

FOURTH AMENDMENT TO PREMIUM CONCESSION MANAGEMENT AND LICENSE AGREEMENT

THIS FOURTH AMENDMENT TO PREMIUM CONCESSION MANAGEMENT AND LICENSE AGREEMENT (the "Fourth Amendment") is dated as of February 1, 2011 (the "Fourth Amendment Effective Date"), among the METROPOLITAN FOOTBALL STADIUM DISTRICT, a body corporate and politic and a political subdivision of the State of Colorado (the "District"), STADIUM MANAGEMENT COMPANY, LLC, a Colorado limited liability company ("SMC"), PDB SPORTS, LTD., a Colorado limited partnership ("PDB"), and EPICUREAN ENTERTAINMENT, LLC d/b/a EPICUREAN SPORTS ENTERPRISES, LLC, a Colorado limited liability company ("Premium Concessionaire"). (The District, SMC, PDB and Premium Concessionaire are sometimes collectively referred to herein as the "Parties").

RECITALS

A. The District, SMC, PDB and Premium Concessionaire entered into that certain Premium Concession Management and License Agreement dated as of October 28, 1999 (the "Original Management and License Agreement"), concerning the management and operation of certain Catering services at the Stadium, as amended by (i) that certain First Amendment to Premium Concession Management and License Agreement dated as of May 25, 2001 (the "First Amendment"), (ii) that certain Second Amendment to Premium Concession Management and License Agreement dated as of June 20, 2001 (the "Second Amendment"), (iii) that certain letter agreement dated as of May 8, 2002 (the "Letter Agreement"), and (iv) that certain Third Amendment to Premium Concession Management and License Agreement dated as of June 30, 2002 (the "Third Amendment"). The Original Management and License Agreement, the First Amendment, the Second Amendment, the Letter Agreement and the Third Amendment shall be collectively referred to as the "Management and License Agreement".

B. The Parties now desire to amend the Management and License Agreement as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements and conditions hereinafter contained, and for other good and valuable consideration the receipt, adequacy and sufficiency of which are hereby confessed and acknowledged, the Parties hereby amend the Management and License Agreement and otherwise agree as follows:

1. **Definitions.** Schedule I to the Management and License Agreement is hereby deleted in its entirety and replaced with the revised form of Schedule I which is attached hereto as Exhibit A.
2. **Term.** Section 3.1 of the Management and License Agreement is amended and restated to provide in its entirety as follows:
 - 3.1 Subject to the provisions of Article 59, the term of this Agreement (the "Term") shall commence on the Effective Date and shall expire on the first Business Day

following the expiration of thirty (30) days from the date the last Home Game is played at the Stadium at the conclusion of the twentieth (20th) NFL Season played, in whole or in part, at the Stadium (the "Expiration Date"). The Parties acknowledge that ten (10) NFL Seasons have been completed as of Fourth Amendment Effective Date.

3. **Commissions.** Effective as of July 1, 2011, Article 26 of the Agreement is amended and restated to provide in its entirety as follows:

26. **Commissions.**

26.1.1 Commissions Payable to SMC.

26.1.1 Executive Suites Commissions. For all Stadium Catering at SMC Executive Suite Catered Events occurring during the License Term of this Agreement, Premium Concessionaire shall pay SMC the following Commissions determined as a percentage of Gross Receipts from such Executive Suite Catered Events:

<u>Sales Category</u>	<u>Percentage of Gross Receipts</u>
Stadium Catering at SMC Executive Suite Catered Events	29.0%

26.1.2 Catered Events Commissions. For all Stadium Catering at SMC Stadium Catered Events occurring during the License Term of this Agreement, Concessionaire shall pay SMC the following Commissions determined as a percentage of Gross Receipts from such Stadium Catered Events from the following categories of sales:

<u>Sales Category</u>	<u>Percentage of Gross Receipts</u>
Stadium Catering at SMC Stadium Catered Events occurring on the Club Level of the Stadium (excluding Non-Profit Events)	15%
Stadium Catering at SMC Stadium Catered Events occurring at a venue not located on the Club Level of the Stadium (excluding Non-Profit Events)	20%
Stadium Catering at Non-Profit Events	10%

- 26.1.3 Guaranteed Annual Payments to SMC. Premium Concessionaire guarantees that the minimum amount of Commissions payable to SMC during each Contract Year pursuant to subsections 26.1.1 and 26.1.2 ("SMC Guaranteed Annual Payment") shall be Two Hundred Thousand Dollars (\$200,000).
- 26.1.4 SMC Preliminary Home Game Summary Report, Event Summary Report and Commission Payments. Premium Concessionaire shall deliver to SMC within three (3) days after each Home Game a Preliminary Home Game Summary Report. Premium Concessionaire shall deliver to SMC within twenty-five (25) days after the end of a calendar month (i) an Event Summary Report reflecting the amount of Gross Receipts attributable to SMC Catered Events during such calendar month for each sales category identified in subsections 26.1.1 and 26.1.2, and (ii) payment of Commissions due to SMC with respect to all such Catered Events. At the request of SMC, Premium Concessionaire shall pay Commissions and any other amounts due to SMC under this Agreement in the form of a wire transfer to account(s) designated from time to time by SMC.
- 26.1.5 SMC Annual Report. On or before ninety (90) days following the end of each Contract Year during the License Term, Premium Concessionaire shall deliver to SMC (i) a complete accounting report (collectively the "SMC Annual Report"), setting forth the calculation of Gross Receipts for all SMC Catered Events (separated between the categories of Gross Receipts described in subsections 26.1.1 and 26.1.2) and the total amount of Commissions due to SMC for the applicable period pursuant to subsections 26.1.1, 26.1.2 and 26.1.3, which accounting report shall be certified by Premium Concessionaire's Chief Financial Officer as accurate and prepared in accordance with industry standards and the Obligations; (ii) if Commissions previously paid to SMC for such Contract Year are less than the total amount of Commissions due to SMC for such Contract Year (including, if applicable, the difference between Commissions paid during such Contract Year and the SMC Guaranteed Annual Payment for such Contract Year) payment of such shortfall shall either accompany such SMC Annual Report or, if previously requested by SMC, shall be wire transferred to account(s) designated by SMC.

26.2 Commissions Payable to District.

- 26.2.1 Executive Suites Commissions. For all Stadium Catering at District Executive Suite Catered Events occurring during the

License Term of this Agreement, Premium Concessionaire shall pay the District the following Commissions determined as a percentage of District Gross Receipts from such Executive Suite Catered Events:

<u>Sales Category</u>	<u>Percentage of District Gross Receipts</u>
Stadium Catering at District Executive Suite Catered Events	29.0%

26.2.2 Catered Events Commissions. For all Stadium Catering at District Stadium Catered Events occurring during the License Term of this Agreement, Concessionaire shall pay the District the following Commissions determined as a percentage of District Gross Receipts from such Stadium Catered Events from the following categories of sales:

<u>Sales Category</u>	<u>Percentage of District Gross Receipts</u>
Stadium Catering at District Stadium Catered Events occurring on the Club Level of the Stadium (excluding Non-Profit Events)	15.0%
Stadium Catering at District Stadium Catered Events occurring at a venue not located on the Promenade Level of the Stadium (excluding Non-Profit Events)	20.0%
Stadium Catering at Non-Profit Events	10%

26.2.3 District Event Summary Report. Premium Concessionaire shall deliver to the District within twenty-five (25) days after the end of a calendar month (i) an Event Summary Report reflecting the amount of District Gross Receipts attributable to all District Catered Events held within such calendar month for each sales category identified in subsections 26.2.1 and 26.2.2 and (ii) payment of Commissions due to the District for all such Catered Events. At the request of the District, Premium Concessionaire shall pay Commissions and any other amounts due to the District under this Agreement in the form of a wire transfer to account(s) designated from time to time by the District.

26.2.4 District Annual Report. On or before ninety (90) days following the end of each Contract Year during the License Term, Premium Concessionaire shall deliver to the District a complete accounting report (collectively the "District Annual Report"), setting forth the calculation of District Gross Receipts, (separated between the categories of District Gross Receipts described in subsections 26.2.1 and 26.2.2), of all District Catered Events and the total amount of Commissions due to the District for the applicable period, which accounting report shall be certified by Premium Concessionaire's Chief Financial Officer as accurate and prepared in accordance with industry standards and the Obligations, and if Commissions previously paid to the District for such Contract Year are less than the total amount of Commissions due to the District for such Contract Year payment of such shortfall shall either accompany such District Annual Report or, if previously requested by the District, shall be wire transferred to account(s) designated by the District.

26.3 Commission Obligations Absolute. The obligation of Premium Concessionaire to pay any Commissions and the SMC Guaranteed Annual Payments are independent of the obligations and liabilities of the District and SMC under this Agreement. Premium Concessionaire shall promptly pay all Commissions and the SMC Guaranteed Annual Payments when due to either the District or SMC (as applicable) without any deductions or setoffs against such Commissions and the SMC Guaranteed Annual Payments on account of any breach or default by or claim against the District or SMC. Nothing in this Section 26.3 shall prevent Premium Concessionaire from bringing an independent action against the District or SMC.

4. **Sponsorship Agreements with Sports Authority**. Premium Concessionaire acknowledges that SMC and PDB have entered into an SMC Sponsorship Agreement with Sports Authority and the District entered into a Naming Rights Agreement with Sports Authority (collectively, the "Sports Authority Agreements", as the same may be replaced, amended, extended or otherwise modified). Premium Concessionaire agrees that Premium Concessionaire Parties shall, when making reference to the Stadium in any and all advertising, marketing, agreements, arrangements, correspondence, communications and media in any form whatsoever, including whether in printed, audio, video or electronic form or otherwise, refer to the Stadium as "Sports Authority Field at Mile High" or such other name as SMC may notify Premium Concessionaire in writing has been approved by Sports Authority, SMC, PDB and the District pursuant to the terms and provisions of the Sports Authority Agreements (the "Approved New Name"). Premium Concessionaire shall not abbreviate or shorten the name, "Sports Authority Field at Mile High", or the Approved New Name, if applicable, when making any such references to the Stadium.

5. **Uniforms**. Premium Concessionaire agrees that the uniforms of Stadium Employees who have general access to Patrons shall bear Sports Authority Field at Mile High identification, as may be requested from time to time by the District, SMC and PDB in accordance with the provisions of

Section 37.1 of the Agreement. The terms and provisions of Section 37.1 of the Agreement, as modified by this Section, shall remain in full force and effect.

6. **Catering Areas and Equipment Repairs and Replacement Reserve Fund.** In the third to the last sentence of Section 55.1, the amounts of “five hundred dollars (\$500)” and “three thousand dollars (\$3,000)” are changed to “two thousand dollars (\$2,000)” and “ten thousand dollars (\$10,000)”, respectively.

7. **Termination by District and SMC.** Section 59.3 of the Agreement is amended and restated to provide in its entirety as follows:

The District and SMC, or either of them, may elect to terminate this Agreement without any cause or reason as of the last day of any calendar month occurring during the License Term selected by the District or SMC (the “Early Termination Date”) upon the District’s or SMC’s delivery of not less than ninety (90) days prior written notice to Premium Concessionaire and payment by the Terminating Party to the Premium Concessionaire on or before the Early Termination Date the following fee (“Early Termination Fee”):

\$100,000	plus the amount of the Unamortized Fourth Amendment Investment if the Termination Date occurs prior to or during the eleventh (11th) Contract Year
\$ 90,000	plus the amount of the Unamortized Fourth Amendment Investment if the Termination Date occurs during the twelfth (12th) Contract Year
\$ 80,000	plus the amount of the Unamortized Fourth Amendment Investment if the Termination Date occurs during the thirteenth (13th) Contract Year
\$ 70,000	plus the amount of the Unamortized Fourth Amendment Investment if the Termination Date occurs during the fourteenth (14th) Contract Year
\$ 60,000	plus the amount of the Unamortized Fourth Amendment Investment if the Termination Date occurs during the fifteenth (15th) Contract Year
\$ 50,000	plus the amount of the Unamortized Fourth Amendment Investment if the Termination Date occurs during the sixteenth (16th) Contract Year
\$ 40,000	plus the amount of the Unamortized Fourth Amendment Investment if the Termination Date occurs during the seventeenth (17th) Contract Year
\$ 30,000	plus the amount of the Unamortized Fourth Amendment Investment if the Termination Date occurs during the eighteenth (18th) Contract Year
\$ 20,000	plus the amount of the Unamortized Fourth Amendment Investment if the Termination Date occurs during the nineteenth Contract Year

\$ 10,000 plus the amount of the Unamortized Fourth Amendment Investment if the Termination Date occurs during the twentieth (20th) Contract Year

No such termination pursuant to this Section 59.3 shall be effective until the Early Termination Fee has been paid. The following calculation of the Early Termination Fee is provided as an example. For purposes of the example, the Early Termination Date is assumed to be June 30, 2016, and the Expiration Date is assumed to be February 28, 2021. The Early Termination Fee is determined as follows:

\$1,000,000 (the amount of the Fourth Amendment Investment) is multiplied by the fraction 56/115 (the numerator, 56, is the number of complete calendar months remaining during the License Term assuming that this Agreement is not terminated prior to the Expiration Date, and the denominator, 115, is the number of complete calendar months expected to occur throughout the License Term assuming that this Agreement is not terminated prior to the Expiration Date). Then add \$50,000 (the Early Termination Date occurs during sixteenth (16th) Contract Year) to the product of 1,000,000 x 56/115.

$$\begin{aligned} \$1,000,000 \times 56/115 &= \$486,956.52 \\ \$486,956.52 + \$50,000 &= \$536,956.52 \\ \text{Early Termination Fee is } & \$536,956.52 \end{aligned}$$

8. **Termination by Premium Concessionaire.** Section 60.2 of the Agreement is amended and restated to provide in its entirety as follows:

60.2 Premium Concessionaire may elect to terminate this Agreement without any cause or reason after the completion of fourteenth (14th) 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 fifteenth (15th) Contract Year;
- (b) \$50,000 if such notice is delivered during the sixteenth (16th) Contract Year;
- (c) \$40,000 if such notice is delivered during the seventeenth (17th) Contract Year;
- (d) \$30,000 if such notice is delivered during the eighteenth (18th) Contract Year;
- (e) \$20,000 if such notice is delivered during the nineteenth (19th) Contract Year; and

(f) \$10,000 if such notice is delivered during the twentieth (20th) 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, the Unamortized Equipment Investment, and the Fourth Amendment.

9. **Surrender and Removal of Items from the Stadium Premises.** Section 62.1 of the Agreement is amended and restated to provide in its entirety as follows:

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 Fourth Amendment 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 pay Premium Concessionaire the amount of the Unamortized Fourth Amendment 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 Fourth Amendment Investment, (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. Premium Concessionaire agrees that neither SMC nor the District is obligated to pay the Unamortized Premium Concessionaire Investment and/or Unamortized Equipment Investment in the event of the termination of this Agreement for any reason since the Premium Concessionaire Investment and Equipment Investment have been fully amortized as of the Fourth Amendment Effective Date.

10. **Notice.** Section 69.8 of the Agreement is amended and restated to provide in its entirety as follows:

69.8 Notice. Until written notice of change of address is given by the Parties to this Agreement in accordance with this subsection 69.8, any notices, consents, approvals, demands, requests or other communications (the "Notices") given or required to be given under this Agreement shall be deemed sufficiently given or rendered only if in writing (unless oral notice is expressly specified herein), and (a) sent by hand (receipt required), (b) sent by reputable overnight courier such as Federal Express, or (c) sent by registered or certified mail (return receipt requested) when, if given to the District, the Notices shall be addressed to:

Metropolitan Football Stadium District
1701 Bryant Street, Suite 232
Denver, CO 80204
Attn: Executive Director

with a copy to:

Metropolitan Football Stadium District
2195 Blake Street
Denver, CO 80205
Attn: Executive Director

If given to SMC, Notices shall be addressed to:

Stadium Management Company, LLC
1701 Bryant Street, Suite 700
Denver, CO 80204
Attn: Richard P. Slivka

with a copy to:

Stadium Management Company, LLC
13655 Broncos Parkway
Englewood, CO 80112
Attn: Richard P. Slivka

If given to PDB, Notices shall be address to:

PDB Sports, Ltd.
13655 Broncos Parkway
Englewood, CO 80112
Attn: Joe Ellis

with a copy to:

PDB Sports, Ltd.
13655 Broncos Parkway
Englewood, CO 80112
Attn: Richard P. Slivka

And if given to Premium Concessionaire, Notices shall be addressed to:

Epicurean Entertainment, LLC
6800 South Xanthia Street
Centennial, CO 80112
Attn: Paul G. Aylmer

with a copy to:

Epicurean Entertainment, LLC
1701 Bryant Street, Suite 600
Denver, CO 80204
Attn: Paul G. Aylmer

with an additional copy to:

Epicurean Catering, LLC
6800 South Xanthia Street
Greenwood Village, CO 80112
Attn: Larry DiPasquale

Any Notices shall be deemed to have been rendered or given on the date when such Notices shall have been delivered or the date delivery is rejected, if sent by hand, or two (2) days after mailing, if sent by registered or certified mail, or one day after such Notices are sent, if sent by overnight courier.

11. **Deleted Provisions.** The following provisions of the Agreement are deleted and of no further force or effect:

- (a) Section 6.9;
- (b) Article 29; and
- (c) Article 31.

12. **Innovations.** The Parties recognize that the implementation of new and creative Catering offerings, services and marketing (collectively, "Innovations") will enhance the experience of Patrons attending Games and Catered Events, and the level of Gross Receipts from Stadium Catering and Catered Events. 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) held by SMC (the "Innovations Fund"). 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 Innovations Fund. The Innovations Fund shall be maintained in a separate escrow or trustee account(s) to be used solely for the implementation of Innovations. All checks issued from the fund shall require a signature of an authorized representative of SMC. Within forty (40) days after the end of each NFL Season during the License Term, Premium Concessionaire, the District and SMC shall meet and discuss the merits of potential Innovations to be implemented during the Contract Year following such NFL Season. SMC, subject to Premium Concessionaire's and District's reasonable approval shall determine the Innovations to be implemented during each Contract Year. The Parties agree that the balance in the Innovations Fund as of the end of any Contract Year shall not be in excess of One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00). Any tangible personal property purchased with the proceeds of the Innovation Fund shall be the sole property of SMC. Any funds remaining in the Innovations Fund upon the expiration or termination of the Agreement shall be the sole property of SMC.

13. **Fourth Amendment Investment Fund.** On or before that date which is the thirtieth (30th) day following the date this Fourth Amendment has been fully executed, Premium Concessionaire shall pay to SMC the sum of \$1,000,000 (the "Fourth Amendment Investment") which shall be deposited into and maintained by SMC in a separate escrow or trustee account(s) (the "Fourth Amendment Investment Fund") to be used solely for the payment of costs and expenses incurred in the design and construction of improvements to the Stadium and acquisition of Catering Wares pursuant to the terms of this paragraph 13. The Parties recognize that certain renovations to the Executive Suites and the Executive Suite Concourses and the acquisition of additional Catering Wares (collectively, "Fourth Amendment Catering Improvements") are needed to enhance the experience of Patrons at Catered Events. SMC and Premium Concessionaire have discussed different possible Fourth Amendment Catering Improvements which include the items set forth on Exhibit A attached hereto and incorporated herein by this reference. SMC and Premium Concessionaire acknowledge that the items set forth on Exhibit A are intended only to provide an example of what could be Fourth Amendment Catering Improvements and are not intended to be construed as the exclusive list of potential Fourth Amendment Catering Improvements. Within forty (40) days after the end of each NFL Season during the License Term, SMC, Premium Concessionaire and the District shall meet to discuss potential Fourth Amendment Catering Improvements that may be designed, constructed and/or acquired during the Contract Year following such NFL Season. SMC shall, subject to the reasonable approval of the District, and Premium Concessionaire shall determine the Fourth Amendment Catering Improvements to be designed, constructed and/or acquired during each Contract Year. All Fourth Amendment Catering Improvements shall be the sole property of SMC. Any funds remaining in the Fourth Amendment Investment Fund upon the expiration or termination of the Agreement shall be the sole property of SMC.

14. **Premium Concessionaire Executive Suite.** The Parties acknowledge that Premium Concessionaire is an Executive Suite Licensee pursuant to that Executive Suite License Agreement executed by Premium Concessionaire on August 14, 2011, between SMC and Premium Concessionaire (herein referred to as the "Premium Concessionaire Executive Suite License Agreement", as the same

may be replaced, amended, extended, supplemented or otherwise modified from time to time). Premium Concessionaire agrees to perform all of its obligations under the Premium Concessionaire Executive Suite License Agreement throughout the License Term and agrees that it shall (subject to SMC's discretion) extend the term of the Premium Concessionaire Executive License Agreement from time to time during the License Term upon terms and conditions that are comparable to the terms and conditions of extensions of other Executive Suite License Agreements pertaining to Executive Suites that are comparable to the Executive Suite that is the subject of the Premium Concessionaire Executive Suite License Agreement. Any extensions or renewals of the Premium Concession Executive Suite License Agreement shall be subject to SMC's right to decide not to extend or renew the Premium Concession Executive Suite License Agreement in its sole and absolute discretion. In the event this Agreement is terminated pursuant to the provisions of Section 59.3 or Section 60.1, Premium Concessionaire shall be permitted to terminate the Premium Concessionaire Executive Suite License Agreement without penalty provided that Premium Concessionaire delivers written notice of its election to terminate to SMC within ten (10) Business Days after the date of the termination of this Agreement. In the event this Agreement is otherwise terminated, the Premium Concessionaire Executive Suite License Agreement shall remain in full force and effect.

15. **Consent and Agreement.** The Parties acknowledge and agree that the Management and License Agreement as amended by this Fourth Amendment is subject to the Consent and Agreement.

16. **Conflict.** The Parties agree that the terms, covenants and conditions of the Management and License Agreement, as modified by this Fourth Amendment, shall remain and continue in full force and effect. Except as modified by this Fourth Amendment, the terms, covenants and conditions of the Management and License Agreement are ratified and affirmed. If there is any conflict between the terms and provisions of this Fourth Amendment and the terms and provisions of the Management and License Agreement, the terms and provisions of this Fourth Amendment shall govern.

17. **Defined Terms.** Capitalized terms used herein but not defined herein shall have the respective meanings ascribed to them in the Management and License Agreement, unless the context requires otherwise.

18. **Construction and Headings.** The language in all parts of this Fourth Amendment shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the Parties. The headings of the several sections of this Fourth Amendment are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Fourth Amendment.

19. **Governing Law.** This Fourth Amendment shall be governed by and construed in accordance with the laws of the State of Colorado, without giving effect to conflicts of law principles.

20. **Amendment.** No amendment or modification of this Fourth Amendment shall be valid or binding on the Parties unless made in writing and signed on behalf of each of the Parties by their respective authorized representatives.

21. **Counterparts.** This Fourth Amendment may be may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

22. **No Third Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Fourth Amendment, and all rights of action relating to such enforcement, shall be strictly reserved to the District, SMC, PDB and Premium Concessionaire and nothing contained in this Fourth Amendment shall give or allow any such claim or right of action by any other or third person. It is the express intention of the District, SMC, PDB and Premium Concessionaire that any Person other than the District, SMC, PDB and Premium Concessionaire receiving benefits under this Fourth Amendment shall be deemed to be an incidental beneficiary only.

23. **Entire Agreement.** With respect to the matters addressed herein, this Fourth Amendment constitutes the entire understanding and agreement among the Parties and supersedes all prior written or oral understandings and agreements among the Parties.

24. **Successors and Assigns.** Subject to the provisions of Section 69.15 of the Management and License Agreement, this Fourth Amendment and the terms, conditions and obligations herein contained shall be binding upon and inure to the benefit of the Parties and each of their respective successors and assigns.

IN WITNESS WHEREOF, the District, SMC, PDB and Premium Concessionaire duly execute this Fourth Amendment as of the date first written above.

DISTRICT:

METROPOLITAN FOOTBALL STADIUM DISTRICT, a body corporate and politic and a political subdivision of the State of Colorado, as the District

By: 

Name: Raymond T. Baker

Title: Chairman

SMC:

STADIUM MANAGEMENT COMPANY, LLC, a Colorado limited liability company, as SMC

By: 

Name: Richard P. Slivka

Title: General Counsel and Executive Vice President

PDB:

PDB SPORTS, LTD., a Colorado limited partnership

By: Bowlen Sports, Inc., an Arizona corporation,
general partner

By: 

Name: Richard P. Slivka

Title: General Counsel and Executive Vice
President

PREMIUM CONCESSIONAIRE:

EPICUREAN ENTERTAINMENT, LLC d/b/a
EPICUREAN SPORTS ENTERPRISES, a Colorado
limited liability company, as Premium Concessionaire

By: 

Name: Larry DiPasquale

Title: Manager

EXHIBIT A

Fourth Amendment to Premium Concession Management and License Agreement

Description of potential Fourth Amendment Catering Improvements

- The design and renovation of Executive Suites, or (ii) the construction of a bar/networking gathering place/restaurant on the Promenade Level.
- Kitchen, pantry kitchen, Executive Suite and catering equipment, including china and small wares for all areas.
- Suite Remodel Option A - \$13,500-\$15,500 Estimated Per Executive Suite
 - Removing the current bar and replacing with a curved, casual seating/dining area shown in renderings.
 - Removing the current buffet and replacing with a larger buffet with built-in induction heating, new serving equipment and pieces, under counter refrigeration with glass door.
 - Built in area for trash, recycling and composting.
 - Includes Architectural Design, Construction/ Materials, Upgraded Equipment.
- Technology Upgrades
- Suite Remodel Option B - \$21,500-\$32,500 Estimated Executive Per Suite
 - Option A above plus any or all of the following:
 - Elongated Ethanol fireplace
 - Electric candles and washed river rock or crushed glass in a recessed nook in place of above fireplace
 - Fireplace wall furred out and finishes
 - Revise back bar and closet for bus tub / recycle
 - New carpet and stone floor
 - Curved ceiling soffit
 - New Lighting
- Suite Promenade Level Remodel - \$25-\$150 per square foot depending on level of remodel.
 - Due to both SMC and Premium Concessionaire being unsure if this area would generate interest from Executive Suite Licensees, Premium Concessionaire is proposed a light remodel of the following to differentiate it from the rest of the Executive Suite area: paint, ceiling, carpet, televisions, custom designed bar and buffet, new seating areas, high-end merchandise area, concierge table.

SCHEDULE I
TO PREMIUM CONCESSION MANAGEMENT
AND LICENSE AGREEMENT
(FOURTH AMENDMENT)

DEFINED TERMS

"AAA" shall mean the American Arbitration Association.

"Actual Cost" shall mean the actual out-of-pocket expenses incurred by Premium Concessionaire (excluding any overhead and administration expenses) in (i) the purchase of Food and Beverages, and (ii) the labor to prepare and serve Food and Beverages for Catering services at [A] the Owner's Executive Suite, [B] the District's Executive Suite, [C] Private SMC Functions, and [D] Private District Functions. Actual Cost shall be determined by Premium Concessionaire and, at the request of the Event Host, Premium Concessionaire shall provide reasonable evidence supporting the calculation of Actual Cost.

"ADA" means the Americans With Disabilities Act of 1990, together with any rules or regulations promulgated thereunder, as the same may be amended from time to time.

"Additional Equipment" shall mean equipment for the operation of Stadium Catered Events in addition to the Equipment including tables, chairs, linens, trays, stands, tents, flatware, glasses, dishes, audio-visual equipment, dance floors, stage equipment, platforms, decorations, lighting equipment, sound equipment and furniture.

"Affiliate" shall mean, with respect to any Person, any other Person directly or indirectly controlling (including all directors, officers, managers and general partners of such Person), controlled by, or under direct or indirect common control with such Person. A Person shall be deemed to control another Person if the first Person possesses, directly or indirectly, the power to (i) vote ten percent (10%) or more of the securities having ordinary voting power for the election of directors or other governing body of a corporation or ten percent (10%) or more of the partnership, limited liability company or other ownership interest of a partnership or limited liability company, or (ii) direct or cause the direction of the management and policies of such corporation, partnership or limited liability company, whether through the ownership of voting securities or ownership interest, by contract or otherwise. This definition shall not be construed or interpreted as imposing personal liability on any such directors, officers, managers, members and partners of such Person.

"Agreement" shall mean this Premium Concession Management and License Agreement and all exhibits and schedules attached hereto (as amended, extended, supplemented or otherwise modified from time to time).

"Agreement for Services" shall mean any contract or agreement pursuant to which Premium Concessionaire agrees to provide Food, Beverages, or other Catering-related services to an Executive Suite Licensee or a Banquet Licensee, as such agreement may be amended, extended, supplemented or otherwise modified. Each Agreement for Services shall set forth the Food and Beverage items and related services requested by the Executive Suite Licensee or Banquet Licensee. Each Agreement for Services entered into by and between Premium Concessionaire and a Banquet Licensee shall permit the termination of such Agreement for Services by Premium Concessionaire not less than thirty (30) days prior to the date on which the Stadium Catered Event is scheduled to occur upon Premium Concessionaire's (i) payment of the Cancellation Fee and (ii) refund of any deposit paid by such Banquet Licensee with respect to such Stadium Catered Event. The general form, content and format of Agreement for Services shall be subject to the reasonable approval of the District and SMC.

"Alcohol Awareness Training" shall mean program(s) which provides bartenders, servers and other staff with techniques that help prevent alcohol abuse situations, drunk driving and underage consumption of Alcoholic Beverages. Such program(s) shall also provide instruction to bartenders, servers and other staff in anticipating and responding to alcohol-related situations in a manner which will benefit the Patrons, Premium Concessionaire, Premium Concessionaire Parties, the District, SMC and Event Participants.

"Alcoholic Beverages" shall mean any drinks or liquids with an alcohol content including, beer, wine, whiskey, scotch, vodka, gin, tequila, vermouth, liquors and mixed drinks.

"Alterations" shall have the meaning set forth in Section 30.1.

"Ancillary Services" shall mean services generally provided in connection with a Catered Event but not directly involving Food and Beverage service including, by way of example, valet services, coat checking, photography, entertainment, floral arrangements, decorations, lighting, staging, audio or visual sound systems, special food production items (e.g., wedding cake).

"Approved Food and Beverages" shall have the meaning set forth in Section 17.2.

"Approved New Name" shall have the meaning set forth in Section 2 of the First Amendment through and until August 16, 2011 and thereafter shall have the meaning set forth in paragraph 4 of the Fourth Amendment.

"Banks" shall mean "Lenders".

"Banquet Licensee" shall have the meaning set forth in Section 9.3.

"Best Management Practices" means the methods, measures, practices and procedures promulgated from time to time by SMC, PDB, the District or any Governmental Authority which are utilized at the Stadium or the Real Property to protect and improve surface water, groundwater and overall water quality pursuant to the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*, as amended. The Best Management Practices in effect as of the date of execution of the Agreement are

described in **Schedule VI** hereto as the same may be amended, supplemented or otherwise modified, provided that, subject to Article 55, Premium Concessionaire shall be entitled to reimbursement from the Catering Areas and Equipment Repairs and Replacement Reserve Fund for any out-of-pocket expenses incurred by Premium Concessionaire due to physical changes to the Stadium or the Real Property resulting from any such amendment or supplementation.

"Beverage" shall mean a consumable drink and/or liquid of all kinds, including water, milk and other dairy products, soft drinks, sports drinks, juices, coffee, tea, Alcoholic Beverages and Branded Products.

"Branded Products" shall mean Food or Beverage items which are advertised, marketed and sold outside the Stadium in regular retail outlets to the general public under the same brand name which the product is offered for sale inside the Stadium.

"Budweiser's Champions Club" shall mean that area of the Stadium located on the north side of the Upper Suite Level, as generally depicted on **Schedule II**, which was formerly identified as the "Quarterback Club", as the same may be changed or modified.

"Business Day" shall mean any day excluding Saturday, Sunday and any day which in the City, is a legal holiday or a day on which banking institutions are authorized or required by Law or other government actions to close.

"Cancellation Fee" shall mean a reasonable termination fee, in an amount which shall not exceed twenty-five percent (25%) of the total contract price of the Food and Beverage items and related services as set forth on the Agreement for Services entered into by and between Premium Concessionaire and a Banquet Licensee, to be paid by Premium Concessionaire to such Banquet Licensee upon Premium Concessionaire's exercise of its right to terminate such Agreement for Services.

"Catered Event" shall mean any Event that is not open to members of the general public and involves use of banquet, dining or other areas of the Stadium or Real Property. Catered Events shall include Executive Suite Catered Events, Stadium Catered Events and Convention Catered Events.

"Catering" shall mean Food and Beverage functions where payment is received from one party for pre-arranged services including, but not limited to, suite service, dinner banquets and receptions.

"Catering Areas" shall mean areas within the Stadium for the management, administration, storage, preparation and sale of Food and Beverages by Premium Concessionaire as designated from time to time by the District and SMC pursuant to the provisions of Section 4.1 and each such area is defined as a "Catering Area." Catering Areas shall include those areas delineated by cross-hatching on **Schedule II** hereof, including the Marketing Area, as the same may be changed or modified pursuant to the provisions of Sections 4.1 and 4.8.

"Catering Areas Alteration" shall have the meaning set forth in Section 4.1.

"Catering Areas and Equipment Repairs and Replacements" shall have the meaning set forth in Section 55.1.

"Catering Areas and Equipment Repairs and Replacement Reserve Fund" shall have the meaning set forth in Section 55.1.

"Catering Wares" shall mean all Equipment used in the service and presentation of Food and Beverages including spoons, forks, knives, cutlery, serving utensils, flatware, dishes, bowls, glasses, cups, saucers, serving bowls, pitchers, carafes, condiment containers, chaffing dishes, tablecloths, napkins and other linens.

"Charity" shall mean a non-profit charitable organization which represents itself to have qualified as tax-exempt under 26 U.S.C. §501(c)(3) (as the same may be amended).

"City" shall mean the City and County of Denver, a municipal corporation organized and existing by virtue of Article XX of the Constitution of the State of Colorado.

"Club" shall mean any Person owning a Franchise.

"Club Level" shall mean the third level of the Stadium which is also the level where the Club Seats are located.

"Club Level Catered Event" shall mean a Stadium Catered Event occurring on the Club Level of the Stadium.

"Club Lounges" shall mean the lounges located on the Club Level of the Stadium.

"Club Seats" shall mean the approximately 8,200 premium club seats at the Stadium that are generally designated as such in promotional, marketing or other documents or publications.

"Commissions" shall mean the commissions payable to SMC or the District pursuant to the terms of Sections 26.1 and 26.2.

"Comparable Stadiums" shall mean other stadiums hosting NFL football games which have been constructed or subject to major renovation after January 1, 1996 and prior to December 31, 2008.

"Complete Operations Delay Fee" shall have the meaning set forth in Section 69.21.

"Concessionaire" shall mean Volume Services America, Inc. d/b/a Centerplate, a Delaware corporation, or any successor(s) providing Concessions to the Stadium Bowl and Club Seats and/or Premium Concessions in the Club Lounges.

"Concessionaire's Subconcessionaires" shall mean all of the "Subconcessionaires" as defined in the General Concession Agreement.

"Concessions" shall mean the preparation, marketing and sale of Food, Beverages or Merchandise.

"Confidential Information" shall have the meaning set forth in Section 69.26.

"Consent and Agreement" shall mean that Consent and Agreement dated as of February 15, 2002 among SMC, PDB, Premium Concessionaire, Fleet National Bank as Collateral Agent and Fleet National Bank as Administrative Agent (as replaced, amended, extended, supplemented or otherwise modified from time to time).

"Contract Year" shall mean that period from February 1st to January 31st; provided, however, that the first Contract Year under this Agreement shall mean that period from the Opening Date to the next following January 31st.

"Counties Gateway Plaza" shall mean the area located at the western entrance to the Stadium which is depicted by cross-hatching on Schedule II-B as the same may be amended, changed or modified.

"Credit Agreement" shall mean that Credit Agreement dated as of February 15, 2002 among SMC, as Borrower, EagleFunding Capital Corporation and Paradigm Funding LLC, as Lender and Fleet National Bank, as Administrative Agent, concerning a \$150,000,000 credit facility (as replaced, amended, extended, supplemented or otherwise modified from time to time).

"Culinary Event" shall mean a Field Event or Non-Field Event which primarily features Food cuisine, Beverages or culinary arts. Culinary Events shall include, for example, The Festival of Mountain and Plain: A Taste of Colorado, Share Our Strength's Taste of the Nation and the Great American Beer Festival. Culinary Events shall not exceed six (6) per Contract Year unless otherwise mutually agreed.

"Defaulting Party" shall have the meaning set forth in subsection 58.2.2.

"Delinquent Account" shall have the meaning set forth in Section 13.1.

"Denver Broncos" shall mean the NFL team known as the "Denver Broncos" and which is the subject of the Franchise held by PDB to operate a professional football club of the NFL in the City.

"Design/Build Agreement" shall mean the Agreement, dated May 14, 1999, among the District, SMC and the Design/Builder.

"Design/Builder" shall mean Turner/HNTB, a Joint Venture consisting of Turner Construction Company and HNTB Design/Build Inc.

"Disposables" shall mean disposable utensils, glasses, cups, bowls and plates used in the operation of Executive Suite Catered Events.

"Dispute" shall have the meaning set forth in subsection 69.10.1.

"District" shall have the meaning set forth in the introduction to this Agreement.

"District Annual Report" shall have the meaning set forth in subsection 26.2.4.

"District Catered Event" shall mean a Catered Event sponsored or hosted by the District.

"District Counties" shall mean the following counties in the State: Adams County, Arapahoe County, Boulder County, Broomfield County, the City, Douglas County, and Jefferson County.

"District Gross Receipts" shall mean the total amount of money received or charged by Premium Concessionaire or any Subconcessionaire, agent or employee of Premium Concessionaire for all sales, cash or credit, of Food and Beverage items and any labor pertaining thereto at District Catered Events, excluding applicable sales or other such taxes, the amount of any gross receipts, rent or similar tax, reasonable shortages or shrinkage not to exceed five tenths of one percent (0.5% or 0.005) of District Gross Receipts, any service or discount charges on debit card, spot card, credit card, smart card or value added card or similar sales, bad debts, bulk or other sales not made in the ordinary course of business requested by the District, sales made by Premium Concessionaire at cost, and royalties or franchise fees paid by Premium Concessionaire in connection with Branded Products or franchises at the Stadium. District Gross Receipts shall include the District Gross Receipts of any Subconcessionaire, and not just payments made by said Subconcessionaire to Premium Concessionaire. District Gross Receipts shall not include (i) receipts from the portion of the sale of Food and Beverages relinquished by Premium Concessionaire at any Special Stadium Events, (ii) any Relinquished Event Fees; (iii) receipts from any Non-Stadium Events, and (iv) any revenues expressly excluded from District Gross Receipts under the provisions of this Agreement.

"District Liaison" shall have the meaning set forth in Section 8.2.

"District Parties" shall mean the District and its directors, employees and agents.

"District Project Fund" shall have the meaning defined in the Indenture of Trust.

"District's Executive Suite" shall mean the Executive Suite reserved by the District pursuant to the terms of the Lease, as delineated on Schedule II hereof, as the same may be amended, changed or modified.

"District/SMC Event of Default" shall have the meaning set forth in Section 58.2.

"Early Termination Date" shall have the meaning set forth in Section 59.3.

"Early Termination Fee" shall have the meaning set forth in Section 59.3.

"Effective Date" shall have the meaning set forth in the introduction to the Agreement.

"Employee Records" shall have the meaning set forth in Section 35.1.

"Environmental Laws" shall mean any applicable federal, State, interstate or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree or rule of common law, and any applicable judicial interpretation of any of the foregoing, which pertains to health, safety, any Hazardous Material, or the environment (including land surface, subsurface strata, or air or surface water or ground water or noise pollution or contamination, and underground or above ground tanks) or endangered or threatened species of fish, wildlife and plants or the management or use of natural resources and shall include the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Endangered Species Act, 16 U.S.C. § 1531 et seq.; the National Environmental Policy Act, 42 U.S.C. § 4321 et seq.; or State or local laws analogous thereto, and any other State or federal environmental statutes, and all applicable rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

"Equipment" shall have the meaning set forth in Section 28.1.

"Equipment Investment" shall mean the total amount of reasonable out-of-pocket costs and expenses incurred by Premium Concessionaire in the purchase and installation of the Equipment.

"Event" shall mean any event conducted, in whole or in part, at the Stadium or on the Real Property whether sponsored or hosted by the District, SMC or some other third party.

"Event Diagram" shall mean a diagram, in reasonable detail, reflecting the location of the Stadium Tables and Chairs for a Stadium Catered Event.

"Event Host" shall mean SMC or the District, whichever is hosting or promoting the Event at the Stadium or on the Real Property.

"Event Participants" shall mean the actual participants in an Event (e.g., for Home Games, Event Participants would include the NFL team members, coaches, trainers, officials and other similar employees, and for Catered Events, Event Participants would include speakers, moderators, musicians and other entertainers).

"Event Summary Report" shall mean a report in hard copy and electronic format in form and content reasonably acceptable to SMC and the District which will reflect the Gross Receipts attributable to each Event for each sales category described in subsections 26.1.1 and 26.1.2 and the Off-Premise Use Fee attributable to each Non-Stadium Event.

"Exclusions" shall have the meaning set forth in Section 10.1.

"Executive Suite Attendant" shall have the meaning set forth in Section 34.1.

"Executive Suite Catered Event" shall mean a Catered Event which (i) takes place in an Executive Suite or (ii) takes place on an Executive Suites Concourse and takes place immediately before, during or immediately after a Home Game, Field Event or Non-Field Event.

"Executive Suite Licensee" shall mean any Person who has entered into a License Agreement for an Executive Suite with SMC, including any Person who has rented a Party Suite from SMC.

"Executive Suite Menus" shall have the meaning set forth in Section 17.4.

"Executive Suites" shall mean the luxury suites with seats for viewing Home Games and Field Events at the Stadium that are generally designated as such in promotional, marketing or other documents or publications as delineated on **Schedule II** hereto, as the same may be changed or modified.

"Executive Suites Concourses" shall mean those concourses in the Stadium on the same level as or providing access to the Executive Suites.

"Expiration Date" shall have the meaning set forth in Section 3.1.

"Field Event" shall mean any Event that includes the use of the exterior seating bowl, the playing field or both at the Stadium and is not a Home Game.

"First Amendment" shall have the meaning set forth in Recital A of the Fourth Amendment.

"Food" shall mean consumable food products of all kinds, including candies, cooked foods, prepared foods, ready-to-serve foods, Branded Products, sweets, desserts, breads, meats, poultry, fish, cheese and other dairy products, soups, salads, vegetables, fruits, grains, cereals, dairy products, ice cream, popcorn and such other food products commonly sold from time to time in Similar Local Facilities.

"Fourth Amendment" shall have the meaning set forth in the introductory paragraph of the Fourth Amendment to Premium Concession Management and License Agreement to which this Schedule I is attached.

"Fourth Amendment Effective Date" shall have the meaning set forth in the introductory paragraph at the beginning of the Fourth Amendment.

"Fourth Amendment Catering Improvements" shall have the meaning set forth in paragraph 12 of the Fourth Amendment.

"Fourth Amendment Investment" shall have the meaning set forth in paragraph 12 of the Fourth Amendment.

"Fourth Amendment Investment Fund" shall have the meaning set forth in paragraph 12 of the Fourth Amendment.

"Franchise" shall mean a franchise from the NFL granted pursuant to the terms of the NFL Governing Documents, establishing membership in the NFL and authorizing the operation of a professional football club of the NFL in a designated city. The term "Franchise" shall include any such franchise granted pursuant to an expansion of the membership of the NFL subsequent to the Opening Date, as well as any such franchise in existence as of the Opening Date.

"Franchise Project Fund" shall have the meaning set forth in the Indenture of Trust.

"GAAP" shall mean United States generally accepted accounting principles as in effect from time to time, including applicable statements, bulletins and interpretations issued by the Financial Accounting Standards Board and bulletins, opinions, interpretations and statements issued by the American Institute of Certified Public Accountants or its committees.

"Game Day Special" shall have the meaning set forth in Section 17.3.

"General Concession Agreement" shall mean that agreement among the Concessionaire, SMC and the District providing for the operation of Concessions to the Stadium Bowl and Club Seats and Premium Concessions in the Club Lounges and such other Concessions and Catering Services as may be requested by an Event Host (as replaced, amended, extended, supplemented or otherwise modified).

"General Manager" shall have the meaning set forth in Section 8.4.

"Governmental Authority" shall mean any federal, state, municipal, local, territorial or other governmental department, commission, board, bureau, agency, registry, regulatory authority, instrumentality, judicial or administrative body, domestic or foreign.

"Gross Receipts" shall mean the total amount of money, service charges (including but not limited to charges for labor), rental charges (including but not limited to rental of Equipment and Premium Concessionaire's equipment, personal property or smallwares but excluding items which Premium Concessionaire rents from third parties, the cost of which is passed through to other Persons) and other similar charges received or charged by Premium Concessionaire or any Subconcessionaire, agent or employee of Premium Concessionaire for all sales, cash or credit, made as a result of the operation of the Stadium Catering or the rights granted under this Agreement, excluding applicable sales or other such taxes, the amount of any gross receipts, rent or similar tax, reasonable shortages or shrinkage not to exceed five tenths of one percent (0.5% or 0.005) of Gross Receipts, any service or discount charges on debit card, spot card, credit card, smart card or value added card or similar sales, bad debts, bulk or other sales not made in the ordinary course of business requested by SMC, sales made by Premium Concessionaire at cost, and royalties or franchise fees paid by Premium Concessionaire in

connection with Branded Products or franchises at the Stadium. Gross Receipts shall include the Gross Receipts of any Subconcessionaire, and not just payments made by said Subconcessionaire to Premium Concessionaire. Gross Receipts shall include any receipts pertaining to Ancillary Services provided by third parties, but only to the extent that such receipts exceed the amount Premium Concessionaire has paid such third parties for providing such Ancillary Services. Gross Receipts shall not include (i) receipts from the portion of the sale of Food and Beverages relinquished by Premium Concessionaire at any Special Stadium Events, (ii) any Relinquished Event Fees; (iii) receipts from any Non-Stadium Events, (iv) any revenues expressly excluded from Gross Receipts under the provisions of this Agreement, and (v) District Gross Receipts.

"Guarantor" shall have the meaning set forth in Section 69.28.

"Guaranty" shall have the meaning set forth in Section 69.28.

"HACCP" shall mean Hazard Analysis and Critical Control Point, the food safety program being developed by the United States Food and Drug Administration which focuses on identifying and preventing hazards from contaminating food.

"Hazardous Materials" shall mean any substance, whether solid, liquid or gaseous, which is listed, defined or regulated as a "hazardous substance", "hazardous waste", "solid waste", "oils", "pollutants" or "contaminants" or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law; or which is or contains asbestos, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons.

"Home Games" shall mean those NFL Pre-Season, NFL Regular Season and NFL Post Season football games in which the Denver Broncos are identified as the "home team" under the NFL Governing Documents; provided that preseason football games sponsored by the NFL at an otherwise neutral site outside of the "home territory" of the Denver Broncos or NFL championship games (i.e., Super Bowl or equivalent) where the Denver Broncos have been designated the "home team" shall not be "home games" within this definition.

"Immediate Family Member" shall mean a spouse, child, grandchild, sibling or parent.

"Improvements" shall have the meaning set forth in Section 27.1.

"Indemnatee" shall have the meaning set forth in Section 53.2.

"Indenture of Trust" shall mean indenture of trust dated as of August 1, 1999 between the District and Norwest Bank Colorado, National Association, as amended by First Supplemental Indenture of Trust and Second Supplemental Indenture of Trust both dated as of August 1, 1999.

"Innovations" shall have the meaning set forth in paragraph II of the Fourth Amendment.

"Innovations Fund" shall have the meaning set forth in paragraph 11 of the Fourth Amendment.

"Interim Menu Change" shall have the meaning set forth in subsection 17.2.2.

"INVESCO" shall mean INVESCO Funds Group, Inc., a Delaware corporation.

"INVESCO Agreements" shall have the meaning set forth in Section 2 of the First Amendment.

"Joint Liquor License" shall have the meaning set forth in subsection 7.2.1.4.

"Law" means any applicable federal, state, interstate or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree or rule of common law, and any applicable judicial interpretation of any of the foregoing (including fire, building, health and sanitation codes and regulations).

"Lease" shall mean the Lease and Management Agreement, dated as of September 3, 1998, by and between the District, PDB, and SMC, assigned by PDB to SMC pursuant to the Assignment and Assumption of Management Agreement, effective as of September 3, 1998, by and between PDB and SMC (as amended, extended, replaced, supplemented or otherwise modified from time to time).

"Lease Capital Replacement Reserve Fund" shall mean the Capital Replacement Reserve Fund defined in the Lease.

"Lender" shall mean Bank of America, N.A., acting in its capacity as agent and collateral agent for the Banks, and any successor agent appointed in accordance with the Credit Agreement.

"Lenders" shall have the meaning set forth in the Credit Agreement.

"License Term" shall have the meaning set forth in Section 4.1.

"Licensee" shall mean any third Person that contracts with the District or SMC to use the Stadium or any portion thereof for a specific Field Event or Non-Field Event.

"Licenses" shall mean all licenses (including Liquor Licenses), permits, approvals, consents or orders required from any Governmental Authority for the full and complete operation of Catering at Events at the level and in the manner contemplated under this Agreement by Premium Concessionaire. Each of the Licenses are referred to individually as a "License".

"Liquor License" shall mean all licenses (including the Joint Liquor License, if any), permits, approvals, consents or orders required from any Governmental Authority for the Premium Concessionaire's lawful storage, sale and distribution and Patron's consumption of Alcoholic Beverages

in the Executive Suites or on the Executive Suites Concourses during Events in order to satisfy the Obligations.

"Liquor Storage Areas" shall have the meaning set forth in subsection 5.2.1.

"Loading Dock Areas" shall mean those areas of the Stadium which from time to time are designated by the District and SMC to provide loading dock access to the Stadium.

"Management Team" shall have the meaning set forth in Section 33.4.

"Marketing Area" shall mean that portion of the Catering Areas located in the southeast quadrant of the Plaza Level of the Stadium which is delineated by cross-hatching on **Schedule II-A** hereof, as the same may be changed or modified pursuant to the provisions of Section 4.1.

"Marketing Area Termination Date" shall have the meaning set forth in Section 4.8.

"Marketing Area Termination Notice" shall have the meaning set forth in Section 4.8.

"Merchandise" shall mean all items other than Food, Beverages or the packaging thereof which may be sold at the Stadium, including, but not limited to, NFL souvenirs, novelties, clothing, Publications and other similar items.

"Minimum Food Offerings" shall have the meaning set forth in Section 17.3.

"Mortgage" shall have the meaning set forth in Section 69.12.

"Naming Rights Agreement" shall mean any naming rights agreement entered into by the District, pursuant to C.R.S. §32-15-106(3), pertaining to the name of the Stadium (as amended, extended, replaced, supplemented or otherwise modified from time to time).

"NFL" shall mean the National Football League, a not-for-profit association having its principal executive office at 280 Park Avenue, New York, New York, acting through its duly authorized officers, agents or committees.

"NFL Championship" means the Super Bowl, or equivalent playoff game sanctioned by the NFL as establishing the overall champion of the NFL.

"NFL Consent" shall mean the letter agreement, dated as of August 12, 1999, by and among the NFL and The Sumitomo Bank, Limited, New York Branch, as Agent and Collateral Agent and as Lender, Stadium Management Company, LLC, PDB Sports, Ltd., Bowlen Sports Inc., Arapahoe Management Company, LLC, PDB Enterprises, Inc., Bank of America, N.A., as collateral agent under the League-Wide Credit Facility, U.S. Bank National Association, 483618 Alberta Ltd., Hambledon Sports, Inc., Patrick D. Bowlen and John M. Bowlen.

"NFL Governing Documents" shall mean the Constitution and Bylaws of the NFL and the Articles of Association and Bylaws of the NFL Management Council, including any amendments to either such document and any interpretations of either such document issued from time to time by the Commissioner which are in the Commissioner's jurisdiction; all operative NFL or NFL Management Council resolutions that are within the NFL's or the NFL Management Council's respective jurisdiction; any existing or future agreements entered into by the NFL (including the NFL Consent) or the NFL Management Council, including any Television Contracts or any collective bargaining or other labor agreements (including any NFL player salary guarantees and pension fund agreements), and any agreements made in settlement of any litigation against the NFL, the NFL Management Council or the Clubs (including litigation against such Clubs, or agreements made by such Clubs, jointly or collectively); and such other rules or policies as the NFL, the NFL Management Council, or the Commissioner may issue from time to time that are within the issuing party's jurisdiction.

"NFL Post-Season" means the football games played after an NFL Regular Season as part of the competition for the NFL Championship.

"NFL Pre-Season" means the NFL sanctioned football games played prior to the commencement of the NFL Regular Season.

"NFL Regular Season" means the football games counting in the standings for the purpose of determining the NFL teams that will participate in NFL post-season play.

"NFL Season" shall mean an NFL Regular Season together with the immediately preceding NFL Pre-Season and immediately following NFL Post-Season.

"Non-Field Event" shall mean any Event that is open to members of the general public and involves the use of areas of the Stadium or Real Property other than the Stadium Bowl or playing field.

"Non-Profit Event" shall mean a Catered Event that is sponsored or contracted by a Charity, and the pricing for the Food and Beverages to be served during such event has been discounted by Premium Concessionaire by an amount of not less than ten percent (10%) from Premium Concessionaire's standard pricing.

"Non-Stadium Event" shall mean an event or function not held at the Stadium or on the Real Property where Premium Concessionaire utilizes any portion of the Stadium Premises or Equipment to prepare Food or Beverages.

"Notices" shall have the meaning set forth in Section 69.8.

"Obligations" shall mean all of the obligations, responsibilities and liabilities of the Premium Concessionaire under this Agreement.

"Off Premise Use Fee" shall mean a fee payable to the District and SMC equal to five percent (5%) of the gross sales received by Premium Concessionaire at the applicable Non-Stadium Event.

"Optional Food Offerings" shall have the meaning set forth in Section 17.3.

"Other Agreements" shall mean any agreements entered into by the District or SMC with the City pertaining to the maintenance, operation or use of the Stadium (i.e., parking and pedestrian and automobile traffic control) as such agreements may thereafter be amended, supplemented, replaced or otherwise modified, provided that provided that a copy of such agreement(s) has been provided to the Premium Concessionaire, and shall include (i) Purchase and Sale Agreement between the City and the District dated August 27, 1998; (ii) Agreement for Public Improvements and Infrastructure between the City and the District dated August 27, 1998, and (iii) Conditional Termination of User Agreement between the City and PDB dated August 27, 1998. Prior to the execution of any new agreements or any amendments, supplements, replacements or other modifications to existing agreements coming within the definition of Other Agreements as set forth herein, the District and SMC agree to notify Premium Concessionaire of the subject matter of such agreements, amendments, supplements, replacements or other modifications and to consider Premium Concessionaire's position with respect thereto; provided, however (i) that the District and SMC shall have no obligation to cause the incorporation of Premium Concessionaire's position into such agreements, and (ii) that such new agreements, amendments, supplements, replacements or other modifications do not materially restrict the operation of Stadium Catering. A restriction or prohibition on the sale of specific items of Food or Beverages by Other Agreements shall not be deemed to materially restrict the operation of Stadium Catering.

"Owner's Executive Suite" shall mean the Executive Suite granted to PDB under the terms of the Lease, as delineated on Schedule II hereof, as the same may be changed or modified.

"Owner's Suite Equipment" shall mean that equipment listed on Schedule III-A hereof which is scheduled for installation in the Owner's Executive Suite.

"Party" shall mean any of the Premium Concessionaire, the District, SMC or PDB and "Parties" shall mean the Premium Concessionaire, the District, SMC and PDB, collectively.

"Party Suites" shall mean those Executive Suites available for rental by SMC to any Person on a per Event basis, as delineated on Schedule II hereof, as the same may be changed or modified.

"Patron" shall mean an attendee at an Event, except for Premium Concessionaire Parties, the District Parties, SMC Parties, PDB Parties, Event Participants or any other Person who attends an Event other than as a spectator or guest.

"Patron Complaint" shall have the meaning set forth in Section 15.2.

"PDB" shall have the meaning set forth in the introduction to this Agreement.

"PDB Parties" shall mean PDB, its partners and their respective officers, directors, shareholders, trustees and beneficiaries and its employees and agents.

"Performance Bond" shall have the meaning set forth in Section 48.1.

"Permitted Areas" shall have the meaning set forth in Section 6.5.

"Permitted Successor Concessionaire" shall have the meaning set forth in Section 69.15.

"Person" shall mean and include any individual, partnership, joint venture, firm, corporation, limited liability company, association or other unincorporated organization, trust or other enterprise or any Governmental Authority.

"Plaza Level" shall mean the second level of the Stadium also known as the Lower Suites level of the Stadium.

"Preliminary Home Game Summary Report" shall mean a report in hard copy and electronic format in form and content reasonably acceptable to SMC which will reflect the Gross Receipts attributable to each such Home Game for each sales category described in subsections 26.1.1 and 26.1.2.

"Premium Concessionaire" shall have the meaning set forth in the introduction to this Agreement.

"Premium Concessionaire Change Order" shall have the meaning set forth in Section 27.3.

"Premium Concessionaire Construction Liaison" shall have the meaning set forth in Section 8.1.

"Premium Concessionaire Executive Suite License Agreement" shall have the meaning set forth in paragraph 13 of the Fourth Amendment.

"Premium Concessionaire Parties" shall mean the Premium Concessionaire and any of its officers, directors, employees, agents, Subconcessionaires, subcontractors, and sublicensees and any of their respective officers, directors, members, managers, employees or agents.

"Premium Concessionaire Trash Receptacles" shall have the meaning set forth in Section 40.3.4.

"Premium Concessionaire's Event of Default" shall have the meaning set forth in Section 58.1.

"Premium Concessionaire's Inventory" shall mean Premium Concessionaire's inventory of Food and Beverages available from time to time at the Stadium Premises for the operation of Stadium Catering.

"Premium Concessionaire's Investment" shall mean the total reasonable out-of-pocket costs and expenses incurred by Premium Concessionaire for (i) Pre-Opening Expenses and (ii) the purchase and installation of the Equipment (excluding Premium Concessionaire's Inventory).

"Premium Concessionaire's Pre-Opening Budget" shall have the meaning set forth in Section 29.2.

"Premium Concessions" shall mean premium quality and gourmet Concessions and Concessions in demand by Patrons of the Club Seats.

"Pre-Opening Expenses" shall have the meaning set forth in Section 29.1.

"Private District Functions" shall have the meaning set forth in subsection 11.3.2.

"Private SMC Functions" shall have the meaning set forth in subsection 11.2.2.

"Proposer" shall mean any Person who submitted a proposal to provide the services defined by and in accordance with the specifications set forth in the RFP.

"Publications" shall mean all printed scorecards, rosters, schedules, media guides, yearbooks, magazines, newspapers, programs, or other publications including but not limited to NFL and Denver Broncos publications.

"Real Property" shall mean the real property owned by the District and leased and managed by SMC pursuant to the Lease and all easements, rights, privileges and appurtenances to such property and all rights in any streets, ways or alleys adjoining such property.

"Relinquished Event Fee" shall have the meaning set forth in subsection 10.2.1.

"Relinquished Stadium Catering Event" shall have the meaning set forth in Section 10.2.

"Required Catering" shall mean all Catering Services consulting and supervisory services that Premium Concessionaire is required to provide pursuant to the provisions of Sections 11.1, 11.2 and 11.3.

"Restaurants" shall mean restaurants at or in the Stadium that may be open to the general public irrespective of the purchase of an admission to the Stadium.

"RFP" shall mean Request for Proposal Number 99-004, promulgated by the District after consultation with SMC.

"Scheduled Opening Date" shall mean August 25, 2001, or such earlier date mutually determined by the District, SMC and Premium Concessionaire in accordance with the provisions of the Design/Build Agreement or such later date determined by the District and SMC in accordance with the provisions of the Design/Build Agreement; provided, however, that the District and SMC shall provide Premium Concessionaire with prompt written notification of such later date.

"Second Amendment" shall have the meaning set forth in Recital A of the Fourth Amendment.

"Series A Bonds" shall mean the Metropolitan Football Stadium District Sales Tax Revenue Bonds, Series 1999A as described in the Indenture of Trust.

"Series B Bonds" shall mean the Metropolitan Football Stadium District Sales Tax Revenue Bonds, Series 1999B as described in the Indenture of Trust.

"Similar Local Facility" shall mean similar banquet and entertainment venues within the City including, by way of example, Coors Field, Pepsi Center, Colorado Ocean Journey, Denver Convention Center, Denver Center for the Performing Arts, Denver Museum of Nature and Science, the Denver Art Museum, the Westin Hotel, the Brown Palace Hotel, the Four Seasons Hotel, The Ritz-Carlton, Hyatt Regency Denver, and the Oxford Hotel.

"SMC" shall have the meaning set forth in the introduction to the Agreement.

"SMC Annual Report" shall have the meaning set forth in subsection 26.1.5.

"SMC Construction Representative" shall mean Dudi Berreti, and any successor thereto under the Design/Build Agreement.

"SMC Catered Event" shall mean a Catered Event sponsored or hosted by SMC and all Home Games.

"SMC Event Coordinator" shall have the meaning set forth in Section 8.5.

"SMC Guaranteed Annual Payment" shall have the meaning set forth in subsection 26.1.3.

"SMC Liaison" shall have the meaning set forth in Section 8.3.

"SMC Sponsorship Agreements" shall mean any advertising, sponsorship, pouring rights or similar agreement entered into by SMC or PDB pertaining to the Stadium or Stadium signage (as amended, extended, supplemented or otherwise modified).

"SMC Parties" shall mean SMC, its managers, members, employees and agents.

"Special Auditing Party" shall have the meaning set forth in Section 54.2.

"Special Stadium Event" shall mean an Event where, in order to book the Event, the District or SMC is required to relinquish, in whole or in part, the direction and control of the sale of Food and Beverages to a third-party. Unless otherwise agreed, Special Stadium Events shall not exceed eight (8) per Contract Year.

"Sponsorship Agreements" shall mean, collectively, the SMC Sponsorship Agreements and the Naming Rights Agreement.

"Sports Authority Agreements" shall have the meaning set forth in paragraph 4 of the Fourth Amendment.

"Sports Legends Mall" shall mean the area located at the southern entrance to the Stadium which is depicted by cross-hatching on **Schedule II-A** as the same may be changed or modified.

"Stadium" shall mean the new, approximately 76,000 seat, open-air, natural grass stadium, designed primarily for football, which is subject to the Lease, to be located in the City, together with all facilities, equipment and other items owned, leased or licensed by the District and SMC and located or used in connection therewith.

"Stadium Bowl" shall mean that area of the Stadium which contains approximately 64,504 general admission seats and the concourses adjacent thereto.

"Stadium Catered Event" shall mean a Catered Event (i) which takes place in an area of the Stadium or the Real Property other than in an Executive Suite or (ii) which takes place in an Executive Suite or on an Executive Suites Concourse but is not an Executive Suite Catered Event.

"Stadium Catered Event Menus" shall have the meaning set forth in Section 17.5.

"Stadium Catering" means the management, operation and marketing of Catering at the Stadium or on the Real Property by Premium Concessionaire as contemplated under the terms of this Agreement.

"Stadium Club" shall mean that area of the Stadium located on the east side of the service level as generally depicted on **Schedule II**, as the same may be changed or modified, which is intended to be used by a private club during Home Games and other Events during each Contract Year.

"Stadium Completion Date" shall mean the first Business Day following the date the Stadium is substantially completed and the operation of the Stadium is permitted by all Governmental Authorities.

"Stadium Employee" shall mean any employee (full or part time) of the Premium Concessionaire or any Subconcessionaire who works at the Stadium Premises.

"Stadium Gate Opening" shall mean the first point in time that access to the interior of the Stadium is provided to Patrons for an Event.

"Stadium Insurance Coverages" shall have the meaning set forth in Section 4.4.

"Stadium Plans" means the plans and specifications for the Stadium currently existing as described in **Schedule IV** hereto as the same may be amended and supplemented; provided, however, that each such amendment and supplement to the Stadium Plans shall be subject to the prior written approval of the District, SMC and Premium Concessionaire.

"Stadium Premises" means collectively the Catering Areas, Staff Areas and Improvements as the same may be changed, altered or amended in accordance with the terms of the Agreement.

"Stadium Rules" shall have the meaning set forth in Section 6.1.

"Stadium Systems" shall mean electrical, gas, sewer, air conditioning, telephone, sound, public address, mechanical, plumbing, heating, life-safety, drainage, structural and any other systems now, or hereafter, used in the operation or maintenance of the Stadium.

"Stadium Tables and Chairs" shall mean those tables and chairs purchased and owned by SMC which are intended to be used by Patrons at Stadium Catered Events.

"Staff Areas" shall mean the training rooms and locker rooms to be shared by Concessionaire's and Premium Concessionaire's employees which are generally depicted on **Schedule II** hereto, as the same may be changed or modified in accordance with the terms of this Agreement.

"State", "State of Colorado" or "Colorado" shall mean the State of Colorado acting by or through the Office of the Governor or other agencies of the executive branch of the State of Colorado.

"Subconcessionaire" shall mean any subcontractor, sublicensee or subconcessionaire of, or Person in a similar business relationship with, Premium Concessionaire, at the first or any lower level (for example, a sublicensee of a sublicensee of Premium Concessionaire), engaged in the operation of Catering (or a portion thereof) at the Stadium.

"Subconcessionaire Agreement" shall have the meaning set forth in Section 11.6.

"Sublease" shall mean the Amended and Restated Sublease Agreement, made effective as of September 3, 1998, by and between SMC, as sublessor, and PDB, as sublessee (as amended, extended, replaced, supplemented or otherwise modified from time to time).

"Suite Levels" shall mean the Plaza Level and the Upper Suite Level.

"Term" shall have the meaning set forth in Section 3.1.

"Terminating Party" shall mean (i) the party (either the District and SMC when acting jointly, or the District or SMC, whichever is applicable, when acting independently) electing to terminate this Agreement pursuant to the provisions of either Section 59.1 or 59.3, or (ii) the party (either [A] the

District and SMC if the District/SMC Event of Default is attributable to both the District and SMC or [B] the District or SMC, whichever is applicable, if the District/SMC Event of Default is only attributable to one of them.

"Termination Date" shall mean the date that this Agreement actually terminates whether by expiration of the Term or as a result of any earlier termination.

"Third Amendment" shall have the meaning set forth in Recital A of the Fourth Amendment.

"Third Party Commissions" shall mean any commissions paid to the District or SMC as a result of the sale of any Food or Beverages (including Alcoholic Beverages) by third parties as a result of the District's or SMC's exercise of their remedies under subsection 7.2.1.1 or 7.2.1.2.

"Third Party Sales" shall mean any Catering sales generated by third parties as a result of the District's or SMC's election of any of the remedies provided under subsection 7.2.1.1 or 7.2.1.2.

"Ticketed Events" shall mean all Field Events and any other Events at the Stadium where a Patron's admission is conditioned upon presentment of an admission ticket.

"Transfer" shall have the meaning set forth in Section 69.15.

"Unamortized Equipment Investment" shall mean an amount from time to time during the first ten (10) Contract Years of the Term which is equal to the product of (i) the Equipment Investment multiplied by (ii) a fraction the numerator of which is the number of complete calendar months remaining during the License Term assuming that this Agreement is not terminated prior to the Expiration Date and the denominator of which is the number of complete calendar months expected to occur throughout the License Term assuming that this Agreement is not terminated prior to the Expiration Date.

"Unamortized Fourth Amendment Investment" shall mean an amount from time to time during that portion of the Term that occurs after the Fourth Amendment Effective Date which is equal to the product of (i) the Fourth Amendment Investment multiplied by (ii) a fraction the numerator of which is the number of complete calendar months remaining during the License Term after the Early Termination Date assuming that this Agreement is not terminated prior to the Expiration Date and the denominator of which is the number of complete calendar months expected to occur throughout that portion of the License Term that commences on the Fourth Amendment Effective Date assuming that this Agreement is not terminated prior to the Expiration Date.

"Unamortized Premium Concessionaire Investment" shall mean an amount from time to time during the first ten (10) Contract Years of the Term which is equal to the product of the (i) Premium Concessionaire's Investment multiplied by (ii) a fraction the numerator of which is the number of complete calendar months remaining during the License Term assuming that this Agreement is not terminated prior to the Expiration Date and the denominator of which is the number of complete

calendar months expected to occur throughout the License Term assuming that this Agreement is not terminated prior to the Expiration Date.

"Upper Suite Level" shall mean the suite level of the Stadium as delineated on the Stadium Plans which is also known as level 400.

"Wells Fargo Bank West, N.A." shall mean Wells Fargo Bank West, N.A. as the successor trustee under the Indenture of Trust.