

## **AGREEMENT**

THIS AGREEMENT, dated April 29, 2004, is between The Idaho Center, ("Client") and Thomas Management Corporation dba Thomas Cuisine Management ("T.C.M"), an Idaho corporation qualified to do business in Idaho.

## **INTRODUCTION**

- A. T.C.M. is a provider of professional facility management, including the operation, of food service facilities.
- B. Client maintains food service facilities and provides services to its customers, and invited guests as an integral part of the operation of its total facility.
- C. Client desires to contract with T.C.M. as its independent contractor to operate and manage Client's concession facilities and T.C.M. desires to accept such contract.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, Client and T.C.M. agree as follows:

## **ARTICLE I** **RELATIONSHIP OF THE PARTIES**

1.1 Responsibility of T.C.M. T.C.M. shall manage and operate Client's food service facilities as described herein as an independent contractor. T.C.M. shall also provide and serve whatever food and beverages as may be required by Client for religious, social, business or other catered functions by mutual agreement.

1.2 Relationship. T.C.M. as independent contractor, Client as principal, reserves all rights of supervision of the food service management and operations performed by T.C.M. as independent contractor. Client reserves the right to make, from time to time, reasonable regulations with regard to the performance of said services and operations. T.C.M. shall comply with such regulations within a reasonable time after written notification. Authorized representatives of Client shall have full right to access the concession facilities at all times.

## **ARTICLE II** **TERM**

2.1 Duration of Term. The term of this Agreement is for two (2) years commencing on the date the contract is signed and shall continue for two (2) years thereafter.

2.2 Contract Option. At the end of each successive year, Client shall extend this contract for an additional one (1) year period. All terms and conditions will remain the same unless both parties otherwise agree. The Agreement shall continue from year to year

thereafter, unless terminated as provided in Article XI.

### **ARTICLE III** **PAYMENT**

3.1 Invoice Due Date and Interest. When applicable, T.C.M. may submit invoices to Client monthly. Such invoices shall be due and payable upon receipt, and shall be overdue fifteen (15) days from date of receipt of invoice. Client shall pay interest on all overdue invoices at the lesser of (i) one and one-half percent (1.5%) per month or; (ii) the highest interest rate allowed by applicable state law.

### **ARTICLE IV** **INVENTORY**

4.1 Inventory of Food and Supplies. For the purpose of this Agreement, and as of September 30, 2003, there is \$12,399.44 in inventory value and is set forth as such in Appendix "A" attached hereto. Upon termination of this agreement, an ending inventory shall be jointly taken and a dollar value placed thereon based on actual purchase price. Client shall reimburse T.C.M. for the value of said inventory. The value of all inventories shall be based on products that are of good merchantable and usable quality.

### **ARTICLE V** **EQUIPMENT AND FACILITIES**

5.1 Facilities and Equipment. Client shall provide at no cost to T.C.M., appropriate facilities for use by T.C.M. in the performance of this agreement, except as provided in Article 20.2.

5.2 Office Facilities, Furniture and Equipment. Client shall provide, at no cost to T.C.M., suitable office facilities and necessary furniture and office equipment for use by T.C.M. in the performance of this Agreement. T.C.M. shall provide for its own use its own computer system to include a C.P.U., monitor, keyboard, printer and appropriate software.

5.3 Care of Facilities, Equipment and Furniture. T.C.M. shall take reasonable and proper care of all equipment, furniture, and facilities provided by Client and shall return such to Client in good condition at termination of this Agreement, ordinary wear and tear excepted.

### **ARTICLE VI** **INSURANCE**

6.1 Worker's Compensation Insurance. T.C.M. and Client shall procure Workers' Compensation Insurance or shall maintain a system of workers' compensation self-insurance in conformance with applicable state law, covering their respective employees who may be employed for any purpose connected with Client's food service operations, and shall provide proof of such coverage or system to the other upon request.

6.2 Comprehensive Insurance. T.C.M. shall obtain and keep in force, during the term of this Agreement, insurance or self insurance for the protection of both Client and T.C.M., Comprehensive General Bodily Injury and Property Damage Liability Insurance in the Combined Single Limit of Five Million Dollars (\$5,000,000.), including, but not limited to, coverage for Personal Injury Liability, Property Damage Liability, Auto Liability, Blanket Contractual Liability and Products Liability, covering the operations and activities of T.C.M. included in this Agreement and the Client's operation of the Client's facility, and shall deliver to the other a certificate evidencing such policy or policies within thirty (30) days after execution of this Agreement. The insurance policy or policies shall contain a covenant by the company issuing the same that they shall not be canceled unless a thirty (30) day written notice of cancellation is given to Client as the case may be. The policy provided by each party shall name the other party as an additional insured.

6.3 Real and Personal Property Insurance. Each party has the obligation and responsibility to fully insure or provide for its responsibilities through self insurance of its real and/or personal property against loss or damage caused by fire, extended coverage perils, vandalism or malicious mischief. The parties waive all rights of recovery against each other, for any loss or damage covered by insurance, or including subrogation rights, for loss or damage to the waiving party occasioned by any such peril. Each party shall name the other as loss payee as to the extent of their interests in the insured property.

## **ARTICLE VII** **MANAGEMENT EMPLOYMENT RESTRICTION**

7.1 Management Employment Restrictions. T.C.M. and Client agree that for the duration of this Agreement and for one (1) year thereafter, they shall not, directly or indirectly, hire or contract with any management employee of the other who is, or was within the six (6) months prior to this Agreement's termination, connected in any manner with Client's foodservice.

## **ARTICLE VIII** **LAWS AND REGULATIONS**

8.1 Governing Law. This Agreement shall be governed by the laws of the State of Idaho.

8.2 Severability. If any provision of this Agreement is held to be invalid, illegal, unconscionable or unenforceable in any respect, such shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal, unconscionable or unenforceable provision had never been included herein, all other terms and provisions remaining effective and in force to the fullest extent permitted by law

8.3 Compliance with Law. T.C.M. shall comply with all applicable laws of governmental authorities concerning the sanitation, safety and health in providing service to Client and

shall procure and maintain all necessary licenses and permits. Client agrees to provide all cooperation reasonably necessary for said compliance and procurement.

8.4 Condition of Premises and Equipment. The premises and equipment provided by each party in the performance of this Agreement shall comply with all applicable building, sanitation, safety and health laws. T.C.M. shall take reasonable and proper care of all premises and equipment under its care, custody, and control and shall use them in a manner that shall not cause violation of the laws, including any reporting and record-keeping requirements.

8.5 Repair of Premises and Equipment. Each party shall, at no cost to the other, make all alterations, modifications or replacements which may be necessary to correct conditions in the premises or equipment owned by it, which are in violation of any applicable building, sanitation, health or safety law. Client agrees to make, at Client's sole expense, alterations, modifications or replacements which Client may desire to make in order to procure or maintain compliance with the standards of any applicable agency. T.C.M. shall operate in conformance with the rules and regulations of such agencies, provided T.C.M. is given reasonable, prior written notice thereof.

## **ARTICLE IX** **EQUAL OPPORTUNITY POLICY**

9.1 Equal Opportunity Policy. Neither party shall discriminate because of race, color, religion, sex, age, national origin, handicap, or status as a Viet Nam Veteran, as defined and prohibited by applicable governmental law, in the recruitment, or other employment-related activities concerning their personnel. This fundamental rule of conduct will be clearly communicated to all employees, prospective employees and community at large.

## **ARTICLE X** **INDEMNIFICATION**

10.1 Indemnity. Except as otherwise expressly provided, T.C.M. and Client shall defend, indemnify and hold each other harmless from and against all claims, liability, loss and expense, including reasonable costs, collected expenses, and attorney's fees incurred, which arise by reason of the acts or omissions of the indemnifying party, its agent or employees in the performance of its obligations under this Agreement.

## **ARTICLE XI** **TERMINATION**

11.1 Termination Without Cause. Either party may terminate this Agreement without cause at any time during its terms, by giving ninety (90) days notice in writing to the other party of its intention to terminate this Agreement and setting forth a specific termination date.

11.2 Termination For Cause. If either party fails to comply with any of the obligations required of it in this Agreement and, following receipt of written notice specifying the failure, fails to remedy and cure such failure within a reasonable time (but in no event later than (a) ten (10) days for failure to make payments due and (b) twenty (20) days in the case of any other failures), then the other party shall have the right to terminate this Agreement immediately upon giving written notice of that intention. If this Agreement is terminated due to late or nonpayment, all outstanding amounts shall immediately become due and payable.

11.3 Insolvency. In addition to all other rights herein, either party hereto may terminate this Agreement without prior notice should the other party become insolvent in either an equity or bankruptcy sense, should the other party commit any act of bankruptcy or receivership, or make any assignment for the benefit of creditors or should the other party have commenced against it any proceeding, suit or action in bankruptcy or receivership provided such proceeding, suit or action is not dismissed within thirty (30) days.

11.4 Rights Beyond Termination. The rights of termination referred to in this Agreement are not intended to be exclusive and are in addition to any other rights available to either party at law or in equity.

## **ARTICLE XII**

### **TRADE SECRETS: PROPRIETARY RIGHTS: CONFIDENTIALITY**

12.1 T.C.M. Trade Secrets and Proprietary Rights. Client acknowledges that during the term of this Agreement, Client may have access to or become acquainted with various trade secrets and confidential proprietary information of T.C.M. including, but not limited to; recipes, surveys and studies, management guidelines and procedures, software programs, computer data base, operating manuals and similar compilations and documents regularly used in the operation of the business of T.C.M. Client shall not use or disclose any of such trade or proprietary secrets, directly or indirectly, during or subsequent to the term of this Agreement. Client further agrees not to photocopy or otherwise duplicate any such material without the prior express written consent of T.C.M. All recipes, files, records, documents, compilations, manuals and similar items (including all copies or facsimiles thereof) shall remain the exclusive property of T.C.M. and shall be returned to T.C.M. immediately upon termination of this Agreement.

12.2 Client Trade Secrets and Proprietary Rights. T.C.M. acknowledges that during the term of this Agreement, T.C.M. may have access to or become acquainted with various trade secrets and confidential proprietary information of Client including, but not limited to; studies, management guidelines and procedures, operating manuals and similar compilations and documents regularly used in the operation of the business of Client. T.C.M. shall not use or disclose any such trade or proprietary secrets, directly or indirectly, during or subsequent to the term of this Agreement. T.C.M. further agrees not to photocopy or otherwise duplicate any such material without the prior written consent of Client. All records, documents, compilations, manuals and similar items (including all

copies or facsimiles thereof) shall remain the exclusive property of Client and shall be returned to Client immediately upon any termination of this Agreement.

### **ARTICLE XIII** **NOTICE**

13.1 Notice. Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be served personally, delivered by overnight courier or sent by United States certified or registered mail, postage prepaid with return receipt requested, addressed to the other party at the address set forth below or at such other address as either party shall hereafter designate to the other in writing.

#### **Notices shall be sent to Client as follows:**

Terry Calnon

16200 Can-Ada Road

Nampa, ID 83687

Mail to: PO Box 279, Nampa, ID 38653

#### **Notices shall be sent to T.C.M. as follows:**

THOMAS CUISINE MANAGEMENT

640 East Franklin Road

Meridian, ID 83642

All notices shall be effective when personally served, seventy-two (72) hours after deposit in the United States mail, or one (1) business day following deposit if delivered by overnight courier guaranteeing next day delivery.

### **ARTICLE XIV** **ATTORNEY'S FEES**

14.1 Attorney's Fees. If any actions or proceeding is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which it may otherwise be entitled.

## **ARTICLE XV** **AMENDMENTS**

15.1 Modification. The parties may at any time hereafter modify or amend this Agreement by a subsequent written agreement executed by the parties. This Agreement shall not, however, be changed orally, nor shall it be deemed modified in any way by the act of any of the parties hereto. Nothing herein is intended, nor shall it be construed, as obligating either party to agree to any modification to this Agreement.

15.2 Amendments. Each of the Articles and Appendixes shall remain in effect throughout the term of this Agreement unless the parties agree, in a written document signed by both parties and attached to this Agreement, to amend, add or delete an Article or Appendix. Any amendment to this Agreement shall become effective at the time specified in the amendment.

## **ARTICLE XVI** **WAIVER; CONSTRUCTION AND EFFECT**

16.1 Waiver. The failure of a party to insist, in any one or more instances, upon strict performance of any term, covenant or condition of this Agreement or in any instrument or document referred to herein or contemplated hereby, or to exercise any option contained herein, shall not be construed as a waiver, or a relinquishment for the future, of such term, covenant, condition or option, but the same shall remain and continue in full force and effect.

16.2 Construction and Effect. Both of the parties to this Agreement have been, or have had the opportunity to be, represented by legal counsel in the course of the negotiations for and the preparation of this Agreement. Accordingly, in all cases, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against either party regardless of which party caused the preparation of this Agreement.

## **ARTICLE XVII** **CATASTROPHE**

17.1 Catastrophe. With the exception of payment obligations for prior performance under this Agreement, neither T.C.M. nor Client shall be liable for the failure to perform their respective obligations under this Agreement when such failure is caused by fire, explosion, water, act of God or inevitable accident, civil disorder or disturbances, strikes, vandalism, war, riot, sabotage, weather and energy related closings, governmental rules and regulations or like causes beyond the control of such party, nor for real or personal property destroyed or damaged due to such causes.

## **ARTICLE XVIII** **AGREEMENT**

18.1 Restriction of Benefits. None of the provisions of this Agreement shall be for the benefit of, or be enforceable by, any creditors of any party to this Agreement.

18.2 Entire Agreement. This Agreement and the instruments and documents referred to herein or contemplated hereby constitute the entire Agreement between the parties concerning the subject matter of this Agreement; there are no oral or other agreements existing between the parties relative to the subject matter hereof which are not expressly set forth herein or in the instruments or documents referred to herein or contemplated hereby.

## **ARTICLE XIX** **OPERATING PROCEDURES**

19.1 Service. T.C.M. shall manage and operate the following services for Client:

- A. All food and beverage concessions including mobile food carts
- B. Catering
- C. Merchandise
- D. Others as requested

19.2 T.C.M. Management/Professional Employees. T.C.M. shall provide Client with T.C.M. personnel to fulfill the following management positions that shall be supported by T.C.M. supervisory personnel. Client and T.C.M. shall agree to the management positions to be at Clients site.

- A. Food Service Director
- B. Concessions Manager
- C. Catering Manager
- D. Chef

T.C.M.'s Food Service Director will function and be recognized as department head in the Client's facility and, therefore, perform and act in a fashion consistent with the department head practices as defined by Client. T.C.M. shall prepare and process the payroll for, and shall pay such employees directly.

19.3 T.C.M. Hourly Employees. All food service hourly employees shall be employees of T.C.M. and shall be compensated directly by T.C.M. T.C.M. shall prepare and process the payroll for and shall pay such employees directly.

19.4 Personnel Obligations. The parties hereto shall be solely responsible for all personnel actions regarding employees on their respective payrolls. Each party represents and warrants that it shall withhold and/or pay, as appropriate, all applicable federal and state employment taxes and payroll insurance with respect to its employees (specifically including any income, social security and unemployment taxes), insurance premiums, contributions to benefit and deferred compensation plans, licensing fees and worker's compensation costs, and shall file all required documents and forms. Each party shall indemnify, defend and hold the other harmless from and against any liability and expense related to, or arising out of, the indemnifying party's responsibility as set forth herein.



19.5 Sanitation. T.C.M. personnel are responsible for cleaning Client's kitchen and concession facilities in accordance with regulations, standards, and specifications of the District Health Department. The areas to be cleaned shall include and is limited to the following:

A. Main Kitchen

1. Walls
2. Equipment
3. Counters
4. Storage Areas
5. Shelves
6. Floors
7. Hoods

B. Concession Service Area

1. Equipment
2. Walls
3. Counters
4. Floors (behind counters)
5. Condiment counters

C. Catering

1. Staging and service areas

19.6 Maintenance. T.C.M. shall be responsible for maintenance and repair of all food service equipment. The cost of which shall be included in general maintenance.

19.7 Purchasing Arrangements. Purchases of food, supplies and equipment required for the operation of Client's food service facilities, shall be made by T.C.M., utilizing T.C.M.'s regional purchasing contracts.

19.8 Changes in Policies and Practices. This Agreement is in part based upon the type of food service existing in Client's food service facilities as of September 15, 2003. Any significant changes in Client's current policies, practices, service and service methods or wage and hour laws may necessitate a change in Client's budget.

19.9 Liaison. Client will designate a position within its organization to act as a liaison between T.C.M. and Client. All decisions and actions of that individual are binding on Client.

19.10 Capital Purchases. T.C.M. shall not make capital purchases on behalf of Client without Client's prior approval. Capital purchases shall be defined as any equipment purchase where price exceeds Five Hundred Dollars (\$500).

19.11 Utilities. Client shall furnish, without charge to T.C.M., the use of all light, heat, power, gas, hot and cold water, and trash and garbage disposal from the loading dock, necessary for the performance of this agreement.

19.12 Pricing. The prices charged for goods and services sold by T.C.M. shall be reasonable and shall be determined jointly by T.C.M. and Client.

19.13 Program Development. T.C.M. will take responsibility for the planning, development and day-to-day management of the concession and catering programs for Client including but not limited to the following areas:

- A. Concessions
- B. Mobile Food Carts
- C. Catering -- In the pricing of all catering, T.C.M. shall make every effort to price and manage all catering functions to yield a 35% gross margin.

## **ARTICLE XX** **FINANCIAL**

20.1 Financial Arrangements. In consideration for food management services to be provided by T.C.M. hereunder, the following financial arrangements shall be in effect.

- A. T.C.M. will account for and deposit in its name, all cash and credit card sales.
- B. T.C.M. will process and pay all operating expenses directly related to the provision of food services to Client, including but not limited to the following:

1.	Food	17.	Postage
2.	Professional Employees salary, taxes & benefits	18.	Computer Lease
3.	Hourly payroll wages, taxes and benefits	19.	Employee relations
4.	Contract labor	20.	Merchandise
5.	Paper supplies	21.	Equipment
6.	Janitorial supplies	22.	Training
7.	Rentals	23.	General maintenance
8.	Smallwares	24.	Bank charges
9.	Laundry	25.	Account related travel
10.	Uniforms	26.	Gas and/or mileage
11.	Decorations	27.	Subscriptions
12.	China	28.	Account related Human Resource advertising
13.	Liability insurance	29.	Computer hardware
14.	Sales tax	30.	Returned check charges
15.	Office supplies	31.	Computer maintenance
16.	Printing of menus	32.	T.C.M. overhead and management fee

- C. For the provision of its services, T.C.M. shall receive a gross management fee as follows:
1. 5.8% of after tax concession sales
  2. 15% of gross catering sales
  3. 5.8% of gross merchandise revenues received by Client as per its merchandise contracts with promoters and/or entertainers
  4. 12% for all other non-event related Christmas caterings.
- D. T.C.M. shall remit to Client the difference between its gross sales and the operating expenses set forth in section 20.1B above. Said remittances shall be mailed to the Client no later than the 15<sup>th</sup> of each calendar month for the previous calendar month's activities.
- E. As a part of its management fee, T.C.M. shall provide to Client the following services:

1.	C.P.A. semi-annual audit reviews	7.	Petty cash funds
2.	Processing of all vendor purchases	8.	District supervision
3.	Payroll processing	9.	Market analysis and product differentiation research
4.	Contract labor processing and payment	10.	Monthly operating statement
5.	Payroll and benefits administration	11.	Others as reasonably requested and mutually agreed by T.C.M.
6.	Inventory carrying costs		

## 20.2 Capital Investment

- A. In consideration for a two-year contract, T.C.M. will reimburse Client \$10,000 per year for Client Purchased Assets used in the management of Client's foodservice facilities. Client shall pay for and own such assets. Client and/or T.C.M. may, at their own discretion, accelerate said asset purchase reimbursement at a frequency that exceeds \$10,000 each year, but in no case will T.C.M.'s obligation exceed \$20,000 for a two (2) year contract period or \$10,000 for any one (1) year extension. The limit of this obligation is ten (10) years at \$10,000 per year.
- B. If this Agreement is terminated for any reason, prior to the expiration of its first two (2) year term and each successive two (2) year period, Client shall reimburse T.C.M. the amount paid by T.C.M. to Client for Client Purchased Assets purchased during the original term or each successive two (2) year term, whichever is in effect at the time of termination.
- C. Any amounts payable to T.C.M., as a result of termination, shall be paid at the time the termination is effective and may be offset by the amount owed Client by T.C.M.

- D. T.C.M. will document the purchase of each asset with invoices that represent the actual cost of the product and document as an exhibit to this contract, upon the date the asset is placed into service. At the conclusion of each two (2) and one (1) year contract periods, said assets will become the property of the Client.
- E. All items and services purchased with the investment shall be in connection with the foodservice facilities.

20.3 T.C.M.'s accounting schedules are as follows:

- A. Fiscal accounting period is a calendar year.
- B. Monthly accounting periods with all revenue and costs calculated from the first through the last day of each month.
- C. Monthly food costs are determined by the sum of beginning inventory plus purchases minus ending inventory.
- D. Payroll dollars are accrued for each operating month such that each month's statement represents a full calendar month of payroll related costs.

**ARTICLE XXI**  
**ASSIGNMENT**

21.1 Assignment. This Agreement may not be assigned by either party in whole or in part without the consent in writing of the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) set forth below.

**CLIENT:**

By: 

Title: Controller

Date: 5/5/04

**T.C.M.:**

By: 

Title: Thad Thomas  
President & CEO

Date: 5/17/04

## APPENDIX A

**OPENING INVENTORY.** The value of the opening inventory as of September 30, 2003 was \$12,399.44, dated September 30, 2003.

**CLIENT:**

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

Title: \_\_\_\_\_

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

**T.C.M.:**

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

Title: \_\_\_\_\_

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