FOURTH AMENDMENT OF FOOD SERVICE AGREEMENT

This Fourth Amendment of Food Service Agreement for the Alamodome ("Fourth Amendment") is made to be effective the 6th day of December, 2018, by and between the City of San Antonio, a Texas Municipal Corporation ("City"), acting by and through its City Manager pursuant to Ordinance No. 2018-12-06-____, dated December 6, 2018, and SAVOR Black Tie Joint Venture, by and through its majority partner, SMG Food and Beverage, LLC ("Concessionaire"), both of which may be referred to collectively as the "Parties," each a "Party."

WHEREAS, the Parties entered into a Food Service Agreement for the Alamodome dated January 28, 2016 ("Original Agreement"), under which the City retained Concessionaire to perform certain Catering and Concession Services for a variety of events, including without limitation, sporting events, concerts and family shows, at the premises located at 100 Montana Street, San Antonio, TX 78203, known and operating as the Alamodome;

WHEREAS, the Parties amended the Original Agreement several times, most recently effective November 1, 2017 (the Original Agreement, as amended, is the "Agreement"); and

WHEREAS, the Parties desire to amend the Agreement in accordance with the terms and conditions set forth in this Fourth Amendment;

NOW THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties covenant and agree to the supplemental terms and conditions set forth in this Fourth Amendment. In the event of a conflict between the provisions of the Agreement and this Fourth Amendment, the provisions of this Fourth Amendment shall control.

1. Section 1.18 shall be deleted in its entirety and replaced with the following:

""Major Event" – annual non-recurring single day events with verified scanned tickets in excess of 40,000, including without limitation NCAA Men's and Women's Final Four Basketball Tournaments, but excluding the Alamo Bowl."

2. Section 4.02(a) shall be deleted in its entirety and replaced with the following:

"For annual Concessions & Bar Sales, not covered by Section 4.02(e), a Commission in the amount of 28% for Food and Non-Alcoholic Beverage sales and a Commission in the amount of 32% for Alcoholic Beverage sales; and"

3. Section 4.02(d) shall be deleted in its entirety and replaced with the following:

"The Gross Receipts threshold for the Agreement Year beginning March 1, 2018 shall be \$9,700,000 ("Gross Receipts Threshold"), and the Gross Receipts Threshold shall increase by \$100,000 every subsequent Agreement Year, resulting in a Gross Receipts Threshold of \$10,900,000 on the fifteenth and last year of the Agreement. Beginning March 1, 2018, should cumulative Gross Receipts for any Agreement Year surpass the Gross Receipts Threshold for such Agreement year, then Commissions for such Agreement Year shall revert to the Original Agreement rates, set forth in the Original Agreement Sections 4.02(a)-(d) ("Original

Commission Rates"), allowing for the change to Section 4.02(e) reflected in the Fourth Amendment, and such rates shall apply to that entire Agreement Year. Once the Gross Receipt Threshold is met during any Agreement Year, Concessionaire shall immediately begin paying Commissions based on the Original Commission Rates. On the fifteenth of the following month, in addition to the Commission payment, Concessionaire shall remit a payment covering the difference between the Commissions paid and the Commissions due under the Original Commission Rates dating back to March 1 of that Agreement Year;"

4. Section 4.02(e) shall be deleted in its entirety and replaced with the following:

"For branded third party sales, meaning the third-party is clearly linked with the unique product(s) being sold, a commission in the amount of 19%; and"

5. Section 13.02 shall be deleted in its entirety and replaced with the following:

"Concessionaire is responsible for the cost to clean and maintain the vent hoods, exhaust and fire suppression systems (i.e. "Ansul"), grease traps, water softener, POS, and all other maintenance agreements for City assets in all assigned service areas. Concessionaire shall provide City, upon request, with copies of maintenance and repair records. Expenses for aforementioned maintenance and repairs shall be acceptable expenses to the Concessionaire's Repair and Maintenance Fund ("2% Fund") provided under Section 33.08."

6. Section 13.03 shall be deleted in its entirety and replaced with the following:

"Concessionaire will provide pest control at food service locations by a City-approved vendor in coordination with City's pest control efforts for the facility, with program and intervals as required by the City. Expenses for aforementioned pest control shall be acceptable expenses to the 2% Fund."

7. Section 33.06 shall be deleted in its entirety and replaced with the following:

"Concessionaire is responsible for all maintenance and service agreements for the Equipment, including Concessionaire's Capital Investment. Equipment, which is supplied in good condition by City, shall be maintained by Concessionaire in the same condition, normal wear and tear excepted, at Concessionaire's expense as a part of the 2% Fund. Concessionaire shall immediately notify City's Director of any Equipment failure that will adversely affect the operations or result in the spoilage of food, etc. Concessionaire shall send a notice to the City's Director when repairs and/or services are completed. Expenses for aforementioned service agreements for the Equipment shall be acceptable expenses to the 2% Fund."

8. Section 33.07 shall be added as follows and the remainder of the Article shall be renumbered accordingly:

"During any Agreement Year, expenses charged to the 2% Fund for costs set forth in Sections 13.02, 13.03 and 33.06 shall not exceed the greater of $100,000 or 50% of the deposits made into the 2% Fund during that Agreement Year."

9. Section 36.06 shall be deleted in its entirety and replaced with the following:

"In the event the Agreement is terminated, unless such termination is at the request of or due to the default of Concessionaire, City will purchase or cause to be purchased Concessionaire's investments at then book value ("Buy Out"). Concessionaire will amortize their investment as follows:

(a) Uniforms and Smallwares – 36 months, straight line method
(b) All costs incurred as a part of the Capital Investment described in Section 33.01, excluding those set forth in Section 36.06 (a) – 120 months from the date of deployment
(c) Investment provided to City under Section 4.01 – 180 months, straight line method
(d) Such Buy Out shall not apply in the Event Concessionaire defaults or requests termination of this Agreement."

10. Except as expressly amended in this Fourth Amendment, all of the other terms, conditions and obligations of the Parties under the Agreement are ratified and shall remain in full force and effect.

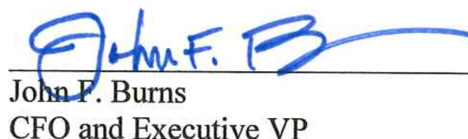
11. This Fourth Amendment may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute but one and the same original document.

IN WITNESS WHEREOF, the Parties have executed this Fourth Amendment to be effective December 6, 2018.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

____
Sheryl Sculley
City Manager

SAVOR BLACK TIE JOINT VENTURE,
by and through its Majority Partner,
SMG Food and Beverage, LLC


John F. Burns
CFO and Executive VP

Approved as to Form:

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City Attorney