

but not the obligation, to make any repairs in or to the Stadium Premises; provided, however, that the District and SMC shall be responsible for maintaining all Stadium Systems and the structural components (i.e., walls, floors and ceilings) of the Stadium, including those in the Stadium Premises.

38.1.1 Except as otherwise provided by the provisions of Article 55, any repairs or replacements to the Stadium Premises and Equipment shall be subject to the prior written approval of the District and SMC, except that Premium Concessionaire may make emergency repairs and provide notice to the District and SMC promptly thereafter.

38.2 Report and Repair of Damage. Premium Concessionaire shall promptly report to the District and SMC, and repair, consistent with the foregoing provisions of this Article 38 and with the provisions of Article 55, any and all damage to the Stadium Premises and Equipment.

38.3 District and SMC Inspections. The District and SMC will, subject to subsection 5.2.1, be permitted to make periodic inspections of the Catering Areas to determine whether the Stadium Premises and Equipment are being kept in the manner required under Section 38.1. If Premium Concessionaire has a duty to repair under Section 38.1 and Premium Concessionaire fails to repair any damage to or defect in the Equipment within thirty (30) days after receipt of written demand from the District and SMC to do so, or, if such damage cannot reasonably be repaired within such thirty (30) day period, if Premium Concessionaire fails to commence to repair such damage within thirty (30) days after receipt of such written demand or fails to diligently pursue the completion of the repair and complete the same in any event within ninety (90) days after Premium Concessionaire's receipt of such written demand, the District and SMC shall have the right, but not the obligation, to repair such damage. Subject to the provisions of Article 55, if the District and SMC repair any such damage, they shall be entitled to reimbursement for the reasonable cost thereof from the Catering Areas and Equipment Repairs and Replacement Reserve Fund or, from Premium Concessionaire upon demand, if such damage was caused by Premium Concessionaire's negligence or misconduct.

## 39. Security

39.1 Premium Concessionaire is responsible for the control of keys and access codes obtained from the District and SMC. Premium Concessionaire shall immediately report all facts relating to losses incurred as a result of break-ins to the provider of the Stadium's security service and to the District Liaison and the SMC Liaison. Any Party whose negligence or misconduct compromises security at the Stadium shall be responsible for the costs of re-keying the Stadium or reprogramming codes at the Stadium. In addition, any Party whose negligence or misconduct compromises security in the Catering Areas shall be responsible for the costs of re-keying or reprogramming codes in such area.

**40. Cleaning and Sanitation**

- 40.1 Cleaning of Catering Areas. Premium Concessionaire shall maintain at all times the Stadium Premises, including kitchens, bars, buffets, pantries, storage areas and food preparation areas, and all equipment, fixtures, paraphernalia, material, utensils and other items therein (including the Equipment), in a clean, sanitary and orderly condition, and comply with all Laws and Best Management Practices. Premium Concessionaire shall at all times permit inspection of the Stadium Premises and Equipment by authorized Governmental Authorities and, upon reasonable oral notice, by the District and SMC. The District and SMC shall have the right to require changes or modifications in Premium Concessionaire's cleaning of the Stadium Premises and Equipment that they deem reasonably necessary to preserve the cleanliness and neatness of appearance of the Stadium Premises and Equipment.
- 40.2 Cleaning Report. On an annual basis, within ninety (90) days after the end of each Contract Year, Premium Concessionaire shall provide the District and SMC with a report addressing the cleaning regimen conducted by Premium Concessionaire in connection with the operation of Stadium Catering during the past Contract Year and any modifications to be implemented during the current Contract Year. Such report will be reviewed by the District and SMC to determine Premium Concessionaire's compliance with requirements of this Agreement and Laws.
- 40.3 Premium Concessionaire's Cleaning Responsibilities. Premium Concessionaire agrees that its cleaning responsibilities include the following tasks, at Premium Concessionaire's sole expense:
- 40.3.1 Maintaining the Stadium Premises and Equipment and all areas therein which are under Premium Concessionaire's control, in a clean and sanitary condition free of all trash, debris, spilled food and beverages, dust and dirt to a high standard of cleanliness and sanitation and in compliance with all Laws;
- 40.3.2 Adhering to high standards of cleanliness and sanitation to ensure continual sanitation in performing the Obligations, including Stadium Employees' appearance and performance in the preparation, service, transport and storage of Food and related items;
- 40.3.3 Providing housekeeping, cleaning, sanitation service and supplies as necessary for the Catering Areas and Staff Areas;
- 40.3.4 Maintaining a reasonable number of trash receptacles within the Catering Areas (collectively, "Premium Concessionaire Trash Receptacles");
- 40.3.5 Emptying of all of Premium Concessionaire Trash Receptacles in accordance with the provisions of Section 42.1;

40.3.6 Within a reasonable time (and in any event within four (4) hours) following the conclusion of any Executive Suite Catered Event and any Stadium Catered Event at which Premium Concessionaire provides Stadium Catering, removing all Equipment (except Stadium Tables and Chairs), all Additional Equipment provided by or through Premium Concessionaire, Premium Concessionaire's personal property (including any linens, flatware, cutlery, china or other dishes, and glassware) and unused Food and Beverages from the Executive Suites, Club Lounges or other areas of the Stadium at which Premium Concessionaire serves Food or Beverages and transporting such Equipment, personal property and leftover Food and Beverages to the Catering Areas for disposal and cleaning;

40.3.7 Providing liners for Premium Concessionaire Trash Receptacles;

40.3.8 Providing effective extermination and pest control to the Catering Areas including kitchens, preparation areas and storage areas; and

40.3.9 Maintaining all delivery vehicles according to safety, cleanliness and sanitation standards acceptable to the District and SMC.

40.4 Cleaning Supplies. Premium Concessionaire shall provide at its sole cost and expense paper and other office, janitorial, chemical, cleaning and laundry supplies necessary for the satisfactory performance of Premium Concessionaire's maintenance and cleaning responsibilities under this Agreement.

40.5 Failure to Clean. In the event that Premium Concessionaire fails to keep the Stadium Premises clean as required herein and upon twenty-four (24) hours prior written notice transmitted via facsimile to the General Manager, the District and SMC shall have the right to perform or contract for such required cleaning, and any reasonable cost or expense incurred by the District and SMC in connection therewith will be payable by Premium Concessionaire on demand.

#### **41. Dishwashing**

41.1 In accordance with Law, Premium Concessionaire shall wash within twenty-four (24) hours after each use, all non-disposable serviceware, flatware, glassware (excluding any glassware provided by Concessionaire as part of the Alcoholic Beverage service) and cutlery used in the operation of Stadium Catering.

#### **42. Waste Handling and Disposal**

42.1 Premium Concessionaire shall place Premium Concessionaire's waste materials (excluding grease which Premium Concessionaire shall dispose of in accordance with Section 43.1) into the Premium Concessionaire Trash Receptacles and shall not place such waste materials into trash receptacles maintained and emptied by the District and SMC. Premium Concessionaire shall transport all such waste materials from the

Premium Concessionaire Trash Receptacles and from within the Catering Areas to a central waste pick-up area in or about the Stadium in a manner and by a reasonable route designated by the District and SMC. Such removal by Premium Concessionaire shall be made after each Catered Event at which Premium Concessionaire provides Stadium Catering and the cost and expense of all such waste handling shall be borne by Premium Concessionaire. The District and SMC agree to use reasonable efforts to allow Premium Concessionaire, at its sole cost and expense, to contract with any waste removal service utilized by the District and SMC. The cost of repair of damage (other than ordinary wear and tear) done to floors, walls, windows, or other property resulting from the transport or storage of waste materials by Premium Concessionaire, shall be the responsibility of Premium Concessionaire. Waste removal from the central pick-up area shall be the sole responsibility of the District and SMC and shall be at no cost to Premium Concessionaire.

- 42.2 Cleaning personnel will provide cleaning services at times reasonably designated by the Event Host. Premium Concessionaire agrees to train, or cause the training of, cleaning personnel in the Best Management Practices in connection with the Stadium's gray water conveyance system.
- 42.3 The District and SMC shall provide sufficient waste receptacles and liners within the Executive Suites, Club Lounges and other areas of the Stadium used for Catered Events. Premium Concessionaire shall cooperate in the development and implementation of a comprehensive recycling program adopted by the District and SMC; provided that Premium Concessionaire shall in no event be required to transport recyclables outside the Stadium or incur any cost payable to a third party in connection with such program.
- 42.4 Premium Concessionaire shall comply with all Laws governing the discharge of storm sewage or runoff including compliance with the Best Management Practices.

#### 43. Grease

- 43.1 Premium Concessionaire shall not discharge or permit any Premium Concessionaire Party to discharge any grease into the drains or drainage systems serving the Stadium and must keep grease in containers for disposal by Premium Concessionaire in compliance with all Laws and Best Management Practices. If Premium Concessionaire fails to comply with this provision, any fine, penalty, cost, charge or expense assessed or incurred as a result of Premium Concessionaire's failure to comply with this Section 43.1 shall be paid by Premium Concessionaire.

#### 44. Pest Control

- 44.1 Premium Concessionaire shall engage and supervise exterminators to control rodents and other vermin and pests in the Catering Areas as necessary and in any event on not less than a monthly basis. To the extent necessary, the District and SMC shall engage and supervise exterminators to control rodents and pests elsewhere in the Stadium.

Each Party shall engage only providers of extermination services that are licensed by the State and reasonably approved by the District and SMC. Upon the request of the District and SMC, Premium Concessionaire agrees to engage the provider of extermination services utilized by Concessionaire or the District and SMC. Documentation of Premium Concessionaire's extermination services shall be retained by Premium Concessionaire and provided to the District and SMC. Should such service be deemed unsatisfactory by the District and SMC, the District and SMC may, after written notice to Premium Concessionaire and the expiration of a reasonable period of time for Premium Concessionaire to correct the situation, not to exceed in any event five (5) Business Days after the date of delivery of such written notice, contract for extermination services and the reasonable cost or expense incurred by the District or SMC in connection therewith will be payable by Premium Concessionaire on demand.

**45. Utility Services Provided**

- 45.1 The District and SMC shall provide, at their sole cost and expense, Stadium Systems for use by Premium Concessionaire in the operation of the Stadium Catering, as set forth on **Schedule II** hereto.
- 45.2 The District and SMC shall not be liable to any Premium Concessionaire Party with respect to damages to either person or property (including economic injuries) resulting from any interruptions, curtailments, stoppages or suspensions of utility services or systems (including Stadium Systems), except to the extent such damages are caused by the gross negligence or willful misconduct of the District or SMC. Premium Concessionaire agrees to use commercially reasonable efforts not to waste electricity, natural gas, water and other utilities at the Stadium Premises, and to keep the Equipment in repair so that the consumption of utilities is as efficient as possible.

**46. Maintenance of Utilities**

- 46.1 The cost to repair or replace any utility service or lines (to the extent not provided by the utility provider without cost to the District or SMC) due to Premium Concessionaire's willful misconduct or negligent acts or omissions shall be at Premium Concessionaire's expense.

**47. Telephone and Telecommunications Service**

- 47.1 Premium Concessionaire shall cause all telephone and telecommunication instruments necessary for the operation of the Stadium Catering to be included within the Equipment, and the cost of telephone and/or telecommunication services for Premium Concessionaire's and the Premium Concessionaire Parties' use shall be at Premium Concessionaire's sole expense. The District and SMC shall provide all wiring, connections and infrastructure necessary to provide telephone and telecommunications service to the Stadium, including the Stadium Premises, such that Premium Concessionaire shall be able to access such service with its

instruments. The District and SMC shall provide a master telephone switch for the Stadium and shall provide Premium Concessionaire with reasonable capacity on such switch. Premium Concessionaire shall pay its proportionate share of use of the master telephone switch. SMC shall monitor and determine Premium Concessionaire's capacity on such switch and shall, on a periodic basis as determined by SMC, invoice Premium Concessionaire for Premium Concessionaire's proportionate share of use of such switch. Premium Concessionaire shall pay SMC for Premium Concessionaire's proportionate share of use of such switch within fifteen (15) days after receipt of SMC's invoice therefor.

#### **48. Performance Bond**

- 48.1 Premium Concessionaire shall, prior to the Opening Date, deliver to the District a performance bond ("Performance Bond") in the amount of Two Hundred Fifty Thousand Dollars (\$250,000), in form and content acceptable to the District and SMC, as security for the due performance of the Obligations and the indemnification of the District Parties, SMC Parties and PDB Parties against losses. Within sixty (60) days after execution of this Agreement, Premium Concessionaire shall deliver (or cause to be delivered) to the District and SMC a binding commitment letter from the proposed issuer of the Performance Bond addressed to the District and SMC. The Performance Bond shall be issued by a surety company acceptable to the District and SMC, authorized by law to conduct business in the State, and endorsed by a local representative of such surety company.
- 48.2 The Performance Bond shall remain in effect throughout the remainder of the Term of this Agreement, and all premiums shall be paid by Premium Concessionaire. At Premium Concessionaire's option, Premium Concessionaire may elect to provide the Performance Bond on an annual basis subject to the approval of the District and SMC, which approval shall not be unreasonably withheld provided there is no lapse in coverage. Premium Concessionaire agrees that in the event of a threatened or pending cancellation or termination of the Performance Bond, a new bond or bonds, or letters of credit all in form and content reasonably acceptable to the District, SMC and PDB shall be provided by Premium Concessionaire to the District, SMC and PDB prior to the effective date of any cancellation or termination.
- 48.3 The Performance Bond shall be substantially in the same form and content set as Exhibit E hereto.

#### **49. Letters of Credit**

- 49.1 As an alternative to the furnishing of the Performance Bond, the District, SMC and PDB, at their option, may agree to accept irrevocable letters of credit from a bank or banks organized pursuant to laws of the United States of America and domiciled in the State which shall be for an amount of not less than Two Hundred Fifty Thousand Dollars (\$250,000). The letters of credit shall be available by draft of the District and SMC at sight to be accompanied by the signed statement of the District and SMC in

duplicate certifying that Premium Concessionaire, after notice and an opportunity to cure to the extent provided by the provisions of this Agreement, has failed to faithfully perform any material obligation assumed by, or imposed upon said Premium Concessionaire by this Agreement. Premium Concessionaire shall take all steps necessary to ensure that the letters of credit remain issued and fully enforceable at all times during the License Term of this Agreement. Premium Concessionaire agrees that in the event of cancellation or termination of any letters of credit, new letters of credit, or bonds effecting the same guarantees to the District and SMC shall be furnished by Premium Concessionaire to the District and SMC not less than ten (10) days prior to the effective date of such cancellations or terminations.

- 49.2 The letters of credit will be issued in such form so that partial draws thereunder shall be permitted, and the District and SMC agree to draw upon such letters of credit only to the extent necessary to cover the loss incurred due the Premium Concessionaire's failure to perform any material obligation assumed by, or imposed upon said Premium Concessionaire by this Agreement.

## **50. Insurance**

- 50.1 Premium Concessionaire shall comply with all applicable state and local insurance and fire prevention codes and regulations and all reasonable requirements of the District's, SMC's and PDB's insurance policies which the District, SMC or PDB have notified Premium Concessionaire of in writing, in connection with the operation of the Stadium Catering and the use of the Stadium Premises.
- 50.2 The District and SMC shall have the right to approve the form and content of all certificates of insurance and any other necessary pages of insurance policies required to be obtained and maintained by Premium Concessionaire herein. Not later than fifteen (15) days prior to the first scheduled Pre-Opening Event, Premium Concessionaire shall furnish and deposit with the District and SMC one original copy for each of all required insurance policies in the form of certificates as required under this Article 50. By June 1, 2001, Premium Concessionaire shall deliver (or cause to be delivered) to the District and SMC a binding commitment for the issuance of the insurance policies required under this Section from the proposed insurer addressed to the District and SMC. Premium Concessionaire shall not commence any work or the operation of Stadium Catering under this Agreement until it has obtained all of the required insurance, bonds and the approval of the District and SMC. All insurance policies shall (i) be issued by an insurance company authorized by law to conduct business in the State with the financial rating of at least A- [Class VII status], as rated in the most recent edition of Best's Insurance Reports, (ii) be issued as a primary policy, (iii) contain an endorsement requiring forty-five (45) days' written notice from the insurance companies to the District, SMC and PDB before cancellation, modification or change in the coverage, scope or amount of any policy if any such change or modification would cause the insurance coverages provided to be less than those required by this Article 50, and (iv) name the District Parties, SMC Parties and PDB Parties as additional insureds (and not as named insureds). Such insurance

company and policies are subject to the prior approval and acceptance of the District and SMC. A new certificate shall be required if at any time Premium Concessionaire changes insurance carriers. Premium Concessionaire shall, at its sole cost and expense, procure and maintain throughout the License Term of this Agreement the following insurance coverages with respect to the Stadium and the operation of the Stadium Catering:

- 50.2.1 Special form (all-risk) insurance, insuring against damage or destruction to Premium Concessionaire's personal property and the Equipment in an amount equal to the full replacement cost thereof, on a "risk of direct physical loss" peril basis, including coverage against explosion and collapse, and resultant damage, and sewer backup. The deductible for the all-risk insurance shall not exceed \$5,000 per occurrence.
- 50.2.2 Commercial General Liability coverage, containing a per location or per project aggregate endorsement, with the addition of coverages as broad and as encompassing as the Broad Form Comprehensive General Liability endorsement in the occurrence form, including liquor/dram shop liability, providing coverage against claims for bodily injury (including inoculations) or death and property damage occurring in or upon or resulting from the use or occupancy of the Stadium or from or out of Premium Concessionaire's and Premium Concessionaire Parties' performance or non-performance related in any way to this Agreement. Such insurance shall be primary and non-contributory with any other coverages, including that of the District, SMC and PDB and such insurance shall afford immediate defense and indemnification of the District, SMC and PDB to the limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate with umbrella excess commercial general liability coverage (containing a per location or per project aggregate endorsement) with a limit of not less than \$5,000,000 per occurrence. This insurance shall apply in excess of underlying commercial general liability, employer's liability, commercial automobile liability and liquor liability. The deductible or self-insurance retention for this coverage shall not exceed \$5,000 per occurrence.
- 50.2.3 Workers' compensation insurance covering all employees meeting statutory limits in compliance with all Laws. The workers' compensation coverage must include employer's liability insurance with limits of \$1,000,000 per accident for bodily injury by accident and \$1,000,000 per employee for bodily injury by disease. The workers' compensation coverage shall include a waiver of subrogation by Premium Concessionaire and its insurer in favor of District Parties, SMC Parties and PDB Parties and their respective Affiliates and Premium Concessionaire shall request such waiver of subrogation from its insurer.
- 50.2.4 Commercial automobile liability or comprehensive business automobile policy with a minimum \$1,000,000 combined single limit for bodily injury

or death and property damage, including loading and unloading operations. This coverage shall cover any owned, hired or non-owned motor vehicle.

- 50.2.5 Liquor liability or dram shop liability on an occurrence basis, and containing a per location or per project aggregate endorsement, subject to a \$1,000,000 combined single limit for bodily injury or death and property damage. This coverage shall apply to the insured's liability arising out of the selling, serving or furnishing of any Alcoholic Beverage.
- 50.2.6 Blanket employee dishonesty, including an endorsement for third party claims, with limits no less than \$500,000 per occurrence and \$1,000,000 in the aggregate.
- 50.3 The coverages required under Article 50, except Section 50.2.3 (Workers' Compensation), shall name the District Parties, SMC Parties and PDB Parties and their successors and assigns, as additional insureds. The additional insured endorsement language is subject to the approval of the District, SMC and PDB.
- 50.4 The special form (all-risk) coverage set forth in Section 50.2.1 shall name the District Parties, SMC Parties and PDB Parties as loss payees. The loss payee endorsement language is subject to the approval of the District, SMC and PDB.
- 50.5 All required insurance policies shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, material change affecting the coverages or reduction in coverage until forty-five (45) days' prior written notice has been given to the Metropolitan Football Stadium District, Stadium Management Company, LLC and PDB Sports, Ltd." Premium Concessionaire shall notify the insurer of the addresses to which notification shall be provided to the District, SMC and PDB as such addresses are set forth in Section 69.8 hereof, as the same may be changed in accordance with such section. In addition, the words of the general import of "endeavor to" and "but failure to mail such notice shall not impose an obligation of liability of any kind upon the company, its agents or representatives" shall be eliminated from the cancellation provision of the standard ACORD certificates of insurance.
- 50.6 Premium Concessionaire, the District and SMC agree that the specified coverage or limits of insurance in no way limit the liability of Premium Concessionaire. Premium Concessionaire shall maintain with respect to each such policy or agreement evidence of such insurance coverage and endorsements as required herein.
- 50.7 Premium Concessionaire shall, throughout the License Term of this Agreement, require any and all Subconcessionaires to provide Premium Concessionaire, the District and SMC with certificates of insurance and insurance policies evidencing the same type of Commercial General Liability, Workers' Compensation, Employers' Liability, and Commercial Automobile Liability insurance coverages with limits of no less than \$1,000,000. Said insurance shall include a waiver of subrogation, the

additional insured endorsement and the cancellation language required of Premium Concessionaire by this Agreement.

- 50.8 If Premium Concessionaire fails to comply with the insurance requirements set forth in this Article 50, the District and SMC shall have the right to obtain and keep such insurance in full force and effect and, as additional amounts payable hereunder, Premium Concessionaire shall pay the District and SMC the cost of such insurance within ten (10) days of receipt of written demand.

## **51. Waiver of Subrogation**

- 51.1 Premium Concessionaire expressly waives all rights and claims it may have against the District Parties, SMC Parties or PDB Parties and their respective Affiliates, for loss or damage to property arising or resulting from the occupancy or use of Stadium Premises, and the operations conducted therein or thereabouts (including the operation of Stadium Catering) to the extent reimbursable by insurance that Premium Concessionaire carries or is required to carry hereunder, whichever is greater and each insurance policy covering loss or damage to property procured by Premium Concessionaire shall affirmatively state that it will not be invalidated because the insured waived its rights of recovery against any Party prior to the occurrence of a loss. Each such insurance policy shall also provide that the insurer waives all rights of subrogation which such insurer may have against the District Parties, SMC Parties, PDB Parties and their respective Affiliates.

- 51.2 The District, SMC and PDB expressly waive all rights and claims they may have against Premium Concessionaire Parties and their respective Affiliates, for loss or damage to property arising or resulting from the occupancy or use of Stadium Premises and operation of Stadium Catering to the extent reimbursable by insurance that the District, SMC or PDB carries and each insurance policy covering loss or damage to property procured by the District, SMC or PDB shall affirmatively state that it will not be invalidated because the insured waived its rights of recovery against any Party prior to the occurrence of a loss. Each such insurance policy shall also provide that the insurer waives all rights of subrogation which such insurer may have against Premium Concessionaire Parties and their respective Affiliates.

## **52. Workers' Compensation**

- 52.1 Premium Concessionaire shall comply with applicable provisions of the Workers' Compensation Act of Colorado, as amended.

## **53. Non-Liability and Indemnity**

- 53.1 The District Parties, SMC Parties and PDB Parties shall not have any liability to Premium Concessionaire, or to any Premium Concessionaire Party or (to the extent permitted by Law) any Person claiming through Premium Concessionaire, for any damage, injury, loss or claim based on or arising out of the following; provided,

however, that each of the District, SMC and PDB shall each be severally (and not jointly) liable the extent such damage, injury, loss or claim results from its gross negligence or willful misconduct: (i) Premium Concessionaire's use or occupancy of the Catering Areas and the operations conducted therein (including the operation of Stadium Catering), (ii) repair by the District or SMC of any portion of the Stadium Premises or the Stadium, (iii) interruption of Premium Concessionaire's use of the Catering Areas or the Equipment, (iv) any accident or damage resulting from any use or operation of the Stadium or any Stadium System by the District, SMC, PDB, Premium Concessionaire or any other Person, (v) termination of this Agreement, subject to the provisions of Article 65, by reason of damage to the Stadium Premises or the Stadium, including any damage caused by fire, power failure, flood, robbery, theft, vandalism, explosion, mysterious disappearance or any other casualty, and leakage in any part of the Stadium Premises or the Stadium from water, rain, ice or snow that may leak into, or flow from, any part of the Stadium Premises or the Stadium, or from drains, pipes or plumbing fixtures in the Stadium Premises or the Stadium; provided, however, that nothing in this Section 53.1 shall be construed to relieve the District, SMC or PDB from liability for any breach of this Agreement.

**53.1.1 Subject to the provisions of Sections 51.1 and 53.1:**

- (a) The District shall, to the extent permitted by Law, indemnify and defend the Premium Concessionaire Parties from, and hold each of them harmless against, any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever, including the fees and disbursements of counsel, for death, bodily injury or property damage occurring in or about the Stadium (excluding the Catering Areas) or the Real Property to the extent it results from or arises out of (i) any willful misconduct or negligence of the District or any District Party and (ii) any failure of the District or any District Party to comply with any Law.
- (b) SMC shall indemnify and defend the Premium Concessionaire Parties from, and hold each of them harmless against, any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever, including the fees and disbursements of counsel, for (i) death, bodily injury or property damage occurring in or about the Stadium (excluding the Catering Areas) or the Real Property to the extent it results from or arises out of (i) any willful misconduct or negligence of SMC or any SMC Party and (ii) any failure of SMC or any SMC Party to comply with any Law.
- (c) PDB shall indemnify and defend the Premium Concessionaire Parties from, and hold each of them harmless against, any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions,

judgments, suits, costs or disbursements of any kind or nature whatsoever, including the fees and disbursements of counsel, for death, bodily injury or property damage occurring in or about the Stadium (excluding the Catering Areas) or the Real Property to the extent it results from or arises out of (i) any willful misconduct or negligence of PDB or any PDB Party and (ii) any failure of PDB or any PDB Party to comply with any Law.

- 53.2 Subject to the provisions of Section 51.2, Premium Concessionaire shall indemnify and defend the District Parties, SMC Parties and PDB Parties (each an "Indemnatee") from, and hold each of them harmless against, any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for such Indemnitees) for death, bodily injury or property damage to the extent the same results from or arises out of (i) any willful misconduct or negligent act, error or omission of Premium Concessionaire, or any Premium Concessionaire Party; (ii) failure to materially perform any of the Obligations in any material respect, (iii) any Food or Beverages (including Alcoholic Beverages) sold or service rendered by Premium Concessionaire or any Premium Concessionaire Party; (iv) the consumption of Alcoholic Beverages sold or distributed by Premium Concessionaire or a Premium Concessionaire Party at the Stadium or Real Property; (v) any failure of Premium Concessionaire or any Premium Concessionaire Party, to comply with any Law.
- 53.3 The provisions (including the waivers and indemnifications) of this Article 53 shall survive the expiration or termination of this Agreement. Notwithstanding any other provisions of this Agreement, no Party shall be liable to any other Party for consequential damages.

#### **54. Records, Accounting and Audit**

- 54.1 Premium Concessionaire shall keep at the Stadium, or at its offices within the Denver metropolitan area, an accurate and complete set of books and records of Gross Receipts and District Gross Receipts, in accordance with GAAP. Such books and records shall be kept in a hard copy format and in an electronic format in each case for seven (7) years after creation of the record, subject to the reasonable approval of the District and SMC. Premium Concessionaire shall allow the District and SMC or their auditors or other authorized representatives, at all reasonable times, upon reasonable notice, to inspect, copy and audit said books and records, correspondence, memoranda and other information relating to Gross Receipts and District Gross Receipts at the Stadium during the Term of this Agreement and for three (3) years following the License Term of this Agreement and any extensions, renewals or modifications thereof, at Premium Concessionaire's office.
- 54.1.1 Said books and records shall include, without limitation, daily Gross Receipts and District Gross Receipts, daily bank deposits, daily sales and business

transacted by Premium Concessionaire. Premium Concessionaire shall preserve and make available for audit and examination by the District and SMC or their auditors or other authorized representatives, such books and records.

- 54.2 On an annual basis, Premium Concessionaire shall deliver to the District and SMC, within one hundred twenty (120) days after the end of each Contract Year, an audit from a certified public accountant which has been approved by the District and SMC, covering Gross Receipts, District Gross Receipts and Commissions paid or due for such Contract Year. This audit shall be conducted at Premium Concessionaire's expense. In the event that either the District or SMC is not satisfied with the statements presented as a result of an audit, the District or SMC, as applicable, (the "Special Auditing Party") shall have the right to conduct, at its expense, a special audit of Gross Receipts or District Gross Receipts, as applicable, and Commissions payable, by a nationally recognized accounting firm selected by the Special Auditing Party. The Premium Concessionaire shall immediately pay any Commission(s) determined to be owed after the completion of a special audit and if such special audit reflects a deficiency in the payment of Commissions to the District or SMC, as applicable, during such Contract Year in excess of three percent (3%), the Premium Concessionaire shall reimburse the Special Auditing Party for all reasonable costs and expenses incurred in conducting such special audit. Premium Concessionaire's obligations and the District's and SMC's rights to inspect, copy and audit under this Article 54 shall survive the expiration or termination of this Agreement for a period of three (3) years following the Term of this Agreement and any extensions or renewals thereof.
- 54.3 Inventory systems to determine sales and product usage are subject to the approval of the District and SMC. Payment to Premium Concessionaire for all Stadium Catering shall be made by check or draft or electronically (including by electronic funds transfers, debit card, spot card, credit card, smart card, or value added card) and no payments to Premium Concessionaire for Stadium Catering shall be made in cash. In addition, Premium Concessionaire shall not permit any of the Premium Concessionaire Parties to make change from boxes, containers or pockets of clothing.
- 54.4 Premium Concessionaire shall provide the District and SMC with a preliminary sales report or invoice by noon of the second Business Day following each Catered Event at which Premium Concessionaire provides Stadium Catering. Additionally, an Event Summary Report shall be provided to the District and SMC in accordance with subsections 26.1.4 and 26.2.3 within twenty-five (25) days after the end of the calendar month during which the Catered Event occurred.

## **55. Catering Areas and Equipment Repairs and Replacement Reserve Fund**

- 55.1 The Parties recognize that repairs, replacements and improvements will have to be made to the Catering Areas and Equipment (excluding Catering Wares) during the Term to maintain the Catering Areas to the standards desired by the Parties.

Accordingly, Premium Concessionaire agrees that it shall make payments from Gross Receipts and District Gross Receipts into an interest bearing escrow or trustee account(s) (the "Catering Areas and Equipment Repairs and Replacement Reserve Fund"). The fund shall be maintained in a separate escrow or trustee account(s) to be used solely for repairs and replacements to the Catering Areas and Equipment, excluding Catering Wares ("Catering Areas and Equipment Repairs and Replacements"). All checks issued from the fund shall require a signature of an authorized representative of both the District and SMC. Simultaneously with each Commission payment due under Sections 26.1.1, 26.1.2, 26.2.1 and 26.2.2, Premium Concessionaire shall deposit an amount equal to one and one-half percent (1 ½%) of all Gross Receipts and District Gross Receipts, as applicable, on which such Commission payment is based into the Catering Areas and Equipment Repairs and Replacement Reserve Fund. Within forty (40) days after the end of each NFL Season during the License Term, Premium Concessionaire, the District and SMC shall meet and agree upon any Catering Areas Repairs and Equipment Repairs and Replacements which are to be made to the Catering Areas and Equipment during the Contract Year following such NFL Season. No Catering Areas and Equipment Repairs and Replacements shall be made without the concurrence of the Premium Concessionaire, District and SMC, except that SMC, subject to the provisions of Article 15 of the Lease, or Premium Concessionaire shall be permitted to make Catering Areas and Equipment Repairs and Replacements without such concurrence in emergency situations and Premium Concessionaire may also make any individual repair under five hundred dollars (\$500) not to exceed, in the aggregate, three thousand dollars (\$3,000) in any Contract Year. SMC or Premium Concessionaire (as applicable) shall be entitled to prompt reimbursement from the Catering Areas and Equipment Repair and Replacement Reserve Fund for such emergency or de minimis Catering Areas and Equipment Repairs and Replacements. Notwithstanding any provision contained herein to the contrary, the Catering Areas and Equipment Repair and Replacement Reserve Fund shall not be used for the replacement of lost, stolen or broken Catering Wares.

- 55.2 If the Catering Areas and Equipment Repair and Replacement Reserve Fund is depleted at any time during the License Term, Premium Concessionaire, the District and SMC shall discuss the repair and replacement of Catering Areas and Equipment and shall determine by consensus which Party shall bear the cost of such repairs and replacements.
- 55.3 Notwithstanding any provision in this Agreement to the contrary, if any Premium Concessionaire Party damages any portion of the Stadium Premises or Equipment through its negligence or misconduct, Premium Concessionaire shall be responsible for repairing or replacing, as applicable, such Stadium Premises or Equipment and the cost of such repairs or replacements shall not be expended or reimbursed from the Catering Areas and Equipment Repair and Replacement Reserve Fund. Notwithstanding any provision in this Agreement to the contrary, if any District Party or SMC Party damages any portion of the Stadium Premises or Equipment through its gross negligence or willful misconduct, the District or SMC, as applicable, shall

be responsible for repairing or replacing, as applicable, such Stadium Premises or Equipment and the cost of such repairs or replacements shall not be expended or reimbursed from the Catering Areas and Equipment Repair and Replacement Reserve Fund.

- 55.4 Any amount remaining in the Catering Areas and Equipment Repairs and Replacement Reserve Fund upon the termination and expiration of this Agreement shall, unless otherwise directed by the District and SMC, be transferred to the Lease Capital Replacement Reserve Fund established under the Lease.

**56. Gross Receipts Proforma**

- 56.1 On or before June 15, 2001 for the first Contract Year and at least three (3) months prior to the beginning of each subsequent Contract Year during the Term, Premium Concessionaire shall deliver to the District and SMC a Gross Receipts proforma and a District Gross Receipts proforma, in a format reasonably acceptable to the District and SMC, for the operation of Stadium Catering (i) at Executive Suite Catered Events, provided that the District and SMC have provided Premium Concessionaire with estimated attendance at such Executive Suite Catered Events at least four (4) months prior to the beginning of each such Contract Year, and (ii) for anticipated Stadium Catered Events.

**57. Taxes and License Fees**

- 57.1 Premium Concessionaire shall promptly pay all license fees and taxes on the products or services which Premium Concessionaire provides hereunder, including all federal, state and local taxes, sales and use taxes, workers' compensation payments, unemployment insurance, payroll taxes, and all other applicable taxes relating to Premium Concessionaire's operations, employees, equipment or inventory.

**58. Default**

- 58.1 Premium Concessionaire Default. Any of the following occurrences or acts shall constitute an event of default ("Premium Concessionaire's Event of Default") under this Agreement:

58.1.1 Premium Concessionaire's failure to pay when due any Commissions or any other sums due under this Agreement and the continuance of such failure for a period of more than ten (10) days after the District or SMC has delivered to Premium Concessionaire written notice thereof;

58.1.2 Premium Concessionaire's failure to perform, comply with, or observe any other material agreement or obligation of Premium Concessionaire under this Agreement and the continuance of such failure for a period of more than thirty (30) days after the District or SMC has delivered to Premium Concessionaire written notice thereof, provided that such failure shall not

constitute a Premium Concessionaire's Event of Default if Premium Concessionaire (i) commences actions to cure such default within thirty (30) days of Premium Concessionaire's receipt of the District's or SMC's notice, (ii) provides written notice to the District and SMC within such thirty (30) days describing the curative actions taken and providing a projected time period to complete such cure and (iii) diligently pursues such actions to cure such default to completion within ninety (90) days of Premium Concessionaire's receipt of the District's or SMC's notice;

58.1.3 Any representation or warranty of Premium Concessionaire under this Agreement is or becomes untrue, false or misleading in any material respect and Premium Concessionaire shall fail to make such representation or warranty true, correct and not misleading in accordance with the cure provisions in Section 58.1.2;

58.1.4 Premium Concessionaire shall cease operations of the Stadium Catering, and, except in the case of casualty or force majeure events as provided herein, such cessation shall continue for a period of five (5) days after the District and SMC request Premium Concessionaire in writing to resume such operations;

58.1.5 Premium Concessionaire or Guarantor shall make an assignment for the benefit of its creditors, or fail to have any petition filed against it in any bankruptcy, reorganization or insolvency proceeding dismissed within ninety (90) days after the institution of the same, or fail to have any receiver, trustee or liquidator or any portion of its property discharged within ninety (90) days of the appointment of the same, or file a petition seeking an order for relief under applicable bankruptcy law; and

58.1.6 An event of default under the Guaranty shall have occurred.

58.2 District/SMC Default. Any of the following occurrence or acts shall constitute an event of default ("District/SMC Event of Default") under this Agreement:

58.2.1 Subject to the provisions of Section 69.22, the Denver Broncos shall fail to hold all Home Games at the Stadium during each NFL Regular Season;

58.2.2 The District's or SMC's, as applicable, (the "Defaulting Party's") failure to pay when due any amounts due to Premium Concessionaire under this Agreement and the continuance of such failure for a period of more than ten (10) days after the Premium Concessionaire has delivered to SMC and the District written notice thereof; provided, however, that (a) the non-Defaulting Party (the District or SMC, as applicable), shall have the right, but not the obligation, to cure the Defaulting Party's default within such ten (10)-day period and shall be reimbursed by the Defaulting Party for any and all costs incurred (including reasonable attorneys' fees) in curing such default within

thirty (30) days after the Defaulting Party's receipt of written demand therefor, and (b) any and all sums expended by the non-Defaulting Party in curing such default which are not reimbursed within such thirty (30)-day period shall bear interest at the "Prime Rate" as published by The Wall Street Journal, Southwest Edition, in its listing of "Money Rates" (the "Prime Rate") on the date that the non-Defaulting Party cures such default;

58.2.3 The District's or SMC's failure to observe or perform any of the other covenants, conditions or agreements on its part to be observed or performed under this Agreement and the continuance of such failure for a period of more than thirty (30) days after the Premium Concessionaire has delivered to the District and SMC written notice thereof, provided that such failure shall not constitute a District/SMC Event of Default if the District or SMC (i) commences actions to cure such default within thirty (30) days of the District's and SMC's receipt of the Premium Concessionaire's notice, (ii) provides written notice to the Premium Concessionaire within such thirty (30) days describing the curative actions taken and providing a projected time to complete such cure, and (iii) diligently pursues such actions to cure to completion;

58.2.4 If any representation or warranty of the District or SMC under this Agreement is or becomes untrue, false or misleading in any material respect and the District and/or SMC, as the case may be, shall fail to make such representation or warranty true, correct and not misleading in accordance with the cure provisions in Section 58.2.3; and

58.2.5 The District and SMC shall make an assignment for the benefit of creditors, or fail to have any petition filed against it in any bankruptcy, reorganization or insolvency proceeding dismissed within ninety (90) days after the institution of the same, or fail to have any receiver, trustee or liquidator or any portion of its property discharged within ninety (90) days of the appointment of the same, or file a petition seeking an order for relief under applicable bankruptcy or insolvency law.

## **59. Termination by District and SMC**

59.1 Upon an occurrence of a Premium Concessionaire's Event of Default, the District and SMC, or either of them, at their option, shall have the right to terminate this Agreement by notice to Premium Concessionaire and immediately upon the giving of any such notice, this Agreement shall terminate, but the Parties shall not be released from any obligations that expressly survive the expiration or termination of this Agreement.

59.2 Upon an occurrence of a Premium Concessionaire's Event of Default, with or without terminating this Agreement, the District and SMC shall have the right to enter upon and take possession of the Stadium Premises and the Equipment. In the

event of such re-entry and repossession by the District and SMC, all of Premium Concessionaire's rights under the license granted hereunder shall be suspended, and Premium Concessionaire shall cease occupying the Stadium Premises and operating Stadium Catering. The District and SMC shall be entitled to any and all damages and other remedies that may be available at law or in equity and to reimbursement from Premium Concessionaire for any and all reasonable costs and expenses (including reasonable attorneys' fees) incurred by the District and SMC in enforcing the provisions of this Agreement, in re-entering and repossessing the Stadium Premises and in protecting and preserving the Stadium Premises by use of security guards, caretakers and other maintenance personnel. Failure of the District and SMC to strictly and promptly enforce these rights shall not operate as a waiver of the District's and SMC's rights. The foregoing provisions of this Section 59.2 shall not be construed as negating any Party's obligation to mitigate its damages.

59.3 The District and SMC, or either of them, may elect to terminate this Agreement without any cause or reason upon ninety (90) days written notice to Premium Concessionaire and payment by the Terminating Party to the Premium Concessionaire of the following fee ("Early Termination Fee"):

\$100,000	plus the amount of the Unamortized Premium Concessionaire Investment if the Termination Date occurs prior to or during the first Contract Year
\$ 90,000	plus the amount of the Unamortized Premium Concessionaire Investment if the Termination Date occurs during the second Contract Year
\$ 80,000	plus the amount of the Unamortized Premium Concessionaire Investment if the Termination Date occurs during the third Contract Year
\$ 70,000	plus the amount of the Unamortized Premium Concessionaire Investment if the Termination Date occurs during the fourth Contract Year
\$ 60,000	plus the amount of the Unamortized Premium Concessionaire Investment if the Termination Date occurs during the fifth Contract Year
\$ 50,000	plus the amount of the Unamortized Premium Concessionaire Investment if the Termination Date occurs during the sixth Contract Year
\$ 40,000	plus the amount of the Unamortized Premium Concessionaire Investment if the Termination Date occurs during the seventh Contract Year
\$ 30,000	plus the amount of the Unamortized Premium Concessionaire Investment if the Termination Date occurs during the eighth Contract Year
\$ 20,000	plus the amount of the Unamortized Premium Concessionaire Investment if the Termination Date occurs during the ninth Contract Year

\$ 10,000 plus the amount of the Unamortized Premium Concessionaire Investment if the Termination Date occurs during the tenth Contract Year

No such termination pursuant to this Section 59.3 shall be effective until the Early Termination Fee has been paid.

#### **60. Termination by Premium Concessionaire**

60.1 Upon an occurrence of District/SMC Event of Default, the Premium Concessionaire, at its option, shall have the right to terminate this Agreement by notice to the District and SMC, and, as of the last day of the Contract Year during which Premium Concessionaire provided such notice of termination or such earlier date requested by the District and SMC, this Agreement shall terminate, but the Parties shall not be released from any obligations that expressly survive the expiration or termination of this Agreement. Upon such termination, Premium Concessionaire shall have the right to pursue any remedy against the District and SMC that may be available at law or in equity and shall be entitled to reimbursement from the District and SMC for any and all reasonable costs and expenses (including reasonable attorneys' fees) incurred by Premium Concessionaire in enforcing the provisions of this Agreement; provided, however, that this Section 60.1 shall not be construed as negating Premium Concessionaire's obligation to mitigate its damages.

60.2 Premium Concessionaire may elect to terminate this Agreement without any cause or reason after the completion of fourth (4th) Contract Year upon the following conditions:

60.2.1 Premium Concessionaire shall deliver written notice of its election to terminate to the District and SMC;

60.2.2 Premium Concessionaire shall pay to SMC contemporaneously with its delivery of notice to SMC pursuant to subsection 60.2.1 a fee in the amount of:

- (a) \$60,000 if such notice is delivered prior to the end of the fifth (5th) Contract Year;
- (b) \$50,000 if such notice is delivered during the sixth (6th) Contract Year;
- (c) \$40,000 if such notice is delivered during the seventh (7th) Contract Year;
- (d) \$30,000 if such notice is delivered during the eighth (8th) Contract Year;
- (e) \$20,000 if such notice is delivered during the ninth (9th) Contract Year; and
- (f) \$10,000 if such notice is delivered during the tenth (10th) Contract Year.

60.2.3 The termination shall be effective on the date which is the later of one hundred eighty (180) days after the date of the delivery of notice to the District and SMC or the last day of the Contract Year in which such notice is delivered to the District and SMC; provided, however, at the election of SMC the effective date of the termination may be accelerated to a date selected by SMC in a written notice to the District and Premium Concessionaire.

60.2.4 Premium Concessionaire shall be deemed to have waived all rights to the payment of the Unamortized Premium Concessionaire Investment or the Unamortized Equipment Investment.

## **61. Self Help**

61.1 In the event that Premium Concessionaire abandons the Stadium Premises during the License Term, in addition to any other remedies under this Agreement, in law or at equity, the District and SMC have the right, but not the obligation, to operate Stadium Catering and, in their discretion, terminate this Agreement and enter into a premium concession agreement with any other Person. If the District and SMC elect to operate Stadium Catering, terminate this Agreement and enter into a premium concession agreement with another Person, Premium Concessionaire shall reimburse the District and SMC for all reasonable costs associated therewith, including reasonable attorneys' fees. The District and SMC shall also have the right to offset the amount of reimbursable costs against any sums owing from either of them to Premium Concessionaire in the event of the failure of Premium Concessionaire so to reimburse.

## **62. Surrender and Removal of Items from the Stadium Premises**

62.1 Upon the expiration or termination of this Agreement, Premium Concessionaire shall peaceably deliver up and surrender the Stadium Premises to the District and SMC in good order and repair, subject to the provisions of Article 55, except for ordinary wear and tear provided that if this Agreement is terminated by the District or SMC pursuant to the provisions of Section 59.3 or by the Premium Concessionaire pursuant to the provisions of Section 60.1, the Terminating Party shall pay the Premium Concessionaire an amount equal to the Unamortized Premium Concessionaire Investment in accordance with the provisions of this Section 62.1. If this Agreement is terminated with cause by the District and SMC (including any termination pursuant to the provisions of subsection 7.2.1.1), or is terminated in accordance with the provisions of Article 65 (damage or destruction), Article 66 (condemnation) or Section 69.15 (unpermitted Transfer or attempted Transfer) the District and SMC shall pay the Premium Concessionaire an amount equal to the Unamortized Equipment Investment in accordance with the provisions of this Section 62.1. If this Agreement is terminated by Premium Concessionaire pursuant to the provisions of Section 60.2, the District and SMC shall have no obligation to Premium Concessionaire the amount of the Unamortized Premium Concessionaire

Investment or the Unamortized Equipment Investment. The obligation of the District and SMC or the Terminating Party (in the event of termination pursuant to 59.3 or 60.1) to pay the Unamortized Premium Concessionaire Investment or the Unamortized Equipment Investment, as applicable, (i) shall survive the expiration or termination of this Agreement, (ii) shall be independent of the Obligations and (iii) shall not be subject to any deductions or setoffs by the District or SMC on account of any breach or default by or claim against Premium Concessionaire by the District or SMC; provided, however, that nothing in this Section 62.1 shall prevent SMC or the District from bringing an independent action or counterclaim against Premium Concessionaire. In addition to Premium Concessionaire's other remedies at law or in equity and subject to the provisions of this Section 62.1, in the event that the District and SMC or the Terminating Party (in the event of termination pursuant to 59.3 or 60.1) fail to pay the Unamortized Premium Concessionaire Investment or the Unamortized Equipment Investment (as applicable) within sixty (60) days after any other termination of this Agreement (excluding termination under Article 65 or 66), the Parties agree that title to the Equipment shall automatically revert to Premium Concessionaire, and Premium Concessionaire shall have the right to remove the Equipment from the Stadium.

- 62.2 Upon the expiration or termination of this Agreement, the District and SMC may in their discretion require Premium Concessionaire to remove the Premium Concessionaire Inventory and any and all of the Premium Concessionaire's personal property and related items, constructed or placed on the Stadium Premises by Premium Concessionaire or Premium Concessionaire Parties, title to which has not vested in the District and SMC, whether permanently affixed to the Stadium Premises or not, and to restore the Stadium Premises and leave them and the Equipment in as good condition as at the commencement of this Agreement, ordinary wear and tear excepted. Premium Concessionaire shall remove all waste, stocks and material, supplies, tools, and similar items belonging to Premium Concessionaire and Premium Concessionaire Parties. Except as otherwise expressly provided by this Agreement, the cost of any and all such removals and restorations shall be borne by Premium Concessionaire. Premium Concessionaire, the District and SMC shall jointly conduct a closing inventory, and, except for Equipment which has been retired at the end of its useful life, Premium Concessionaire shall replace any Equipment which has been lost, damaged or destroyed by Premium Concessionaire, ordinary wear and tear excepted.
- 62.3 Subject to the provisions of Section 62.1, Premium Concessionaire shall not remove or permit the removal from the Stadium of any piece of Equipment, furnishings or other items belonging to the District or SMC including any of the Equipment without the prior written consent of the District and SMC, which consent may be withheld in their sole and absolute discretion.

### **63. Community Involvement**

- 63.1 Premium Concessionaire agrees to reasonably cooperate with charitable or other civic-minded programs that the District, SMC or PDB may endorse or sponsor (including consultation and supervision of Culinary Events pursuant to the provisions of Section 11.1), provided that Premium Concessionaire is given advance notice and an opportunity to comment on such programs.

**64. Representations and Warranties**

- 64.1 The District hereby represents, warrants and covenants as follows:

64.1.1 The District is a body corporate and politic and a political subdivision of the State of Colorado established by the Metropolitan Stadium District Act, as amended (Colorado Revised Statutes Annotated § 32-15-101 et. seq.).

64.1.2 The District has full power and authority to enter into this Agreement; the execution, delivery and performance of this Agreement by the District have been duly authorized by all necessary actions on the part of the District, and this Agreement constitutes a valid, binding and enforceable obligation of the District, except as such enforceability may be affected by the application of the rights of creditors generally and applicable principles of equity.

64.1.3 The District's execution, delivery and performance of this Agreement will not conflict with, contravene, violate or result in a material breach of any order or agreement to which the District is bound.

64.1.4 No consent of or notice to any other Person or Governmental Authority is required in connection with the District's execution, delivery or performance of this Agreement other than the consents obtained by the District.

- 64.2 SMC hereby represents, warrants and covenants as follows:

64.2.1 SMC is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Colorado.

64.2.2 SMC has full power and authority to enter into this Agreement; the execution, delivery and performance of this Agreement by SMC have been duly authorized by all necessary actions on the part of SMC, and this Agreement constitutes a valid, binding and enforceable obligation of SMC, except as such enforceability may be affected by the application of the rights of creditors generally and applicable principles of equity.

64.2.3 SMC's execution, delivery and performance of this Agreement will not conflict with, contravene, violate or result in a material breach of any order or agreement to which SMC is bound.

64.2.4 No consent of or notice to any other Person or Governmental Authority is required in connection with SMC's execution, delivery and performance of this Agreement other than the consents obtained by SMC.

64.3 PDB hereby represents, warrants and covenants as follows:

64.3.1 PDB is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Colorado.

64.3.2 PDB has full power and authority to enter into this Agreement; the execution, delivery and performance of this Agreement by PDB have been duly authorized by all necessary actions on the part of PDB, and this Agreement constitutes a valid, binding and enforceable obligation of PDB, except as such enforceability may be affected by the application of the rights of creditors generally and applicable principles of equity.

64.3.3 PDB's execution, delivery and performance of this Agreement will not conflict with, contravene, violate or result in a material breach of any order or agreement to which PDB is bound.

64.3.4 No consent of or notice to any other Person or Governmental Authority is required in connection with PDB's execution, delivery and performance of this Agreement other than the consents obtained by PDB.

64.4 Premium Concessionaire hereby represents, warrants and covenants as follows:

64.4.1 Premium Concessionaire is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Colorado, and is duly qualified to do business and in good standing under the laws of the State of Colorado.

64.4.2 Premium Concessionaire is a wholly-owned subsidiary of Epicurean Catering, LLC, a Colorado limited liability company.

64.4.3 Premium Concessionaire has the full power and authority to enter into this Agreement; the execution, delivery and performance of this Agreement by Premium Concessionaire have been duly authorized by all necessary actions on the part of Premium Concessionaire, and this Agreement constitutes a valid, binding and enforceable obligation of Premium Concessionaire, except as such enforceability may be affected by the application of the rights of creditors generally and applicable principles of equity.

64.4.4 Premium Concessionaire's execution, delivery and performance of this Agreement will not conflict with, contravene, violate or result in a material breach of any order or agreement to which Premium Concessionaire is bound.

64.4.5 No consent of or notice to any other Person or Governmental Authority is required in connection with Premium Concessionaire's execution, delivery and performance of this Agreement other than the consents obtained by Premium Concessionaire.

64.4.6 There is no litigation, action, suit, investigation or proceeding by or before any Governmental Authority or arbitrator pending or, to its best knowledge, threatened against or affecting or involving Premium Concessionaire which could individually or, in the aggregate, reasonably be expected to have a material adverse effect upon the Premium Concessionaire's ability to perform its Obligations.

64.4.7 Premium Concessionaire is not delinquent in (i) the filing of any statements or returns concerning sales or personal property taxes with the District Counties or the State, and (ii) the payment of franchise, sales, use, excise, personal property or real property taxes with the District Counties or the State.

## **65. Damage or Destruction**

65.1 If the Premium Concessionaire has knowledge that the Stadium Premises or any part thereof has been damaged by fire or other casualty, Premium Concessionaire shall give prompt notice thereof to the District and SMC.

65.2 If at any time during the Term of this Agreement, the Catering Areas or any part thereof or any part of the Stadium which materially affects Premium Concessionaire's ability to perform the Obligations shall be damaged or destroyed by fire or other cause of loss of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, the District and SMC shall determine in good faith and notify the Premium Concessionaire in writing within ninety (90) days after the occurrence of such damage, destruction or loss, whether or not the Catering Areas or the Stadium (as applicable) may be restored or repaired within a period of two hundred forty (240) days from the date of the damage and whether the District and SMC reasonably anticipate having adequate funds available for such restoration and repair.

65.2.1 If the District and SMC determine in good faith that the Catering Areas or the Stadium (as applicable) may not be restored or repaired within a period of two hundred forty (240) days from the date of the damage or if the District and SMC do not have adequate funds available for such restoration or repair then any Party may terminate this Agreement by giving notice to the other Parties within thirty (30) days after all Parties have received notice of such determination. If such option to terminate is exercised by the District, SMC or Premium Concessionaire, this Agreement shall terminate as of the date of such damage or destruction.

- 65.2.2 If the District and SMC determine in good faith that the Catering Areas or the Stadium (as applicable) may be restored or repaired within a period of two hundred forty (240) days from the date of the damage and that the District and SMC have adequate funds available, the District and SMC shall diligently restore the Catering Areas or the Stadium (as applicable) to the condition described on Schedule II and Section 4.8, and Premium Concessionaire shall replace any damaged Equipment.
- 65.3 In the event that the Stadium is so severely damaged by fire or other casualty (although the Catering Areas may not be affected) that the District and SMC shall determine in good faith not to rebuild or reconstruct the Stadium, then this Agreement shall terminate on the date specified by the District and SMC in a notice given to Premium Concessionaire not later than ninety (90) days after the date of such casualty.
- 65.4 In the event the District, SMC or Premium Concessionaire elects to terminate this Agreement pursuant to the provisions of this Article 65, the District and SMC shall pay to the Premium Concessionaire an amount equal to the Unamortized Equipment Investment within one hundred eighty (180) days from the date of the damage. Premium Concessionaire agrees to fully cooperate with the District and SMC in the filing and processing of any insurance claims pertaining to damage to the Stadium, Improvements or Equipment by fire or other casualty. The provisions of this Section 65.4 shall survive the termination of this Agreement.

## 66. Condemnation

- 66.1 In the event that the whole of the Catering Areas shall be lawfully condemned or taken for a public or quasi-public use, this Agreement shall terminate as of the date that possession is to be surrendered to the condemnor or taking authority. In the event that there shall be a lawful condemnation or taking for any public or quasi-public use of more than twenty-five percent (25%) of the Catering Areas or more than twenty-five percent (25%) of the seating areas in the Executive Suites, then, at the option of the District and SMC or Premium Concessionaire, exercisable by notice given to the other Parties not later than ninety (90) days after the date upon which the Parties receive notice of the taking or condemnation, this Agreement shall terminate as of the date that possession of the condemned portion of the Catering Areas or the Executive Suites is required to be surrendered to the condemnor or taking authority. In the event of any such taking or condemnation of all or any part of the Catering Areas or Executive Suites or all or any part of the Stadium or the Real Property, Premium Concessionaire shall have no claim against the District or SMC and shall not have any claim or right to any portion of the amount that may be awarded as damages or paid as a result of such taking or condemnation. Premium Concessionaire shall have no claim against the District or SMC or, to the extent such claim would diminish any claim of the District or SMC, the condemnor, for the value of the unexpired Term of this Agreement. In the event of any such partial taking or condemnation of the Catering Areas, the Commissions, the SMC Guaranteed Annual