

LEASE AGREEMENT

STATE OF TEXAS

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COUNTY OF BEXAR

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This lease Agreement (“LEASE”) is made and entered into by and between the CITY OF SAN ANTONIO, (“CITY”), a Texas Municipal Corporation acting by and through its City Manager and Malley Restaurants, LLC, a limited liability company formed in accordance with the laws of the State of Texas, (“LESSEE”) for the lease of parking, as authorized and approved by the passage of Ordinance No. ____ - ____ - ____ - ____ on _____, 2017.

I. LEASE TERM/RENEWAL

1.1 The term of this LEASE shall be for a three-year (3) period beginning on October 1, 2017 (“Commencement Date”) and terminating on September 30, 2020.

1.2 Upon mutual agreement of the CITY and LESSEE evidenced by a duly executed written instrument, this LEASE may be renewed for a period of one-year from the date of termination (“First Renewal”), without the further approval of City Council.

1.3 Should LESSEE not be in default of this LEASE during the First Renewal period, the CITY and LESSEE may agree to renew this LEASE for an additional one-year term from the date of termination of the First Renewal (“Second Renewal”) evidenced by a duly executed written instrument, without the further approval of City Council.

II. LEASED PREMISES

2.1 CITY, for and in consideration of the payment of the LEASE FEES set forth below and the covenants and agreements in this LEASE, and, further, subject to all laws, codes, rules, regulations and ordinances of any governmental or quasi-governmental entity (hereinafter referred to as “Laws”) does lease to LESSEE approximately 5,200 square feet of real property consisting of eighty-seven (87) parking spaces abutting the Alamodome in Parking Lot C, located at 100 Montana Street, San Antonio, Bexar County, Texas 78205 (“LEASED PREMISES”), as depicted on Exhibit A, which is attached hereto and incorporated herein, to utilize as described in this LEASE for the term and any renewal periods as provided for in this LEASE, unless sooner terminated.

2.2 The LEASED PREMISES shall be used by LESSEE and LESSEE’S tenants who are operating the restaurants (“Tenants”), as a surface parking lot for LESSEE and Tenant’s patrons and employees from restaurants at the following locations: 302 Montana Street, 321 Montana Street and 323 Montana Street, all of which are owned by LESSEE (“Restaurants”).

2.3 LESSEE will not occupy or use, nor permit any portion of the LEASED PREMISES to be occupied or used for any business or purpose which is not the same as the purpose stated in Section 4.1 or is unlawful in part or in whole or deemed to be disreputable in any manner, or is in violation of any Laws. LESSEE must procure at its sole expense any permits and licenses required for its use of the LEASED PREMISES and otherwise comply with all Laws.

2.4 LESSEE will maintain the LEASED PREMISES in a clean and healthful condition at its sole cost and expense and will comply with all Laws, with reference to use, conditions, or occupancy of the LEASED PREMISES. LESSEE will conduct its business, and control its agents, employees, and invitees in such a manner as not to create any nuisance, interfere with, annoy or disturb CITY's business operations.

III. ACCEPTANCE AND CONDITION OF PREMISES

3.1 LESSEE has had full opportunity to examine the LEASED PREMISES, in its present "AS IS, WHERE IS, WITH ALL FAULTS" condition, and LESSEE acknowledges that there is in and about said LEASED PREMISES nothing dangerous to life, limb or health and hereby waives any claim for damages that may arise from defects of that character upon the LEASE Commencement Date. LESSEE's use of the LEASED PREMISES in its "AS IS, WHERE IS, WITH ALL FAULTS" condition shall be conclusive evidence of LESSEE's acceptance thereof in good order and satisfactory condition and LESSEE hereby accepts the LEASED PREMISES in its present, "AS IS, WHERE IS WITH ALL FAULTS" condition from CITY as suitable for LESSEE's intended use as stated herein.

3.2 LESSEE agrees that no representations respecting the condition of the LEASED PREMISES and no promises to alter, repair, or improve the LEASED PREMISES, either before or after the execution hereof, have been made by CITY. CITY specifically disclaims any and all warranties whatsoever of suitability of the premises for LESSEE's intended use.

3.3 LESSEE further agrees to clean and maintain the LEASED PREMISES for the duration of this LEASED at its own cost.

IV. USE

4.1 The LEASED PREMISES provided for in this LEASE are intended for the use of LESSEE, and Tenant's patrons and employees at the Restaurants, except when CITY has an event in the Alamodome ("CITY EVENTS"). No parking will be permitted under this Agreement during CITY EVENTS. The LEASED PREMISES shall only be utilized during the hours of operation of the Restaurants. All vehicles shall be removed within one hour of the Restaurants' closing time. Under no circumstances shall LESSEE allow other individuals to utilize the LEASED PREMISES without the written consent of the CITY. LESSEE shall not charge for such parking.

a. CITY will give notice to LESSEE, at least (48) hours in advance, of CITY EVENT dates. Additionally, City shall provide a monthly schedule of CITY EVENTS to LESSEE.

4.3 LESSEE agrees and specifically understands that this LEASE is confined to the privilege to use the LEASED PREMISES and that the permission given does not grant LESSEE any interest or estate in the LEASED PREMISES, but is a mere personal privilege to do certain acts of a temporary character upon the LEASED PREMISES. CITY retains dominion, possession, and control of said LEASED PREMISES, including access thereto, at all times. CITY reserves the right to enforce all reasonable, necessary and proper rules for the management and operation of the LEASED PREMISES, and may eject from the LEASED PREMISES, any person or persons it reasonably deems objectionable.

4.4 LESSEE shall insure that those under its control or otherwise authorized by it to use said LEASED PREMISES shall in no way obstruct ingress or egress or limit accessibility to CITY's property or the general public or by others having licenses, leasehold interests, or other interests in or about CITY's property.

4.5 LESSEE agrees that those under its control or otherwise authorized to use said LEASED PREMISES shall abide by, conform to and comply with all applicable Laws and will not do or permit to be done anything in violation of those Laws. If the attention of LESSEE is called to any such violation, LESSEE or those under its control or otherwise authorized to use said LEASED PREMISES will immediately desist from and correct such violation.

4.6 No alterations or additions to the LEASED PREMISES are permitted or will be performed by LESSEE without the written consent of CITY.

V. OPERATIONS

5.1 CITY does not warrant the security of vehicles or persons under this proposal and accepts no responsibility or liability for any loss or damage of any kind for any reason. CITY is not responsible for providing security to the LEASED PREMISES or for monitoring the use of the parking spaces making up the LEASED PREMISES.

5.2 Drivers must not exceed five (5) mph within the LEASED PREMISES, must afford the right-of-way to pedestrians, and must extend courtesy to other drivers. Any violation is subject to revocation of this LEASE.

5.3 Vehicles parking in the LEASED PREMISES will be passenger-type trucks and cars only. The following will not be allowed in the LEASED PREMISES:

- a. Vehicles with a gross vehicle weight rating (GVWR) in excess of 20,000 lbs;
- b. Vehicles longer or wider than can be reasonably and safely parked in a standard-sized parking space;
- c. Any type of heavy equipment; and
- d. Any type of other equipment or materials.

5.4 An individual parking under this LEASE is only authorized to do so when working at or visiting the Restaurants.

5.5 City shall provide a barricade sign designating that the LEASED PREMISES is only for use by LESSEE and Tenant's patrons and employees at the Restaurants. LESSEE shall be responsible for the cost of said signage and shall reimburse City for its cost along with payment of the first Lease Fees due under this LEASE.

VI. LEASE FEES

6.1 LESSEE covenants and agrees that, in consideration for the lease of space as granted in this LEASE, LESSEE shall pay CITY the amount of three hundred dollars (\$300) per month ("Lease Fees").

6.2 Lease Fees shall be paid on the first of every month beginning on the Commencement Date.

6.3 Lease Fees shall be paid by check made out to the City of San Antonio sent to the individual and address listed in Section 17.1.

VII. DEFAULT AND REMEDIES

7.1 An Event of Default in the LEASE shall occur should LESSEE neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained and on LESSEE's part to be performed or in any way observed and if such neglect or failure should continue for a period of ten (10) days after receipt by LESSEE of written notice of such neglect or failure except for the failure or neglect to pay any installment of Lease Fees wherein such neglect or failure must be cured within three (3) days after receipt by LESSEE of written notice of such neglect or failure. However, if more than ten (10) days shall be required because of the nature of the Event of Default, LESSEE shall be allowed to cure if within said ten (10) day period LESSEE commences and thereafter diligently proceeds to cure such Event of Default but under no circumstances shall the period of notice and cure exceed thirty (30) days from the date of such Event of Default by LESSEE. CITY is not responsible to notify LESSEE of any monetary default.

7.2 Upon an Event of Default and failure of LESSEE to cure as stated above, CITY may terminate this LEASE by written notice to LESSEE.

XIII. TERMINATION

8.1 Either party may terminate this LEASE without cause upon thirty (30) days notice provided under the provisions of Article XVII below.

8.2 In the event of early termination, LESSEE shall not be refunded any portion of the LEASE FEES paid under this LEASE.

IX. INSURANCE REQUIREMENTS

9.1 LESSEE shall furnish an original completed Certificate of Insurance to the City of San Antonio Convention Facilities Department, at the address provided herein, as a precondition to occupancy of the parking spaces. The Certificate shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to CITY. CITY shall have no duty to pay or perform under this LEASE until such certificate shall has been delivered to the Convention and Sports Facilities Department and no officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.

9.2 CITY reserves the right to review the insurance requirements of this article during the effective period of this LEASE and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this LEASE, but in no instance will any modification be allowed whereupon CITY may incur increased risk.

9.3 Subject to LESSEE's right to maintain reasonable deductibles in such amounts as are approved by CITY, LESSEE shall obtain and maintain in full force and effect for the duration of this LEASE, and any extension hereof, at LESSEE's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to CITY, in the following types and amounts:

Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
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9.4 CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by CITY, LESSEE shall exercise reasonable efforts to accomplish such changes in policy coverage and shall pay the cost thereof.

9.5 LESSEE agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- a. Name CITY and its officers, employees, volunteers and elected representatives as additional insureds with respect to operations and activities of, or on behalf of, the named insured performed under LEASE with CITY, with the exception of the workers' compensation and professional liability policies;
- b. Provide for an endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy;
- c. General liability policy will provide a waiver of subrogation in favor of CITY; and
- d. Provide advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

9.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, LESSEE shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend LESSEE's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

9.7 If LESSEE fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, CITY may obtain such insurance, and increase the Base Rent in Section 5.1 of this Lease in order to pay the premiums for such insurance; however, procuring of said insurance by CITY is an alternative to other remedies CITY may have, and is not the exclusive remedy for failure of LESSEE to maintain said insurance or secure such endorsement. In addition to any other remedies CITY may have upon LESSEE's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to terminate this LEASE.

9.8 Nothing herein contained shall be construed as limiting, in any way, the extent to which LESSEE may be held responsible for payments of damages to persons or property resulting from LESSEE's performance under this Lease.

9.9 It is agreed that LESSEE's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by CITY for liability arising out of operations under this Agreement.

9.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of CITY shall be limited to insurance coverage provided..

9.11 LESSEE, Tenants and any subcontractors, if approved, are responsible for all damage to their own equipment and/or property and to the property of others placed at the LEASED PREMISES under this Agreement. CITY shall not be liable for any damages to vehicles or property placed at the LEASED PREMISES.

X. INDEMNITY

10.1 LESSEE covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon CITY directly or indirectly arising out of, resulting from or related to LESSEE'S activities or CITY's activities or the acts of other parties, under this LEASE, in, on or about the LEASED PREMISES or in connection with LESSEE'S use of the LEASED PREMISES, or from any condition of the LEASED PREMISES caused by LESSEE, including any acts or omissions of LESSEE, any agent, officer, director, representative, employee, consultant or subcontractor of LESSEE, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this LEASE, all without, however, waiving any governmental immunity available to CITY under Texas law and without waiving any defenses of the parties under Texas law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF CITY, UNDER THIS LEASE. The provisions of this INDEMNIFICATION are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

10.2 It is the EXPRESS INTENT of the parties to this LEASE that the INDEMNITY provided for in this ARTICLE is an INDEMNITY extended by LESSEE to INDEMNIFY, PROTECT and HOLD HARMLESS CITY from the consequences of CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this ARTICLE SHALL APPLY only when the NEGLIGENT ACT of CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of CITY is the sole active cause of the resultant injury, death, or damage. LESSEE further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, volunteers, directors and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

10.3 LESSEE shall advise CITY in writing within 24 hours of any claim or demand against CITY or LESSEE known to LESSEE related to or arising out of LESSEE's activities under this AGREEMENT.

10.4 Defense Counsel. CITY shall have the right to select or to approve defense counsel to be retained by LESSEE in fulfilling its obligation hereunder to defend and

indemnify CITY, unless such right is expressly waived by CITY in writing. LESSEE shall retain CITY approved defense counsel within seven (7) business days of CITY's written notice that CITY is invoking its right to indemnification under this Agreement. If LESSEE fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and LESSEE shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

10.5 Employee Litigation. In any and all claims against any party indemnified under this Agreement by any employee of LESSEE, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for LESSEE or any subcontractor under worker's compensation or other employee benefit acts.

XI. ASSIGNMENT AND SUBCONTRACTING

11.1 LESSEE shall not assign or transfer any interest in this LEASE to any other person or entity without CITY's prior written consent. CITY acknowledges and consents to LESSEE providing for the use of the Leased Premises by Tenants. LESSEE shall provide CITY the name and contact information of Tenants prior to their use of the LEASED PREMISES.

XII. DAMAGE TO LICENSED PREMISES

12.1 LESSEE shall be responsible for all damages to the LEASED PREMISES caused by its employees, agents or subcontractors. The extent of such damages and the amount due to CITY hereunder shall be left to the sole discretion of CITY.

XIII. DESTRUCTION OF LEASED PREMISES

13.1 If the Leased Premises are partially destroyed or otherwise made unsuitable in whole or in part by fire, other casualty, or for any other reason during the term of this LEASE, or any renewal periods, this LEASE shall terminate.

XIV. RESERVED

XV. CONFLICT OF INTEREST

15.1 The Charter of the City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with CITY or any CITY agency, such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with CITY or in the sale to CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- a. a CITY officer or employee;
- b. his parent, child or spouse;
- c. a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- d. a business entity in which any individual or entity above listed is a (i) subcontractor on a CITY contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

15.2 LESSEE warrants and certifies as follows:

- a. LESSEE and its officers, employees and agents are neither officers nor employees of CITY.
- b. LESSEE has tendered to CITY a Contracts Disclosure Statement in compliance with CITY's Ethics Code.

15.3 LESSEE acknowledges that CITY's reliance on the above warranties and certifications is reasonable.

XVI. RELATIONSHIP OF PARTIES

16.1 Nothing contained in this LEASE shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship. It is understood and agreed that no provision contained in this LEASE nor any acts of the Parties creates a relationship other than the relationship of lessor and lessee.

XVII. NOTICE

17.1 Any notice required or permitted to be given hereunder by one party to the other shall be deemed to be given when deposited in the United States Mail, with sufficient postage prepaid, certified mail, return receipt requested, addressed to the respective party to whom notice is intended, or by hand delivery (courier or otherwise) with signature from the receiving party, to be given at the following address:

CITY: Mike Sawaya, Director of Convention and Sports Facilities
Henry B. Gonzalez Convention Center
200 E. Market Street
San Antonio, Texas 78205

LESSEE: David Malley, Malley Restaurants, LLC
5616 Bicentennial Drive, Suite 101

XVIII. AMENDMENTS

18.1 Except where the terms of this LEASE expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both CITY and LESSEE, subject to the approval of City Council by passage of an ordinance.

XIX. EFFECT OF WAIVER

19.1 Either CITY's or LESSEE's waiver of a breach of one covenant or condition of this LEASE is not a waiver of a breach of any other covenants or conditions, or of a subsequent breach of the one waived. CITY's acceptance of Lease Fee installments after a breach is not a waiver of the breach, except of a breach of the covenant to pay the Lease Fees.

XX. LEGAL CONSTRUCTION

20.1 THIS LEASE SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, and all obligations of CITY and LESSEE created hereunder are performable in Bexar County, Texas. CITY and LESSEE hereto further agree that any court of proper jurisdiction sitting in San Antonio, Bexar County, Texas, shall be the proper forum for any legal actions or proceedings brought under this LEASE.

XXI. SEVERABILITY

21.1 If one or more of the provisions contained in this LEASE shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. In such event, it is the intention of CITY and LESSEE that the remainder of this LEASE shall not be affected, and it is also the intention of the Parties to this LEASE that in lieu of each clause or provision of this LEASE that is illegal, invalid or unenforceable, there be added as a part of this LEASE a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

XXII. CAPTIONS

22.1 The captions contained in this LEASE are for purposes of convenience only and shall not, in any way, modify, amend or affect the provisions hereof.

XXIII. AUTHORITY

23.1 The signer of this LEASE for LESSEE hereby represents and warrants that he or she has full authority to execute this LEASE on behalf of LESSEE.

XXIV. ENTIRE LEASE

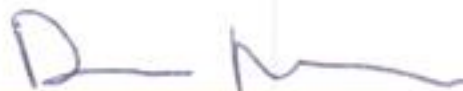
24.1 This LEASE, and any amendment thereto, contains the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon and no other agreements, oral or otherwise, regarding the subject matter of this LEASE shall be deemed to exist or to bind the parties hereto, it being the intent of the parties that neither the LESSEE nor CITY shall be bound by any term, condition or representation not herein written.

EXECUTED AND AGREED TO be effective the 12th day of July, 2017.

CITY OF SAN ANTONIO

MALLEY RESTAURANTS, LLC

Sheryl L. Sculley
City Manager



David Malley
Manager

ATTEST:

Leticia Vacek
City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit A

