January 1, 2014, and on the first day of each January thereafter throughout the Term, the Minimum Guarantee amount shall increase by the same percentage as the increase in the Consumer Price Index for All Urban Consumers in the Seattle-Tacoma Metropolitan Area, published by the Bureau of Labor Statistics, United States Department of Labor (the "Index") during the preceding calendar year, if any. If the percentage change to the Index is negative or remains the same during the calendar year preceding the adjustment, then the Minimum Guarantee shall remain the same as it was during the immediately preceding calendar year. If there is any change in the Index base or if the Index is discontinued, the Director shall select a substitute index of comparable statistics on the cost of living for the locality in which the Premises are located as shall be computed by an agency of the United States or by a responsible financial periodical or other recognized authority. The amount of the annual Minimum Guarantee is conditioned on Seattle Opera and Pacific Northwest Ballet (the "Resident Tenants") scheduling 105 or more public performances during the applicable calendar year, excluding school performances and performances of "The Ring". In the event that the

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Resident Tenants schedule fewer than 105 performances per calendar year, then SAVOR and the Director shall proportionately modify the annual Minimum Guarantee for that calendar year. Events which are scheduled and later cancelled due to unanticipated reasons like inclement weather will be considered a scheduled performance. In the event that SAVOR pays the City less than the annual Minimum Guarantee from the percentage of Gross Sales during any calendar year, then SAVOR shall pay City, the difference between the percentage of Gross Sales paid and the annual Minimum Guarantee for that calendar year.

5.3 Timing and Form of Payments; Interest on Late Payments.

SAVOR shall pay City the City's share of Gross Sales earned during the preceding month, and the preceding month's trash removal costs, as specified in Section 9.4, within ten (10) calendar days following the last day of each month throughout the Term. During January of each calendar year SAVOR shall pay City, if required, the amount needed to reach the annual Minimum Guarantee for the prior calendar year upon City's invoice. All such payments shall be in lawful money of the United States of America or in a money order or check payable in such form and sent or delivered to Accounts Receivable, c/o Seattle Center Fiscal Services, 305 Harrison Street, Seattle, Washington, 98109, or to such other address as the Seattle Center Director shall specify by written notice to SAVOR. Late payments shall accrue interest at a rate of 12% per annum from the date due until paid.

SAVOR shall identify separately and offset against each monthly payment any amounts due from the City for catering or other services that SAVOR provided to the City during the preceding month. If, in any month, the City owes SAVOR more than the percentage share of Gross Sales due the City for that month, SAVOR shall carry forward the balance due it and offset the amount owed against the following month's payment of Gross Sales.

ARTICLE VI
REPORTING, AUDITS, RECORD KEEPING AND CONFIDENTIALITY

6.1 Monthly Reports.

Together with each monthly remittance, SAVOR shall provide the City with an accounting report for the preceding month on an event-by-event basis. Each report shall include, for each event, at least the following information: the Event Service Order number, event name, date of event, location of event, nature of services provided, estimated attendance, per capita revenues, and the amount of Gross Sales received and any amounts still due. All information shall be documented to the Director's reasonable satisfaction, which may include requests for additional types of information from time to time, formatted to correspond with the "event type" categories currently used by the Seattle Center, and provided in electronic as well as paper form, utilizing a computer application approved by the Seattle Center Director.

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6.2 Year End Report; Final Accounting and Payment of Percentage of Gross Sales to City.

Within thirty (30) days following the end of each Contract Year or partial year of the Term of this Agreement, SAVOR shall submit to City a year-end report that includes an accounting of all Gross Sales realized and remaining owing for services provided by SAVOR during the preceding year. Such report shall include a review of Savor's cash handling procedures and an accounting of any shortages or overages experienced during such year. Such report and accounting shall be in a form reasonably acceptable to the Seattle Center and accompanied by such documentation as the City may reasonably require. SAVOR shall provide the City electronic as well as paper copies of the accounting, utilizing a computer application approved by the Seattle Center Director.

6.3 Maintenance of Records and Annual Financial Audits.

SAVOR shall establish and maintain at its on-site office an accounting system for its operations at Seattle Center that conforms to generally accepted accounting practices and is consistently applied. SAVOR shall also maintain books and records for its operations hereunder for a period of at least three (3) years following the expiration or termination of this Agreement and shall produce them for inspection and copying in King County, Washington, with reasonable promptness upon the City's request. Within one hundred eighty (180) days after the end of each Contract Year or partial year of the Term, SAVOR shall submit to the City an annual financial audit of SAVOR's activities hereunder prepared by an accounting firm approved by the City at SAVOR's expense. From time to time during the Term of this Agreement and for a period of at least three (3) years thereafter, the City, at its own expense and upon reasonable notice, may cause its designated accountants to audit all records maintained by SAVOR pertaining to its activities hereunder.

6.4 Accounting Systems.

SAVOR shall use such inventory control systems, sales slips, and/or equipment as is customary in the industry to record Gross Sales. All systems, equipment and sales slips shall be subject to inspection by City, its officers, employees and representatives, upon reasonable notice during such hours that the Premises are operating or during regular business hours. Any such inspection shall be made so as not to interfere with SAVOR's business activities hereunder.

6.5 Confidentiality.

The parties agree that they will not permit the duplication or disclosure of any information designated in advance by the other party as "Confidential and Proprietary" to any person (other than its own employee, agent, or representative who must have such information for the performance of that party's obligations hereunder) unless such duplication, use or disclosure is specifically authorized in writing by the other party or is required by law, including the Public Disclosure Act, Chapter 42.56 RCW.

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ARTICLE VII
OPERATING STANDARDS

7.1 Product and Service Standards.

A. SAVOR shall conduct all of its operations in a first-class, professional, businesslike, and efficient manner consistent with industry standards for a premier performance hall and the Fundamental Expectations described in Exhibit D. All Concession Services and Catering Services in McCaw Hall shall be with china, glassware, non-plastic flatware and linen. Use of any alternative service ware shall be subject to the prior approval of the Seattle Center Director, which approval shall not be unreasonably withheld. All foods, drinks, beverages, confectionery, refreshments, and the like sold or kept for sale shall be of first quality, wholesome, and pure and shall conform in all respects to all applicable, federal, state, and municipal food and other laws, ordinances and regulations. No imitation, adulterated, or misbranded article shall be sold or kept for sale, and all products kept on hand shall be stored and handled with due regard for sanitation and in compliance with all applicable health and safety standards. Leftover perishable products shall not be sold to the public at any time. Leftover perishable products may be sold to employees in the employee dining facility or donated to food banks, shelters, or other charitable uses. Minimum food purchase specifications shall be as outlined in Exhibit E, attached hereto. SAVOR and its employees shall not make or permit any misrepresentation as to kind, quality, weight, or price of food or beverages offered for sale. The location of points of sales, methods of sale, and prices charged for commodities sold or business transacted by SAVOR under the provisions of this Agreement shall at all times be subject to the supervision, direction and approval of the Seattle Center Director, which approval shall not be unreasonably withheld. A copy of the then current food and beverage concession price schedule shall be displayed at each concession facility on the Premises in such a manner so as to be easily viewed by the public whenever the concession facility is open for business. SAVOR shall strictly adhere to the established prices as set forth in the then current price schedule. If City becomes aware that SAVOR is not adhering to the current established price schedule, it shall notify SAVOR of such departure in writing, and SAVOR shall immediately cure such default or City may terminate this Agreement in accordance with Article 19 hereof.

B. City and SAVOR shall mutually develop a program to monitor service quality standards. The program will include evaluative criteria and quantitative standards of performance for Café food, Concession food, non-alcoholic beverages, alcoholic beverages and catered events. The program will include quarterly secret shopper visits paid for by SAVOR, with the provider approved by the City. City may schedule additional secret shopper visits throughout the year at its expense. The program will also include a patron feedback/survey mechanism for each Resident Tenant Organization's production, and client feedback/surveys from each third party event.

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C. Conditioned upon SAVOR achieving an aggregate average annual score of 90% on all secret shopper reports and customer/patron surveys and so long as no single average annual criteria is less than 75% then, on the final payment by SAVOR to City of each calendar year, SAVOR shall receive as a performance incentive a credit to the amount of commissions owed the City as follows:

If Gross Sales are equal to or greater than:	Commission Credit
$2,275,000	$5,000
$2,325,000	$7,500
$2,375,000	$10,000
$2,475,000	$15,000

7.2 Tobacco Products.

SAVOR will not advertise or sell or permit others within SAVOR's control to advertise or sell tobacco products on or around the Facility or elsewhere at Seattle Center.

7.3 Alcoholic Beverages.

SAVOR shall sell alcoholic beverages and permit others to sell alcoholic beverages pursuant to this Agreement only in compliance with applicable state and local laws and subject to reasonable procedures established by the City. Final decisions as to whether alcoholic beverages may be sold at an event or in any Seattle Center facility shall be the sole responsibility of the City. The City's decision to disallow the sale of alcoholic beverages in a particular instance will be based upon public safety or other public policy concerns and the Director will inform SAVOR of the basis for any such decision. When alcoholic beverages are sold at an event or elsewhere at Seattle Center, the decision to serve or refuse service of an alcoholic beverage to any individual shall be SAVOR's sole responsibility. All licenses and permits required for the sale of alcoholic beverages at any Seattle Center facility shall be held in SAVOR's name. SAVOR shall keep such licenses and permits for McCaw Hall in full force and effect at all times throughout the Term and shall obtain proper permits to serve liquor at other Seattle Center facilities prior to such service. SAVOR shall prepare, file and process all applications for renewals of the licenses and permits. At the termination of this Agreement, SAVOR shall surrender all alcoholic beverage licenses for all Seattle Center facilities, it being acknowledged and agreed that such licenses are non-transferable.

Unless the City agrees otherwise, notwithstanding anything in this Agreement to the contrary, if SAVOR operates the McCaw Hall café as a full-service restaurant, then its alcoholic beverage sales shall be limited to beer and wine.

7.4 Drinking Awareness Program.

SAVOR shall implement and maintain a continuing alcohol awareness educational program, such as TIPS and/or TEAM, for all employees serving alcohol to the public. This training shall include age identification, diplomatic ways to refuse service, and legal

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responsibilities. All SAVOR employees serving alcohol to the public at the Facility or any other Seattle Center venue or location shall participate in such training and SAVOR, upon the request of the City, shall provide City with documentation of the content of and attendance at any such training program. Frequency of such training shall be at SAVOR's discretion or upon the City's reasonable request. SAVOR shall submit to the Seattle Center Director for approval, which approval shall not be unreasonably withheld, proposed graphics on alcohol awareness to be displayed in the Facility and as required by law or regulation.

7.5 Menus, Prices and Signage.

No later than May 1 of each year during the Term, SAVOR shall submit proposed concession menus and prices, and proposed prices for any other services to be provided under this Agreement, to the Seattle Center Director for approval and implementation on the following July 1. The Director's approval will not be unreasonably withheld.

If menu and price changes are recommended during other periods, SAVOR shall submit such changes to the Seattle Center Director within thirty (30) days of the proposed change. If City provides no written response within the thirty (30) day review period, SAVOR's proposed changes shall be deemed acceptable.

SAVOR shall provide a wide range of catering menus and prices to meet the variety of needs and price points of Seattle Center Clients. Client event orders and cost estimates shall clearly indicate all client costs including service charges, gratuities, labor costs and sales tax. Subject to the approval of the Seattle Center Director, which shall not be unreasonably withheld, all SAVOR signage, marketing, menus and employee uniforms and identification shall tastefully reflect the relationship hereunder between the City and SAVOR.

7.6 Deliveries.

Deliveries shall be made to and on the Facility prior to 11:00 a.m. whenever reasonably possible, or such alternative time as mutually agreed, and in a manner that minimizes congestion and disruption to users of Seattle Center, unless otherwise authorized by the Seattle Center Director, such authorization not to be unreasonably withheld.

7.7 Uniforms.

SAVOR shall provide, maintain and launder, as necessary, uniforms of a color and design appropriate to each facility and approved by the Seattle Center Director.

7.8 Cash Handling.

Upon execution of this Agreement, SAVOR shall provide City with a written copy of its cash handling procedures for the Facility, and shall promptly notify City of any changes

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to the cash handling procedures. Any theft or loss of cash due to any cause whatsoever shall be borne solely by SAVOR and shall not be deducted from Gross Sales under this Agreement.

ARTICLE VIII
USE OF PREMISES

8.1 Access to City Premises.

SAVOR and its agents, employees, suppliers and other such persons necessary for SAVOR to render services contemplated herein, shall have access to such areas of the Seattle Center as the Director may determine are necessary or appropriate for SAVOR to provide the services contemplated herein, subject to reasonable security precautions. When providing services hereunder, SAVOR's agents, employees, suppliers and other persons necessary to its operations shall be entitled to free admission to such areas, including restrooms and changing rooms, through a reasonably convenient entrance designated by City.

8.2 Parking.

City shall provide SAVOR with four (4) parking permits for such Seattle Center parking facility as the Director shall from time to time designate. SAVOR shall be permitted to utilize the McCaw Hall loading dock for load/unload purposes only. The charge for any additional parking utilized by SAVOR shall be at the established Seattle Center parking rate in effect at the time of such parking space use.

8.3 Inspection.

City shall have access to the exclusive use portions of the Premises at any reasonable time for the purposes of inspecting, repairing, altering or improving any property owned by or under the control of City and not the responsibility of SAVOR hereunder; provided, however, that such access and inspections shall not unnecessarily or unreasonably interfere with SAVOR's operations. City shall promptly notify SAVOR management of its intent to inspect and shall permit a SAVOR employee (preferably a manager or director of security) to accompany any inspection or unscheduled entry into any locked portion of the Premises. SAVOR shall deliver to City a key to any locked portions of the Premises to enable City to at any time unlock each of the doors in, upon, and about the Premises, excluding SAVOR's vaults, safes, and files. City shall have the right to use any and all means that the Seattle Center Director deems proper to obtain entry to the Premises in an emergency, without liability to SAVOR of any kind.

8.4 Care of Premises.

SAVOR shall not damage or in any manner deface the Premises and shall not cause or permit anything to be done whereby any Seattle Center facility shall be in any manner defaced or damaged. SAVOR shall submit a written notice to the Seattle Center

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Director regarding the circumstances of any damages to the Premises or other Seattle Center facility within forty-eight (48) hours after the occurrence of any such event. If, during the period of SAVOR's use, the Premises or any other Seattle Center facility is damaged or defaced by SAVOR's willful misconduct, default or negligence, SAVOR shall pay City such sum as is reasonably necessary to restore the damaged portion of the Premises or facility to its condition immediately prior to the occurrence of such damage.

ARTICLE IX
OPERATING RESPONSIBILITIES

9.1 Cleaning, Event Set-Up and Take-Down.

SAVOR shall maintain all portions of the Premises in an orderly, clean and sanitary condition. City shall be responsible for maintaining and cleaning all other areas of the Facility. Subject to Seattle Center labor agreements, SAVOR shall set up and remove tables, chairs, staging and serviceware for all events requiring Food and Beverage Services in the Facility, including tables and chairs requested by Clients in lobby spaces (including donor/special function rooms) not specifically associated with SAVOR's Food and Beverage Services. City shall provide sufficient storage for tables and chairs at a location to be determined by the Seattle Center Director. SAVOR shall skirt and dress tables on a timely basis. SAVOR shall set up, tear down, clean and maintain all portable equipment and furniture necessary to provide the Food and Beverage Services. Post-event tear-down and clean-up, including removing food and beverage residue from furniture used for the event and removing dirty linens, shall occur immediately following each event, unless Seattle Center management staff has agreed otherwise, in advance.

9.2 Utilities.

City, or its authorized utility providers, shall supply and SAVOR shall pay for all basic utility services associated with SAVOR's operations hereunder, including, but not limited to, gas, electricity, sewer, water and HVAC in the kitchen and café portions of the Premises. SAVOR shall pay, through separate metering systems, for its use of gas, water, sewer and electricity in these spaces. SAVOR's costs for HVAC shall be calculated and billed at 2.75% of McCaw Hall's actual monthly HVAC costs, which percentage reflects the amount of McCaw Hall's total square footage that the café and lower level SAVOR exclusive use spaces (e.g., kitchen, office, storage areas) represent. City has provided sufficient utility load capacity to enable operation of the Facility as designed and SAVOR shall not install any equipment that will exceed or overload such capacity. Any damage to utility lines or systems caused by SAVOR shall be repaired by City at SAVOR's sole expense. SAVOR shall maintain the sewer lines to the satisfaction of the City and shall take all precautionary measures reasonably necessary to assure that grease and other potentially hazardous or damaging materials are not discharged into the sewer system. If any equipment installed by SAVOR requires additional utility facilities the same shall be installed at SAVOR's expense and in

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accordance with plans and specifications approved by the Seattle Center Director, in advance. City shall not be liable for any failure or interruption, from any cause, of water, HVAC, gas or electrical supply, or for loss of property, or for injury or damage to any person or property resulting from steam, gas, electricity, water, rain or snow that may leak or flow from or into any part of any Seattle Center facility, or from the pipes, appliances or plumbing of a building or from any other place.

9.3 Pest Control.

SAVOR shall implement and fund a regular program of pest control for its exclusive use spaces. Such program shall be subject to approval by the Seattle Center Director (such approval not to be unreasonably withheld). SAVOR shall be solely responsible for selecting the vendor to provide these pest control services.

9.4 Trash Removal.

All waste foods shall be kept in closed containers until removed from the Premises. Lard, grease and similar materials shall be kept in airtight containers. At a minimum, SAVOR shall actively participate in a refuse recycling and composting program approved by the Seattle Center Director (such approval not to be unreasonably withheld), which program will at a minimum require SAVOR to collect, sort and separate into such categories as may be legally required, all solid waste products on the Premises and recycle all such products that are locally accepted for recycling. SAVOR shall place each separately sorted category of waste products in separate receptacles approved by the Seattle Center Director (such approval not to be unreasonably withheld). The City shall pick up and dispose of the trash from locations designated by City at the City's expense (except to the extent an obligation of SAVOR as set forth below). City reserves the right to refuse to collect or accept from SAVOR any waste product that is not sorted and separated as required by law, ordinance, rule or, regulation, or this Agreement, and in such instance to require SAVOR to arrange for the collection of the same at SAVOR's sole cost and expense using a contractor reasonably satisfactory to City. SAVOR shall pay all costs, fines, penalties and damages that may be imposed on City or SAVOR as a consequence of SAVOR's failure to comply with the provisions of this section. SAVOR shall pay to the City, without invoice, Two Hundred Seventy Five Dollars ($275.00) per month for trash removal. No later than July 1 of each year throughout the Term, the City and SAVOR shall review garbage and recycling costs associated with the Food and Beverage Service program in the Facility for the prior year and mutually determine whether such amount should be revised for the succeeding Contract Year. SAVOR acknowledges and affirms its commitment to sustainability and agrees to work with the City to develop initiatives designed to minimize waste generation.

9.5 Use of Recycled Content Paper.

SAVOR shall use, whenever practicable, recycled content paper on all documents submitted to City, in accordance with Seattle Municipal Code ("SMC") 3.38.904.

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9.6 Use of Recyclable and Biodegradable Products.

SAVOR shall, whenever reasonably possible, use recyclable and biodegradable products for containers and supplies used in the Facility; provided, however, that the City reserves the right to restrict the use of cans and bottles as serving containers for particular events.

9.7 No Nuisance or Objectionable Activity.

SAVOR shall not permit any excessive or objectionable noise, odor, dust, vibration, or other similar substance or condition to remain on or be emitted from the Premises; shall not create any nuisance in or adjacent to the Premises; and shall not do anything on the Premises that will create a danger to life or limb.

ARTICLE X
PREMISES, EQUIPMENT AND CAPITAL CONTRIBUTIONS OF PARTIES

10.1 Facility and Premises Provided by City Accepted in "As Is" Condition.

SAVOR accepts all existing facilities, including those associated with the Facility and the Premises, in their "as is" condition. The City disclaims all representations, statements, and warranties, express or implied, with respect to the condition of the Premises or the use, occupancy and access authorized hereunder other than those contained herein. If any portion of the Premises subject to this Agreement is determined by a person having authority to be in violation of any building or safety code then upon reasonable and prompt notice thereof, City agrees to cure the violation and to indemnify and hold SAVOR harmless from any penalties or other costs associated with such violation.

10.2 Equipment Provided by SAVOR; Initial $650,000.00 and Ongoing Capital Investment.

A. Throughout the term of this Agreement, SAVOR shall provide, maintain and replace when necessary the computerized point-of-sale system, small wares and other equipment set forth in Exhibit B. By December 31, 2008, SAVOR shall purchase and install, as appropriate, the small wares and food service equipment on Exhibit B totaling approximately $650,000.00, for use in the McCaw Hall café and concessions operations. Subject to the Director's prior approval, which approval shall not be unreasonably withheld, and compliance with applicable building codes, other relevant regulations and Seattle Center union agreements, the City shall make modifications to the Café servery area, concession stands, and other food service areas as SAVOR requests to implement the initial capital investment, at SAVOR's expense. This initial capital investment shall be amortized for income tax purposes over ten years on a straight-line, non-cash basis. Documentation acceptable to the Seattle Center Director of such initial capital investments shall be included in SAVOR's applicable year-end

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report and annual financial audit required pursuant to Sections 6.2 and 6.3 hereof. In no event shall funds from the Kitchen Equipment Reserve Fund established pursuant to Section 10.3 hereof be used for any acquisition described on Exhibit B. All equipment and furnishings to be installed in or provided by SAVOR for the Facility shall (a) be approved by the Seattle Center Director (such approval not to be unreasonably withheld), (b) comply with any standards established for McCaw Hall, and (c) be of such quality, design and finish as will be in keeping with the general décor of the Facility. SAVOR shall own all such equipment. The City may purchase all or a portion of such equipment for the unamortized value of the equipment or for such price as may be mutually agreed by the parties.

B. SAVOR shall, at its sole expense, identify a minimum of one hundred thousand dollars ($100,000) in capital improvements to the food and beverage program at McCaw Hall to include high-end mobile bars stations for the lobbies; purchase and installation of digital/video menu boards in the Grand Lobby North, First Tier North and Second Tier South concession stands, including appropriate software to program/control such menu boards and improvements to the dining environment in Prelude Restaurant. The selection, design and installation of the improvements shall be subject to the Director's approval. The mobile bar stations and digital/video menu boards shall be placed in service no later than December 1, 2013 and the balance of the improvements shall be completed no later than July 31, 2014. These capital improvements shall be amortized for income tax purposes over five and a half (5.5) years on a straight-line, non-cash basis. Documentation acceptable to the Seattle Center Director of such initial capital investments shall be included in SAVOR's applicable year-end report and annual financial audit required pursuant to Sections 6.2 and 6.3 hereof. SAVOR shall own all such equipment purchased as part of these capital improvements. The City may purchase all or a portion of such equipment for the unamortized value of the equipment or for such price as may be mutually agreed by the parties.

10.3 <u>Kitchen Equipment Reserve Fund.</u>

A. Within ten (10) days following the last day of each month from commencement of the Agreement through December 31, 2012 and from January 1, 2016 throughout the remainder of the Term, SAVOR shall pay to City an amount equal to 1.5% of all Gross Sales for the preceding month, as a Kitchen Equipment Reserve Fund to fund the repair, maintenance and replacement of the Food and Beverage Service Equipment purchased with City funds or to make other Food and Beverage Service-related improvements to the Facility. Late payments shall accrue interest at the rate of 12% per annum.

B. City shall deposit SAVOR's monthly Kitchen Equipment Reserve Fund payment in an interest-bearing sub-fund of the Seattle Center Operating fund controlled by the City to be used at the discretion of the Seattle Center Director following consultation with SAVOR. Any funds unused during any year of the term of this Agreement shall be carried forward with accrued interest until the termination of this

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Agreement, at which time all unexpended funds shall immediately become City's property. Items purchased and improvements funded through the Kitchen Equipment Reserve Fund shall immediately become City's property. The City reimburse SAVOR from the Kitchen Equipment Reserve Fund for SAVOR's costs of purchasing approved Food and Beverage Service Equipment if the Director determines that City's purchase of such items would be impracticable. All invoices to be paid from the Kitchen Equipment Reserve Fund shall include appropriate documentation supporting the requested reimbursement.

C. The Kitchen Equipment Reserve Fund may only be used to purchase items that meet at least one of the following criteria:

1. The item will cost in excess of $1,000.00 and will have a useful life in excess of one year, or
2. The item is an addition to or an extension of an existing asset and will significantly extend the useful life of such asset, or
3. The item will entirely replace an existing asset or piece of equipment originally purchased by City.

D. At SAVOR's request, City shall provide SAVOR with an accounting of the status of the Kitchen Equipment Reserve Fund and any expenditure of funds therefrom. All public records maintained by City related to such fund shall be available for inspection, review or audit by SAVOR during normal business hours and upon reasonable notice of such inspection, review or audit.

E. The Kitchen Equipment Reserve Fund and the funds deposited therein shall not relieve SAVOR of its responsibility to provide, maintain and replace as necessary the computerized point-of-sale system, smallwares and related equipment set forth in Exhibit B.

10.4 Reimbursement for Facility and Furniture Repair:

SAVOR shall pay to City upon invoice therefor the cost incurred by City to repair any portion of the Facility or any furniture therein that, in the City's reasonable determination, after consultation with SAVOR, was damaged by SAVOR. The City will notify SAVOR of such damage with reasonable promptness and provide an accounting of expenses incurred in repairing such damage. Nothing contained in this Section 10.4 shall be constructed to be a limitation on SAVOR's obligations under Section 8.4 of this Agreement.

10.5 <u>Maintenance and Repair</u>.

SAVOR shall clean all food service facilities, equipment, rolling stock, furniture and smallwares used in the performance of its duties and maintain the same in good repair, normal wear and tear excepted. If the City so requests, SAVOR shall execute maintenance contracts for Food and Beverage Service Equipment upon terms and

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conditions agreeable to the City and SAVOR. Major maintenance or replacement of the Food Service Equipment, furniture or the Facility (or significant portions thereof) may be funded through the Kitchen Equipment Reserve Fund at the discretion of the Seattle Center Director.

10.6 Graphics.

All graphic designs, text and images of any type or nature to be viewed by the general public and placed upon or affixed to any of the Premises or used on operating materials and/or vehicles in connection with the Facility including but not limited to menus, printed materials, advertising and other promotional materials and the location thereof, shall include the logo for McCaw Hall or the Seattle Center, be subject to the approval of the Seattle Center Director, which approval shall not be unreasonably withheld, and tastefully reflect the relationship between City and SAVOR.

ARTICLE XI
SAVOR STAFFING AND EMPLOYEES

11.1 Intentionally Left Blank

11.2 Management.

Prior to the commencement of this Agreement and not less than thirty (30) days prior to any change, SAVOR shall identify to the City its on-site General Manager, Executive Chef, Sales Manager, Director of Catering and Director of Operations, or their functional equivalents. SAVOR shall at all times employ a full-time, on-site General Manager approved by the Seattle Center Director (such approval not to be unreasonably withheld), and shall propose a candidate as a replacement when necessary, which proposed replacement shall be also be subject to approval by the Seattle Center Director (such approval not to be unreasonably withheld). SAVOR's on-site General Manager shall be designated as its authorized representative and shall oversee all operations on and from the Premises. The General Manager shall have full authority in decision-making for all operations in and from Seattle Center, consistent with SAVOR's standard written policies and procedures. Each McCaw Hall function shall be assigned a SAVOR event manager available for immediate communication and with the authority to make decisions for mid-event problem-solving and course correction.

11.3 Staffing.

SAVOR shall select, employ, train, furnish and deploy employees (including relief personnel) who are proficient, productive and courteous to patrons; and shall discipline and if necessary discharge staff that fail to meet these standards, consistent with applicable law. SAVOR shall employ sufficient staff in accordance with industry standards to perform the concession, catering and other services described in this Agreement and shall employ a "core group" of event staff regularly deployed to support events. Staffing levels shall be subject to the approval of the Seattle Center Director,

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which approval shall not be unreasonably withheld, and shall include a full-time, on-site Sales Manager assigned to work with Seattle Center sales staff and McCaw Hall user groups, both potential and confirmed. Whenever reasonably possible, SAVOR shall hire its personnel from within the greater Seattle area. Upon receipt of notice from City of any reasonable and significant objection to any of SAVOR's employees, including the on-site General Manager, SAVOR shall discontinue the use of such employee in connection with this Agreement and a suitable person shall be promptly substituted; provided however, that City's right to require replacement of a SAVOR employee, and SAVOR's obligation to comply with any such request shall be subject to restrictions imposed upon SAVOR by any federal, state or local statute, law, code, regulation or ordinance or by any collective bargaining agreement or other contract affecting such employee.

11.4 Involvement of Former City Employees.

SAVOR shall promptly notify City in writing of any person who is expected to perform any of the services hereunder who, to SAVOR's knowledge, during the twelve (12) months immediately prior to the expected commencement date of such work or subcontract, was a City officer or employee. SAVOR shall ensure that no services hereunder are performed by any person (employee, subcontractor, or otherwise) who both: (1) to SAVOR's knowledge was a City officer or employee within the past twelve (12) months; and (2) as such was officially involved in, participated in, or acted upon any matter related to the services hereunder, or is otherwise prohibited from such performance by SMC 4.16.075.

11.5 Identification.

SAVOR shall cause all employees at Seattle Center to prominently display their names on either uniforms or badges while at work. SAVOR shall keep records at all times so as to assure proper identification of its employees.

11.6 Appearance.

All of SAVOR's service employees shall be required to wear approved uniforms while on duty and shall be groomed in a manner consistent with a world-class performing arts center. Gum chewing shall not be allowed in any areas where patrons or clients are present and employees shall be restricted from consuming alcoholic beverages while on duty or in areas where patrons or clients are present. Smoking is permitted only in designated, outdoor areas.

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ARTICLE XII
ADDITIONAL RIGHTS RESERVED BY CITY

12.1 Sponsorship, Advertising and Pouring Rights.

The City retains the sole and exclusive right to negotiate sponsorships, advertising and pouring rights for all food, beverages and merchandise sold in the Facility. SAVOR may advertise SAVOR's services, but shall have no other advertising rights of any kind in the Facility.

12.2 Programs and Novelties.

The City retains the sole and exclusive right to sell or authorize the sale of programs and novelties in the Facility.

12.3 Free Distributions of Food and Drink.

The City retains the sole and exclusive right to authorize the free distribution of wrapped or unwrapped food or food products (in bite-sized portions), non-alcoholic drinks (in up to four-ounce portions) or any other items of any nature whatsoever in the Facility, and SAVOR shall not interfere with such distributions. Such distributions shall be made only as patrons are exiting the Facility following an event, or at such other time as the City and SAVOR may mutually agree upon.

12.4 Approval of Suppliers, Products and Brands.

A. City shall have the right to approve and/or designate items SAVOR sells at the Facility provided that any such designated items are competitive in price, product, and quality. At no time shall SAVOR offer exclusive or non-exclusive product distribution rights within any Seattle Center facility to any supplier without the Director's prior written approval (such approval not to be unreasonably withheld).

B. SAVOR agrees to serve such designated products exclusively (with respect to product type) and if requested by City, SAVOR shall, subject to the terms of the designated products agreements, more prominently display the names or symbols of those items or product designated by City. SAVOR shall maintain and have readily available for use in the Facility such quantities of the various items subject to this Agreement as are required for the efficient operation of this Agreement.

C. City shall have the right to reasonably designate items that may not be used or sold at the Seattle Center. Reasonable bases for designating items that may not be used or sold at the Seattle Center include the enactment by the Seattle City Council of an ordinance, issuance of an executive order by the Mayor of Seattle, or implementation of a Seattle Center policy or procedure that restricts or prohibits the use of a supplier, product or brand at the Seattle Center.

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D. City desires that local producers of food and beverage products and outside services be utilized when these products or services are available on competitive terms and with equal quality. SAVOR agrees to consider as many local products and supply sources as possible and to use as many of these as may be feasible in its operation, considering the requirements of this Agreement and SAVOR's quality control standards.

E. Subject to the foregoing, SAVOR shall otherwise have the right to select the suppliers, products and brands to be utilized at the Seattle Center.

12.5 Pouring Rights for Donated Wine.

The City retains the sole and exclusive right to allow the pouring of wine donated by persons other than SAVOR to the Seattle Opera, the Pacific Northwest Ballet, non-profit organizations or the Seattle Center Foundation at their catered events. If the City authorizes such pouring of donated wine, SAVOR will provide this service and shall charge Seattle Opera, the Pacific Northwest Ballet or the Seattle Center Foundation, as the case may be, a corkage fee not to exceed $10.50 per bottle. If the City authorizes pouring of donated wine to other non-profit organizations, SAVOR will charge a corkage fee not to exceed $12.50 per bottle. The City retains the right to allow the pouring of wine provided by Seattle Center Clients at primarily wine-tasting events. At such events, SAVOR will provide the pouring service and may charge the client a corkage fee not to exceed $10.50 per bottle, which amount is intended to compensate SAVOR for the cost of its service staff for the event. If SAVOR also provides Catering Services for such event, it may charge the client for such services at its customary rates and may assess its customary service charge on the combined corkage and catering expenses for the event.

ARTICLE XIII
INSURANCE

Prior to undertaking any work or performing any services under this Agreement, SAVOR shall obtain and shall thereafter maintain continuously throughout the term of this Agreement the insurance specified on Exhibit F.

ARTICLE XIV
INDEMNIFICATION

To the extent permitted by law, SAVOR does hereby release and shall defend, indemnify and hold City, Seattle Opera, and Pacific Northwest Ballet and their employees and agents harmless from all losses, liabilities, claims (including claims arising under federal, state or local environmental laws), costs (including reasonable attorneys' fees), actions or damages of any sort whatsoever arising out of (i) SAVOR's performance of the services contemplated by this Agreement to the extent attributable to the negligent acts or omissions, willful misconduct or breach of this Agreement by

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SAVOR, its servants, agents, and employees, (ii) SAVOR's failure to comply with all laws applicable to the provision of its services hereunder including, but not 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; provided that such failure does not arise from any default of this Agreement by the City of its obligations specified in this Agreement or from the negligent acts or omissions or willful conduct of the City or its servants, agents or employees; (iii) the fact that after the commencement of the Term hereunder SAVOR has caused or contributed to any condition on, above, beneath or arising from the premises occupied by the Facility which might, under any 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); provided that such fact does not arise from any default by the City of its obligations specified in this Agreement or from the negligent acts or omissions or willful conduct of the City or its servants, agents or employees; or (iv) any unsound operating condition with respect to the Facility or the premises occupied by the Facility that SAVOR caused or contributed to after the commencement of the Term hereunder; provided that such fact does not arise from any default by the City of its obligations specified in this Agreement or from the negligent acts or omissions or willful conduct of the City or its servants, agents or employees. In furtherance of these obligations, and only with respect to City, Seattle Opera and Pacific Northwest Ballet and their employees and agents, SAVOR waives any immunity it may have or limitation on the amount or type of damages imposed under any industrial insurance, worker's compensation, disability, employee benefit or similar laws. SAVOR acknowledges that the foregoing waiver of immunity was mutually negotiated and agrees that the indemnification provided for in this section shall survive any termination or expiration of this Agreement.

To the extent permitted by law, including but not limited to the limitations under RCW 35.32A.090, the City does hereby release and shall defend, indemnify and hold SAVOR and its employees and agents harmless from all losses, liabilities, claims (including claims arising under federal, state or local environmental laws), costs (including reasonable attorneys' fees), actions or damages of any sort whatsoever to the extent attributable to (i) the negligent acts or omissions, willful misconduct or breach of this Agreement by City, its servants, agents, and employees; (ii) the fact that at any time prior to, as of, or after the commencement of the Term hereunder the Facility has not been operated, or the Facility and the premises occupied by such Facility are not or have not been, in compliance with all applicable laws, including, but not 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; provided that such fact does not arise from any default by SAVOR of its obligations specified in this Agreement or from the negligent acts or omissions or willful conduct of SAVOR or its servants, agents or employees; (iii) the fact that prior to, as of, or after the commencement of the Term hereunder there is any condition on, above, beneath or arising from the premises

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occupied by the Facility which might, under any 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); provided that such fact does not arise from any default by SAVOR of its obligations specified in this Agreement or from the negligent acts or omissions or willful conduct of SAVOR or its servants, agents or employees; or (iv) any structural defect or unsound operating condition with respect to the Facility or the premises occupied by the Facility, as of or after the commencement of the Term hereunder; provided that such fact does not arise from any default by SAVOR of its obligations specified in this Agreement or from the negligent acts or omissions or willful conduct of SAVOR or its servants, agents or employees. In furtherance of these obligations, and only with respect to SAVOR and its employees and agents, City waives any immunity it may have or limitation on the amount or type of damages imposed under any industrial insurance, worker's compensation, disability, employee benefit or similar laws. The City acknowledges that the foregoing waiver of immunity was mutually negotiated and agrees that the indemnification provided for in this section shall survive any termination or expiration of this Agreement.

ARTICLE XV
TAXES, LICENSES AND COMPLIANCE

15.1 Licenses and Permits.

SAVOR shall obtain all licenses and permits and other approvals required by law for its operations hereunder, including an alcoholic beverage license, prior to commencing its operations, and shall maintain the same throughout the Term of this Agreement. SAVOR shall at all times observe all restrictions, rules and conditions of all such licenses and permits and shall use commercially reasonable efforts at all times to avoid any loss or suspension thereof. Prior to undertaking any Food and Beverage Services under this Agreement, SAVOR shall submit a photocopy or facsimile copy of a current and valid Business License issued by The City of Seattle and a current and valid Food Service Establishment Permit issued by the Seattle-King County Department of Public Health to the Director. If any license or permit necessary for the provision of Food and Beverage Services expires during the Term of this Agreement then, prior to next providing Food and Beverage Services hereunder, SAVOR shall obtain and deliver to the Director documentation of its possession of current and valid licenses and permits.

15.2 Taxes.

SAVOR shall pay, before delinquency, all taxes, levies and assessments arising from its activities and use of the Premises, including Washington State Leasehold Excise Taxes.

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15.3 Compliance with Laws.

The parties, at no expense to each other, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City of Seattle; and the rules, regulations, orders and directives of their administrative agencies and the officers thereof.

15.4 Americans with Disabilities Act.

Each party shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 ("ADA") in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be a material breach of this Agreement.

15.5 WISHA Requirements.

The parties shall comply with the requirements of the Washington Industrial Safety and Health Act ("WISHA"), as it may be amended, throughout the term of this Agreement.

15.6 Fair Contracting Practices Ordinance.
SAVOR shall comply with City's Fair Contracting Practices Ordinance, SMC Chapter 14.10, as amended. Conduct made unlawful by that ordinance constitutes a breach of contract. Engaging in an unfair contracting practice may also result in the imposition of a civil fine or forfeiture under the Seattle Criminal Code as well as various civil remedies.

15.7 Compliance with Seattle Center Rules and Regulations.

SAVOR shall comply with all Seattle Center rules and regulations as they may be amended from time to time. A copy of the current Seattle Center rules and regulations is attached hereto as Exhibit G.

ARTICLE XVI
EQUAL EMPLOYMENT OPPORTUNITY AND OUTREACH

SAVOR agrees to comply and shall require its subcontractors to comply with all federal, state and local laws prohibiting discrimination with regard to creed, religion, race, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap including, without limitation, the provisions of SMC 20.42 (Equality in Contracting).

The foregoing provision shall be inserted in all subcontracts for the work covered by this Agreement and any breach of such provision shall be a material breach of this Agreement.

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ARTICLE XVII
EFFORTS TO USE WOMEN AND MINORITY BUSINESS ENTERPRISES

17.1 General.

If SAVOR will hire employees or subcontract for the performance of the work of this Agreement, then SAVOR shall use affirmative efforts to recruit and encourage participation by women and minority candidates and businesses. Outreach efforts may include the use of solicitation lists, advertisements in publications directed to minority communities, breaking down total requirements into smaller tasks or quantities where economically feasible, making other useful schedule or requirements modifications that are likely to assist small or WMBE businesses to compete, targeted recruitment efforts, and using the services of available minority community and public organizations to perform outreach. SAVOR shall ensure that all employees, particularly supervisors, are aware of, and adhere to their obligation to maintain a working environment free from discriminatory conduct, including but not limited to harassment and intimidation of minorities, women, or WMBE businesses.

A breach of the foregoing provision shall be a material breach of this Agreement.

17.2 Record-Keeping.

SAVOR shall maintain, for at least 24 months after the expiration or earlier termination of this Agreement (i) SAVOR's records of employment, employment advertisements, application forms and other pertinent employment data necessary to determine compliance with this Article; and (ii) relevant records and information necessary to document all of SAVOR's solicitations to subcontractors and suppliers, all subcontractor and supplier proposals received, and all subcontractors and suppliers actually utilized under this Agreement. The City shall have the right to inspect and copy such records at reasonable times and upon reasonable advance notice.

ARTICLE XVIII
CONTINGENCIES

18.1 Failure to Perform Excused.

Neither party shall be liable to the other for any nonperformance, in whole or in part, of its obligations under this Agreement caused by the occurrence of any contingencies beyond the reasonable control of the parties, including but not limited to declared or undeclared war, sabotage, insurrection, riot, or other acts of civil disobedience, acts of a public enemy, acts of governments or agencies affecting the terms of this Agreement, strikes, labor disputes, acts of third parties not within the control of the party whose performance is affected, shortages of fuel, failures of power, accidents, fires, explosions, floods and other similar contingencies (each a "Force Majeure Event"). If any such contingencies occur, the party whose performance is affected shall have a reasonable time in which to resume performance and such party's nonperformance

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shall not constitute a default under Section 19.2. Notwithstanding the foregoing, if SAVOR's ability to perform its obligations under this Agreement is temporarily impaired by any such contingency, the City shall have the right to utilize substitute food service providers in any area of the Facility, without liability to SAVOR of any kind during the period of such impairment. If a party is unable to resume full performance for a period of at least forty-five (45) days, either party shall have the right to terminate this Agreement on thirty (30) days' prior written notice to the other party. No suspension shall result in an extension of the expiration date of this Agreement unless specifically agreed upon, in writing, by the parties. If SAVOR has knowledge that any actual or potential labor dispute is impairing or threatening to impair its performance under this Agreement, SAVOR shall immediately give notice, including all relevant information, to City. SAVOR shall make all reasonable efforts to prevent and mitigate the effects of any interruption in service regardless of its cause. If the provisions of this Section 18.1 are triggered resulting in the suspension of SAVOR's obligations hereunder or the termination of this Agreement, SAVOR shall pay the City its appropriate share of Gross Sales that had accrued prior to the date of the Force Majeure Event.

18.2 Damage or Destruction.

If any portion of the Facility is damaged by fire or other casualty, preventing SAVOR from providing the services contemplated by this Agreement to a material extent, City will, within thirty (30) days after learning of such damage, notify SAVOR in writing of the time necessary to repair or restore such damage, as reasonably estimated by City's architect, engineer or contractor. If such estimate states that repair or restoration of such damage is not anticipated to be completed within one hundred and eighty (180) days from the date of such damage, then either party may terminate this Agreement upon thirty (30) days' prior written notice to the other party.

ARTICLE XIX
TERMINATION

19.1 When Terminated.

Unless sooner terminated as provided herein, this Agreement shall terminate at the expiration of its Term.

19.2 Termination for Cause.

Either City or SAVOR may terminate this Agreement prior to the expiration of the Term only in the event of a material breach on the part of the other party which remains uncured after thirty (30) days' written notice thereof. In the event that a default 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.

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19.3 Rights and Duties Upon Termination.

The following provisions shall apply in the event of a termination of this Agreement for any reason whatsoever:

A. Delivery of Premises. SAVOR shall remove its property from the Facility and shall deliver to City the Premises and all property belonging to City thereon in the same condition as existed at the time the Premises and property were delivered to SAVOR, ordinary wear and tear excepted.

B. Final Accounting. SAVOR shall deliver to City, within twenty-five (25) days of the termination date, a final accounting setting forth the information described in Section 6.2, and shall remit to City all amounts owed as of the termination date, including City's appropriate percentage share of Gross Sales and required deposits into the Kitchen Equipment Reserve Fund.

ARTICLE XX
DISPUTES

Any dispute or misunderstanding that may arise under this Agreement concerning the performance of either party shall first be resolved through amicable negotiations, if possible, between SAVOR's on-site General Manager and the Seattle Center Director's designee, or if necessary shall be referred to the Seattle Center Director and SAVOR's executive officers. If such officials do not agree upon a decision within a reasonable period of time, the parties may pursue other legal means to resolve such disputes.

ARTICLE XXI
NOTICES

21.1 Requirements for Notice.

All notices required by this Agreement, including any notice as to changes of address, shall be in writing and shall be delivered personally, by overnight mail or by registered or certified mail, return receipt requested to:

If to the City:
Seattle Center Director
Seattle Center Department
The City of Seattle
305 Harrison Street
Seattle, WA 98109
Telephone: (206) 684-7330
Facsimile: (206) 233-3950

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If to SAVOR:
SAVOR
305 Harrison Street.
Seattle, WA 98109
Attn: Region Dir. Of F/B

with a copy to:
SMG Food and Beverage, LLC
701 Market Street, 4th Floor
Philadelphia PA 19106
Attn: Senior VP Food and Beverage

21.2 When Given.

Notice complying with the requirements of Section 21.1 shall be deemed given on the date delivered.

ARTICLE XXII
ASSIGNMENT AND BINDING EFFECT

22.1 Subcontracting, Sale and Assignment or Transfer.

Unless the Seattle Center Director approves otherwise, in advance, or except as otherwise expressly provided herein, SAVOR shall not subcontract, sell, assign or otherwise transfer any of its rights or responsibilities under this Agreement to another person or entity other than SMG Food and Beverage, LLC, and then if and only if such entity remains a wholly-owned subsidiary of SMG. SAVOR shall provide City with such documentation as may be reasonably necessary to permit City to determine whether to approve any such subcontract, sale, assignment or transfer. Any such subcontract sale, assignment or transfer shall be subject to all of the terms and conditions of this Agreement. In the event of any such sale, assignment or transfer, SAVOR shall, upon the request of the Seattle Center Director, cause to be delivered to the Seattle Center Director, simultaneously with such sale, assignment, or transfer, an instrument, in writing, executed by the grantee, assignee, or transferee, in which the grantee, assignee or transferee shall have assumed and agreed to perform all of the terms and provisions of this Agreement on SAVOR's part which have not been fully performed previously.

22.2 Binding Effect

Subject to Section 22.1, this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors, assigns and representatives.

ARTICLE XXIII
REPRESENTATIONS AND WARRANTIES

23.1 City's Representations.

The City represents and warrants to SAVOR as follows:

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A. That it has been validly formed and duly exists as a municipal corporation under the laws of the State of Washington;

B. That it has the full right and authority to grant to SAVOR the rights conferred by this Agreement, and that it is not prevented from entering into this Agreement by any statute, regulation, or order of the State of Washington or other governmental authority, or by any license, debt instrument, lease, contract, or other agreement or instrument binding upon it or any of its property;

C. That it is duly authorized to enter into this Agreement and has taken all necessary action to obtain such authorization, and that no consent of or notice to any other individual, private entity or governmental authority is required in connection with the execution and delivery of this Agreement;

D. That this Agreement, when properly executed by both parties, shall constitute a valid and binding agreement, enforceable by SAVOR in accordance with its terms subject to bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally subject to bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally;

E. That to the best of its knowledge, there is no suit or proceeding pending or threatened with respect to the Premises that would adversely affect the Premises, or the operation thereof; and

F. That it will use its best efforts at all times to ensure that the Premises subject to this Agreement in which services are to be provided are booked to the fullest extent possible.

23.2 <u>SAVOR's Representations</u>.

SAVOR represents and warrants to City as of the date hereof as follows:

A. That SMG is a Pennsylvania general partnership that is in all respects authorized to do business in the State of Washington and The City of Seattle.

B. That SMG has the full right and authority to enter into and execute this Agreement and that no consent of or notice to any other individual, private entity or governmental authority is required in connection with the execution and delivery of this Agreement;

C. That this Agreement, when properly executed by both parties, shall constitute a valid and binding agreement, enforceable by City in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally; and

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D. That to the best of its knowledge, there is no suit or proceeding pending or threatened that would adversely affect the ability of SMG to perform its obligations under this Agreement.

23.3 Disclaimer of Representations and Warranties.

The City expressly does not warrant: (a) that sales of food or beverages or the number of concession or catering events at the Facility or other Seattle Center facilities will meet or exceed any particular amount or number; or (b) that any portion of the Premises subject to this Agreement will remain open and available for public events or performances.

23.4 Survival of Representations and Warranties.

The representations and warranties of each party set forth in this Article shall survive the expiration or termination of this Agreement.

ARTICLE XXIV
MISCELLANEOUS

24.1 Relationship of Parties.

The parties intend that SAVOR shall be a licensee of City and an independent contractor thereto. Nothing herein shall be construed to create a partnership, joint venture or agency relationship between the parties and neither shall have the authority to obligate or bind the other in any respect.

24.2 Amendments.

No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.

24.3 Applicable Law/Venue.

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in either the Superior Court for King County or the United States District Court for the Western District of Washington.

24.4 Remedies Cumulative.

Rights under this Agreement are cumulative and nonexclusive of any other remedy at law or in equity.

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24.5 Captions.

The titles of sections are for convenience only and do not define or limit the contents.

24.6 Severability.

If any term or provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

24.7 Waiver.

No covenant, term or condition or the breach thereof shall be deemed waived, except by written document from the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. City's acceptance of any performance by SAVOR that is inconsistent with the terms and conditions of this Agreement shall not constitute a waiver by City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by City, in writing.

24.8 No Conflict of Interest.

SAVOR confirms that it does not have a business interest or a close family relationship with any City officer or employee who was involved in SAVOR's selection for this Agreement or the negotiation, drafting, signing, administration, or evaluating of SAVOR's performance thereunder. As used in this subsection, the term "SAVOR" includes any employee of SAVOR who was, is, or will be involved in the negotiation, drafting, signing, administration, or performance of this Agreement. As used in this section, the term "close family relationship" refers to the following: spouse or domestic partner; any dependent parent, parent-in-law, child, son-in-law, or daughter-in-law; or any parent, parent-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

24.9 Limited Effect of Approval by Seattle Center Director.

Action of the Seattle Center Director pursuant to or in implementation of this Agreement does not constitute any official action by any other City department or official that may be required by law, City Charter, ordinance, rule or regulation before SAVOR may rightfully commence, suspend, enlarge or terminate any particular undertaking. No permission, consent, or approval of the City contained herein or given pursuant to this Agreement is, or shall be construed as, a representation or assurance that the matter consented to or approved complies with applicable laws, regulations, ordinances or Codes, nor shall any such consent or approval be construed to authorize any failure to comply with any of the foregoing.

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24.10 Entire Agreement.

This Agreement, together with its Exhibits A through G, constitutes the entire agreement between the parties with respect to the services that SAVOR is to provide hereunder. No verbal agreement or conversation between any officer, agent, associate or employee of City and any officer, agent, employee or associate of SAVOR prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement.

24.11 Negotiated Agreement.

The parties acknowledge and agree that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against either party on the basis of such party's draftsmanship thereof

24.12 Limitation of Liability

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, OR SPECIAL DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION AND THE LIKE, RELATING TO, CAUSED BY OR ARISING OUT OF THIS AGREEMENT EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

24.13 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which

24.14 Exhibits.

The following are exhibits to this Agreement:

Exhibit A: Food Service Equipment and Furniture
Exhibit B: Concessionaire Capital Investment in Food Service related Furniture, Smallwares, Equipment and Facility Modifications
Exhibit C: Food Service Facilities
Exhibit D: Fundamental Expectations
Exhibit E: Minimum Purchase Specification Requirements
Exhibit F: Insurance Requirements
Exhibit G: Seattle Center Rules and Regulations

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by having their authorized representative(s) affix their signatures in the spaces below:

SMG	THE CITY OF SEATTLE
By _____	By _____
Name:	Robert Nellams, Director
Title:	Seattle Center Department
Date _____	Date _____

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ACKNOWLEDGMENT

STATE OF PENNSYLVANIA)
) ss
COUNTY OF _____)

On this _____day of _____, 2013, before me personally appeared _____, to me known to be the _____ of SMG, the general partnership that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said general partnership for the uses and purposes therein mentioned and, under oath, state that he was authorized to execute said instrument.

GIVEN UNDER MY HAND AND SEAL the day and year first above written.

_____
Signature

_____
(*Print or Type Name*)

NOTARY PUBLIC in and for the State of Pennsylvania,

Residing at

My appointment expires:

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STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this _____ day of _____, 2013, before me personally appeared _____, to me known to be the Director of the Seattle Center Department of The City of Seattle, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and, under oath, stated that he was authorized by ordinance to execute said instrument.

GIVEN UNDER MY HAND AND SEAL the day and year first above written.

_____
Signature

_____
(*Print or Type Name*)

NOTARY PUBLIC in and for the State of Washington,

Residing at

My appointment expires:

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Exhibit A

Food Service Equipment and Furniture

Agreement for the Management of Food and Beverage Services
at Marion Oliver McCaw Hall at Seattle Center
between The City of Seattle, and
SMG

Quantity	Item
1	Cooler/Freezer
1	Cooler Shelving
1	Freezer Shelving
1	Dry Storage Shelving
3	Reach-in Refrigerator
3	Ice Makers, Cube-Style, includes water filters and refrigeration units
3	Work Tables
1	Food Mixer
2	Sink Tables
7	Faucets
2	Drop-in Sinks
1	Electric Food Processor
5	Wall Shelves
1	Food Slicer
1	Canopy Hood
1	Stainless Steel Work Surface
2	Heavy-Duty Gas Range
8	Gas Connector Kits
1	Half-size Gas Range
3	Gas Fryers
1	Mobile Fryer Unit
1	Gas Char broiler, counter model
1	Fire Protection System
1	Reach-In Freezer
2	Gas Convection Ovens
1	Gas Tilting Skillet
2	Floor Troughs
1	Gas Tilting Kettle
1	Soiled Dish table
1	Gusher Head
2	Built-in warming drawers
1	Wall shelf w/heat lamp (for Café)
1	Reach-in cooler kit
1	Salad Spinner
1	Roller Cart for table
12	48" tables
12	30" x 72" tables
12	30" x 96" tables
103	Interior 2 top Café Tables
650	Stacking Banquet Chairs

Quantity	Item
4	Pre-rinse assembly faucets
1	Conveyor type Dishwasher
2	Vent Ducts
1	Clean Dish table
8	Dish Carts
2	Pot Sinks
1	Refrigeration Rack
9	Undercounter Refrigerator (multiple units)
1	Microwave Oven
5	Holding Cabinets
1	Display Case, Refrigerated Deli
1	Display Case, Heated Deli
12	Roll-in Refrigerator Racks
1	Tray & Silver Cart
1	Counter with sink
3	Refrigerated Backbar storage cabinets
3	Concession Shelving (multiple units)
2	Beverage Tables
1	Plating & Staging Table
2	Heated Banquet Cabinets
2	Ice Bins
2	Roll-in Refrigerator
2	Plating Tables
2	Plate Dispenser
2	Plate warmers
1	Café Bussing Station
1	48" long Bar Order Holder
2	36" long Bar Order Holders
1	SSB Flatbar 60" x 2"
1	Disposer
1	S/S Trim Ring
1	3 Comp Table Mod
1	L-Shaped Stainless Counter
1	Salad Spinner Inner Liner
48	Seville Classic Highback Outdoor Chairs
10	Vict Classic Resin Outdoor Tables – 32" sq
3	Wooden Market Hunter Green Umbrellas
3	Resin Umbrella Bases
2	High Chairs
6	Booster Chairs

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24	Donor Lounge seating Chairs
20	High 30" round (perching) Tables
Quantity	Item
4	4' Folding Round Tables
66	6' Folding Round Tables
12	8' Folding Rectangle Tables
2	5' Round Table Trunks
3	6' Rectangle Table Trucks
12	Banquet Seating Chair Trucks

180	Interior Café Chairs "Xuxa"
9	22" round Tables
Quantity	Item
12	5' Folding Round Tables
12	6' Folding Rectangle Tables
18	6' Folding Serpentine Rectangle Tables
4	6' Round Table Trucks
2	8' Rectangle Table Trucks

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Exhibit B

Concessionaire Capital Investment in Food Service related Furniture, Small wares, Equipment and Facility Modifications

Agreement for the Management of Food and Beverage Services
at Marion Oliver McCaw Hall at Seattle Center
between The City of Seattle, and
SMG

Exhibit B provides a general indication of the food service related items and facility modifications to be provided by SAVOR at their cost for Food and Beverage operations in McCaw Hall.

SAVOR shall provide small wares, related equipment and furnishings in quantities necessary to provide food service to McCaw Hall. The small wares, furniture and signage proposed for purchase shall be of a quality consistent with a world-class facility and shall be approved in writing by Seattle Center prior to their purchase. The items provided shall include the following:

1. Adequate supply of china, including but not limited to: plates, bowls, cups, saucers, water pitchers, and related items. Unless otherwise directed by Seattle Center, the china will not have the logo of Seattle Center imprinted thereon.
2. Beverage glassware.
3. Adequate supply of trays (both service and Café style).
4. Supply of stainless steel and/or silver-plated dining utensils, including but not limited to: knives, forks, spoons, and soupspoons
5. Ample supplies of back-of-house service wares, including but not limited to: kitchen utensils, equipment cleaning aids, and related items.
6. Buffet and catering equipment i.e.: chafing dishes, transport carts, service wares, and related items.
7. Salt- and peppershakers.
8. Table and service linens.
9. Electronic, computerized point-of-sale cash and inventory control system with peripheral equipment and interface equipment necessary to be fully compatible with the Seattle Center computer systems. Seattle Center shall approve all control systems, their interface, and the monitoring system thereof before their purchase and implementation.
10. State of the art menu boards and lighted signage for the food service program wherever necessary.
11. Desks, chairs, file cabinets, shelving and other equipment necessary to furnish management office spaces.
12. New furniture for the Café dining area.
13. Mobile, modular concession carts/stands for service in various lobby areas.

Subject to the Director's prior approval and accordance with applicable building codes, other relevant regulations and Seattle Center union agreements, Seattle Center shall make modifications to the Café servery area, concession stands, and other food service areas as SAVOR requests, at SAVOR's expense.

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To meet the requirements as outlined above, SAVOR will distribute the $650,000 of their Capital Investment as follows. Upon request, SAVOR may reallocate these resources with the approval of the Seattle Center Director, as long as the overall investment is $650,000.

Item/Project	Estimated Cost
P.O.S. system with handhelds	$110,000
China/Glassware/Silver	$ 85,000
Café Face Lift	$ 75,000
Kitchen Equipment	$ 75,000
Servery Reconfiguration	$ 50,000
Napa Tech	$ 45,000

Item/Project	Estimated Cost
Small wares	$ 40,000
Bars	$ 40,000
Coffee Cart	$ 40,000
Retail Food Stand Face Lift	$ 35,000
Menu/Signage	$ 35,000
Express Cart	$ 20,000

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Exhibit C -- Food Service Facilities

Agreement for the Management of Food and Beverage Services at Marion Oliver McCaw Hall at Seattle Center between The City of Seattle, and SMG

PREMISES (ALL SPACES IN McCAW HALL)	Exclusive Use Space	Right of Access	Cleaning Responsibility	Utility Payment Responsibility
LOWER LEVEL				
MAIN KITCHEN	X		SAVOR	SAVOR
CANTEEN	X		SAVOR	SAVOR
CATERING/CONCESSION STORAGE RM #164	X		SAVOR	SAVOR
RECEIVING AREA OFFICE #163	X		SAVOR	SAVOR
CATERING FURNITURE STORAGE RM IN RM #165	X		SAVOR	Seattle Center
CATERING STORAGE AREAS UNDER STAIRS 6 & 7	X		SAVOR	Seattle Center
CORRIDOR 110, RECEIVING AREA #160, LOAD DOCK		X	Seattle Center	Seattle Center
MEZZANINE/ORCHESTRA PIT LEVEL				
LECTURE HALL CONCESSION	see note 1, below		see note 1, below	Seattle Center
LECTURE HALL LOBBY, MOBILE CARTS/STANDS		X	Seattle Center (a)	Seattle Center
GROUND (PROMENADE) LEVEL	-	-		
CAFÉ:				
BARISTA	X		SAVOR	SAVOR
CAFÉ SERVERY AND DISH AREA	X		SAVOR	SAVOR
CAFÉ DINING		X	SAVOR (b)	Seattle Center
LOBBY AREA W/ CAFÉ OVERFLOW		X	Seattle Center (a)	Seattle Center
INTERIOR AND EXTERIOR PROMENADE		X	Seattle Center (a)	Seattle Center
PRESS AND RECEPTION ROOMS		X	Seattle Center (a)	Seattle Center
PRESS/RECEPTION CATERING PANTRY	X		SAVOR	Seattle Center
MOBILE CARTS AND/OR SERVICE STANDS	X		SAVOR	Seattle Center
ORCHESTRA (GRAND LOBBY) LEVEL	-	-		
CONCESSION (South) (Includes Support Pantry)	X		SAVOR	Seattle Center
CONCESSION (North)	X		SAVOR	Seattle Center
GRAND LOBBY		X	Seattle Center (a)	Seattle Center
MOBILE CARTS AND/OR SERVICE STANDS	X		SAVOR	Seattle Center
FIRST TIER LEVEL	-	-		
CONCESSION	X		SAVOR	Seattle Center
PANTRY, ALLEN ROOM	X		SAVOR	Seattle Center
PANTRY, NORCLIFFE ROOM	X		SAVOR	Seattle Center
ALLEN AND NORCLIFFE ROOMS		X	Seattle Center (a)	Seattle Center
LOBBY		X	Seattle Center (a)	Seattle Center
MOBILE CARTS AND/OR SERVICE STANDS	X		SAVOR	Seattle Center
SECOND TIER LEVEL	-	-		
CONCESSION (South) (Includes Support Pantry)	X		SAVOR	Seattle Center
CONCESSION (North)	X		SAVOR	Seattle Center
LOBBY		X	Seattle Center (a)	Seattle Center
MOBILE CARTS AND/OR SERVICE STANDS	X		SAVOR	Seattle Center

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Note #1 -- The SIFF Group has the exclusive use of the Lecture Hall concession stand through December 2009, and as may be extended beyond December 2009 at the City's discretion, in conjunction with extending the SIFF Group's Agreement with the City for use of the Nesholm Family Lecture Hall. Upon termination of the SIFF Group's Agreement, the Lecture Hall Concession shall become an exclusive use space for SAVOR, for the remaining duration of SAVOR's Agreement with the City.

(a) Seattle Center will be responsible for general cleaning of these spaces. For any event involving catering or concessions, SAVOR is responsible to set up and remove all tables and chairs (whether specifically for food service or not), as well as mobile service stations and serviceware for food service functions. SAVOR will be responsible for skirting and dressing tables on a timely basis. SAVOR shall be responsible for setting up and tearing down, and maintaining all portable equipment necessary to food service functions.

(b) SAVOR will be responsible for cleaning in the Café dining area following any event for which SAVOR has operated the Café. Should Seattle Center make the Café dining area available to an event client for their event related (non-food service) use, SAVOR will remove/rearrange the furniture in this area pre-event and restore it post-event, and Seattle Center shall be responsible for cleaning the Café dining area following this event.

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Exhibit D

Fundamental Expectations

Agreement for the Management of Food and Beverage Services
at Marion Oliver McCaw Hall at Seattle Center
between The City of Seattle, and
SMG

The City expects SAVOR to provide consistently high quality food and beverage services that actively support and promote McCaw Hall achieving its vision as: "the Pacific Northwest's premier performing arts venue – an architectural and cultural landmark, known as an exquisite home for world-class ballet and opera; as a beautiful, functional and accommodating facility for major performances and events; and as a place where the attention to clients and patrons compels all to return." Therefore, in performing its services under this Agreement, SAVOR agrees to conduct its operations in a manner consistent with the following fundamental expectations. Specifically, SAVOR shall:

1. Employ a core management team that is both accessible and responsive. At least one SAVOR management representative shall attend the weekly McCaw Hall Operations meetings.
2. Maintain on-site office at McCaw Hall for regular communication with McCaw Hall staff and clients.
3. Have on-site management-level representation at all events and staffing levels acceptable to McCaw Hall Management at all "front of house" concession stands for all performances.
4. Be pro-active in all areas of operation and administration at McCaw Hall so that a problem does not become a bigger issue.
5. Be attentive to customer service, details, overall appearance and wait times as they relate to front-of-house concessions.
6. Provide exemplary services for all types of special events, from small, casual private receptions to large-scale black-tie gala dinners.
7. Provide consistent service (particularly for repeat, catered events such as donor lounges and opening night dinners) with the ability to implement immediate system-wide response to feedback from client.
8. Provide a variety of high quality menus and competitive pricing that are affordable for each market segment of clients using McCaw Hall.
9. Maintain regular communication with Seattle Center sales and marketing staff regarding business development opportunities.
10. Generate client leads for McCaw Hall.
11. Cross-promote McCaw Hall to SAVOR's current client database.
12. Host client familiarization tours in collaboration with Seattle Center staff.
13. Generate estimates for potential and contracted clients in a timely manner.
14. Generate electronic event set up drawings for potential and contracted clients in a timely manner.
15. Generate event floor plans to meet pre-approved fire permit standards.

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Exhibit E

Minimum Purchase Specification Requirements

Agreement for the Management of Food and Beverage Services
at Marion Oliver McCaw Hall at Seattle Center
between The City of Seattle, andSMG

BEEF Heifer or Steer	GRADE: YIELD: CONDITION: GROUND BEEF:	USDA Top Choice 3 or under Fresh or Frozen Chuck, 20% fat content
PORK	GRADE: YIELD: CONDITION:	US No. 1 1 Fresh or Frozen
VEAL Calf	GRADE: CONDITION:	USDA Choice Fresh or Frozen
LAMB Under one year old	GRADE: CONDITION:	USDA Choice Fresh or Frozen
POULTRY	GRADE: CONDITION:	USDA Inspected Grade A Hens - Fresh or Frozen Fryers - Fresh or Frozen Duckling - Fresh or Frozen Turkey Breast - Fresh or Frozen
FISH & SHELLFISH	GRADE: CONDITION:	When graded - A, otherwise top quality Fresh when available, frozen if cost and availability warrant
EGGS	GRADE: SIZE: CONDITION:	USDA A, 100% candled Large Fresh
BUTTER	GRADE:	USDA AA
MILK & MILK PRODUCTS	GRADE:	US Grade A pasteurized
NONFAT DRY MILK	GRADE:	US Extra
BULK ICE CREAM		Minimum 12% milk fat, 80-100% overrun
FRESH VEGETABLES & FRUITS	GRADE:	US No. 1 or better
FROZEN VEGETABLES	GRADE:	A
CANNED FRUIT	GRADE:	US Grade A or Fancy in heavy syrup
CANNED VEGETABLES	GRADE:	US Grade A or Fancy
DRY GOODS	RICE: BEANS:	Fancy or US No. 2 Grade A
BAKED PRODUCTS	At Seattle Center's approval	

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Exhibit F

Insurance Requirements

Agreement for the Management of Food and Beverage Services
at Marion Oliver McCaw Hall at Seattle Center
between The City of Seattle, and
SMG

SAVOR shall obtain and maintain continuously throughout the term of this Agreement insurance as specified below, at no expense to City. Satisfactory evidence of such insurance shall be filed with Seattle Center and City's Risk Management Division, as described below.

1. Coverages and Minimum Limits of Liability.

A. Commercial General Liability (CGL) insurance, including:

1. Premises/Operations
2. Products/Completed Operations
3. Personal/Advertising Injury.
4. Contractual
5. Independent Contractor's
6. Stop Gap/Employers Liability.
7. Liquor Liability
8. Fire/Tenant Legal

Such insurance must provide the following minimum limits of liability:

Combined Single Limit Bodily Injury and Property Damage (CSL) -
$ 2,000,000.00 each occurrence
$ 2,000,000.00 each offense Personal & Advertising Injury
$ 5,000,000.00 General Aggregate
$ 5,000,000.00 Products and Completed Operations Aggregate
$ 1,000,000.00 Stop Gap/Employers Liability
$ 500,000.00 Fire/Tenant Legal

B. Automobile Liability insurance, including coverage for owned, non-owned, leased and hired vehicles, with a minimum limit of liability of $1,000,000.00 CSL each occurrence.

C. Worker's Compensation insurance in accordance with the provisions of Title 51 of the Revised Code of Washington. SAVOR shall also be responsible for ensuring that Workers' Compensation Insurance is in force where required under the provisions of Title 51 for any subcontractor who provides services under this Agreement.

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2. Additional Insured and Primary Insurance Provisions.

Each CGL and Automobile insurance policy maintained under this Agreement shall include the City of Seattle, Seattle Opera and Pacific Northwest Ballet as an additional insureds for primary and non-contributory limits of liability.

3. No Limitation of Liability.

The limits of liability stated herein are minimum limits only and shall not be deemed to limit the liability of SAVOR or any of its insurers. Where the City is required to be an additional insured, it shall be so for the full available limits of insured and/or self-insured limits of liability, whether such limits are primary, excess, contingent or otherwise.

4. Cancellation.

Coverages provided to the City, Seattle Opera and Pacific Northwest Ballet shall not be cancelled without at least thirty (30) days (except ten (10) days notice with respect to cancellation for non-payment of premium) prior written notice.

5. Amendment of Insurance .

Insurance coverage and/or limits requirements herein may be amended or increased as necessary by the City to reflect the type of or exposure to risk.

6. Authorized Carriers.

All insurance described herein shall be obtained from insurance companies approved by the City and either duly authorized to issue such policies in the State of Washington and having a rating of A-VII or higher in the A.M. Best's Key Rating Guide, or placed as surplus lines in accordance with RCW 48.

7. Evidence of Insurance.

SAVOR shall cause to be electronically delivered to the City as an email attachment to riskmanagement@seattle.gov or by fax to (206) 470-1279:

A. A certificate of insurance evidencing coverages, minimum limits of liability and terms and conditions as specified herein issued to: "The City of Seattle, P.O. Box 94669, Seattle, WA 98124-4669."

B. A copy of the CGL insurance policy provision(s) that document(s) that the City of Seattle, Seattle Opera and Pacific Northwest Ballet are additional insureds for primary and non-contributory limits of liability.

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8. Assumption of Risk

The placement and storage of personal property on and in any Seattle Center facilities used or occupied by SAVOR hereunder shall be the responsibility, and at the sole risk, of SAVOR.

9. Failure to Maintain Insurance.

SAVOR's failure to maintain the insurance required by this Agreement in full force and effect throughout the term of the Agreement shall constitute a default and material breach of this Agreement.

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Exhibit G

Rules and Regulations Governing Seattle Center

Agreement for the Management of Food and Beverage Services
at Marion Oliver McCaw Hall at Seattle Center
between The City of Seattle, and
SMG

SEATTLE CENTER CAMPUS RULES

Seattle Center Vision Statement

We are the premier urban park, home to the finest cultural and educational organizations, sports teams, festivals, community programs and entertainment facilities. Our mission is to delight and inspire the human spirit in each person and bring together our rich and varied community.

A: General Provisions

Seattle Center is a department of the City of Seattle. It is a beautiful 74-acre landscaped campus that includes theaters, arenas, museums, and other public facilities. Its roots reach back more than 100 years as a site of Native American celebrations. Seattle Center is a reflection of the Northwest itself: the cultural diversity; the commitment to the arts, to the environment, and to education; and the love of sports and quality entertainment. With over 12 million visitors a year, it is the fourth largest visitor destination in the United States.

B: Purpose

These rules are intended to help provide for the safe enjoyment of all that Seattle Center has to offer. Prohibited and inappropriate behavior on the Seattle Center Campus diminishes these precious assets and deprives citizens of the full use and enjoyment of the natural beauty, recreational opportunities, and peaceful repose that the Seattle Center campus provides in the center of an urban setting.

All persons on the Seattle Center campus shall be governed by these rules and regulations and by order and instructions of the Seattle Center Director relative to the use or occupation of any part of the Seattle Center grounds or buildings and shall comply with written or oral instructions issued by the Director, Seattle Center employees, Seattle Center authorized agents, or Seattle Police to enforce these regulations.

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C: Definitions

Unless clearly inconsistent with the context in which used, the following definitions apply:

1. **"Adequate leash"** means a leash of six (6) feet in length or shorter.

2. **"Buildings"** means all enclosed or sheltered areas on the campus, including inside buildings, under covered walkways, and under building overhangs.

3. **"Camp"** means to erect a tent or other shelter, or to use sleeping equipment, such as sleeping bags, blankets, cardboard, tarps, or similar coverings for the purpose of sleeping.

4. **"Campus"** means all grounds and all buildings, including gardens, lawns, open spaces, fountains, streets, roads, pathways, parking lots, garages, plazas, and sculptures that comprise the areas under the control of Director of Seattle Center.

5. **"Commercial Activity"** means any business activity, profession, trade, or occupation requiring a City of Seattle Business License; any activity that is taxable under the City of Seattle's Business and Occupation tax; any activity engaged in with the objective of financial gain, benefit or advantage, directly or indirectly, or any activity, including commercial speech, that proposes or offers an exchange of valuable consideration for goods or services at the time of the proposal or in the future, for consummation on or off campus. Commercial Activities include but are not limited to vending, food concessions, advertising, promotion, filming, exhibits, commercial photography, placement of telecommunication relay devices or fiber optic devices, airspace use, sub soil rights, and giving away products such as, but not limited to, food, gum, and medicines.

6. **"Commercial Speech"** means any speech relating to commercial activities.

7. **"Director"** means the Seattle Center Director or his or her designee.

8. **"Exclusion Notice"** means that the recipient is no longer invited, licensed, permitted, or otherwise privileged to remain on the premises of the campus from which he or she was ordered to leave. The Exclusion Notice shall be in writing and shall contain the date of issuance. The Exclusion Notice shall specify the length and places of exclusion. The issuing individual shall sign it. Warning of the consequences for failure to comply shall be prominently displayed on the notice.

9. **"Grounds"** means all areas of the campus other than "buildings."

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10. **"License"** or **"permit"** means a written authorization for a person or entity to engage in a specific use or activity on a portion or all of the Seattle Center campus.

11. **"Protected Speech"** means verbal or written communication intended to convey a non-commercial political, religious, and philosophical or other similar message to the public, and includes distributing literature, seeking petition signatures, picketing, demonstrating, carrying signs, artistic performances, or other activities recognized by courts as entitled to protection under Federal or Washington constitutions .

12. **"Seattle Center Campus Rules"** means these rules or other rules so entitled and promulgated by the Director.

13. **"Speech Activities"** includes both protected speech and commercial speech. Speech activities do not include activity conducted by City employees.

14. "**Use"** means the exercise of dominion or control over or occupation of all or part of a public place, or the right to do so. It includes constructing, storing, erecting, placing upon, or maintaining, operating any inanimate thing or object in, upon, over or under any public place. "Use" includes the placement of a table, equipment, or other similar object. "Use" does not include the placement of an inanimate object in such a location and for such a limited duration of time that, under the circumstances, no reasonable person could conclude that the public's right to use or enjoy the public place, in whole or in part, has been or potentially could be interfered with.

15. **"Violation"** means an act or omission or combination thereof that is contrary to any campus rule or any civil or criminal provision of the Revised Code of Washington, the Seattle Municipal Code, or other applicable law.

16. **"Weapon"** means any firearm or any instrument designed or intended to propel a missile of any kind, or any knife having a blade of three inches or more, or any straight-edge razor, spring stick, metal knuckles, blackjack, bat, club or other bludgeon-type instrument, or any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, such as nun chahkas, nunchakus or shurikens, or chains, or whips, or stars, or darts, or stun gun, or taser, or any disc having at least two points or pointed blades which is designed to be thrown or propelled.

17. **"Weapon Violation"** means possession or use of a weapon in violation of Chapter 9.41 of the Revised Code of Washington, Chapter 12A.14 of the Seattle Municipal Code or other applicable statute or ordinance.

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D: Director's Authority – Rulemaking – Enforcement

The Director shall have the power to enforce these rules. The Director may, in accordance with SMC 17.04.040 of the Administrative Code, adopt, amend and rescind rules in order to manage and control the campus.

E: Licenses and Permits

1. The following activities require a license, permit, or other written authorization. Engaging in any activity requiring a license or permit without a valid license or permit is a violation of these rules.

a. Conducting any Commercial Activity on the grounds or in any buildings.

b. Festivals, programs and other events at which more than 75 attendees can reasonably be expected to attend.

c. Use of the Seattle Center name or logo or any of the Seattle Center's images, exclusive representations, copyrighted, or proprietary material for commercial purposes.

d. Attaching any signs, posters, banners, notices, or any similar objects, whether temporary or permanent, to any Seattle Center property;

e. Making any improvement to or on the campus or construction of a public work, or placement of visual art.

f. Using any outdoor electrical power outlet or indoor electrical power outlet for use outside; or laying cables or extending wires on the campus.

g. Reserving all or a portion of any facility, room or part or all of the campus.

h. The Use of sound or voice amplification equipment, other than battery-powered equipment as provided in: F (2) (d)

i. The placement of a table, stand, or other structure of a dimension of greater than three by three feet, other than as provided in section F (2) (e).

j. Storage of placards, boxes, or supplies.

k. The use of any flammable liquids.

l. Any other activities that constitute an exercise of dominion or control over a portion of the Seattle Center campus, thereby limiting the general public's ability to use that area of the campus.

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2. Terms and Conditions of Licenses or Permits

The Director may condition a license or permit or impose such terms and conditions as appropriate to protect the health, safety, and welfare of the public and/or the campus; to protect property; to avoid or limit unnecessary interference with other uses or users of the campus; to minimize disturbance of the surrounding neighborhood; and require the user to leave the area in a condition after the activity or event as it was beforehand. For this purpose, the Director may require the user to furnish public liability and property damage insurance, naming the City of Seattle as an additional insured, in such amounts as reasonably necessary to provide recompense for personal injury or death or property damage that results from the event or activity, and/or to make a reasonable security and damage deposit, or provide a bond. The Director shall have authority to immediately suspend or terminate a license or permit without prior notice upon violation of an applicable law, a Seattle Center Campus Rule, or any material term or condition of the license or permit.

The Director may temporarily suspend a license or permit during activities or events that have been granted exclusive use rights to the campus or any portion of the campus. Exclusive use activities and events can include festivals, Seattle Center programming, Seattle Center sponsored or co-sponsored events, or exclusive licensed activities.

All licenses shall be wholly of a temporary nature, shall vest no permanent right, and may be revoked for convenience upon seven (7) days' notice or, if the license so states, upon shorter notice.

3. License Fees

The Director is authorized to charge fees for licensed activities. Fees can be based solely upon or in combination with a percentage of gross sales, a one-time flat fee, a fee per each instance the licensed activity is exercised, or the recovery of Seattle Center costs associated with the license issuance and authorized activities (or such other fee structure as may be negotiated). Issuance of a license shall also be subject to payment of fees, taxes, or charges as required by ordinance or authorized by resolution of the Seattle City Council, or pursuant to King County or State of Washington requirements, or all applicable laws.

4. Permit Fees

The Director may establish and charge application fees and permit fees as provided in other applicable laws or rules.

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5. Refund of Deposits and Fees

The Director is authorized to refund fees, on a prorated basis, upon cancellation of a license or permit and to return all or any portion of any security and damage deposit when no longer needed or after costs that may be charged against the license or permit have been paid.

6. Non-Transferability of Licenses & Permits

Licenses and permits are, unless provided otherwise in the license or permit, non transferable. Trading, selling, or transferring permits is prohibited and may result in the immediate revocation of a permit.

F. Protected Speech Activities

1. *Protected Speech Activities on the Grounds Which Require No Permit*
The following protected speech activities are allowed on the **grounds, but not in buildings, without any license or permit and without any** advance notice to Seattle Center:

a. Leafleting and Gathering Signatures

No permit is required to engage in political speech activities such as the distribution of literature or the gathering of signatures unless the activity is accompanied by conduct that requires a permit under these rules. Leafleting and signature gathering is prohibited within (30) feet of building entrances. Leafleting and signature gathering are also prohibited inside Seattle Center buildings, except as otherwise provided in a license or permit.

b. Carrying Signs

The carrying of signs or placards is allowed on the grounds so long as it is done in a manner consistent with these rules and all applicable laws. Unattended signs or placards are prohibited without a permit or license.

2. Designated Protected Speech Locations

The Director shall designate locations on the grounds for protected speech activities that would otherwise require a permit (use of a table, equipment, or structure, amplification, etc., as provided in these Rules.) Each location has a capacity based on factors such as its size, location, and common other nearby uses.

a. Designated locations are available for protected speech activities that would otherwise require a permit on a first come, first serve basis with no permit required.

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b. The Director may establish additional designated locations, either temporarily or indefinitely.

c. A plaque will mark all designated protected speech locations with a number and/or letter inside, unless otherwise noted below, designating the maximum capacity of speakers and audience and maximum equipment size at that particular location. The Director may modify the maximum capacity of a specific designated location, based upon factors such as other authorized uses in the vicinity or anticipated congestion or mobility problems.

d. The Director shall designate protected speech locations at which battery powered portable amplification is allowed without a permit. Such equipment must not be operated at such a volume that it could be clearly heard by a person of normal hearing at a distance of seventy-five (75) feet or more from the source of the sound. Seattle Center Security or other employees may request that the amplification be turned down if the amplification interferes with other authorized uses.

e. The Director shall designate protected speech locations at which one small (no greater than 3 feet x 3 feet x 3 feet high) structure (such as a piece of equipment, a table or a self-standing sign) may be placed in conjunction with related protected speech activities, so long as the structure is: 1) not left unattended; and 2) is not placed in such a way as to interfere with passersby or other Seattle Center users.

f. A map of the designated protected speech locations, along with each location's permissive uses and limitations, will be available to the public.

g. A schedule will be published that shows which areas are unavailable because of permitted activities.

h. If all designated sites are occupied, a person may request that the Director and/or his designee approve a temporarily location. Factors used to evaluate the request include other authorized uses in the vicinity, anticipated congestion or mobility problems, and public safety.

3. Prohibition on Commercial Activity at Designated Protected Speech Locations

Use of a protected speech location for Commercial Activity is prohibited. Commercial activity requires a written license. Those engaged in protected speech activities may request and receive voluntary donations, which are not considered commercial activity under these rules. A voluntary donation means a person may participate in the activity or receive an offered item of value without regard to whether or not he or she makes a donation.

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G: Speech Activities

1. Speech Related Activities Which Require a Permit

a. Gatherings, Demonstrations and Meetings - A gathering on the grounds that is reasonably anticipated to exceed seventy-five (75) people requires prior notice to Seattle Center and a license or permit. The Center will attempt to find an appropriate location on the grounds, based on the size of the anticipated gathering.

b. The use of sound or voice amplifying apparatus in a building or on the grounds, except as permitted under Section: F. (2) (d).

c. Attaching notices, stickers or similar objects to any Seattle Center property.

d. Placing any structure except as provided in section F. (2) (e).

2. Activities Which are Prohibited in Seattle Center Buildings Unless Expressly Authorized by the Director in a License or Permit

a. Performing

b. Picketing

c. Demonstrating

d. Displaying Signs

e. Leafleting

f. Gathering Signatures

g. Actively Soliciting Donations

3. Applicability of Speech Rules to Major Events

a. Gated Events and Rooms or Buildings Reserved for Exclusive Use

Inside the reserved or gated areas, whether grounds, buildings, or both, the event organizers may control speech activities, both commercial and protected, and all commercial activities. Individuals who wish to engage in commercial activities, or commercial or speech activities inside the gated areas should contact the event organizers for permission.

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b. Ungated Events

The event organizers may, under the terms of the applicable event agreement, control commercial activities and commercial speech inside the event area. However, these rules regarding protected speech activities apply both outside and inside the event area.

H: Property Regulations

No-Trespassing Areas – Removal or Destruction of Property – Structure or Obstructions

1. It is prohibited for any person except a duly authorized Seattle Center employee or agent or other person duly authorized pursuant to law, to enter or go upon any area which has been designated and posted by the Director as "no admittance" "no trespassing," "not open to the public," or other similarly designated area.

2. It is prohibited for any person except a duly authorized Seattle Center employee or agent or other person duly authorized pursuant to law, to remove, destroy, damage, mutilate or deface any structure, lawn, monument, statue, vase, fountain, wall, fence, railing, vehicle, bench, shrub, tree, geological formation, plant, flower, lighting system, sprinkling system, gate, barricade or lock or other property lawfully on the campus, or to remove sand, soil, plant materials, or sod on the campus.

3. It is prohibited for any person other than a duly authorized employee or agent of the Seattle Center to place or erect on the campus a structure or obstruction of any kind without a license from the Director.

4. The Seattle Center Campus is officially open from 7:00 A.M. to Midnight daily. (By Ordinance 92792)

I: Rules of Conduct

1. Aggressive Behavior

No person shall treat any person in an aggressive, menacing, or abusive manner that would place a reasonable person in fear for their property or personal safety.

2. Liquor Offenses and Controlled Substances

It is prohibited on the campus to consume, or to possess liquor, as defined in SMC Section 12A.24.010 C, or other applicable law, except as authorized by a Seattle Center License or other agreement and a Permit issued by the Washington State Liquor Control Board or its successor. Use of any controlled substance is prohibited.

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3. Animals are Prohibited in Buildings and Designated Areas

It is prohibited for anyone except those individuals with ADA service animals, public law enforcement officers, authorized City employees in the performance of their duties, or Seattle Center authorized licensees to bring any animal into any Seattle Center building or other areas designated by the Director and so posted, or to allow or permit any animal under his or her control to enter such facilities.

a. Exceptions

1) American with Disabilities Act (ADA) service animals, defined as an animal that is individually trained to assist an individual with a disability.

2) Animals on the grounds on adequate leashes and under the control of an individual physically able to restrain the animal.

3) Horses or dogs used by public law enforcement agencies and under the control of a law enforcement officer.

4) Animals that are part of a Seattle Center licensed or sponsored activity.

b. Adequate Leash Required

Any person with an animal in his or her possession must keep the animal on an adequate leash while on campus and shall be responsible and liable for the conduct of the animal, shall carry equipment for removing feces, and shall place feces deposited by such animal in an appropriate receptacle.

c. Major Events

For the safety of both patrons and animals, the Director may prohibit all animals, except ADA service animals, from campus during high traffic events such as, but not restricted to, festivals.

4. Weapons

It is Prohibited To:

a. Sell, manufacture, purchase, possess or carry any blackjack, sand-club, metal knuckles, switchblade knife, chako sticks, or throwing stars.

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b. Carry concealed or unconcealed on his or her person any dangerous knife unless used as a tool for work by Seattle Center employees or their authorized agents, or carry concealed on his or her person any weapon. Seattle Center employees are subject to the Seattle Center Employees Firearm Policy.

c. Possess or display a firearm on the campus, unless permitted by applicable law.

5. Contraband in Seattle Center Facilities

The following items are prohibited on the Seattle Center campus: illegal drugs, weapons, explosive devices, spray paint, lasers. The Director may, by posting notice, prohibit the following items from being brought into a Seattle Center building or to a particular event: alcoholic beverages, cameras, recording devices, bundles, packages, coats, blankets, shawls not being worn, umbrellas, mace, pepper spray, and containers or cases (as defined as, but not limited to, pocketbooks, purses, bags, ice chests, backpacks, cans, bottles, or binocular cases).

6. Urinating or Defecating Prohibited Except in Restrooms

Urinating or defecating on the campus, except in facilities specifically provided for the purpose, is prohibited.

7. Stickers

It is prohibited to distribute stickers on the Seattle Center campus without the expressed authorization of the Director. It is prohibited to adhere stickers to any building, structure, or other surface on the Seattle Center campus.

8. Wheeled Devices

a. The use on the campus of all wheeled devices, such as bicycles, skateboards, roller skates, inline skates, and scooters, is prohibited, except for:

1) wheeled equipment used by disabled individuals to be ambulatory;

2) children's strollers;

3) skateboards, roller skates and inline skates used in the Seattle Center Skatepark;

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4) wheeled devices such as bikes, skateboards, roller skates, inline skates, scooters, being used only for transportation across the campus; or

5) other uses expressly authorized by the Director.

b. Operation of any wheeled device in a dangerous manner or in a manner that could damage property is prohibited.

9. No Wheeled Equipment in the International Fountain

With the exception of wheeled equipment used in order to be ambulatory and strollers, all wheeled devices are prohibited from entering the International Fountain.

10. Vehicular Access

Vehicular access onto the Seattle Center campus requires express authorization.

a. Exceptions

1) In designated parking areas.

2) Authorized by a unload/load pass.

3) Supply deliveries to organizations and businesses on campus shall be authorized to access the campus between the hours of 7:00 a.m. and 11:00 a.m. Monday through Friday and between 9:00 a.m. and 11 a.m. Saturday and Sunday.

4) Otherwise specifically authorized by the Director.

b. Use of Driveways and Boulevards – Speed Limit

It is prohibited to ride, or drive any vehicle over or through the campus at a speed in excess of the posted speed limit, or in excess of ten (10) miles per hour where no speed limit is posted.

c. Areas Closed to General Vehicular Access

Except as authorized by the Director, it is prohibited to drive, operate or park a motor vehicle in an area which is designated as being closed to general vehicular traffic access, including all landscaped areas such as turf areas, shrub areas, decorative plazas; on any pedestrian walkway; and in all other areas not specifically authorized for vehicular traffic.

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11. Littering – Trash

It is prohibited to throw or deposit any refuse or other material on the campus, except in designated receptacles. It is also prohibited for any person(s) to dig in, rummage in, in anyway disturb trash in any receptacle.

12. Smoking

Smoking is prohibited in all Seattle Center buildings and within twenty-five (25) feet from building entrances and exits, windows that open, and ventilation intakes that serve an enclosed area.

13. Motorized Models

It is prohibited to operate any motorized model aircraft; dirigible, vehicle or motorized model watercraft on the campus, unless expressly authorized by the Director.

14. Fires

It is prohibited to ignite or maintain any fire or to participate in igniting, maintaining or using any fire on any portion of Seattle Center Campus unless expressly authorized by the Director.

15. Camping

It is prohibited to camp on any portion of the Seattle Center Campus unless expressly authorized by the Director.

16. Violations of These Rules or of other Applicable Law

A violation of these rules or of other applicable laws may, in addition to any applicable civil or criminal penalties, result in the revocation of a person's permission to remain on the Seattle Center campus.

J: Campus Exclusion

The Director or his or her designee may, by delivering an Exclusion Notice to the offender, exclude from the Seattle Center campus for a period not to exceed five (5) days anyone who violates any provision of these rules or any other applicable Seattle Center rules; anyone who violates any provision of the Seattle Municipal Code, the Revised Code of Washington, or other applicable law.

- The individual need not be charged, tried, or convicted of any crime or infraction in order for an Exclusion Notice to be issued or effective. The Exclusion may be based upon activities observed by the Director or a Seattle Center employee, or

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upon the sort of civilian reports that would ordinarily be relied upon by police officers in the determination of probable cause.

- Upon such Notice being given, the recipient shall no longer be invited, licensed or otherwise privileged to remain on the campus.

K: Trespass on Campus

Criminal Trespass on Campus shall include any person who knowingly:

1. Enters or remains on the campus without permission or from which he or she has been excluded during the period covered by an Exclusion Notice pursuant to these rules.

2. Enters, remains in, or is otherwise present within the premises of the campus during hours within which the campus is not open to the public, or within an area not open to the public, unless the person is present within the campus to participate in an activity either conducted by Seattle Center or conducted pursuant to the terms of a license or permit issued by Seattle Center.

L: Discrimination prohibited

1. It is the policy of the City of Seattle, in the exercise of its police powers for the protection of the public health, safety and general welfare, and for the maintenance of peace and good government, to assure equal opportunity for full enjoyment and use of Seattle Center facilities to all persons, free from restrictions because of race, color, sex, marital status, sexual orientation, gender identity, political ideology, age, creed, religion, ancestry, national origin or the presence of any sensory, mental or physical handicap.

2. It is prohibited for any person occupying or using the campus for any event, activity or exhibition open to the public, whether or not under a license or permit and whether or not an admission or entrance fee is charged, to deny to any other person the full use and enjoyment of such event, activity, or exhibition because of race, creed, color, sex, marital status, sexual orientation, gender identity, political ideology, age, religion, ancestry, national origin or the presence of any sensory, mental or physical handicap.

APPROVED:

February 15, 2011

Robert Nellams
Director, Seattle Center

Date

DIS CITY CLERK

Kerry Smith
CEN SAVOR FISC
April 12, 2013
Version #1

Form revised: December 12, 2012

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Center	Kerry Smith/615-0358 Rebecca Keith, Law/684-8239	Greg Shiring/386-4085

Legislation Title:
AN ORDINANCE relating to the Seattle Center; authorizing the Seattle Center Director to execute a five year extension to an agreement with SMG, doing business as SAVOR, for the management of food and beverage services at Marion Oliver McCaw Hall at Seattle Center.

Summary of the Legislation: This legislation authorizes the Seattle Center Director to execute a five year extension to the restated five year agreement for the Management of Food and Beverage Services at Marion Oliver McCaw Hall at Seattle Center Between the City of Seattle and SMG.

Background:

McCaw Hall opened in June 2003 as a $127 million renovation of the Seattle Opera House, made possible by a partnership between the Pacific Northwest Ballet, Seattle Opera, (jointly the "Resident Tenants") the Seattle Center Foundation and the City. This partnership secured $55 million in public funds and over $72 million in private philanthropic gifts to make the Hall a reality. In addition, the Resident Tenants each committed to use McCaw Hall as their primary venue for the presentation of their regular season performances. In recognition of the significant private funds raised for the building and the Resident Tenants commitment of future use, the City committed to continue financial support of McCaw Hall at an established amount and to joint management of McCaw Hall under the oversight of a "Marion Oliver McCaw Hall Operating Board" (the "MOB") consisting of one representative from Seattle Center and one representative from each Resident Tenant as authorized by Ordinance 121206. The MOB is responsible for on-going management of McCaw Hall and shared responsibility for its operations and budget. While McCaw Hall receives a set amount of General Fund, the Opera and Ballet pay an annual use fee in addition to their direct event expenses which, when added to the City's support and other building revenues, must ensure McCaw Hall has a balanced budget. Essentially, the license fee increases or expenses must be reduced to balance the budget. If McCaw Hall does not operate profitably the use fee will be increased in future years or McCaw Hall fund balances may be used to address the loss.

Each year the Ballet and Opera present approximately 150 performances in McCaw Hall. In addition, McCaw Hall hosts production of a wide range of popular music concerts, lectures,

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corporate meetings, receptions, weddings, festival performances, community, and non-profit events. McCaw Hall has balanced its budget every full year of operations since its opening.

The exclusive food service provider for McCaw Hall is SMG, doing business as SAVOR. SAVOR manages Prelude Café and provides concession and catering services for events in the hall. SAVOR was selected as the concessionaire as a result of a 2008 Request for Proposal (RFP) process, taking over food services from the Westin Hotel. A national firm, SMG typically provides food service for arenas, but wanted to broaden their market to performing arts venues. The 2008 RFP Review Panel, which included representatives from both Resident Tenants and local food service providers, unanimously recommended SAVOR as the concessionaire because of their willingness to make an initial $650,000 capital investment in food service equipment and related items, the proposed financial return to the hall, and the high quality of SAVOR's product and enthusiasm of their staff.

The MOB approved a 5 year Agreement with SAVOR, that, with the approval of the Seattle City Council, if necessary, the Seattle Center Director could renew for an additional term of 5 years. In 2008 the Seattle City Council was considering legislation that would have increased from 5 to 10 years the term of concession agreements that the Seattle Center Director was authorized to execute so in 2008 there was uncertainty about whether or not the Agreement extension would require legislative approval. The original agreement has been amended over the last five years to address requirements of the Liquor Control Board, modify concession fees, incentivize achievement of high customer satisfaction reviews and increase SAVOR's capital investment in the Hall. The original agreement, as amended, is the restated agreement addressed by this legislation.

While the revenues generated from food and beverage service concession fees is important to McCaw Hall, of even greater significance is the need to ensure the quality of food and service provided meets the exacting standards of the clients and patrons of McCaw Hall. SAVOR has done this admirably and the MOB supports extension of the concession agreement.

Contract Terms:

SAVOR has the right to be the exclusive provider of food and beverage services at McCaw Hall and is also one of the approved caterers for other Seattle Center facilities.

- Term: The 5 year contract extension is for the period August 1, 2013 through July 31, 2018. The initial contract term was 5 years, beginning June 30, 2008.
- Concession Fee: SAVOR pays a minimum annual guaranteed concession fee of $250,000, with the guaranteed amount increasing annually by the CPI, contingent on the Resident Tenants scheduling a minimum of 105 public performances. If fewer performances are scheduled then the minimum guarantee is reduced proportionately. Concession fees are paid as follows:

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Service	% of Gross Sales
Café Services and Concession Services at McCaw Hall	11.5%
Catering Services at McCaw Hall	17.5%
Concession Services and Catering Services at Seattle Center except for McCaw Hall	7.5%
Gross sales from corkage fees for authorized non-profit organizations	10%

- Seattle Center retains the right to allow the pouring of wine donated by persons other than SAVOR at the Seattle Opera, the Pacific Northwest Ballet and other non-profit organizations catered events for set corkage fees.
- As consideration for being recognized as an institutional donor to the Resident Tenants, SAVOR provides up to $25,000 of in-kind food and beverage services at Resident Tenant events. These in-kind services are not included in gross sales.

- Customer Service/Performance Incentive: A service quality monitoring program with established criteria for evaluative and quantitative standards of performance, including a secret shopper program, is in operation. If gross sales reach specified levels and SAVOR achieves an average annual score of 90% on shopper report and customer/patron surveys then SAVOR is eligible to receive a performance incentive payment ranging from $5,000 to $15,000 depending upon annual gross sales.
- Marketing: SAVOR works cooperatively with the City in marketing and booking McCaw Hall including cross marketing to other SAVOR customers.
- Utilities: SAVOR pays for kitchen utilities and food service related garbage and recycling costs.
- Sustainability: SAVOR uses recyclable and biodegradable products for containers and supplies whenever possible.
- Capital Investment: At commencement of the agreement, SAVOR invested $650,000, which was amortized for income tax purposes over ten years, for small wares, food service equipment and a computerized point-of-sale system. The purchases are owned by SAVOR and if the extension is not authorized, McCaw Hall may purchase the equipment for the unamortized value. During the 5 year extension period, SAVOR will invest $100,000 for mobile bar stations in the lobbies, digital/video menu boards and improvements to the dining environment in Prelude Restaurant. These improvements must be completed before August, 2014.
- Kitchen Equipment Reserve Fund: Starting January 1, 2016, SAVOR will pay 1.5% of Gross Sales into a McCaw Hall maintained kitchen equipment reserve fund for maintenance and replacement of city-owned food and beverage service equipment.

Please check one of the following:

____ **This legislation does not have any financial implications.**

_X_ **This legislation has financial implications.**

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Appropriations:

Fund Name and Number	Department	Budget Control Level*	2013 Appropriation	2014 Anticipated Appropriation
TOTAL				

**See budget book to obtain the appropriate Budget Control Level for your department.*

Appropriations Notes:
N/A

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2013 Revenue	2014 Revenue
TOTAL				

Revenue/Reimbursement Notes:
There are no new revenues associated with this legislation, but the 2013 and 2014 adopted budgets include projected McCaw Hall concession and catering revenue of $270,000 per year from SAVOR in McCaw Hall.

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2013 Positions	2013 FTE	2014 Positions*	2014 FTE*
TOTAL							

** 2014 positions and FTE are total 2014 position changes resulting from this legislation, not incremental changes. Therefore, under 2014, please be sure to include any continuing positions from 2013.*

Position Notes:
N/A

Do positions sunset in the future?
N/A

Spending/Cash Flow:

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Fund Name & #	Department	Budget Control Level*	2013 Expenditures	2014 Anticipated Expenditures
TOTAL				

** See budget book to obtain the appropriate Budget Control Level for your department.*

Spending/Cash Flow Notes:
N/A

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
The legislation does not have indirect or long-term financial implications.

b) **What is the financial cost of not implementing the legislation?**
Food and beverage service is an integral part of the event experience in McCaw Hall. All event producers, including the Resident Tenants, expect to be able to provide event patrons with a food service experience commensurate with the quality of their events. If food and beverage service is not available, or is not of a quality attractive to patrons, McCaw Hall would lose events and patrons and the associated revenues.

c) **Does this legislation affect any departments besides the originating department?**
No

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**
Instead of granting the agreement extension, the food service opportunity could be advertised through a new RFP process and a new food service provider selected. It should be noted that the MOB did not consider issuing a new RFP to be respectful of the work that SAVOR has done in McCaw Hall to date or expect one to result in a significantly better arrangement, either financially and/or due to improved quality, than experienced currently with SAVOR.

e) **Is a public hearing required for this legislation?**
No

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No

g) **Does this legislation affect a piece of property?**
No

h) **Other Issues:**

List attachments to the fiscal note below:

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City of Seattle
Office of the Mayor

April 30, 2013

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill authorizing the Seattle Center Director to execute a five year extension to a restated agreement with SMG for the management of food and beverage services at Marion Oliver McCaw Hall at the Seattle Center. In 2008, SMG, doing business as SAVOR, was selected through a competitive process as the exclusive provider of food and beverage concession and catering services at McCaw Hall. SAVOR is also an approved caterer for other Seattle Center facilities.

McCaw Hall is celebrating its ten year anniversary following the $127 million renovation of the Seattle Opera House. Recognizing that both public and private investment made McCaw Hall possible, the facility is cooperatively managed by Seattle Center, Seattle Opera and Pacific Northwest Ballet. As concessionaire, SAVOR provides McCaw Hall patrons with a wide range of culinary options designed to complement the performances. Under the terms of the agreement authorized by this legislation, SAVOR guarantees that McCaw Hall will receive a minimum concession fee from food and beverage service of $250,000 per year and, in addition to a $650,000 capital investment made in 2008, will make a capital investment of $100,000 in the food service program.

Food and beverage service is an essential part of the entertainment experience. For McCaw Hall to succeed it is important to ensure the quality of food and service provided meets the exacting standards of the clients and patrons of McCaw Hall. Over the past five years SAVOR has done this admirably, earning the affirmation of Seattle Opera and Pacific Northwest Ballet in support of the legislation being considered. Should you have questions please contact Chris Miller at 233-9711 or Kerry Smith at 615-0358.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
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