

**CITY OF OAKLAND**  
**AGENDA REPORT**

2004 APR 22 PM 3: 16

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Finance and Management Agency  
DATE: May 4, 2004

RE: **A RESOLUTION APPROVING THE OAKLAND/ALAMEDA COUNTY  
JOINT POWERS AUTHORITY (JPA) CONTRACT WITH LEVY PREMIUM  
FOOD SERVICES LIMITED PARTNERSHIP TO PROVIDE FOOD  
SERVICES AT THE OAKLAND ARENA**

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**SUMMARY**

The management agreement between the City and Alameda County and the Coliseum JPA requires City and County approval for any major concession contracts negotiated by the JPA. The JPA, in its special meeting of April 15, 2004, voted to approve a contract with Levy Premium Food Services Limited Partnership (Levy) by a vote of 6-1 (1 absent). The attached staff report from the Executive Director of the JPA describes the vendor selection process and key elements of the contract.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council approve the resolution.

Respectfully submitted,



William E. Noland, Director – Finance and  
Management Agency

APPROVED AND FORWARDED TO THE  
CITY COUNCIL:

  
OFFICE OF THE CITY MANAGER

Item: 16  
City Council  
May 4, 2004

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

04 APR 22 PM 4:22 OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

RWH: ssf *RWH*

**RESOLUTION APPROVING THE EXECUTION AND DELIVERY OF AN ARENA CONCESSION LICENSE AGREEMENT BY AND BETWEEN THE OAKLAND ALAMEDA COUNTY COLISEUM AUTHORITY (JPA) AS "CONCESSION LICENSOR" AND LEVY PREMIUM FOODSERVICE LIMITED PARTNERSHIP, AS "CONCESSION LICENSEE"**

**WHEREAS**, on or about December 11, 2003, the JPA approved and adopted a review process to evaluate arena concessions proposals submitted by several concessionaires to provide food service to the Oakland Arena ("Arena"); and

**WHEREAS**, after full consideration of several proposals by vendors competing for the license agreement to provide food service to the Arena, representatives of the JPA concluded that Levy Premium Foodservice Limited Partnership ("Levy") would best serve the interests of the citizens of the City and County; and

**WHEREAS**, on April 15, 2004, the JPA, by majority vote approved a recommendation by a sub-committee of JPA Board members and staff to select Levy to provide food service to the Arena, and

**WHEREAS**, on April 15, 2004, the JPA accepted the recommendation and approved Execution and Delivery of an Arena Concession Agreement ("the Agreement") by and between the Oakland Alameda County Authority as "Concession Licensor" and Levy Premium Foodservice Limited Partnership, as "Concession Licensee" ("the Agreement"); and

**WHEREAS**, section 4.5 of the Amended and Restated Management Agreement between the City of Oakland ("City"), the County of Alameda ("County") and the JPA requires approval by the City and the County for the JPA to enter into the Agreement with Levy; and

**WHEREAS**, the representatives appointed to the JPA by the Oakland City Council recommend that Council approve the decision of JPA to enter into the Agreement with Levy; and **NOW, THEREFORE BE IT**

*16*  
ORA/COUNCIL

MAY 4 2004

**RESOLVED:** that the City of Oakland hereby approves the decision by the JPA approving the execution and delivery of an Arena Concession License Agreement by and between the Oakland Alameda County Coliseum Authority (JPA) as "Concession Licensor" and Levy Premium Foodservice Limited Partnership, as "Concession Licensee"

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2004

**PASSED BY THE FOLLOWING VOTE:**

Brooks, Brunner, Chang, Nadel, Quan, Reid, Wan and President De La Fuente

AYES-

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
CEDA FLOYD  
City Clerk and Clerk of the  
Council  
of the City of Oakland,  
California

16  
CRA/COUNCIL  
MAY 4 2004

**ARENA CONCESSION LICENSE AGREEMENT**

**BY AND BETWEEN**

**THE OAKLAND ALAMEDA COUNTY COLISEUM AUTHORITY,  
AS "CONCESSION LICENSOR"**

**AND**

**LEVY PREMIUM FOODSERVICE LIMITED PARTNERSHIP,  
AS "CONCESSION LICENSEE"**

**DATED: APRIL \_\_\_\_, 2004**

**16  
CRA/COUNCIL  
MAY 4 2004**

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## ARENA CONCESSION LICENSE AGREEMENT

This Arena Concession License Agreement ("Agreement") is entered into as of this day of April, 2004 by and between the Oakland Alameda County Authority, a joint powers exercise of powers entity created by the City of Oakland and the County of Alameda (the "Concession Licensor") and Levy Premium Foodservice Limited Partnership, an Illinois limited partnership ("Concession Licensee").

### RECITALS

1. The City of Oakland and the County of Alameda each own fifty percent (50%) of the multi-purpose indoor arena currently known as the Oakland Arena (the "Arena"), and they have jointly delegated the exclusive right to manage the Arena to Concession Licensor.

2. The Arena is the home arena for, among other events, all of the Golden State Warriors (the "Team") home exhibition, regular season and post-season National Basketball Association ("NBA") games.

3. Pursuant to the terms and provisions of that certain License Agreement by and between the Team and Concession Licensor, the Team is required to play at least two (2) of their exhibition/pre-season and all of their regular season and post season NBA home games in the Arena.

4. Concession Licensor also owns the exclusive right to determine who shall operate the food and beverage concession services throughout the Arena.

5. As of the date here of, the Arena has: (a) approximately 15,200 seats in general concession areas, with fourteen (14) concession stands, and approximately twenty-four (24) portable carts ("General Concessions Areas"), (b) seventy-two (72) suites (the "Suites"), (c) an approximately six thousand (6,000) square foot event-level club (the "Courtside Club") and the two (2) separate approximately eight thousand (8,000) square feet each clubs known as the Plaza Club and the 880 Club (the "Sideline Clubs"; the Courtside Club and the Sideline Clubs are hereinafter collectively referred to as the "Clubs"), (d) the approximately four thousand (4,000) club/preferred seats located in the VIP Row and sections 1,2, 5, 7, 8, 10, 13-16 (inclusive), 19, 21, 22, 24, 27, 28, 101-103 (inclusive), 112-117 (inclusive), 126-128 (inclusive) [the "In-Seat Service Areas"], and (e) the Owner's Room, Grandview Suites, the Press Room, Locker Rooms, and other "backstage" areas (collectively the "Extra Premium Areas"; the Suites, the Clubs, the In-Seat Service Areas and the Extra Premium Areas are hereinafter collectively referred to as the "Premium Areas"; the Premium Areas along with the General Concessions Areas shall be known as the "Food and Beverage Areas").

6. Concession Licensee and its affiliated and related entities are in the business of developing, owning and managing restaurants and other food service facilities.

7. Concession Licensor desires to engage Concession Licensee, and Concession Licensee desires to be engaged by Concession Licensor, pursuant to the terms of this Agreement, to exclusively operate all of the food and beverage concession services for the Food and Beverage Areas throughout the duration of this Agreement.

8. Concession Licensee desires to render certain management and operational services for the Food and Beverage Areas, all as more fully described in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, hereby agree as follows:

1. Representations

(a) Concession Licensor's Representations to Concession Licensee.  
Concession Licensor hereby represents to Concession Licensee as follows:

(i) that it has been validly formed and duly exists as a joint powers authority under the laws of the State California, and that it is duly qualified to do business in the State of California;

(ii) that it has the full right, power and authority to grant the exclusive right to manage the food and beverage concessions throughout the entire Arena, including, but not limited to, the right to engage Concession Licensee to provide management and operational services described in this Agreement;

(iii) that it is not prevented from entering into this Agreement or complying with its commitments hereunder by any statute, regulation or order of any governmental authority;

(iv) that it is not prevented from entering into this Agreement or complying with its commitments hereunder by any statute, regulation, order of, or agreement with, governmental or quasi-governmental authority or by any license, debt instrument, mortgage, lease, contract or other agreement or instrument binding it or any of its property;

(v) 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, delivery, and performance of this Agreement other than the Team, whose consent has been given prior to the date hereof;



(vi) that this Agreement, when properly executed by both parties, will constitute a legal, valid and binding agreement, enforceable by Concession Licensee in accordance with its terms;

(vii) that the party executing this Agreement on behalf of Concession Licensor has full right, power and authority to execute this Agreement and to bind Concession Licensor to the terms hereof; and

(viii) that it shall use its good faith, reasonable and diligent efforts at all times to cooperate with and assist Concession Licensee in (A) providing quality food and beverage services to patrons of the Food and Beverage Areas, and (B) achieving maximum Gross Receipts (as that term is defined below) for the Operations (as that term is defined below).

(b) Concession Licensee's Representations to Concession Licensor.  
Concession Licensee hereby represents to Concession Licensor as follows:

(i) that it has been validly formed and duly exists as a limited partnership under the laws of the State of Illinois, and that it is duly qualified to do business in the State of California;

(ii) that it is duly authorized to enter into this Agreement and is not prevented from entering into this Agreement or complying with its commitments hereunder by its partnership agreement, by any statute, regulation or order of any governmental or quasi-governmental authority, or by any license, debt instrument, mortgage, lease, contract, or other agreement or instrument binding upon it or any of its property;

(iii) 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, delivery and performance of this Agreement;

(iv) that this Agreement, when properly executed by both parties, will constitute a legal, valid, and binding agreement, enforceable by Concession Licensor in accordance with its terms;

(v) that the party executing this agreement on behalf of Concession Licensee has full right, power and authority to execute this Agreement and to bind Concession Licensee to the terms hereof;

(vi) that it shall use its good faith, reasonable and diligent efforts at all times to (A) provide quality food and beverage services to patrons of the Food and Beverage Areas, and (B) achieve maximum Gross Receipts from the Operations and

(vii) that it has not entered into any agreement, partnership, joint venture or similar arrangement with any party with respect to the subject matter hereof.

## 2. Concession Licensor's Investment; Concession Licensee Responsibilities.

(a) Concession Licensor Investment. The Concession Licensor hereby agrees to expend an amount not to exceed Two Million Dollars (\$2,000,000.00) (the "Concession Licensor Investment"), allocated according to the following priority, (i) build a new kitchen and additional commissary space for Concession Licensee's sole and exclusive use, which will be sufficient (as determined by Concession Licensor and approved by Concession Licensee (which approval shall not be unreasonably withheld, denied or delayed) for Concession Licensee to perform the Operations (the "New Kitchen"), (ii) reconcept all concession stands and portable carts in the General Concessions Areas, including, without limitation, the creation and implementation of new signage ("New Concession Stands"), (iii) replace kitchen utensils, pots, pans, service pieces, china, silver, linen and serving dishes, and (iv) to purchase a new point of sale system for Concession Licensee's sole and exclusive use ("POS"). Concessionaire Licensor shall use its best efforts to fully expend the Concession Licensor Investment as described above by December 31, 2004. In addition, Concession Licensor shall pay, at its sole cost, for the temporary kitchen until the New Kitchen is completed. Concession Licensee shall reasonably consult with Concession Licensor in connection with certain phases of the design, development and construction of the New Kitchen, the POS, and New Concession Stands. The Concessionaire Licensor shall determine the allocation of the Concessionaire Licensor Investment with the written approval of the Concession Licensee (which approval shall not be unreasonably withheld, denied or delayed).

(b) Scope of Concession Licensee's Responsibilities. It is expressly understood and agreed that, unless Concession Licensor and Concession Licensee otherwise agree in a separate written agreement, Concession Licensee shall have no responsibilities with respect to the design, development or construction of any aspect of the Arena other than the Foodservice Facilities. It is further expressly understood and agreed that Concession Licensee is a consultant and not a licensed architect, engineer or professional services provider and accordingly, Concession Licensee shall not have control or charge of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programming in connection with the design, development and construction of the Food and Beverage Areas, nor for the acts or omissions of any architect, engineer, professional services provider, general contractor, subcontractor, supplier, vendor or any other individual or entity performing any of the design, engineering or construction work, or for the failure of any of them to carry out the construction work in accordance with the contract documents.

(c) Concession Licensee. Concession Licensor shall provide to Concession Licensee: (i) Concession Licensor's Investment, in accordance with Paragraph 2(a)

above, and (ii) all existing items (including, without limitation, equipment and smallwares) located in the Arena necessary to operate the Foodservice Facilities consistent with the current operations in the existing Arena at no cost to Concession Licensee. Concession Licensee shall have no obligation whatsoever to make any investment in the Foodservice Facilities. Concessionaire Licensor shall have no obligation to make any investment in the Foodservice Facilities, other than the Concession Licensor Investment. Concession Licensee may, however, decide in its own sole discretion to make an investment in the Operations, for the enhancement of the Operations (“Concession Licensee’s Investment”).

### 3. Concession Services.

(a) Foodservice Facilities. Concession Licensor hereby grants to Concession Licensee an exclusive license to operate and manage, the entire food and beverage service operations (collectively, the "Operations") of, for and to the Food and Beverage Areas for all events held or conducted in the Arena during the Term (as that term is defined below), including but not limited to, all of the Team’s home games and all catering throughout the Arena. In order to provide the services required of Concession Licensee hereunder, Concession Licensor hereby exclusively licenses to Concession Licensee the Food and Beverage Areas, the kitchens (including the New Kitchen), pantry areas and other areas of the Arena all as described on Exhibit “A” attached hereto and made a part hereof (collectively, the “Facilities”). The Food and Beverage Areas, together with the Facilities, shall hereinafter be referred to as the “Foodservice Facilities.” In addition, Concession Licensee shall have the exclusive right to utilize all of the equipment in the Facilities, which equipment is either: (i) listed on Exhibit “B” attached hereto and made a part hereof, or (ii) in the existing office of the general concessionaire not owned by the current general concessionaire (collectively, the “Equipment”). Concession Licensor shall provide to Concession Licensee: (i) all current smallwares provided to Concession Licensee by Concession Licensor which are listed on Exhibit “C”, which is attached hereto and made a part hereof, and (ii) all smallwares currently in the current general concession stands used by the current general concessionaire not owned by the current general concessionaire (collectively, the “Smallwares”).

(b) Concession Licensee’s Rights in the Foodservice Facilities. In order to enable Concession Licensee to fulfill its responsibilities under this Agreement, Concession Licensor hereby grants Concession Licensee the exclusive license to use all of the Foodservice Facilities without hindrance from Concession Licensor, the owner of the Arena or any individuals of entities claiming by, from, through or under Concession Licensor provided, however, that the Concession Licensor shall have access to the Facilities to the extent required to satisfy its obligations hereunder. In order to control the quality of the products and services sold at the Arena, to ensure the safety of the patrons and to protect Concession Licensee's exercise of the exclusive rights granted hereunder, Concession Licensor agrees to use its best efforts to prevent any other entities or individuals, from (i) utilizing all or any portion of the Foodservice Facilities, and (ii)

selling, anywhere in the Foodservice Facilities, any Food and Beverage Items (as that term is defined below). In addition, Concession Licensor hereby agrees to use reasonable efforts to the extent that it is capable, and through the operator of the Arena, to prevent patrons from bringing any food, beverages, beverage containers or alcoholic beverages into the Foodservice Facilities.

(c) Services. The concession services (collectively, the "Services") to be provided by Concession Licensee shall include, without limitation, the following:

(i) Administration, management and direction of the day-to-day Operations in accordance with, and subject to, the further terms and conditions of this Agreement;

(ii) Procurement of all supplies, services and personnel which are necessary for the Operations, including personnel for the maintenance and operation of the Foodservice Facilities and preparation and service of such food and beverage items as shall be proposed by Concession Licensee and reasonably approved by Concession Licensor ("Food and Beverage Items"), which Food and Beverage Items shall consist of, but not necessarily be limited to, food, alcoholic and non-alcoholic beverages, candy and confections, but only to the extent that any of the foregoing may now or hereafter be legally sold at the Arena, in accordance with applicable laws, ordinances, rules and regulations;

(iii) Establishment and from time to time, review and/or modification of such menus, portions and prices of the Food and Beverage Items as shall be proposed by Concession Licensee and reasonably approved by Concession Licensor; provided, however (A) Concession Licensor shall not unreasonably withhold, condition or delay its approval of such menus, portions and prices, and (B) in the event that Concession Licensor fails to deliver to Concession Licensee within thirty (30) days after Concession Licensee's written submission of such menus, portions and prices, written approval or denial, such submitted menus, portions and prices shall be deemed approved; provided, however, Concession Licensee shall not be required to get Concession Licensor's approval for items such as daily specials offered in addition to the approved menu; provided further, that Concession Licensor shall reasonably approve any material limitations or restrictions to the approved menu;

(iv) Arranging for the maintenance and repair of all furniture, fixtures and equipment used in connection with the Operations and the maintenance of the Foodservice Facilities in a clean, neat and sanitary condition;

(v) Arranging for the addition to, and replacement or modification of, any element of the Foodservice Facilities, the cost of which shall be borne by Concession Licensor upon Concession Licensee's written request and the Concession Licensor's prior written approval which approval shall be at the

Concession Licensor's sole discretion (such approval to be reasonably given by Concession Licensor if replacement or modification is reasonably necessary for the Operations); provided, however, Concession Licensee shall be responsible for the replacement of any Smallwares at the end of the Term in order to reach the same par level of Smallwares described on Exhibit "C", normal wear and tear excepted. If the Concession Licensor agrees to pay for purchases of additional equipment and additional smallwares throughout the Term, Concession Licensee agrees to provide a revised Exhibit "B" or Exhibit "C", as the case may be, that includes such additional equipment and additional smallwares which shall become Equipment or Smallwares as the case may be;

(vi) Consultation with Concession Licensor at such times as shall be reasonably appropriate for the purpose of eliminating operational problems and improving the Operations;

(vii) Arranging for the removal of all trash from the Facilities to various centralized collection points in the Arena, whereupon Concession Licensor shall be responsible for arranging for such trash to be properly and lawfully discarded;

(viii) Any and all other services which Concession Licensor or Concession Licensee, in their joint reasonable discretion, deem appropriate in order for Concession Licensee to effectively manage and operate the Operations in a manner at least consistent with, if not better than, comparable services at the facilities which are described on Exhibit "D". Such services shall be evaluated consistent with all opportunities presented to Concession Licensee; and

(ix) Make reasonable efforts to make donations to local food banks, and/or other community programs.

(d) Monitoring Standards. Concession Licensee and Concession Licensor hereby agree to comply with the monitoring standards described on Exhibit "D".

(e) Extension of Credit. Concession Licensor hereby acknowledges that Concession Licensee shall have no obligation whatsoever to extend credit to the Concession Licensor, any tenant (permanent or temporary), or any patron of the Food and Beverage Areas.

(f) Special Circumstances. Concession Licensee hereby acknowledges that Concession Licensor has the right to present events other than Team's home games at the Arena (for example, a national political party convention or the National Collegiate Athletic Association basketball tournament) and to use portions of the Food and Beverage Areas, subject to Concession Licensee's exclusive rights to provide Food and Beverage Items in the Food and Beverage Areas for such events. Concession Licensee therefore agrees to reasonably cooperate with Concession Licensor's designated

representative in the use of the Food and Beverage Areas for such other events; provided, however any other entity or individual using all or any portion of the Food and Beverage Areas is expressly prohibited from using any of Concession Licensee's employees, licenses, Equipment, Smallwares, and inventory. In addition, Concession Licensee acknowledges that there shall be the following exclusions to its exclusivity hereunder only for: (i) meetings for fifty (50) people or less not held during ticketed events at the Arena, (ii) for back stage and crew meals during a concert or non-Team event held at the Arena, or (iii) the sale of novelty food items such as cotton candy and snow cones at all circuses, ice shows, and similar multi-performance family shows, which items Concession Licensee shall not sell at such events. During such events, Concession Licensor or any such other food service providers shall not be entitled to utilize any of Concession Licensee's employees, licenses, Equipment, Smallwares or inventory. Concession Licensee acknowledges and agrees that all rights and privileges to present, sell, display, advertise, and/or promote non-food merchandise such as novelties, toys souvenirs, binoculars, periodicals, programs, publications, seat cushions, clothing, garments and other items which would customarily be merchandise offered for sale or rent are expressly reserved to Concession Licensor and excluded from the rights granted to Concession Licensee hereunder; provided, however, Concession Licensee shall retain all rights to sell souvenir cups with beverages contained in such cups.

(g) Alcohol Service. It is expressly agreed by both parties that there is hereby reserved to Concession Licensor the right to limit the sale of alcoholic beverages at the Arena from time to time during any event if there is a threat of public safety, if limits are imposed by any governmental authority or by the NBA or if there is a reasonable security concern, in either parties' reasonable and good faith judgement. Both parties acknowledge that certain types of events in the Arena, such as high school or college sports events, may prohibit the sale of alcoholic beverages. If the sale of alcoholic beverages is significantly curtailed or eliminated, the parties hereby agree to review the economic situation for both parties resulting from such curtailment or elimination.

4. Projections of Gross Receipts; Food Service Plan. Prior to the commencement of each year during the Term (or such other period upon which Concession Licensor and Concession Licensee shall mutually agree), Concession Licensee shall supply Concession Licensor with a food service plan (the "Food Service Plan") that shall contain at least a copy of Concession Licensee's projections for anticipated Gross Receipts for the ensuing year, including projections of per capita revenues, proposed menus, modifications to the organizational chart, a proposed budget for any recommended capital expenditures to be made during such year to add to, replace or modify any of the furniture, fixtures or equipment to be included in the Foodservice Facilities. The proposed budget shall be approved in writing by Concession Licensor's at its sole discretion. The approved budget shall be the capital budget (the "Capital Budget") for the period specified in the proposed budget. As detailed in Section 13 hereof, no less than once each month, Concession Licensee shall provide Concession Licensor with a statement of the actual Gross Receipts for the prior month in comparison to the applicable sales projection, together with a brief explanation from Concession Licensee about any significant variances between the projected Gross Receipts and the actual Gross Receipts.

5. Conduct of the Operations.

(a) General. Concession Licensee agrees that it will conduct the Operations diligently and in good faith so as to maximize Gross Receipts and to promptly and courteously serve the patrons of the Food and Beverage Areas at a high quality level customarily followed in the conduct of similar operations. The hours and days of operation during which the Foodservice Facilities shall be open shall be proposed by Concession Licensee and reasonably approved by Concession Licensor.

(b) Compliance with Laws, Policies and Programs. In connection with the conduct of the Operations, Concession Licensee shall promptly comply with and observe all federal, state and local laws, ordinances, regulations, orders or directions (including, without limitation, fire, building, health and sanitation codes and regulations) with respect to the sanitation and purity of the Food and Beverage Items, provided that nothing herein shall be interpreted to hold Concession Licensee responsible for such compliance as it relates to areas of the Arena other than the Foodservice Facilities.

(c) Condition of the Facilities. Concession Licensee agrees to conduct the Operations in such a manner so as to reasonably preserve the condition of all areas of the Facilities licensed to Concession Licensee. Concession Licensee agrees to keep the Foodservice Facilities and all other areas to be utilized by Concession Licensee, neat, clean and in a sanitary condition, and to follow all reasonable and appropriate directions of Concession Licensor with respect thereto. Concession Licensee maintain and repair all equipment, furniture, plumbing, and electrical fixtures within the Foodservice Facilities, including, but not limited to clearing stopped drains caused by grease or other foreign matter lodged in the area between the grease traps and the food service area. Concession Licensee shall be responsible for restoring or bringing to original condition as of the Commencement Date any damage or destruction to floor, ceilings, air handling ducts, plumbing, electrical, walls, furniture, walkways, streets, or other facilities or property of the Arena caused by its personnel, vendors or sub contractors due to its sole willful misconduct or negligence. Any damage or disfigurements as described above shall be restored, repaired, or brought to the original condition as of the Commencement Date at the Concession Licensee's expense. Concession Licensee will not make any alterations to the Arena facilities or property, including the Foodservice Facilities, without the prior written approval of the Concession Licensor (Both parties hereby acknowledge that Concession Licensee is consulting with Concession Licensor in building the New Kitchen, as detailed in Section 2(b) above). Concession Licensee will be responsible for the cost of making and maintaining all alterations or modifications to the Foodservice Facilities (including the New Kitchen upon its completion and delivery to the Concession Licensee) requested by the Concession Licensee and approved by the Concession Licensor unless the parties agree in writing otherwise.

(d) Sponsorship. Concession Licensee and Concession Licensor recognize the value of securing sponsorship relationships for the Arena. Concession Licensee,

Concession Licensor and the Team therefore have entered into as of the date hereof the Letter Agreement in the form attached as Exhibit "E".

6. Sale and Delivery of Food and Beverage Items. Concession Licensee covenants that it shall at all times have available for sale in the Foodservice Facilities sufficient quantities and varieties of Food and Beverage Items and shall provide sufficient and competently trained personnel so that the Operations shall yield the maximum Gross Receipts, shall provide patrons of the Arena with prompt courteous service, and shall provide food service in a commercially reasonable manner to each area of the Arena for every event, all shall be measured commensurate with all opportunities presented. All Food and Beverage Items sold by Concession Licensee, and the manner of serving and selling the Food and Beverage Items, shall be of a high quality, but in any event at least of the food standards set forth in Exhibit "F". All deliveries of Food and Beverage Items and any other items used in connection with the Operations shall be made only at the times and through the locations in the Arena reasonably designated by Concession Licensor.

7. Employees and Agents.

(a) Conduct and Supervision of Employees and Agents. Concession Licensee agrees that it shall hire, train, supervise and regulate all persons employed by it in the conduct of the Operations so that they are aware of, and continuously practice, a high standard of cleanliness, courtesy and service required and customarily followed in the conduct of similar operations at the comparable facilities listed in Exhibit "D". Concession Licensee shall use its reasonable, good faith and diligent efforts to assure that its employees shall (i) be neatly and cleanly uniformed, (ii) maintain personal cleanliness (iii) be polite and courteous and (iv) with respect to non-management employees, wear identification badges that are reasonable in light of identification and security concerns. Concession Licensee shall hire and at all times employ an experienced Director of Operations who shall be subject to Concession Licensor's approval (subject to applicable laws) from time to time and who shall be available to, and shall consult with and shall regularly report to Concession Licensor regarding the conduct of the Operations. Concession Licensor hereby deems Tim Green to be approved as Director of Operations. Concession Licensee shall provide written notice to the Concession Licensor as soon as reasonably possible prior to (or after, as the case may be) a Concession Licensee initiated employment change related to the Director of Operations and other management personnel. Concession Licensee shall ensure that reasonably appropriate supervisory personnel are present at all events during the hours that concession services are available.

(b) Cooperation with Other Employees. Concession Licensee agrees to cause its employees to reasonably cooperate in the use of the Arena's facilities which are common to the Foodservice Facilities and to other operations at the Arena. In this regard, Concession Licensee agrees to cause its employees to cooperate in all other reasonable manners with all employees and agents of Concession Licensor and with third parties performing services at the Arena. Concession Licensee acknowledges the importance of, and, to the extent reasonably practicable, agrees to coordinate with



Concession Licensor, and/or its managing agent, training and operations procedures relating to facility orientation, emergency procedures, first aid, customer service, alcohol awareness, safety and health/sanitation.

(c) Hiring and Employment Practices. Concession Licensee agrees that in the conduct of the Operations it will not discriminate or permit discrimination in its hiring or employment practices on the basis of any federal, state or local impermissible grounds. Upon receipt of notice from Concession Licensor of any reasonable and significant objection to any of Concession Licensee's employees, the employment of such person will be discontinued and a suitable person will be promptly substituted; provided, however, the Concession Licensor acknowledges that its right to require replacement of an employee employed by Concession Licensee is expressly subject to considerations and restrictions imposed upon Concession Licensee by any federal, state or local statute, law, code, regulations, or ordinance by any collective bargaining agreement or other contract affecting such employee.

(d) Labor Relations. Notwithstanding anything in this Agreement to the contrary, Concession Licensee shall have the sole and exclusive right and authority to implement all matters relating to labor relations in the Foodservice Facilities and with respect to the Operations, including, but not limited to, the determination of (i) the degree and methods of opposition (if any) to any union organizing efforts, (ii) all terms and provisions of any collective bargaining agreement(s) and (iii) counsel and consultants to be utilized in such efforts. The Concession Licensee agrees to employ all food service employees (excluding managers) employed at the Arena as of the date of this Agreement who meet Concession Licensee's employment qualifications. All qualified employees (excluding managers) of Concession Licensee shall be subject to the personnel practices and benefits of the Concession Licensee.

8. Licenses and Permits. Concession Licensee shall obtain and maintain in force during the Term, all required food, liquor and other licenses and permits and renewals thereof and shall cause to be paid all fees and taxes which may be due and owing from time to time to federal, state or municipal authorities incidental to the Operations. Concession Licensee shall be the named licensee under all such licenses and permits and Concession Licensor shall do all acts or things that are necessary in order for Concession Licensee to obtain all such licenses and permits. Throughout the Term, Concession Licensor or the managing agent of the Arena shall, at its sole cost and expense, maintain all other licenses and permits which may be required for the operation of the Arena. At all times, Concession Licensor shall comply with the restrictions, rules and conditions of all such licenses and permits. Concession Licensee shall promptly advise Concession Licensor in writing of any pending or threatened actions against it by any governmental authorities, which seek, or could result in the suspension or revocation of any license or permit necessary for its performance under this Agreement.

9. Collections and Payments of Taxes and Other Items.

(a) Payment of Taxes; Filing of Sales Tax Returns. Concession Licensee agrees to timely pay, from Gross Receipts, all sales, excise, employment and similar taxes relating to the Operations. Concession Licensee agrees to file separate sales tax returns reflecting only the Operations, it being understood that such returns shall be filed separately from all other sales tax returns required to be filed by Concession Licensee.

(b) Cash Handling and Cash Management Policies. In connection with the conduct of the Operations, Concession Licensee agrees to employ reasonable and appropriate internal control procedures to protect against the misappropriation of cash funds, which procedures shall be subject to the reasonable inspection by and approval of Concession Licensor. In addition, Concession Licensee agrees to deposit all cash Gross Receipts in a federally-insured depository institution. Concession Licensee agrees to keep records of cash received that are adequate to fulfill the accounting, reporting and auditing requirements of Section 13 hereof.

#### 10. Use of Facilities.

(a) Access to Facilities. Access to the Foodservice Facilities shall be limited to the authorized representatives of, and other persons designated by, Concession Licensor and Concession Licensee for the purpose of the reasonable exercise of Concession Licensor's and Concession Licensee's rights and obligations hereunder.

(b) Signs, Displays and Advertising. Concession Licensee agrees that all signs and displays, and the content and graphics thereof, to be utilized by Concession Licensee at the Arena shall be subject to the prior reasonable approval of Concession Licensor. Concession Licensee may use its name and logo and that of any affiliate of Concession Licensee, as well as the name and logo of Concession Licensor and the name by which the Arena is known in the signage, displays, menus and similar items used in connection with the Operations.

(c) Parking. Concession Licensor shall use reasonable efforts to provide to Concession Licensee, sufficient parking spaces, located reasonably proximate to the Arena and the Foodservice Facilities, for Concession Licensee's employees and vendors whenever possible; provided, however, that during times when events occur on the same day in both the Arena and Network Associates Coliseum, Concession Licensor may be unable to provide parking to all of Concession Licensee's employees and vendors.

(d) Office Space and Equipment; Utilities. Concession Licensor shall provide to Concession Licensee the office space and equipment existing and used as office space and equipment currently by Concession Licensee and the current general concessionaire, (except for any equipment and/or furnishings owned by the current general concessionaire) for use by Concession Licensee's employees (e.g., chefs, sous chefs, Director of Operations to manage the Operations), which shall include, but not be limited to, furniture, phone systems, HVAC, electricity and lighting. The office space and

equipment is listed on Exhibit "G", attached hereto. Concession Licensor shall also provide to Concession Licensee all necessary utilities at no cost to Concession Licensee except for costs related to actual telephone usage, which shall be at Concession Licensee's sole cost. Concession Licensee shall attempt to use reasonable efforts to conserve energy, including without limitation: (i) having PG&E conduct an energy audit for Concession Licensee at no cost to Concession Licensee, and shall implement all reasonable recommendations not requiring the expenditure of funds or having a negative economic impact on Concession Licensee, and shall make recommendations to Concession Licensor regarding Capital Budget items commensurate with such audit, and (ii) conduct employee education and training on energy conservation.

(e) Replacement of Equipment. In addition to providing Concession Licensor with the Food Service Plan that includes a proposed budget for recommended capital expenditures, Concession Licensee shall be responsible for consulting with Concession Licensor with respect to all necessary replacements of furniture, fixtures and equipment, the entire cost of which shall be borne by Concession Licensor.

11. Definition of Gross Receipts. As used in this Agreement, the term "Gross Receipts" shall mean the total gross revenues actually collected from the Operations pursuant to the terms of this Agreement sold in or from the Foodservice Facilities; provided, however, Gross Receipts shall not include any (i) service charges, discounted sales (reasonably requested by the Team or the Concession Licensor) or gratuities retained by employees, (ii) any service or discount charges on credit card sales, or (iii) any city, county, state or federal use, excise or similar tax imposed on the sale or use of the Food and Beverage Items collected and paid to applicable taxing authorities by Concession Licensee.

12. Commissions.

(a) Commissions. As consideration for Concession Licensor's grant of the exclusive rights and privileges to Concession Licensee pursuant to this Agreement, and as the sole compensation due and owing from Concession Licensee to Concession Licensor, Concession Licensee agrees to pay Concession Licensor the following percentages of Gross Receipts generated in the following parts of the Food and Beverage Areas during each Contract Year; provided, however, it is expressly understood that the increasing percentages referred to herein shall be incremental and shall not be retroactive to the first dollar of the Gross Receipts derived (collectively, the "Commissions"):

<u>Source of Gross Receipts</u>	<u>Amount of Gross Receipts</u>	<u>Percentage of Gross Receipts</u>
General Concessions	\$0-\$3,500,000.00	47.00%
	Greater than \$3,500,000.00	50.00% on the increment

**Clubs**

**Team Games**

Contract Years 1-3	18.00%
Contract Years 4-5	20.00%

**Events Other than Team Games**

Contract Years 1-3	33.00%
Contract Years 4-5	35.00%

**In-Seat Service Areas**

Contract Years 1-3	\$0-100,000.00	8.00%
	\$100,000.01-300,000.00	11.00% on the increment
	\$300,000.01-500,000.00	13.00% on the increment
	Greater than \$500,000.00	18.00% on the increment
Contract Years 4-5	\$0-100,000.00	10.00%
	\$100,000.01-300,000.00	13.00% on the increment
	\$300,000.01-500,000.00	15.00% on the increment
	Greater than \$500,000.00	20.00% on the increment

**Suite Service**

Contract Years 1-3	18.00%
Contract Years 4-5	20.00%

**Catering**

Contract Years 1-3	18.00%
Contract Years 4-5	20.00%

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Concession Licensor and Concession Licensee acknowledge that commissions for catering, regardless of location of service, will be paid at the above Catering rate.

(b) Local Businesses. In order to encourage small local business participation at the Arena, Concession Licensee will have the flexibility to exempt or reduce Commissions paid on \$125,000 of sales made at Team games, and an additional \$125,000 of sales for all other Arena events, by qualified small local businesses. Concession Licensor desires that local producers of food and beverage products as well as outside services be utilized when these products of services are available on competitive pricing terms and with equal or superior quality. Concession Licensee agrees to consider as many of these as reasonably feasible in its operation, considering the requirements of this Agreement and

Concession Licensee's high quality control standards. Concessions Licensee agrees to actively recruit and mentor small local businesses through an annual "Opportunity Fair" as well as other means, to the extent reasonably appropriate and at a reasonable level. Concession Licensee shall provide to Concession Licensor a quarterly report of local business activity. "Small Local Businesses" as used herein shall mean businesses located in Alameda County with less than \$5,000,000.00 in annual gross revenues.

(c) Subcontractors; Vending; Local Vendors. Fifty Percent (50%) of the amounts received by Concession Licensee from its subcontractors (including Small Local Businesses) after Concession Licensee's itemized expenses (for example, including, without limitation, all costs incurred by Concession Licensee, such as monitoring subcontractors, advertising, and cost of hosting subcontractors) shall be paid to Concession Licensor. Fifty Percent (50%) of the amounts received by Concession Licensee from third party vendors after Concession Licensee's expenses shall be paid to Concession Licensor. Fifty Percent (50%) of the amounts received by Concession Licensee from local vendors after Concession Licensee's expenses shall be paid to Concession Licensor. Upon Concession Licensor's reasonable request, Concession Licensee shall have the right to review (and not copy) subcontractor, third party vendor, and local vendor agreements with Concession Licensee.

13. Accountings; Payment of Commissions. Not later than the end of the second business day after each event, Concession Licensee shall deliver to Concession Licensor a preliminary report of its estimated Gross Receipts at such event. Within twenty (20) days following the last day of each month during the Term, Concession Licensee shall provide Concession Licensor with a statement detailing all Gross Receipts from the Operations generated during such month, together with the report described in Section 4 hereof (separated by area), together with a statement of the applicable Commissions due for such Gross Receipts (collectively, the "Statement"). Included in this report will be copies of the daily reports, daily bank deposits, register receipts (if the Arena POS allows it), stand sheets, sales tax reports, and any other information reasonably pertinent to Gross Receipts the Concession Licensor may reasonably require upon request. When Concession Licensee delivers the Statement, Concession Licensee shall also pay to Concession Licensor the appropriate Commissions for such month. If Concession Licensee fails to pay such Commissions (unless it is permitted to withhold such Commissions pursuant to the side letter attached hereto as Exhibit "E") by the Twentieth (20<sup>th</sup>) day following the last day of each month during the term, the amount due and payable shall accrue interest at the Bank of America prime rate plus Two Percent (2%) to the date such Commissions are fully paid. Within sixty (60) days following the conclusion of each calendar year during the Term, Concession Licensee shall provide Concession Licensor with a complete accounting certified by Concession Licensor's Chief Financial Officer (collectively, the "Final Statement"), setting forth the calculation of the annual Gross Receipts, (separated by area) and the total Commissions due for the applicable period, in a form reasonably satisfactory to the Concession Licensor. At any time during the Term, and for a period of one (1) calendar year thereafter, Concession Licensor and its designated representatives shall have the opportunity, at

their sole cost and expense (subject to the provisions set forth below), to inspect the books and records of Concession Licensee solely and directly related to the financials of this Agreement to verify the figures contained in each Statement or Final Statement, as the case may be. In the event that Concession Licensor disputes such figures, Concession Licensor shall deliver a written notice of such dispute to Concession Licensee ("Dispute Notice"). If Concession Licensor and Concession Licensee are unable to resolve such dispute within ninety (90) days following the delivery of the Dispute Notice, Concession Licensor and Concession Licensee shall immediately submit the dispute for resolution to a nationally recognized public accounting firm to be mutually agreed to by Concession Licensor and Concession Licensee (the "Accounting Firm"). The determination of Gross Receipts and Commissions in accordance with the terms hereof made by the Accounting Firm after a full and complete inspection of Concession Licensee's books and records shall be final and binding upon the parties. If the Accounting Firm determines that the computation of Gross Receipts or Commissions contained in any Statement or the Final Statement as the case may be, is inaccurate and not previously corrected, then either Concession Licensor shall promptly pay to Concession Licensee, or Concession Licensee shall promptly pay to Concession Licensor, such amount as is necessary to reflect the adjustment of Gross Receipts or Commissions based upon the Accounting Firm's determinations (the "Adjusted Amount"). If the Accounting Firm determines that the computation of Gross Receipts or Commissions contained in any Statement or the Final Statement, as the case may be, is understated by the greater of (i) \$25,000.00 or (ii) five percent (5%) or more, then, in addition to the Adjusted Amount, Concession Licensee shall pay the entire cost of the Accounting Firm's engagement. In all other events, the cost of the Accounting Firm's engagement and the costs of Concession Licensor's inspection of the books and records of Concession Licensee shall be borne by Concession Licensor. Concession Licensor shall also have the right to reasonably inspect during normal business hours, and during events with advance notice when such inspection will not reasonably interfere with Concession Licensee's responsibilities, the inventory of Concession Licensee.

14. Scope; Duration; Termination; Default.

(a) Concession Licensor hereby grants Concession Licensee the right to be the exclusive provider of all Operations in the Food and Beverage Areas for: (i) the Premium Areas for a period of five (5) years and one (1) month, commencing July 1, 2004 (the "Commencement Date"), and (ii) the General Concessions Areas for a period of five (5) years, commencing on August 1, 2004, and, unless otherwise extended by Concession Licensor pursuant to the terms of this Agreement, expiring on the later of: (x) July 31, 2009, or (y) the conclusion of the Team's 2008-2009 NBA season (the "Term"). The Term shall be extended an additional five (5) years ("Additional Term") at the sole discretion of the Concession Licensor, and only if Concession Licensee agrees to such Additional Term. Both parties shall only be required to perform under an Additional Term if they can agree to mutually agreeable terms of an extension. If there is an Additional Term, then such period shall be considered "Term" as well hereunder. For purposes of this Agreement, the term "Contract Year" shall mean the twelve (12) month period commencing on August 1 and expiring on the next ensuing July 31. In the event that: (i) a strike or labor dispute involving employees of Concession Licensor or Team,

and/or (ii) a force majeure event or events as described in Paragraph 24, results in the Team playing less than thirty (30) of their regular season games at the Arena in any given Contract Year, Concession Licensee shall have the right and option to extend the Term one (1) Contract Year for each such occurrence. The Smallwares shall be returned to Concession Licensor, reasonable wear and tear excepted, at the end of the Term.

(b) Concession Licensor shall have the right to terminate this Agreement and Concession Licensee's services for all of the Operations upon the occurrence of any default by Concession Licensee and upon thirty (30) days prior written notice to Concession Licensee specifying the nature of such default. A default shall be defined as the occurrence of any one (1) or more of the following:

(i) Concession Licensee shall file a voluntary petition in bankruptcy, or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute or law relating to bankruptcy, insolvency or other relief for debtors, whether federal or state, or shall seek, consent to or acquiesce in the appointment of any trustee, receiver, conservator or liquidator of Concession Licensee or of all or any substantial part of its properties (the term "acquiesce," as used herein, being deemed to include, but not be limited to, the failure to file a petition or motion to vacate or discharge any order, judgment or decree providing for such appointment within the time specified by law); or a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Concession Licensee seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute or law relating to bankruptcy, insolvency or other relief for debtors, whether federal or state, and Concession Licensee shall consent to or acquiesce in the entry of such order, judgment or decree, or the same shall remain unvacated and unstayed for an aggregate of sixty (60) days from the day of entry thereof, or any trustee, receiver, conservator or liquidator of Concession Licensee or of all or any substantial part of its properties shall be appointed without the consent of or acquiescence of Concession Licensee and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days;

(ii) Concession Licensee fails to perform any of its services or obligations (excluding payment obligations to Concession Licensor, which shall be covered under in Paragraph 14(b)(iii) below) in the manner or within the time required under this Agreement or commits or permits a breach of, or default in, any of its duties, liabilities or obligations hereunder and fails to fully cure or remedy such failure, breach or default within thirty (30) days after written notice from Concession Licensor to Concession Licensee specifying, in sufficient detail, the nature of such failure, breach or default, or, if such breach or default cannot reasonably be cured within thirty (30) days, fails to commence such cure or remedy within said thirty (30) day period and fails to diligently prosecute such

cure or remedy to completion as soon as is reasonably possible thereafter but in each case no later than ninety (90) days from the date such cure is commenced; or

(iii) Concession Licensee fails to make timely payments to Concession Licenser hereunder in a reasonably timely fashion and such default is not cured within fifteen (15) days after written notice is received by Concession Licensee.

Upon termination of this Agreement pursuant to subparagraphs (i), (ii), or (iii) above, Concession Licensee shall only be obligated to pay the Commissions for Gross Receipts generated prior to the date the Concession Licensee actually ceases to operate at the Arena (provided, however, Commissions will only be paid when collected by Concession Licensee) in accordance with Paragraph 13 above, less amounts owed by Concession Licenser to Concession Licensee, if any.

(c) In the event that all of Concession Licensee's services are terminated as provided in this Paragraph 14, Concession Licensee shall, at the request of Concession Licenser, continue to serve as Concession Licensee of the Operations until a successor is selected and commences work in the Foodservice Facilities or until such earlier date as Concession Licenser shall specify; provided that Concession Licensee shall not be obligated to so continue as Concession Licensee for a period in excess of thirty (30) days. The terms and conditions of this Agreement shall continue to be fully applicable during such period as if no termination had occurred; provided that such request shall be deemed to constitute Concession Licenser's agreement to pay Concession Licensee any amounts otherwise owed to Concession Licensee.

(d) Concession Licensee shall have the right to terminate this Agreement upon the occurrence of any of the following events of default by Concession Licenser and upon written notice to the Concession Licenser specifying the nature of such default:

(i) Concession Licenser shall file a voluntary petition in bankruptcy, or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute or law relating to bankruptcy, insolvency or other relief for debtors, whether federal or state, or shall seek, consent to or acquiesce in the appointment of any trustee, receiver, conservator or liquidator of Concession Licenser or of all or any substantial part of its properties (the term "acquiesce," as used herein, being deemed to include, but not be limited to, the failure to file a petition or motion to vacate or discharge any order, judgment or decree providing for such appointment within the time specified by law); or a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Concession Licenser seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute or law relating to bankruptcy, insolvency or other relief for debtors, whether federal or state, and Concession Licenser shall consent to or acquiesce in the entry of such order,



judgment or decree, or the same shall remain unvacated and unstayed for an aggregate of sixty (60) days from the day of entry thereof, or any trustee, receiver, conservator or liquidator of Concession Licensor or of all or any substantial part of its properties shall be appointed without the consent or acquiescence of Concession Licensor and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days; or

(ii) Concession Licensor fails to timely perform any of its obligations under this Agreement or fails to timely make payments due to Concession Licensee hereunder in a reasonably timely fashion and such default is not cured within thirty (30) days after written notice is given by Concession Licensee to Concession Licensor specifying, in sufficient detail, the nature of such failure, breach or default, or, if such breach or default cannot reasonably be cured within thirty (30) days, fails to commence such cure or remedy within said thirty (30) day period and fails to diligently prosecute such cure or remedy to completion as soon as is reasonably possible thereafter but in each case no later than ninety (90) days from the date such cure is commenced.

(e) In the event that, for any reason, this Agreement is terminated prior to its scheduled expiration, Concession Licensor hereby agrees, as a condition precedent to such earlier termination, to pay Concession Licensee, in a single lump sum payment, the unamortized value of any investment made by Concession Licensee (if any) and approved by Concession Licensor, amortized on a mutually agreeable basis.

(f) Notwithstanding anything in this Agreement to the contrary, neither Concession Licensor nor Concession Licensee shall be entitled to seek, claim or collect damages in excess of the actual and direct damages actually incurred or sustained as a result of a breach or violation of this Agreement. Accordingly, Concession Licensor and Concession Licensee hereby expressly waive any right to seek, claim or collect any punitive, indirect, special, speculative or consequential damages in connection with, or related to, a breach or violation of this or any other agreement entered into between Concession Licensor and Concession Licensee.

(g) Concession Licensor hereby expressly agrees that, during the Term (including any extensions thereof) and for a period of twenty four (24) months following either the expiration or earlier termination of this Agreement, none of Concession Licensor, the manager of the Arena, or any other food or beverage service operator or concessionaire providing food and beverages in, to or for any areas of the Arena, nor any of their respective affiliates, related entities or individuals shall directly or indirectly solicit, hire, offer to hire or employ any former or current salaried management-level employee of Concession Licensee (including, but not limited to, Concession Licensee's current or former general manager, chefs, sous chefs and the managers of the various areas of the Foodservice Facilities) to work in or in connection with the Arena or the Foodservice Facilities as a consultant, employee, independent contractor or otherwise in any other

capacity, without Concession Licensee's prior written approval, which approval can be granted or denied in Concession Licensee's sole and absolute discretion. The provisions of this Paragraph 14(g) shall survive the termination of this Agreement for any reason.

(h) Any public announcements made upon the expiration or earlier termination of this Agreement shall be reasonably agreed upon in advance by Concession Licensor and Concession Licensee.

#### 15. Indemnity.

(a) To the fullest extent permitted by law, Concession Licensee hereby indemnifies, defends, protects and forever holds Concession Licensor, its respective shareholders, officers, directors, partners, members, employees, agents and representatives (collectively, the "Concession Licensor's Indemnitees") harmless from and against any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments, awards, costs and expenses (including reasonable attorneys' fees, paraprofessional fees, expert fees and court-related costs), such indemnity covering, but not being limited to, business interruption claims, bodily injury, sickness, disease, death or injury to or destruction of tangible property, but in all events, except as expressly provided below, only to the extent arising directly or indirectly, in whole or in part, out of the gross negligence or any willful misconduct, omission or breach of its obligations under this Agreement by Concession Licensee or by any of its officers, directors, agents or employees, in connection with this Agreement or Concession Licensee's performance of its duties or Concession Licensor hereunder. The indemnification obligation contained in this Paragraph 15(a) shall expressly include, but will not be limited to, damage which occurs as a result of the consumption of Food and Beverage Items sold by Concession Licensee at the Arena. Notwithstanding the foregoing, this Paragraph 15(a) does not require Concession Licensee to indemnify, defend, protect or hold Concession Licensor or Concession Licensor's Indemnitees harmless for claims, demands, losses, liabilities, actions, lawsuits or other proceedings, judgments, awards, costs and expenses resulting from (i) the willful or negligent acts or omissions of Concession Licensor or any of Concession Licensor's Indemnitees or any contractors hired or retained by any of them, (ii) the willful or negligent acts or omissions of the Arena's construction contractor, any construction subcontractors, the Arena architect or any other persons involved in the design, construction, renovation or modification of the Arena (including, but not limited to, the Foodservice Facilities), or (iii) any damages, claims or liabilities resulting from any part of the Arena other than the Foodservice Facilities. If any action or proceeding (including any governmental investigation) shall be brought or asserted against Concession Licensor or Concession Licensor's Indemnitees, in respect of which indemnity may be sought from Concession Licensee, Concession Licensor and Concession Licensor's Indemnitees, as the case may be, shall promptly notify Concession Licensee in writing and Concession Licensee shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to Concession Licensor and Concession Licensor's Indemnitees, as the case may be, and the payment of all expenses. If Concession Licensee assumes the

defense of such action or proceeding, any such indemnified party shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of such indemnified party unless (A) Concession Licensee, in its sole and absolute discretion, has agreed in advance and in writing to pay such fees and expenses, or (B) Concession Licensee has failed to assume the defense of such action or proceeding or employ counsel reasonably satisfactory to the indemnified party in any such action or proceeding. Concession Licensee shall not be liable for any settlement of any such action or proceeding effected without its written consent, but if there be a final judgment for the plaintiff in any such action or proceeding, or if any such action or proceeding shall be settled and Concession Licensee shall have consented to such settlement, Concession Licensee agrees to indemnify, protect, defend and hold harmless both Concession Licensor and Concession Licensor's Indemnitees from and against any loss or liability by reason of such judgment or settlement.

(b) To the fullest extent permitted by law, Concession Licensor hereby indemnifies, defends, protects and forever holds Concession Licensee, its partners, each of its and their respective shareholders, officers, directors, partners, members, affiliates, employees, agents and representatives (collectively, the "Concession Licensee's Indemnitees") harmless, from and against any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments, awards, costs and expenses (including reasonable attorneys' fees, expert fees, ~~paraprofessional~~ professional fees and court-related costs), such indemnity covering, but not limited to, ~~business interruption~~ business interruption claims, bodily injury, sickness, disease, death or injury to or destruction of tangible property, but in all events, except as expressly provided below, only to the extent arising directly or indirectly, in whole or in part, out of the gross negligence or any willful misconduct or omission or breach of its obligations hereunder by Concession Licensor or by any of its officers, directors, agents or employees, in connection with this Agreement. Notwithstanding the foregoing, this Paragraph 15(b) does not require Concession Licensor to indemnify, defend, protect or hold Concession Licensee or Concession Licensee's Indemnitees harmless for claims, demands, losses, liabilities, actions, lawsuits or other proceedings, judgments, awards, costs and expenses resulting from the willful or negligent acts or omissions of Concession Licensee or any of Concession Licensee's Indemnitees. If any action or proceeding (including any governmental investigation) shall be brought or asserted against Concession Licensee or Concession Licensee's Indemnitees, in respect of which indemnity may be sought from Concession Licensor, Concession Licensee and Concession Licensee's Indemnitees, as the case may be, shall promptly notify Concession Licensor in writing, and Concession Licensor shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to Concession Licensee and Concession Licensee's Indemnitees, as the case may be, and the payment of all expenses. If Concession Licensor assumes the defense of such action or proceeding, any such indemnified party shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of such indemnified party unless (i) Concession Licensor, in its sole and absolute discretion, has agreed in writing

to pay such fees and expenses, or (ii) Concession Licensor has failed to assume the defense of such action or proceeding or employ counsel reasonably satisfactory to the indemnified party in any such action or proceeding. Concession Licensor shall not be liable for any settlement of any such action or proceeding effected without its written consent, but if there be a final judgment for the plaintiff in any such action or proceeding, or if any such action or proceeding shall be settled and Concession Licensor shall have consented to such settlement, Concession Licensor agrees to indemnify, protect, defend and hold harmless both Concession Licensee and Concession Licensee's Indemnitees from and against any loss or liability by reason of such judgment or settlement.

(c) Any monetary liability indemnified under subparagraph (a) or (b) above shall be reduced by the proceeds of insurance received by the indemnified party.

(d) The provisions of this Paragraph 15 shall survive the termination of this Agreement for any reason.

16. Independent Contractor. In performing its services hereunder, Concession Licensee is an independent contractor of Concession Licensor and not an employee, agent, partner, or joint venturer of Concession Licensor.

17. Ownership in Foodservice Facilities; Authority of Concession Licensee. Concession Licensee shall have no ownership rights in the Foodservice Facilities, nor any claim of ownership with respect thereto, arising out of this Agreement or the performance of its services hereunder. This Agreement shall in no way be construed to authorize Concession Licensee to engage in any brokerage services or activities of any similar nature relating to the Foodservice Facilities.

18. Taxes and Contributions. Concession Licensee assumes full and exclusive responsibility and liability for withholding and paying, as may be required by law, all federal, state and local taxes and contributions with respect to, assessed against, or measured by Concession Licensee's earnings hereunder, or salaries or other contributions or benefits paid or made available to any persons retained, employed or used by or for Concession Licensee in connection with its services, and any and all other taxes and contributions applicable to its services for which Concession Licensee may be responsible under any laws or regulations, and shall make all returns and/or reports required in connection with any and all such laws, regulations, taxes, contributions and benefits.

19. Qualification. Concession Licensee shall, at its own expense, qualify to do business in the State of California.

20. Severability. Each provision of this Agreement is intended to be severable. If any term or provision hereof shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be deemed to be severed from this Agreement and shall not affect the validity of the remainder of this Agreement.

21. Consents; Waiver. Concession Licensor and Concession Licensee hereby expressly acknowledge and agree that, unless otherwise expressly stated to the contrary in this Agreement, all of the consents and approvals that are necessary or required from either Concession Licensor or Concession Licensee hereunder shall not be unreasonably conditioned, delayed, withheld or denied. The granting of any consent or approval in any one instance by or on behalf of either Concession Licensor or Concession Licensee shall not be construed to waive or limit the need for such consent in any other or subsequent instance. No waiver, express or implied, by either Concession Licensor or Concession Licensee to or of any breach or default by the other party in the performance by the other of its obligations hereunder shall be valid unless in writing, and no such waiver shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

22. Governing Law. This Agreement is entered into in the State of California and shall be governed by the laws thereof.

23. Time of Essence. Subject only to the provisions of Paragraph 24 below, time is of the essence in the performance of this Agreement.

24. Force Majeure. A delay in or failure of performance by Concession Licensor or Concession Licensee shall not constitute a default, nor shall Concession Licensor or Concession Licensee be held liable for loss or damage, if and to the extent that such delay, failure, loss or damage is caused by occurrences beyond the reasonable control of such party, and its agents, employees, contractors, subcontractors and consultants, including, but not limited to acts of God or the public enemy, expropriation or confiscation of facilities, compliance with any order or request of any governmental authority or person purporting to act therefor, acts of declared or undeclared war, weapon of war employing atomic fission or radioactive force, whether in the time of peace or war, public disorders, rebellion, sabotage, revolution, earthquakes, tornadoes, floods, riots, strikes, labor or employment difficulties, delays in transportation, inability of a party to obtain necessary materials or equipment or permits due to existing or future laws, rules or regulations of governmental authorities, or any other causes, whether direct or indirect, and whether or not of the same class or kind as those specifically above named, not within the reasonable control of such party, or its agent, employees, contractors, subcontractors and consultants, and which by the exercise of reasonable diligence said party is unable to prevent. Neither Concession Licensor nor Concession Licensee shall be entitled to the benefits of this Paragraph 24 unless it gives reasonably prompt written notice to the other of the existence of any event, occurrence or condition which it believes permits a delay in the performance of its obligations pursuant to this Paragraph 24; provided, however, if the other party is already aware of such event causing the Force Majeure, no such written notice shall be required.

25. Assignment and Subcontracts. Concession Licensee shall have no right, power, or authority to assign this Agreement, or any portion hereof or any moneys due or to become due hereunder, or to delegate any duties or obligations arising hereunder, either voluntarily,

involuntarily or by operation of law, without the prior written approval of Concession Licensor, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, a transfer, assignment, delegation or sub-contract of this Agreement of duties or obligations arising hereunder to any of Concession Licensee's partners or affiliates (or any of their affiliated or related entities) existing as of the date of this Agreement shall not constitute a transfer, assignment, delegation or sub-contract under this Paragraph and, therefore, shall not require Concession Licensor's approval (any other transfer shall require Concession Licensor's approval), provided that any transferee expressly assumes in writing the terms and conditions of this Agreement. In the event that Concession Licensor sells or in any way transfers its rights to grant the right to sell food and beverage items in the Arena, this Agreement shall be transferred or assigned, subject to Concession Licensee's approval, which approval shall not be unreasonably withheld, conditioned or delayed, provided that prior to the consummation of such sale, assignment or transfer, such purchaser(s), assignee(s) or transferee(s) expressly assumes in writing the terms and conditions of this Agreement and agrees to be bound by all of the obligations of Concession Licensor contained in this Agreement. Without waiver of the foregoing provisions, all of the rights, benefits, duties, liabilities and obligations of the parties hereto shall inure to the benefit of, and be binding upon, their respective successors and assigns.

26. Modification of Agreement. This Agreement constitutes the entire agreement between the parties hereto. To be effective, any modification of this Agreement must be in writing and signed by an authorized representative of the party to be charged thereby.

27. Headings. The headings of the paragraphs of this Agreement are inserted for convenience of reference only and shall not in any manner affect the construction or meaning of anything contained herein or govern the rights or liabilities of the parties hereto.

28. Interpretation. Whenever the context requires, all words used in the singular number shall be deemed to include the plural and vice versa, and each gender shall include any other gender. The use herein of the word "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

29. Notices. All notices, requests and communications required or permitted hereunder shall be in writing and shall be sufficiently given and, deemed to have been received upon personal delivery or, if mailed, upon the first to occur of actual receipt as evidenced by written receipt for certified or registered mail or a nationally recognized overnight courier service, refusal or delivery or notification by the United States Postal Service to the sending party that the notice, request or communication is not deliverable at the address of the receiving party set forth below due to the unwillingness of the recipient to accept delivery:

If to Concession Licensor: Oakland Alameda County Coliseum Authority

7000 Coliseum Way  
Oakland, California 94621  
Fax: (510) 383-4575  
Attn: Executive Director

With a copy to: Oakland Alameda County Coliseum Authority  
7000 Coliseum Way  
Oakland, California 94621  
Fax: (510) 383-4575  
Attn: General Counsel

If to Concession Licensee: Andrew J. Lansing  
CEO/President  
Levy Restaurants  
980 North Michigan Avenue  
Suite 400  
Chicago, Illinois 60611

With a copy to: Michael T. Perlberg, Esq.  
Vice President/General Counsel  
Levy Restaurants  
980 North Michigan Avenue  
Suite 400  
Chicago, Illinois 60611

With a copy to: Concession Licensee's Director of Operations at his/her  
offices in the Arena

Notice of a change in address of one of the parties shall be given in writing to the other parties as provided above, but shall be effective only upon actual receipt.

30. Confidentiality. Concession Licensee acknowledges that the Concession Licensor is a California public entity and is therefore subject to the California Public Records Act, as it may be from time to time amended and will be subject to similar laws of the State of California if and when enacted. To the extent permitted by law, the following confidentiality provisions shall be adhered to:

(a) Any financial statements or other financial information that may be provided by either party to the other prior to the execution of, or pursuant to the requirements contained in, this Agreement, whether provided voluntarily or in satisfaction of an obligation to do so, and the terms of this Agreement, shall be kept strictly confidential by the party receiving the same, except and only to the extent that such information may be required to be reported for purposes of the receiving party's financial statements or public reporting requirements, to or by any duly constituted governmental authorities or to any bank or other financial institution providing financing

to Concession Licensee, Concession Licensor or any of their respective affiliated or related entities or owners.

(b) During the course of the performance of Concession Licensee's services pursuant to this Agreement, Concession Licensee may utilize certain information that relates to its past, present or future research, development, business activities, products, services, technical knowledge and knowledge capital ("Confidential Information"). Furthermore, during the course of Concession Licensee's Services hereunder, Concession Licensee may utilize certain proprietary materials, tools and methodologies, including, but not limited to, software, programs and systems (including modifications and adaptations thereto), documentation, training manuals and procedures (hereinafter collectively referred to as "Service Solution Tools"). Service Solution Tools shall be deemed to be included as part of Concession Licensee's Confidential Information.

(c) Concession Licensor hereby acknowledges and recognizes the competitive advantage and value associated with Concession Licensee's Confidential Information and hereby agrees to use its best efforts to, at all times, protect and preserve the confidentiality of Concession Licensee's Confidential Information. Concession Licensor hereby agrees that it shall not have or retain any right, title or interest in the Confidential Information, except to use them during the term of this Agreement as expressly authorized by Concession Licensee from time-to-time and solely for the purpose of furthering Concession Licensee's services pursuant to this Agreement. Nothing in this Agreement shall restrict, prohibit or limit, in any way, Concession Licensee's use of the Service Solution Tools in any manner or for any purpose whatsoever.

(d) Concession Licensor hereby agrees that all Confidential Information, and all copies thereof, shall be returned to Concession Licensee or, at Concession Licensee's election, may be removed by Concession Licensee upon the first of the following to occur: (a) the expiration or earlier termination of this Agreement or (b) Concession Licensee's request.

(e) Concession Licensor and Concession Licensee hereby expressly acknowledge and agree that the terms and provisions of this Paragraph 30 shall survive the expiration or earlier termination of this Agreement.

(f) If Concession Licensee, in its sole discretion authorizes Concession Licensor to use any Service Solution Tools, Concession Licensor may only use such Service Solution Tools for its internal business purpose and may not use or share them for the benefit of any other party. The Service Solution Tools are made available "AS IS" without express or implied warranties of any kind.

31. Security. Concession Licensee shall be responsible for securing the Food Service Facilities and all equipment and other items used in connection with the Services. Concession Licensor shall be exclusively responsible for providing adequate security throughout the entire Arena, at Concession Licensor's cost. Concession Licensee acknowledges that Concession



Licensors shall be responsible for public order and safety and shall have the right and Concession Licensors to eject individuals from the Foodservice Facilities as necessary. Concession Licensee agrees to reasonably cooperate with Concession Licensors by following all reasonable written security procedures provided by the Concession Licensors or its managing agent, including, but not limited to employee background check (only to the extent: (i) background checks are consistent with the internal policies of Concession Licensors, or (ii) if Concession Licensors reasonably requests background checks consistent with all applicable laws, and pays for all costs of such tests), identification badges, and access restrictions where appropriate. Concession Licensee shall make all reasonable efforts to protect the purchasing, storage, preparation and serving of the Food and Beverage Items from adulteration or contamination, whether from terrorist acts or otherwise. Concession Licensors will cooperate with the Concession Licensee in connection with the foregoing. Concession Licensee shall immediately notify the Concession Licensors of the occurrence of any such adulteration or contamination and of the steps taken and to be taken by Concession Licensee to control the spread of and to eliminate, such adulteration or contamination.

32. Insurance.

(a) Liability Insurance. Concession Licensee shall obtain and maintain, at all times throughout the Term, comprehensive general liability (including liquor liability), property damage, and contractual liability insurance insuring against, among other things, the losses, expenses and liabilities described in Paragraph 15(a) above. The policy shall provide primary coverage and shall provide liability limits equal to \$1,000,000.00 per occurrence and \$4,000,000.00 in the aggregate. In addition, Concession Licensee shall also obtain and maintain workers' compensation insurance coverage in accordance with the State of California statutory requirements. Concession Licensors hereby agrees that it will obtain and maintain, at all times throughout the Term, adequate insurance to cover, among other customary risks that may be incurred and insured for by Concession Licensors, the losses, expenses and liabilities described in Paragraph 15(b) above.

(b) Property Damage Insurance. Concession Licensors shall be responsible for maintaining all insurance for all of the furniture, fixtures and equipment utilized in connection with the Operations against property damage for one hundred percent (100%) of the replacement value of such assets. Concession Licensors hereby releases Concession Licensee from any and all liability and responsibility to Concession Licensors in excess of \$250,000.00 per occurrence, or anyone claiming through and under Concession Licensors by way of subrogation or otherwise, for any loss, damage or injury to the property of Concession Licensors or its employees caused by fire or other peril, even if such fire or other peril shall have been caused by the fault of Concession Licensee or anyone for whom Concession Licensee may be responsible.

(c) Certificates of Insurance; Additional Insureds. Within thirty (30) days after the date hereof, and on October 1 of each year during the Term, Concession Licensee shall furnish to Concession Licensors a certificate of insurance evidencing that

the insurance policies described in subparagraphs (a) and (b) of this Paragraph 32 are in full force and effect, and such certificate shall be in a form acceptable to Concession Licensor, which acceptance shall not be unreasonably withheld, conditioned or delayed. Concession Licensee shall allow Concession Licensor to review copies of such insurance policies if reasonably requested. Unless otherwise requested by Concession Licensor, OACC, Inc., the City of Oakland, the County of Alameda, Oakland Coliseum Joint Venture, the Team and the Concession Licensor, shall, all be named as additional insured parties under all insurance policies, and in each certificate of insurance, described in this Paragraph 32.

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

OAKLAND ALAMEDA COUNTY COLISEUM  
AUTHORITY, a joint powers authority created by the City  
of Oakland and the County of Alameda

By: \_\_\_\_\_

Its: Chair

Attest:

Secretary

Levy Premium Foodservice Limited Partnership,  
an Illinois limited partnership, by its General  
Partner, Levy GP Corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

Approved:

CITY OF OAKLAND

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

COUNTY OF ALAMEDA

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT "A"**

**FACILITIES**

**The areas located in the Arena designated as Foodservice Areas on that certain set of "as built" drawings on file in the office of the Concession Licensor and labeled "to provide description of certain facilities as set forth in Exhibit A and Exhibit C of that certain Arena Concession License Agreement, by and between the Oakland Alameda County Coliseum Authority and Levy Premium Foodservice Limited Partnership, dated, \_\_\_\_\_ 2004."  
[CONCESSION LICENSEE NEEDS TO REVIEW AND APPROVE]**

**EXHIBIT "B"**

**EQUIPMENT**

**[TO BE PROVIDED BY CONCESSION LICENSOR AND VERIFIED BY CONCESSION  
LICENSEE]**

**DRAFT**

**EXHIBIT "C"**

**SMALLWARES**

**GENERAL CONCESSIONS AREAS**

**Please see attached.**

**PREMIUM AREAS**

<b>Item</b>	<b>Number</b>
Sheet Pans	550
1/2 size Sheet Pan	12
Hot Box (medium)	5
Hot Box (small)	2
Hot Box (tall)	4
Electric Hot Box	2
Metro Racks	25
Glass Racks	19
Cake Stands	12
3 Tier Display Stands - oval	3
3 Tier Display Stands - round	4
3 Tier Display Stands - Triangle	1
4 Ring Condiment Holder	8
2 Ring Risers	2
3 Ring Risers	3
Tomato Slicer	1
Crock Pots	5
Electric Warmers	7
Coffee Warmers	4
5 Plate Displays	3
Fruit Display	2
Wood Sandwich Boards	33
Tupperware 10X20 Lids	20
Lexann Black Bowls	10
Lexann Triangle Trays	30
Lexann Oval Trays	17
Grill Plates	5
Paella Pans	10
Large Skillets	3
Small Skillets	3
Teflon Skillets	5
Sauce Pans	4
Can Openers	2
Wells Warmers	2

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Cold Roller	2
Hand Mixer	1
Mixing Bowls	9
Lexann 5 Gallon Containers	22
Lexann 3 Gallon Containers	2
Lexann Bins - Large	19
China Platters	100
Plastic Pitcher	18
Metal Water Pitcher	4
Acrylic Cutting Boards	14
1/3 Plastic Insert Pan	6
1/2 6 inch Plastic Insert Pan	2
1/6 4 inch plastic insert Pan	5
1/2 6 inch Plastic Insert Pan	2
Plastic 200 Pans	4
Plastic 1/4 Pans	3
Plastic 1/6 Pans	3
Wire Whip	1
3 Gallon Plastic Lid	9
1/3 Pan Plastic Lid	4
5 Gallon Plastic Lid	11
Assorted Plastic Lids - various size	15
Plastic Measured Bin	4
14 inch Plastic Serving Trays	30
Hors D'oeuvre Tray	22
Full Pan Plastic Lids	6
China Dollys	4
11 inch China Dinner Plates	446
7.5 inch China Plates	120
China Saucers	110
China Coffee Cups	35
Glass Coffee Cups	20
Glasses - various	400
Compote Plate	2
Cobbler Bowls	30
Octagon China Sauce Bowl	30
200 Pans - Full	316
400 Pans - Full	112
600 Pans - Full	12
2 inch perforated pan - Full	4
4 inch 1/2 Perforated Pan	1
2 inch 1/2 Pan	30
4 inch 1/2 Pan	35
4 inch 1/3 Pan	30
6 inch 1/3 Pan	14
6 inch 1/6 Pan	1
Bain Marie Pans	6

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Roasting Pan	1
Woks	8
Muffin Tins	4
Slicer	2
Utensils - various (tongs, ladles, spoons)	350
Table Flatware - various	480
Chafing Dishes	82
Heating Elements - Chaffers	41
Round Boards	10
Wooden Platters	13
Copper Pans	1
Pizza Pans	12
Floor Mats	40
Wicker Baskets - various	186
Condiment Stands - Concession	4
Metal Cones	78
Metal Cone Bases	65
Utensil Caddies	70
Condiment Cups	158
Napkin Dispensers	11
Tray Stands	8
Dessert Carts	3
Countertop Steam Wells	4
Butane Burners	4

01/25/2017



## EXHIBIT "D"

### MONITORING STANDARDS

#### 1. GENERAL.

- Representations of Concession Licensee. These Monitoring Standards have been agreed to by Concession Licensor and Concession Licensee. Any changes, amendments or modifications to the Monitoring Standards shall only be made with the prior written approval of Concession Licensor and Concession Licensee. In performing all of the Operations as expressly described in the Agreement, Concession Licensee represents and warrants that it shall both (i) comply with the Monitoring Standards set forth herein, as well as (ii) strive to maximize revenues (consistent with all opportunities presented and the terms of this Agreement) derived from the performance of the Operations. These Monitoring Standards are not intended by the parties to lessen, add to or abrogate any rights, responsibilities or obligations of the parties under the Agreement, but are an attempt to provide definition and clarification for the Monitoring Standards agreed to by Concession Licensor and Concession Licensee.

#### 2. STANDARDS.

- Quality Service. Concession Licensee shall perform the Operations in a timely, quality, and appropriate manner, exercising reasonable due and customary professional care in order to achieve a quality of service, taking into consideration all relevant factors, such as all opportunities presented to Concession Licensee and the terms of this Agreement. In satisfying such objective, Concession Licensee and its employees shall reflect positively on Concession Licensor and the Team.
- Comparable to Other Arenas.
  - a) Concession Licensee represents and covenants that it shall provide the Operations in a manner that is as good as or better than the level of service and quality offered in other arenas throughout the Term of this Agreement, consistent with all opportunities presented at the Arena, and subject to the terms of these Monitoring Standards. Specifically, Concession Licensee's performance of all of the components of the Operations, quality food preparation, fresh, innovative, high-quality food items, and prompt courteous service to patrons, shall equal or exceed the qualitative performance of concessionaires performing similar services at all of the following arenas: HP Pavilion, America West Arena, and Arrowhead Pond. In the event that technological or other facilities-related advances or components, which are added to any of these facilities after the execution of this Agreement, impact that facility concessionaire's ability to perform certain of its concessions services (e.g., if such facility is later equipped with "smart card" technology which improves the timeliness of the facility concessionaire's club seat service), Concession Licensee's Performance

Standard for that particular concessions service component (e.g., club seat service timeliness) shall only be compared to such additional facility concessionaire if Concession Licensor has acquired similarly advanced technology or facility-related component for the Arena.

b) Concession Licensor shall have the burden of proving that Concession Licensee has failed to provide the Operations in a manner which is as good as or better than the level of service and/or quality of any of the concessionaires at the comparison facilities. As a result, Concession Licensor will establish the level of service in a comparison facility by utilizing all available information including, without limitation, information from facility management and, to the extent available, customer satisfaction surveys.

3. **CUSTOMER SATISFACTION.** Concession Licensor reserves the right to create and establish customer satisfaction surveys for its patrons to be distributed and analyzed on a regular basis. The scope, questions and manner of distribution will be reasonably determined by Concession Licensor, in consultation with Concession Licensee. The intent of the surveys will be to provide feedback to Concession Licensor as to Concession Licensee's performance of the Operations as reviewed by patrons. Concession Licensee and Concession Licensor will evaluate and review results of the surveys taken and Concession Licensee will make all reasonable changes to its Operations which are less than the quality standards required herein.

4. **FOOD QUALITY FRESHNESS.** Concession Licensee shall at all times serve fresh, hot (where appropriate) food. The Premium Areas chef will have experience, reputation, and abilities comparable to the chefs working for the Concession Licensee. Concession Licensee represents and warrants that the food quality, freshness and variety for the Premium Areas will be of a level at least as good as that of the comparable facilities listed above in these Monitoring Standards, consistent with all opportunities presented and the terms of this Agreement. Concession Licensee shall maintain sufficient levels of each product displayed on any menus, or menu boards for all of the Food and Beverage Areas to ensure that all Arena patrons reasonable needs and requests are met throughout the course of each event.

**EXHIBIT "E"**

**FORM OF SIDE LETTER**

**April \_\_, 2004**

**VIA FEDERAL EXPRESS**

Oakland Alameda County Coliseum Authority  
7000 Coliseum Way  
Oakland, California 94621  
Attention: Ann M. Haley/Executive Director

Golden State Warriors  
1011 Broadway  
Oakland, California 94607-4019  
Attention: Robert Rowell/President

**DRAFT**

Re: Agreement Between the Parties

Dear Ladies and Gentleman:

This letter agreement (the "Letter Agreement") is to augment the Arena Concession License Agreement of even date herewith (the "Agreement"), between the Oakland Alameda County Coliseum Authority ("Concession Licensor") and Levy Premium Foodservice Limited Partnership ("Concession Licensee"). This Letter Agreement augments the Agreement with regards to the issues outlined below, which effect the Concession Licensor, the Concession Licensee, and the main tenant of the Oakland Arena (the "Arena"), which is the Golden State Warriors, a National Basketball Association franchise (the "Team"). Terms capitalized herein but not defined shall have the meanings ascribed in the Agreement.

Concession Licensee, Concession Licensor, and the Team all recognize the value of securing sponsorship relationships for the Arena. Concession Licensee acknowledges that: (i) the Team has full control of advertising in the Arena and sponsorships related to the Team through the Term and any extensions, for all events and that the Team has the sole right to enter into advertising and sponsorship agreements related to the Team concerning the interior of the Arena and the naming rights to the Arena, subject to the provisions of the License Agreement, between the Team, the Concession Licensor and the Oakland Alameda County Coliseum, Inc., dated July 31, 1996, as amended (the "License Agreement"), including possible exterior signage related thereto (collectively, the "Team Sponsorship Areas"), and (ii) the Concession Licensor has the rights to all other advertising and sponsorship rights related to the Arena that is not a Team Sponsorship Area ("Concession Licensor Sponsorship Areas"). Concession Licensor hereby represents and warrants to Concession Licensee that: (i) Concession Licensor (and no

other entity, other than the Team) has no right, related to the Concession Licensor Sponsorship Areas or otherwise, to sell advertising or sponsorship which could effect the Operations or the price or quality of Food and Beverage Items through the Term and any extensions, and (ii) that the Team and the Concession Licensor are the only entities that have the right to enter into an agreement which could effect the price or quality of Food and Beverage Items.

The Team and the Concession Licensor will use reasonable efforts to ensure that any advertising or sponsorship agreements it enters into concerning the Team Sponsorship Areas and the Concession Licensor Sponsorship Areas, as the case may be, will not result in the impairment of the quality of the Food and Beverage Items served by Concession Licensee (as compared to comparable Food and Beverage Items served at other similar venues listed in the Monitoring Standards in, Exhibit D of the Agreement).

Further, the Team and the Concession Licensor will use reasonable efforts to ensure that any advertising or sponsorship agreement it enters into concerning the Team Sponsorship Areas and the Concession Licensor Sponsorship Areas, as the case may be, will not result in an increase in the cost of Food and Beverage Items (as compared to the Concession Licensee's pricing for comparable Food and Beverage Items of similar size and type from suppliers used regularly by Concession Licensee in similar markets). In addition, if the Team or Concession Licensor desires for Concession Licensee to use certain types of products as a result of an advertising or sponsorship arrangement (for example, a 20 ounce "contour" bottle of Coca Cola rather than post mix syrup), the Team, if the Team makes such request, or the Concession Licensor, if the Concession Licensor makes such request, will reimburse the Concession Licensee to the extent it increases the cost of such Food and Beverage Item by more than 5% (but only to the extent such increase exceeds the 5% increase in the cost to Concession Licensee) by using such types of products (as compared to the cost of using its usual type of products, for example, post mix syrup). Concession Licensee shall also receive the benefits of the applicable Vendor Terms (as defined below). In the event the Team or Concession Licensor decides to enter into any advertising or sponsorship agreement (or enters into any other similar relationship) that increases the costs that Concession Licensee incurs for such Food and Beverage Item by more than 5%, then the Team or Concession Licensor, as the case may be, shall fully reimburse Concession Licensee for any such cost increases for such Food and Beverage Items, but only to the extent such increase exceeds the 5% increase in the cost to Concession Licensee.

Subject to the foregoing, in order for Concession Licensee to provide Concession Licensor with high quality Food and Beverage Items and in order for Concession Licensee to maintain the high standards of operations that it requires, Concession Licensee shall purchase inventory, equipment, and services from various sellers and vendors selected by Concession Licensee in its sole discretion (each, a "Vendor"). Subject to the foregoing, purchases from Vendors shall be made under such terms Concession Licensee deems acceptable in its sole discretion ("Vendor Terms"). All Vendor Terms are the exclusive obligations and property of Concession Licensee. Neither Concession Licensor nor the Team have any liability under, or any right to, any Vendor Terms, and no Vendor Terms will reduce or otherwise affect the amount or performance of Concession Licensor's or the Team's obligations. Concession Licensee covenants that the Vendor Terms will not: (i) impair the quality of the Food and

Beverage Items served by Concession Licensee (as compared to comparable Food and Beverage Items served at other similar venues listed in Exhibit D of the Agreement), (ii) increase the costs for such Food and Beverage Items (as compared to the Concession Licensee's pricing for comparable Food and Beverage Items of similar size) more than 5% as compared to the cost to acquire such comparable Food and Beverage Items in similar markets, or (iii) be generally less favorable to Concession Licensor or the Team than terms that would be available to Concession Licensor or the Team through unrelated third party vendors in an arms-length transaction. The foregoing shall be in accordance with any applicable federal, state, or local statute, law code, regulation, or ordinance. If Concession Licensee wants to bring any branded products into the Arena, it must get the Team's prior approval which will not unreasonably withheld, conditioned, or delayed. Concession Licensee shall reasonably consult with the Team and Concession Licensor in notifying them what products it is using in the Arena.

In addition, the parties hereto agree that the Concession Licensee shall have no obligation whatsoever to extend credit to the Concession Licensor, the Team, or any other patron of the Arena. Concession Licensee will use a credit card on file for all patrons, which shall be the only form of credit to be extended by Concession Licensee. If Concession Licensee decides to extend credit in any manner to the Team or Concession Licensor, and Concession Licensee is not fully repaid within sixty (60) days of billing provided that such billing is provided to the Team or the Concession Licensor, as the case may be, within thirty (30) days of the incurrence of any charges for which such credit is extended, then Concession Licensee shall have the right to withhold or offset against Commissions such amount which it is owed. The Team agrees that if the Concession Licensee withholds Commissions as provided in this paragraph related to charges incurred by the Team, the Concession Licensor shall deduct the amounts withheld from the amounts the Concession Licensor is required to pay the Team under the License Agreement.

In addition, Concession Licensee may, in a reasonable and tasteful, fashion, promote its affiliation with the Team, Concession Licensor, the Arena and the services provided by Concession Licensee under the Agreement in Concession Licensee's and its affiliates corporate stationery, brochures and similar promotional material.

The parties hereto indicate their agreement and acceptance to the terms and conditions detailed herein by executing this Letter Agreement.

Sincerely,

**Levy Premium Foodservice  
Limited Partnership**

**By:** \_\_\_\_\_

Its: Secretary of General Partner

Agreed to and Accepted  
this \_\_\_ day of April, 2004

Golden State Warriors

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Agreed to and Accepted  
this \_\_\_ day of April, 2004

Oakland Alameda County  
Coliseum Authority

By: \_\_\_\_\_  
Its: \_\_\_\_\_

DRAFT

S:\LAW\Restaurants - Sports & Entertainment\Current Locations\Oakland\Correspondence\Side Letter to OAK & GSW v7.doc

**EXHIBIT "F"**

(40)

## FOOD STANDARDS

Beef	USDA Choice
Ground Beef	USDA Good or Better, not to exceed 20% fat content, no soy additive or extended. All ground beef to be 100% ALL BEEF.
Pork	USDA Number 1
All Meat should be cut to I.M.P. Specifications	
Poultry	USDA Grade "A"
Eggs	USDA Grade "A", Large
Fresh Fruits/Vegetables	USDA Fancy or highest grade Obtainable in each commodity.
Frozen Fruits/Vegetables/Juices	USDA Fancy as available
Canned Fruits/Vegetables/Juices	USDA Choice
Cheese	USDA Grade "A". No cheese Substitutes or cheese food permitted.
Milk	USDA Grade "A"
Ice Cream	USDA Grade "A", not less than 10% butterfat and not exceeding 85% over-run with maximum of 3% stabilizer.

**EXHIBIT "G"**

**OFFICE SPACE AND EQUIPMENT**

**OFFICE SPACE:**

**The areas located in the Arena designated as Office Space on that certain set of "as built" drawings on file in the office of the Concession Licensor and labeled "to provide description of certain facilities as set forth in Exhibit A and Exhibit G of that certain Arena Concession License Agreement, by and between the Oakland Alameda County Coliseum Authority and Levy Premium Foodservice Limited Partnership, dated, \_\_\_\_\_2004."  
[CONCESSION LICENSEE NEEDS TO REVIEW AND APPROVE]**

**EQUIPMENT**

**[TO BE PROVIDED BY CONCESSION LICENSOR AND VERIFIED BY CONCESSION LICENSEE]**

**DRAFT**



**STAFF REPORT**  
**April 8, 2004**

**APPROVAL OF ARENA CONCESSIONS AGREEMENT WITH LEVY  
RESTAURANTS**

**Background**

On December 11, 2003 the Oakland-Alameda County Coliseum Authority Board of Commissioners adopted a "Review Process" to evaluate arena concessions proposals. This process included the formation of a six-member "Review Panel" to recommend a food service company to the Board. On January 22, 2004, the Review Panel recommendation was presented, and the Authority Board agreed by a majority vote, to make Levy Restaurants the "initial selection" to handle food and beverage services for the arena. This initial selection was subject to the following stipulations:

1. Limiting the contract to a five-year term, instead of Levy's proposed 10-year term
2. No capital investment made by Levy (and therefore no repayment by the Authority)
3. Provisions for the hiring of current employees
4. A plan for the utilization of local Alameda County businesses
5. Monitoring of Levy's service and its accountability for such service

**Key Elements of Proposed Contract**

*Please note: Attached is a copy of the form of the agreement for your review. Please refer to the attached agreement for the full terms of the agreement.*

1. Term - The Board voted to decline accepting any investment dollars from Levy in order to shorten the contract term to five years. At the end of the five years, the option to extend the contract for another five years is at the Authority's sole discretion. Levy declined to include their proposed commission structure for Years 6-10 in this contract, so there may be no reason for the Authority to automatically renew this contract.
2. Capital Investment – The Authority will make an initial investment of up to \$2,000,000 to pay for the kitchen, additional commissary space (if needed), re-concept of concession stands and portable carts and

replacement of smallwares. If possible within the \$2,000,000 maximum, a new Point of Sale system will be purchased. The Authority will determine how the \$2,000,000 will be spent. We are requiring Levy to provide written approval of these expenditures to avoid future disputes as to how this money was invested in the food service operations.

3. Ongoing Costs - There is no commitment of further investment by the Authority, other than the replacement of equipment and facilities, if necessary. It will be Levy's responsibility to repair and maintain the food service equipment and facilities.
4. Commission Structure – The commissions outlined in the contract reflect the Levy proposal commission structure for Years 1-5. Also included in the contract is interest accrual for late payments.
5. Projected Revenue – Actual commissions received by the Authority (before sharing with the Warriors) in Fiscal Year 2002-2003 were \$2,133,933. Projected revenues using the new Levy commission structure applied to the Fiscal Year 2002-2003 actual gross sales numbers would net to the Authority \$2,357,609. This is a projected increase of \$323,676 or approximately 15%.
6. Definition of Gross Receipts – Levy will pay commissions on all revenues collected and retained except for service fees. The Warriors have agreed to sign a letter saying they will allow the Authority to deduct from the Warriors share of concessions commissions, the amount the Authority would have realized from the service fees. Levy will not pay a commission on sales taxes collected and credit card fees, since these monies are not retained by Levy. As a point of clarification, this does not mean the Authority is paying these credit card fees. We are waiving our commission on the fees that Levy pays to the credit card companies.
7. Employee Retention – The contract includes a commitment by Levy to employ all current, qualified, non-management food service employees of the Arena. Levy has the sole right to manage all matters relating to labor relations, including negotiation of any collective bargaining agreements.
8. Local Businesses – In addition to the commission exemption provided by the Authority and Warriors to encourage local small vendor participation, Levy will hold annual "Opportunity Fairs" to actively recruit and mentor local small businesses. Levy will also provide quarterly reports of local business activity including vendors selling

food and beverages at the Arena as well as suppliers of local food and beverage products and outside services.

9. Audit Requirement – Previous mandatory audits of Gross Receipts by the concessionaire merely verified that the Gross Receipts reported to the Authority match the Gross Receipts reported to the auditor, with additional inspection of backup documents. We felt this method was insufficient protection for the Authority, when dealing with a business that handles so much cash. Therefore, we've added rights to inspect cash collection procedures with access to all relevant books and records so that we will be able to verify the accuracy of reported Gross Receipts. We have retained our rights to audit Levy's books at any time during the Term and within one calendar year after the Term, at our own expense.
10. Food Banks – Levy will make reasonable efforts to make donations to local food banks and/or other community programs.
11. Conflict of Interest – In the contract Levy states that it has not entered into any other agreement or partnership relative to this contract.

**Warriors' Approval** – In the Authority's License Agreement with the Golden State Warriors, the Warriors have the right to approve the selection of Levy Restaurants as well as the contract. The Warriors are prepared to approve Levy's selection and the contract, as written. The Authority has consulted with the Warriors regularly during the initial selection and contract negotiations. The Warriors have been cooperative throughout the process.

### **Exhibits & Side Letter**

**Exhibit A Facilities** (not attached) – Blueprints indicating which parts of the Arena will be licensed to Levy through this agreement

**Exhibit B Equipment** (not attached) – This list of equipment has been created, we're just waiting for Aramark to finish noting which pieces of equipment they purchased on their own.

**Exhibit C Smallwares** – Attached is a list of smallwares from the premium part of the Arena. We have a list of smallwares from general concessions, but not in electronic format, so it is not attached here.

**Exhibit D Monitoring Standards** – This exhibit, details how Levy's performance in all components of operation, food quality, and prompt courteous service will be compared to that of food service providers in three arenas:

- HP Pavilion in San Jose
- The Pond in Anaheim
- America West Arena in Phoenix

If Levy fails to meet the standards of the other arenas, the Authority will have cause to terminate the agreement.

**Exhibit E Side Letter between Levy, Warriors and Authority** – Basically this letter states that all three parties, Levy, Authority and Warriors, will respect the Warriors' exclusive rights to sell advertising in the interior of the Arena. It also says generally that the Warriors can require Levy to serve certain products if doing so does not impair food quality or substantially increase Levy's costs. The Authority also states that it will not require Levy to do anything which would reduce food quality or dramatically increase Levy's costs.

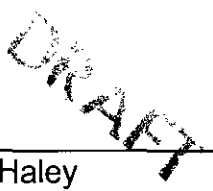
**Exhibit F Food Standards** – This list, which was also in the Arena Concessions RFP, cites general food standards. Levy agrees to conform to at least these standards in Section 6 of the contract.

**Exhibit G Office Space and Equipment** (not attached) – The office space to be allocated to Levy is shown on Exhibit A. We have an inventory of office equipment and furnishings for the Arena but are waiting for Aramark to note which of this equipment and furnishings they own.

**Service Fee Commissions Side Letter** – This letter is not incorporated into the contract because Levy is not a party to it. In the letter, the Warriors allow us to deduct from their share of commissions the amount we would have received from Levy if the service fees were included in Gross Receipts and therefore commissionable.

### Recommendation

Staff recommends the Authority ratify the contract with Levy Restaurants to provide food and beverage services for the Arena, authorizing the Chair to sign the agreement on behalf of the Authority. It is also recommended that the Executive Director be allowed to make non-substantive changes in the document, if necessary, before execution of the contract.

  
\_\_\_\_\_  
Ann M. Haley

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ORA/COUNCIL  
MAY 4 2004