

CITY OF SAN DIEGO CONCESSION PERMIT

THIS CITY OF SAN DIEGO CONCESSION PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and HORNICK ENTERPRISES, LLC, a California limited liability company ("CONCESSIONAIRE"), doing business as "Gameday Concessions," to be effective October 1, 2009.

1. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to CONCESSIONAIRE, its employees, agents and contractors to enter upon that portion of the CITY-owned property known as "Mission Bay Golf Course," located at 2702 Mission Bay Drive in the City of San Diego, and set forth in Exhibit "A" attached to this Permit and incorporated herein (the "Permit Area").
2. Use of Permit Area. CONCESSIONAIRE may enter upon and use the Permit Area solely and exclusively for the purpose of providing food and beverage services, including alcoholic beverages pursuant to a valid liquor license, and other incidental uses as CITY may allow by written consent. All sales and service of alcoholic beverages on or about the Permit Area shall be subject to the regulation and approval of the California Department of Alcoholic Beverage Control. CONCESSIONAIRE shall continuously occupy and use the Permit Area throughout the term of this Permit. CONCESSIONAIRE'S unauthorized use of the Permit Area or CONCESSIONAIRE'S failure to continuously occupy and use the Permit Area as provided herein shall be a default and subject this Permit to immediate termination at CITY'S sole option
3. Schedule of Operation. CONCESSIONAIRE shall be open for business daily from 6:30 A.M. to 8:00 P.M., unless otherwise authorized in writing by the City Manager, or as may be required by the City Manager to accommodate special events.
4. Competent Management. Throughout the term of this Permit, CONCESSIONAIRE shall provide competent management of the Permit Area for the permitted uses to the satisfaction of the City Manager. For purposes of this section, "competent management" shall mean demonstrated ability in the management and operation of a food and beverage business, including without limitation the sale and service of alcoholic beverages, and related activities in a fiscally responsible manner and in accordance with industry standards.
5. Term. The term of this Permit ("Term") shall be three (3) years commencing on the Effective Date. If the Effective Date is not the first day of a calendar month, then the Term shall be extended to include the partial calendar month so that the Term shall expire on the last day of a calendar month, and any monthly payments payable under this Permit shall be prorated.
6. Termination. This Permit may be terminated at any time upon thirty (30) days prior written notice to the other party.
7. Revocable License. This Permit is not a lease. It is a license to use CITY-owned property,

and may be revoked by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by CONCESSIONAIRE as a result of such termination of this Permit. CONCESSIONAIRE expressly waives any claim for expense or loss which CONCESSIONAIRE might incur as a result of CITY'S termination of this Permit. CITY may enter upon the Permit Area at all times upon prior notice to CONCESSIONAIRE.

8. Fees.

- a. Concession Fee. CONCESSIONAIRE shall pay a concession fee to CITY consisting of five percent (5%) of Concessionaire's gross revenue derived from its use of the Permit Area. "Gross Revenue" shall mean all revenue generated by CONCESSIONAIRE'S use of the Permit Area, less all sales taxes paid by CONCESSIONAIRE and directly resulting from CONCESSIONAIRE's use of the Permit Area. Concession fee shall be paid on or before the last day of the calendar month following the calendar month in which the gross revenue was earned; CONCESSIONAIRE will provide CITY with a correct statement together with a payment on all applicable gross receipts in a form selected by CITY. The statement will be signed by CONCESSIONAIRE or its authorized agent attesting to the accuracy thereof. Each statement will include the total gross receipts for the subject month and the five percent (5%) concession fee due to the City. Upon sixty (60) days prior written notice to CONCESSIONAIRE, CITY may adjust the Concession Fee to the then-current fair market rate as reasonably determined by CITY'S Real Estate Assets Department. In no event shall CITY be obligated to reduce the Concession Fee.
- b. Financial Statements. Within sixty (60) days after the end of the first permit year, CONCESSIONAIRE will, at its expense, submit to CITY a statement in which the total gross receipts are classified according to the categories of business conducted on or from the Site. This statement shall be signed by CONCESSIONAIRE attesting to the accuracy thereof, which shall be legally binding upon CONCESSIONAIRE.
- c. Right to Inspect. All CONCESSIONAIRE's books of account, records, and supporting documentation, will be kept for at least five (5) years and made available to CITY. The CITY, at its discretion, shall have the right to inspect and audit the business of CONCESSIONAIRE. At CITY'S request, CONCESSIONAIRE shall promptly provide, at CONCESSIONAIRE's expense, any necessary data to enable CITY, to determine the accuracy of CONCESSIONAIRE's financial statements.
- d. Unauthorized Use Charge. CONCESSIONAIRE shall pay to CITY fifty percent (50%) of the gross sales from CONCESSIONAIRE's unauthorized use of the Permit Area. CITY's acceptance of any such unauthorized-use charge shall not act as a waiver of any of CITY's rights under this Permit, or serve to authorize such use.
- e. Delinquent Payments. If CONCESSIONAIRE fails to pay any amount due CITY

under this Permit when due, CONCESSIONAIRE shall pay, in addition to the unpaid amount, five percent (5 %) of the delinquent amount. If the payment is still unpaid after fifteen (15) days past due, CONCESSIONAIRE shall pay an additional five percent (5%) [being a total of ten percent (10%)] of the delinquent payment, which is agreed to be appropriate to compensate CITY for loss resulting from such delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. In no event shall the charge for late payment be less than Twenty-Five Dollars (\$25).

- f. Time and Place of Rent Payment. Payments are due in advance on or before the first day of each applicable time period. Checks shall be made payable to the City Treasurer and mailed to the **Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California 92112-4165**, or delivered to the **Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California**. The place and time of payment may be changed by CITY upon thirty (30) days prior written notice to CONCESSIONAIRE. Mailed payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. CONCESSIONAIRE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.
9. Security Deposit. On or before the Effective Date, CONCESSIONAIRE shall deliver to CITY a security deposit in the amount of One Thousand Two Hundred Dollars (\$1,200) as security for the performance of CONCESSIONAIRE's obligations under this Permit. CITY shall not be liable to CONCESSIONAIRE for any interest thereon. Any interest earned from such deposit or redeposit shall not become part of the security deposit, but shall be and remain the property of CITY. All or any portion of the security deposit shall be available unconditionally to CITY to cure, in whole or in part, any breach or default of this Permit by CONCESSIONAIRE, or for expenses incurred by CITY as a result of CONCESSIONAIRE's breach or default of this Permit. CONCESSIONAIRE shall maintain the security deposit throughout the Term. **Notwithstanding any other provision of this Permit, if CONCESSIONAIRE fails or refuses to deposit or maintain a security deposit as required by this Permit, CITY may terminate this Permit immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Permit Area and commence and diligently pursue the removal of its property from the Permit Area.**
 - a. Utilization. If CITY utilizes all or any portion of the security deposit, upon 10 days prior written notice, CONCESSIONAIRE shall reimburse the security deposit to the full required amount.
 - b. Increase. Upon thirty (30) days prior written notice by CITY, CONCESSIONAIRE shall deliver to CITY additional funds as CITY may, in its sole determination, require to adequately secure CONCESSIONAIRE's obligations under this Permit.
 - c. Return. Provided CONCESSIONAIRE is not in breach or default of this Permit, CITY shall return the security deposit, or any balance thereof, to

CONCESSIONAIRE within sixty (60) days after the expiration or termination of this Permit.

10. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the City Manager, unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the City Manager's sole and absolute discretion, unless otherwise expressly provided.
11. Acceptance of Permit Area. CONCESSIONAIRE represents and warrants that it has independently inspected the Permit Area and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Permit Area. CONCESSIONAIRE agrees it is relying solely on its independent inspection, tests, investigations, and observations in entering into this Permit. CONCESSIONAIRE further acknowledges that the Permit Area is in the condition called for by this Permit, that CITY has performed all work, if any, related to the Permit Area and required by this Permit, and that CONCESSIONAIRE shall hold CITY harmless for any defects, whether apparent or latent, in the Permit Area, including without limitation the presence of any hazardous substances.
12. Maintenance of the Permit Area. CONCESSIONAIRE shall, at CONCESSIONAIRE's sole cost and expense and to CITY'S satisfaction, maintain the Permit Area in a decent, safe, healthy and sanitary condition at all times during the Term. CITY acknowledges that CONCESSIONAIRE'S obligation under this section shall not include major capital repairs or improvements.
13. Utilities. CONCESSIONAIRE shall order, obtain, and pay for all utilities and service and installation charges in connection with the operation of the Permit Area. All such utilities shall be installed underground.
14. Standard of Conduct. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations on the Permit Area in a creditable manner.
15. Inspection. CITY may, at all times upon prior notice, enter and inspect the Permit Area.
16. Improvements/Alterations. CONCESSIONAIRE shall not construct any permanent improvements, structures, or installations on the Permit Area, and shall not alter the Permit Area without CITY'S prior written consent. CONCESSIONAIRE shall not make any major structural or architectural design alterations to approved improvements, structures or installations on the Permit Area without CITY'S prior written consent, which may not be unreasonably withheld. This provision shall not relieve CONCESSIONAIRE of any obligation under this Permit to maintain the Permit Area in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Permit Area.
17. Ownership of Improvements and Personal Property.

- a. Improvements. Upon expiration or termination of this Permit, any and all improvements, trade fixtures, structures, and installations or additions to the Permit Area now existing or constructed on the Permit Area by CONCESSIONAIRE shall be deemed to be part of the Permit Area and shall become CITY'S property free of all liens and claims.
 - b. Personal Property. CONCESSIONAIRE shall remove CONCESSIONAIRE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property prior to the expiration of the Term, or as soon as reasonably practicable after a notice of termination, but in no event later than sixty (60) days after such notice of termination. Any such items which CONCESSIONAIRE fails to remove, and which are believed to be abandoned, will be processed and disposed of in accordance with applicable provisions of California law. If any removal of such personal property by CONCESSIONAIRE or CITY results in damage to the Permit Area, CONCESSIONAIRE shall repair or pay for the repair of, all such damage at its sole cost and expense. Notwithstanding the foregoing, if CONCESSIONAIRE elects to dispose of any of its personal property used in its operations on the Permit Area, upon expiration or termination of this Permit, CITY shall have the first right to acquire or purchase such personal property.
18. Insurance. On or before the Effective Date, CONCESSIONAIRE shall deliver to CITY a current certificate of insurance for: (1) Commercial General Liability insurance providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of Two Million Dollars (\$2,000,000); AND (2) Fire, Extended Coverage, and Vandalism insurance on all insurable property on the Permit Area in an amount to cover 100 percent (100%) of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and CONCESSIONAIRE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property.
- a. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
 - b. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department upon execution of this Permit.
 - c. Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.

- d. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of CONCESSIONAIRE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
 - e. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term of this Permit, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Permit Area, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, CONCESSIONAIRE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.
 - f. Modification. To assure protection from and against the kind and extent of risk existing on the Permit Area, CITY, at its discretion, may require the revision of amounts and coverages at any time during the Term by giving CONCESSIONAIRE thirty (30) days prior written notice. CONCESSIONAIRE shall also obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Permit.
 - g. Accident Reports. CONCESSIONAIRE shall report to CITY any accident causing more than Five Thousand Dollars (\$5,000) worth of property damage or any serious injury to persons on the Permit Area. Such report shall be delivered to CITY within five (5) days of such accident and shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
 - h. Failure to Comply. If CONCESSIONAIRE fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. CONCESSIONAIRE shall reimburse CITY for the premiums paid, with interest at the maximum allowable legal rate then in effect in California. CITY shall notify CONCESSIONAIRE of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. CONCESSIONAIRE shall pay such reimbursement and interest on the first (1st) day of the month following CITY'S notice.
Notwithstanding any other provision of this Permit, if CONCESSIONAIRE fails or refuses to obtain or maintain insurance as required by this Permit, or fails to provide proof of insurance, CITY may terminate this Permit immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Permit Area and commence and diligently pursue the removal of its property from the Permit Area.
19. Indemnification. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or

property, including injury to CONCESSIONAIRE'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Permit Area, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that CONCESSIONAIRE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CONCESSIONAIRE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

20. No Discrimination. CONCESSIONAIRE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in CONCESSIONAIRE'S use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
21. Local Business and Employment. CONCESSIONAIRE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. If CONCESSIONAIRE solicits bids for work associated with this Permit, CONCESSIONAIRE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts from local residents and firms as opportunities occur. CONCESSIONAIRE agrees to hire qualified local residents and firms whenever feasible.
22. Drug-free Workplace. CONCESSIONAIRE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
 - a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Permit Area and specifying the actions that will be taken against employees for violations of the prohibition; and
 - b. Establish a drug-free awareness program to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. CONCESSIONAIRE'S policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employees assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
23. Disabled Access Compliance. CONCESSIONAIRE shall comply with the California

Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities.

24. CONCESSIONAIRE'S Risk. CONCESSIONAIRE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with CONCESSIONAIRE'S occupancy, use, development and maintenance of the Permit Area and any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.
25. No Nuisance. CONCESSIONAIRE shall not use the Permit Area in any manner which, in CITY'S opinion, creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area.
26. No Assignment. CONCESSIONAIRE shall not assign any rights granted by this Permit or any interest herein without CITY'S prior written consent. Approval of any such proposed assignment may be withheld in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Permit.
27. Supersedure. Any agreement or permit that the parties hereto may have previously entered into is terminated and Superseded by this Permit. All rights, duties and obligations of the parties, if any, pursuant to the terms, covenants and conditions in such terminated agreement or permit shall remain enforceable and subject to all defenses, including and without limitation any applicable statute of limitations, said statute of limitations shall not be waived or extended because of this Permit.
28. Signs. CONCESSIONAIRE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Permit Area, CONCESSIONAIRE shall remove the item at its expense within 24 hours notice by CITY, or CITY may thereafter remove the item at CONCESSIONAIRE'S cost.
29. Encumbrances. CONCESSIONAIRE shall keep the Permit Area free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Permit Area. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Permit Area, including without limitation CONCESSIONAIRE'S failure or the failure of any contractor or subcontractor hired by CONCESSIONAIRE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
30. Compliance with Laws. CONCESSIONAIRE shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to PERMITTE'S occupancy, use, development, and maintenance of the Permit Area.

31. Taxes. PERMTTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon CONCESSIONAIRE by reason of the business or other CONCESSIONAIRE activities related to the Permit Area, including any licenses or permits. CONCESSIONAIRE acknowledges that this Permit may create a possessory interest subject to property taxation, and that CONCESSIONAIRE may be subject to the payment of taxes levied on that interest. CONCESSIONAIRE shall pay all such possessory interest taxes. CONCESSIONAIRE'S payment for taxes, fees, and assessments shall not reduce any payment due CITY under this Permit.
32. Hazardous Substances. CONCESSIONAIRE shall not allow the installation or release of hazardous substances in, on, under, or from the Permit Area. CONCESSIONAIRE and CONCESSIONAIRE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Permit Area without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit.
- a. Remediation. If any release of a hazardous substance occurs, CONCESSIONAIRE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
 - b. Indemnity. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Permit Area, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
 - c. Notice of Release. If CONCESSIONAIRE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Permit Area, CONCESSIONAIRE shall give written notice to CITY within three (3) days of receipt of the knowledge or cause for belief. If CONCESSIONAIRE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, CONCESSIONAIRE shall notify CITY immediately upon receipt of such knowledge or belief and shall take all actions necessary to alleviate the danger. CONCESSIONAIRE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Permit Area.
 - d. Environmental Assessment. At CITY'S option upon expiration or termination of

this Permit, an environmental assessment of the Permit Area shall be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at CONCESSIONAIRE'S sole cost and expense, and shall establish what, if any, hazardous substances exist on, in, or under the Permit Area, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. CONCESSIONAIRE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and CONCESSIONAIRE shall pay all costs and expenses therefor.

33. Waiver. CITY'S failure to insist upon the strict performance of any of CONCESSIONAIRE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Permit Area is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
34. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
35. Partial Invalidity. If any term, covenant, condition, or provision of this Permit is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
36. Number and Gender. Words of any gender used in this Permit shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
37. Captions. Section headings and captions shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Permit. The numbers of the paragraphs and pages of this Permit may not be consecutive. Such lack of consecutive numbers shall have no effect on the enforceability of this Permit.
38. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them and pertaining to this Permit and CONCESSIONAIRE'S occupancy, use, development, and maintenance of the Permit Area. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
39. Legal Proceedings. If either party commences legal proceedings to enforce or interpret any right or obligation under this Permit, the prevailing party shall be entitled to an award of costs related thereto, including without limitation reasonable attorney fees and court costs.

40. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or CONCESSIONAIRE, respectively, as follows:

THE CITY OF SAN DIEGO
Real Estate Assets Department
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

JEFF HORNICK
Gameday Concessions
4479 Caminito Pedernal
San Diego, CA 92117

41. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Permit Area. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental approvals which may be required for CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Permit Area.
42. San Diego's Strong Mayor Form of Governance. All references to "City Manager" in this Permit shall be deemed to refer to "the Mayor or his/her designee." This section shall remain in effect for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the San Diego City Charter.

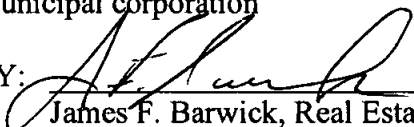
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43. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

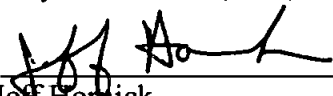
Date: 11/13/09

CITY: THE CITY OF SAN DIEGO, a California municipal corporation

BY: 
James F. Barwick, Real Estate Assets Director

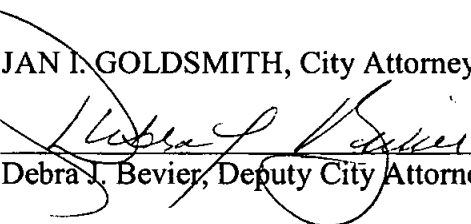
CONCESSIONAIRE: HORNICK ENTERPRISES, LLC, a California limited liability company, d.b.a. "Gameday Concessions,"

Date: 11/09/09

BY: 
Jeff Hornick

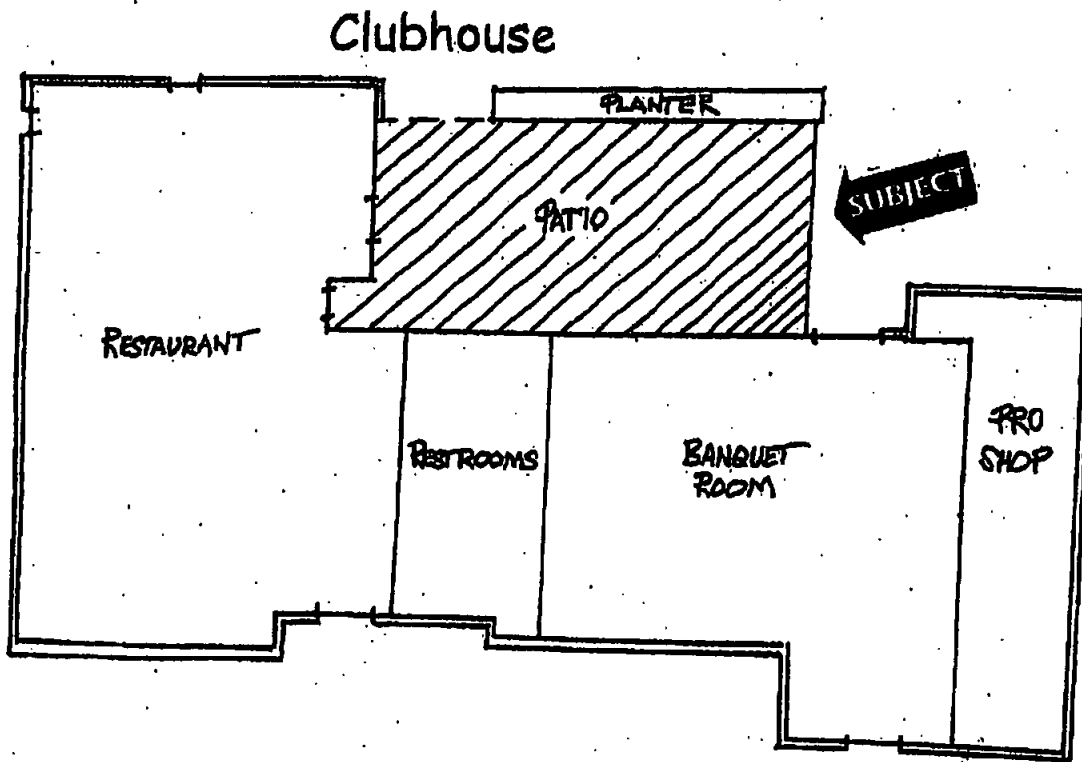
APPROVED AS TO FORM AND LEGALITY:

Date: 11/23/09

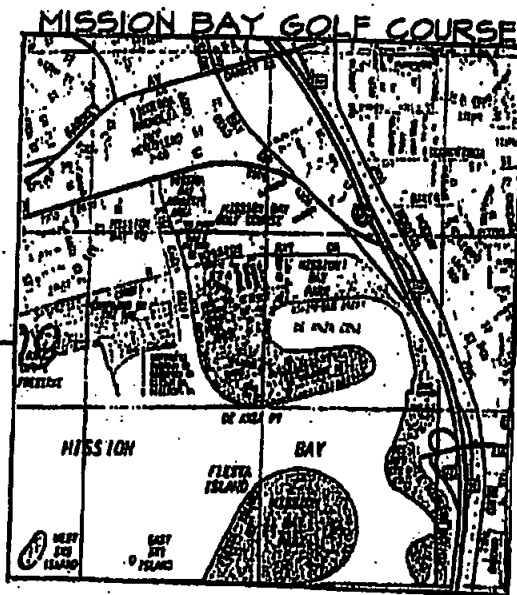
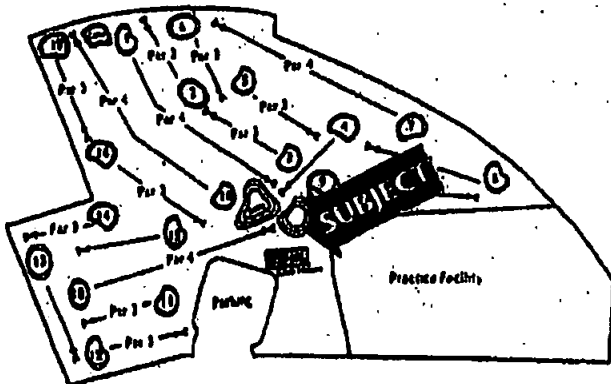
JAN I. GOLDSMITH, City Attorney
BY: 
Debra J. Bevier, Deputy City Attorney

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10-15-09

EXHIBIT A - Permit Area



**Mission Bay Golf Course
FOOD CONCESSION
PERMIT AREA**



LOCATION MAP