

**CITY OF SAN DIEGO
PERCENTAGE LEASE**

THIS CITY OF SAN DIEGO PERCENTAGE LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY") and TOBEY, STEVE, an individual AND TOBEY, CHRISTOPHER STEVEN, an individual ("LESSEE"), to be effective when signed by the parties and approved by the San Diego City Attorney (the "Effective Date").

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. PREMISES; USES

- 1.1 Leased Premises. CITY leases to LESSEE and LESSEE leases from CITY a portion of that CITY-owned real property commonly known as "Tobey's 19th Hole Restaurant," (the "Premises") within the Balboa Park Municipal Golf Course located at 2600 Golf Course Drive, San Diego, CA 92102. The Premises consists of a full kitchen, restaurant and bar area, storage area, and a mid-course concession space, known as the "Halfway House." The entirety of the Premises is generally depicted on **Exhibit A: Premises** and **Exhibit B: Parcel Map**, attached hereto.
- 1.2 Allowed Uses. LESSEE may use the Premises solely and exclusively for the operation and maintenance of a restaurant, concession stand, and other purposes incidental and related thereto if first approved in writing by CITY (the "Allowed Uses"), as further described on **Exhibit C: Service Level Expectations** and **Exhibit D: Sample Tournament Group Menu**, attached hereto.
- 1.3 Business Objective. LESSEE agrees to diligently and continuously conduct the Allowed Uses on the Premises to reasonably maximize Gross Revenue, as defined in this Lease.
- 1.4 Superior Interests. This Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Premises, whether or not of record. LESSEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow LESSEE's development and use of the Premises, relative to any such superior interest. If LESSEE's use of the Premises is or becomes inconsistent or incompatible with a preexisting, superior interest, LESSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
- 1.5 Governmental Approvals. By entering into this Lease, neither CITY nor CITY's City Council ("City Council") is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to LESSEE's occupancy, use, development, maintenance, or restoration of the

Premises. Discretionary action includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals. CITY makes no representation or warranty regarding review or approval of LESSEE's development or redevelopment plans for the Premises, and failure of the CITY or City Council to approve any plans or grant any required permits for development or redevelopment shall not give rise to any claim, liability, obligation, or cause of action related to this Lease. LESSEE shall obtain and maintain throughout the term of this Lease all legally required permits and licenses for the construction of improvements and the operation of its business on the Premises including, but not limited to building permits, and the San Diego County food operator license.

- 1.6 CITY's Consent, Approval. CITY's consent or approval under this Lease shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
- 1.7 Quiet Possession. LESSEE, performing the covenants and agreements in this Lease, shall at all times during the term of this Lease peaceably and quietly have, hold, and enjoy the Premises. If LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damages.
- 1.8 Reservation of Rights.
 - (a) Mineral Rights. CITY reserves all rights, title, and interest in and to any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
 - (b) Easements. CITY reserves the right to grant, establish, and use easements and rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.
 - (c) Repairs. CITY may at all reasonable times enter the Premises for the purpose of making repairs to or developing municipal resources and services.
 - (d) Noninterference. CITY shall not unreasonably interfere with LESSEE's use of the Premises and such non-interference covenant is an express condition to the CITY's exercise of its rights under Section 1.7. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.
- 1.9 Competent Management. LESSEE shall provide competent management of the Allowed Uses to CITY's reasonable satisfaction. "Competent management" shall mean management practices generally considered acceptable within LESSEE's industry for the management and operation of activities substantially similar to the Allowed Uses and in compliance with all applicable local, state and federal laws,

rules and regulations, and in a fiscally responsible manner. "Fiscally responsible manner" shall mean in accordance with generally accepted accounting principles consistently applied and absent financial malfeasance.

2. TERM

- 2.1 **Term.** The term of this Lease shall be for three (3) years, commencing on the Effective Date. If the Effective Date is other than the first day of a calendar month, the partial month after the Effective Date shall constitute the first month of the Term so that the second month of the Term will start on the first day of a calendar month.
- 2.2 **Holdover.** Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration or earlier termination of this Lease shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Lease shall continue in full force and effect, except that CITY may then demand and receive from LESSEE rent up to one hundred fifty percent (150%) of the then market rent for the Premises, as determined by competent CITY staff, which rent shall be effective as of the first day of the holdover period, retroactively applied as necessary.
- 2.3 **Surrender of Premises.** Upon the expiration or earlier termination of this Lease, LESSEE shall vacate the Premises and surrender the Premises to CITY free and clear of all liens and encumbrances, and in as-is condition reasonably satisfactory to CITY. At any time after the expiration or earlier termination of this Lease, LESSEE shall execute and deliver to CITY, within thirty (30) days after CITY's request, a valid and recordable quitclaim deed covering all of the Premises. If LESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice reciting LESSEE's failure to perform this Lease obligation, and the notice shall be deemed conclusive evidence of the termination of this Lease and all of LESSEE's rights in and to the Premises.

3. OPERATIONS ON THE PREMISES

- 3.1 **Operation of Facilities.** Subject to force majeure events or reasonable closures for improvements that are approved by CITY in advance, LESSEE shall conduct its business and operate the Premises continuously and without interruption during the Term. A regular schedule of days and hours of operation established by LESSEE is attached as **Exhibit C: Service Level Expectations**, LESSEE shall not materially change the Schedule of Days and Hours of Operation without CITY's prior written approval. LESSEE may make reasonable modifications of limited duration to the Schedule of Days and Hours of Operation during seasonal periods (for example, to reduce hours on a holiday). LESSEE shall diligently furnish services to the public in a creditable manner in conformity with all applicable laws, rules and regulations. LESSEE shall ensure that the type and quality of all food-handling services furnished by LESSEE, at all times shall satisfy the conditions and

requirements of the "A" Card issued by the California Department of Health to operators of food-handling establishments.

- 3.2 Trash and Refuse. LESSEE shall, at its sole cost and expense, provide covered containers on the Premises to receive trash and refuse generated on the Premises. Refuse containers shall not be located outside the Premises. LESSEE shall ensure that refuse containers are emptied on a regular basis and shall prevent refuse containers from overflowing or creating unhealthful, unsightly, or unsanitary conditions. LESSEE shall ensure that the contents of all refuse containers on the Premises are disposed of at authorized landfills or other garbage reception areas, as provided under applicable law at the time of refuse collection.
- 3.3 Restriction on Plastic Food Containers. LESSEE will not provide to its customers any prepared, takeout, or supplied/resale food in polystyrene foam packaging, nor will Lessee obtain or keep any such customer food packaging at or on the Premises. LESSEE's food packaging for all foods will be recyclable plastic or recyclable paper, and Lessee will deliver to the City, upon request, evidence of such in the form of paid invoices for the purchase of recyclable plastic or recyclable paper containers in amounts sufficient to indicate compliance with this section. Post-consumer recycled plastic or recycled paper is preferred for all customer food packing related to the use and operation of the Premises. No biodegradable or compostable packaging is to be used by LESSEE in lieu of recyclable plastic or recyclable paper unless with the prior written approval of the City's Environmental Services Department. "Prepared food" means all food or beverage prepared on the Premises for immediate consumption at the Premises or elsewhere in the Premises. "Takeout food" means all food or beverage to be consumed off of the Premises or elsewhere in the Premises. "Supplied/Resale food" means foods or beverages which are supplied by a third party to LESSEE for either preparing food or beverages onsite or direct sell. "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are not intended for reuse, and on or in which any prepared food or takeout food is provided on or from the Premises. LESSEE should also limit its distribution of plastic bags to its customers.

4. RENT

- 4.1 Rent. LESSEE shall pay rent to CITY in the amount of the greater of: (a) the Percentage Rent (as defined below); or (b) the Minimum Monthly Rent (as defined below). Within thirty (30) days at the beginning of each month during the Term, LESSEE shall deliver to CITY a schedule of LESSEE's Gross Revenue (as defined below) for the month, together with a statement of the Percentage Rent payable for that month, prepared using generally accepted accounting principles consistently applied, with revenue categorized by source, and deductions categorized by type. If the Percentage Rent calculated for any given month is greater than the Minimum Monthly Rent, LESSEE shall pay to CITY the Percentage Rent, otherwise LESSEE shall pay the Minimum Monthly Rent concurrently with the delivery of such

schedule and statement, LESSEE shall pay to CITY the greater of the Minimum Monthly Rent or the Percentage Rent.

- 4.2 Gross Revenue. "Gross Revenue" shall mean all revenue derived from all uses of the Premises, including without limitation all revenue derived from subtenants and licensees. Possessory interest taxes or other property taxes shall not be deducted in computing Gross Revenue. Notwithstanding the foregoing, Gross Revenue shall not include: (a) federal, state, or municipal taxes collected from consumers (regardless of whether such amount is stated to the consumer as a separate charge) and paid periodically by LESSEE to a governmental agency and accompanied by a tax return or statement as required by law; (b) refunds for goods returned for resale on the Premises or refunds of deposits; (c) goods returned to sources; (d) sums and credits received in the settlement of claims for loss of or damage to merchandise, to the extent previously reported as Gross Revenues; (e) cash refunds made to customers in the ordinary course of business; (f) interest, service or sales carrying charges or other charges, however denominated, paid by customers for extension of credit on sales and where not included in the merchandise sales price; (g) receipts from public telephones, stamp machines, public toilet locks, or vending machines installed solely for use by LESSEE's employees; (h) sales of fixtures, equipment or property which are not stock in trade; (i) gift certificate or like vouchers until such time as the same shall have been converted into a sale by redemption; and (j) gratuities which are provided directly to LESSEE's employees. LESSEE shall clearly indicate the amount of all such taxes and refunds on its books and records.
- 4.3 Minimum Monthly Rent. The minimum monthly rent beginning on the first day of the first (1st) Lease Year shall be Three Thousand Nine Hundred Seventy-One Dollars and Twenty-Seven Cents (\$3,971.27) (the "Minimum Monthly Rent").
- 4.4 Minimum Rent Adjustment. Beginning with the second Lease Year, and continuing with each subsequent Lease Year thereafter, the Annual Minimum Rent will be increased by three percent (3%) of the immediately prior Lease Year's Annual Minimum Rent.
- 4.5 Percentage Rent. Percentage Rent shall be rent in an amount equal to the percentages of Gross Revenue derived from certain designated business activities, applied as follows:

Percentage of Gross Revenue

Business Activities

Five Percent (5%)

Operations involving the serving of meals or dispensing of food or beverages. All service charges and mandatory gratuities; provided, however, that in no event shall Gross Revenues include voluntary gratuities provided directly to LESSEE's employees by LESSEE's customers in addition to the basic price for services. All private party and special event rental operations. Coin-operated vending, game or service

machines or devices on the Premises and owned or rented by LESSEE. Commissions or any other compensation to LESSEE for the right to install and operate coin-operated vending, game or service machines or devices on the Premises. Wireless telecommunication equipment installed or operated on or from the Premises. All retail sales not covered above in this Section 4.5. All other authorized activities (other than those described above) conducted on or from the Premises.

If LESSEE requests uses of the Premises in addition to the Allowed Uses, CITY and LESSEE shall determine by agreement the Percentage Rent calculation applicable to each such use prior to CITY's approval of the use.

4.6 Unauthorized-Use Charge. LESSEE shall pay CITY one hundred percent (100%) of the gross receipts from any use of the Premises that is not allowed by this Lease, regardless of any related penalties charged LESSEE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. The unauthorized use charge shall be considered "rent" under this Lease, and shall be subject to all costs and penalties for delinquent payments hereunder. The existence of such unauthorized use charge and CITY's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY's rights under this Lease.

4.7 Time and Place of Payment. All rent payments shall be made payable to the City Treasurer and mailed to:

The Office of the City Treasurer
City of San Diego
P.O. Box 129030
San Diego, California 92112-9030

or hand-delivered to

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

4.8 Records. LESSEE shall keep or cause to be kept true, accurate, and complete books, records, and accounts of all financial transactions in the operation of LESSEE's business and all other business activities conducted on the Premises, and

all financial transactions resulting from LESSEE's use of the Premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, or other documents (which may be in electronic form) as necessary to allow CITY to easily determine Gross Revenue. All retail sales or charges shall be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. Such registers or other devices shall record sales totals and other transaction numbers and sales details, and shall not be re-settable. Registered totals shall be read and recorded at the beginning and end of each business day. All sales and charges may be recorded by a system other than cash registers or other comparable devices, provided such system is approved by CITY.

- 4.9 Financial Statements. Within sixty (60) days after the end of each Lease Year, LESSEE shall, at its sole cost and expense, deliver to CITY a statement of annual Gross Revenue and the corresponding amount of Rent paid to CITY for the Lease Year, for all LESSEE's activities conducted on or from the Premises. Such statements shall be prepared using generally accepted accounting principles consistently applied, with revenue categorized by source, and deductions categorized by type. Each such statement shall be signed by an officer, general partner, or principal of LESSEE attesting to the accuracy and completeness thereof, which shall be legally binding upon LESSEE. LESSEE shall comply with all reasonable requests by CITY to modify the form and content of such financial statements. LESSEE shall provide such additional information reasonably requested by CITY regarding the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises.
- 4.10 CITY's Right to Inspect and Audit. LESSEE shall keep all of its books of account, records, and supporting documentation throughout the Term, plus five (5) years. LESSEE shall make such books, records, and documentation available for inspection and audit by CITY in one location within the County of San Diego. LESSEE shall maintain separate books and records related to LESSEE's use of the Premises. Upon reasonable prior notice, CITY may inspect and audit the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises as CITY may deem necessary, in its sole reasonable discretion, to protect CITY's rights under this Lease. If required by competent legal authority, LESSEE shall promptly deliver to CITY, at CITY's reasonable request and at LESSEE's sole cost and expense, any and all data reasonably needed to fully comply with such authority's requirements related to the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises.
- 4.11 Audit Cost. The full cost of each CITY audit shall be borne by CITY, unless one or both of the following conditions exists, in which case LESSEE shall reimburse CITY for all costs of the audit:

- (a) If an audit reveals an underpayment of rent of more than five percent (5%) on an annual basis, calculated as the difference between the rent reported as payable by LESSEE and the rent payable as determined by the audit; or
- (b) LESSEE failed to maintain true, accurate, and complete books, records, accounts, and supporting source documents as required by this Lease.

Any rent deficiency determined by the audit shall be delinquent rent, subject to all penalties and remedies provided to CITY for delinquent rent under this Lease. CITY shall credit any overpayment determined by the audit, without interest, against future rents due under this Lease. If no future rents are then due under this Lease, CITY shall refund to LESSEE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.

- 4.12 Delinquent Payments. If LESSEE fails to make any payment under this Lease when due, LESSEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional rent. If any amount of such payment remains unpaid after fifteen (15) days past due, LESSEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be additional rent. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Lease may be referred to the CITY's City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. LESSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the CITY's City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, LESSEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

5. ENCUMBRANCES; ASSIGNMENT & SUBLETTING

- 5.1 Leasehold Encumbrances. LESSEE shall keep the Premises and the property of which it is a part free from all encumbrances and liens of any nature which arise out of or are in any manner directly connected with LESSEE's use or occupancy of the Premises. LESSEE 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 Premises in connection with such encumbrances and/or liens, including without limitation LESSEE's failure or the failure of any contractor or subcontractor hired by LESSEE to pay any person or persons entitled to lien or encumber the Premises pursuant to the California Civil Code.

- 5.2 Assignment and Subletting. LESSEE shall not assign or sublease any rights granted by this Lease or any interest in this Lease without CITY's prior written consent in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any assignment or subletting without CITY's consent shall be void and shall, at the option of CITY, terminate this Lease. This Lease shall not, nor shall any interest in this Lease be assignable as to the interest of LESSEE by operation of law without the written consent of CITY. LESSEE shall pay all reasonable fees required by CITY for processing requests for consent. As a condition to any consent to an assignment, sublease or other grant of rights related to the use and occupancy of the Premises, CITY may require that this Lease be revised to comply with then-current standard CITY lease requirements.
- (a) Assignment for the purposes of this section shall include any transfer of any ownership interest in this Lease by LESSEE, and if LESSEE is other than a natural person, the transfer of a controlling interest in LESSEE or any of LESSEE'S general partners, principals, or controlling shareholders.
 - (b) Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this Lease which are applicable to the rights acquired. Further, each sublessee shall agree that its sublease shall be subject and subordinate to each and every provision of this Lease. Pursuant to City Charter section 225, CITY must review and approve every person or entity which will have an interest in this Lease as a sublessee or assignee.
- 5.3 Consent Conditions. CITY may require, as a condition to consenting to any assignment, sublease or other grant of rights related to the use and occupancy of the Premises, that this Lease be revised to comply with then-current CITY lease provisions, and that the sublease be subject and subordinate to each and every provision of this Lease.
- 5.4 Charter Section 225. Pursuant to San Diego City Charter section 225, LESSEE and each of its subtenants and assignees shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in this Lease and the precise nature of all interests of all persons therein. Pursuant to City Charter Section 225, every person or entity which will have an interest in this Lease must be reviewed and approved by CITY.
- 5.5 Equity Sharing. LESSEE agrees that as additional consideration for this Lease, and in addition to all other rents payable to CITY, CITY shall be entitled to participate in any "equity" received by LESSEE during the Term. For purposes of this paragraph, "equity" shall mean any amount paid to LESSEE as consideration for an assignment of this Lease or Major Sublease of the Premises; provided, however,

equity shall not include any base rents or additional rents payable to LESSEE by its subtenants. "Major Sublease" shall mean any sublease or series of subleases entered into by LESSEE that constitute a single related transaction which individually or cumulatively involves twenty-five (25%) percent or more of the total acreage of the Premises, except for Permitted Transactions, as defined in this Section 5.3. In the event of any action resulting in "equity" as described above, LESSEE agrees that CITY shall be entitled to a payment equal to two percent (2%) of any such equity. For purposes of calculating such payment, equity shall be the total consideration resulting from the transaction including total cash payments and the market value of non-cash consideration, including, but not limited to, stocks, bonds, deferred payments, secured and unsecured notes and forbearances, regarding claims and judgments. Lessee also agrees that CITY shall be entitled to a payment equal to two percent (2%) of the value of all consideration payable on a lease or on the full sale price for any buildings or other structures, or any portion thereof on the Premises upon the Effective Date of this Lease. CITY shall also be entitled to a payment equal to two percent (2%) of the value of all consideration payable on a lease or on the full sale price for any buildings or other structures, or any portion thereof built on the Premises. Prior to CITY's consent to any assignment, Major Sublease or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this paragraph together with a written acknowledgment of accuracy of LESSEE's written statement from the proposed assignee, sublessee or lender of the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the closing of the transaction, whether it be an assignment, a sublease, or a refinancing. In the case of a Major Sublease which provides for periodic payment of rent, CITY shall be entitled to ten percent (10%) of the difference between the rent paid by LESSEE to CITY and the rent paid by the sublessee to LESSEE, which amounts shall be added to the rent paid to CITY. Any assignment, subletting or refinancing in violation of the terms and conditions of this paragraph shall be void:

- (a) an assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession, or by operation of law for the benefit of the spouse or descendants of the individual who is the owner of a controlling interest in LESSEE; or
- (b) an assignment deemed by CITY, in its sole reasonable discretion, not to materially affect the legal and equitable ownership interests in the leasehold, such as a change in LESSEE's legal or fictitious name without any other change in the equity, beneficial use of, or legal title to, the leasehold as an asset or the income produced thereby.

6. DEFAULT AND REMEDIES

6.1 Default. LESSEE shall be in default of this Lease if any of the following occurs:

- (a) LESSEE fails to make any payment required under this Lease;

- (b) LESSEE breaches any of its obligations under this Lease, other than those requiring payment to CITY, and fails to cure the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;
- (c) LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
- (d) LESSEE is adjudicated a bankrupt; or
- (e) LESSEE makes a general assignment for the benefit of creditors.

6.2 Remedies. Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, (1) a written "Three Day Notice to Pay or Quit" for failure to make required payments or (2) a "Notice of Termination" for defaults not requiring payment to CITY, in order that CITY may seek to terminate the Lease and all rights of LESSEE, and all persons claiming rights through LESSEE, to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:

- (a) the worth at the time of award of any unpaid rent that was due at the time of termination;
- (b) the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE proves could have been reasonably avoided;
- (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;
- (d) any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and
- (e) all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses 6.2(a) and 6.2(b), above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause 6.2(c), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any other amounts payable by LESSEE under this Lease.

6.3 Default if Leasehold is Encumbered. If there is a CITY-approved encumbrance on LESSEE's leasehold interest, CITY shall give the mortgagee or beneficiary written notice of LESSEE's default under this Lease, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options:

- (a) CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to LESSEE, and mortgagee or beneficiary;
- (b) CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and
- (c) CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

If the default is non-curable by LESSEE, then any lender holding a beneficial interest in the Premises, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Lease. If the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving CITY's written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease with all the rights, privileges, and obligations of LESSEE, subject to the curing of the default, if possible, by mortgagee or beneficiary. In that event, LESSEE shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Lease.

6.4 Abandonment by LESSEE. If LESSEE abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including without limitation the right to recover rent as it becomes due, plus damages.

- 6.5 Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises are a part of publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

7. EMINENT DOMAIN

- 7.1 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) shall be as follows:
- (a) Full Taking. If the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - (b) Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises are unsuitable for continued operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - (c) Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both. LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE's then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
 - (d) Transfer. CITY has the right to transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by LESSEE on the Premises in accordance with this Lease.

- (e) No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

8. INDEMNITY; HOLD HARMLESS; INSURANCE

- 8.1 Indemnification & Hold Harmless. LESSEE will protect, defend, indemnify and hold City and its elected officials, officers, employees, representatives, agents, and volunteers harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with LESSEE's acts or omissions in the performance of its rights and obligations under this Lease, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that LESSEE's duty to indemnify and hold City harmless will not include any established liability arising from the sole negligence or intentional misconduct of City or its elected officials, officers, employees, representatives, agents, or volunteers. 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 to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE will pay all of the related costs, including without limitation reasonable attorney fees and costs.
- 8.2 Insurance. LESSEE shall not begin any work under Lease until it has: (a) obtained, and upon the CITY's request provided to the CITY, insurance certificates reflecting evidence of all insurance required in below; however, the CITY reserves the right to request, and the LESSEE shall submit, copies of any policy upon reasonable request by the CITY; (b) obtained CITY approval of each insurance company or companies; and (c) confirmed that all policies contain the specific provisions required below. LESSEE's liabilities, including but not limited to LESSEE's indemnity obligations, under this Lease, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Lease and LESSEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Lease may be treated as a material breach of contract by the CITY. The LESSEE shall not modify any policy or endorsement thereto which increases the CITY's exposure to loss for the duration of this Lease.
- 8.3 Types of Insurance. At all times during the term of this Lease, the LESSEE shall maintain insurance coverage as follows:
 - (a) Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability, including Liquor Liability, arising from any and all personal injury or property damage in the amount of Two Million Dollars (\$2,000,000) per occurrence and subject to an

annual aggregate of Four Million Dollars (\$4,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

- (b) Commercial Automobile Liability. For all of the LESSEE's automobiles including owned, hired and non-owned automobiles, the LESSEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of One Million Dollars (\$1,000,000) per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
 - (c) Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Allowed Uses of the Premises under this Lease or the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver a certificate of such insurance to CITY's Real Estate Assets Department.
 - (d) Workers' Compensation. For all of the LESSEE's employees who are subject to this Lease and to the extent required by the applicable state or federal law, the LESSEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of One Million Dollars (\$1,000,000) of employers' liability coverage, and the LESSEE shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives.
- 8.4 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 8.5 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Lease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.
- 8.6 Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the

revision of amounts and coverage at any time by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.

- 8.7 Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses. Such report 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.
- 8.8 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to the CITY before any work is initiated under this Lease.

Commercial General Liability Insurance Endorsements:

(i) ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

(ii) PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of LESSEE's insurance and shall not contribute to it.

(iii) SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that the LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

Automobile Liability Insurance Endorsements:

(iv) ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the LESSEE.

(v) SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

Worker's Compensation Insurance Endorsements:

WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the CITY.

9. IMPROVEMENTS; ALTERATIONS; REPAIRS; MAINTENANCE

- 9.1 Waste, Damage, or Destruction. LESSEE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises, shall keep the Premises clean and clear of refuse and obstructions, and shall dispose of all garbage, trash, and rubbish in a manner reasonably satisfactory to CITY. If the Premises are put into a condition which is not decent, safe, healthy, and sanitary, LESSEE shall restore the Premises to their prior condition within a reasonable time and to CITY's reasonable satisfaction.
- 9.2 Acceptance of Premises. LESSEE acknowledges that the Premises are in good order and condition and shall take possession of the Premises "as is." CITY has not made and makes no representation or warranty as to the condition or suitability of the Premises for LESSEE's intended use, and assumes no obligation to alter or improve the Premises. LESSEE has relied solely on its own independent investigations of the condition and suitability of the Premises, and is satisfied with the condition thereof.
- 9.3 Asbestos Disclosure. Portions of the structural components of the Premises may contain asbestos. LESSEE acknowledges receipt of notice from CITY of the presence of such asbestos in accordance with California Health and Safety Code Section 25915. LESSEE shall disclose to all appropriate parties the existence of asbestos on the Premises, as required by California Health and Safety Code Section 25915. LESSEE shall protect, defend, indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the Premises.
- 9.4 Asbestos. If LESSEE makes improvements, alterations or repairs to the Premises, LESSEE shall be responsible for any asbestos removal, management, or containment, and shall pay all costs associated therewith. Asbestos removal, management or containment shall be conducted in accordance with all applicable laws and as approved by CITY. CITY reserves the right to inspect any improvements, alterations or repairs to the Premises made by LESSEE. CITY may, at its discretion, station supervisory personnel at the work site to ensure that

LESSEE's obligations under this section are fulfilled. Each party shall coordinate with the other any improvement, alteration or repair, and except in the event of an emergency, the party responsible for such work shall provide written notice to the other party at least fifteen (15) days prior to commencing the work.

9.5 Entry and Inspection. Upon reasonable prior notice to the LESSEE (except in the event of an emergency in which case no prior notice shall be required), CITY, as the lessor under this Lease with no effect on its governmental rights and powers, may enter and inspect the Premises and the operations conducted on the Premises, provided that such entry and inspection shall not unreasonably interfere with LESSEE's use of the Premises.

(a) Notwithstanding any provision of this Lease allowing LESSEE an opportunity to correct a breach, if the Premises are not in a clean, decent, safe, healthy and sanitary condition, CITY shall have the right but not the obligation, after thirty (30) days prior written notice to LESSEE, to have any maintenance work done that is reasonably deemed by CITY in its sole discretion to be necessary, and all at LESSEE's sole cost and expense. LESSEE shall promptly pay CITY for all costs incurred for such work immediately upon receipt of an invoice therefor.

(b) CITY may require LESSEE to file with CITY a faithful performance bond to ensure the prompt correction of any condition which is not clean, decent, safe, healthy and sanitary. The bond shall be in an amount reasonably determined by CITY to be adequate to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond.

9.6 Maintenance. LESSEE shall maintain the Premises in a decent, safe, healthy, and sanitary condition reasonably satisfactory to CITY, including without limitation performing all major maintenance and repair to the structural components of the Premises, such as interior wall supports, exterior wall supports, the roof, floor supports, and building-wide mechanical systems. LESSEE shall be responsible for installation and maintenance of the grease interceptor and connection to basement sewer lines. CITY shall have no obligation or responsibility to remove debris, or to maintain, repair or replace improvements on the Premises.

9.7 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the exterior of the Premises, and the Premises may not be altered, by LESSEE without CITY's prior written approval, not to be unreasonably withheld or conditioned. LESSEE shall not make any structural or architectural design alterations to approved improvements, structures, or installations on the Premises without CITY's prior written approval, including applicable building permits, which should not to be unreasonably withheld. This provision shall not relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises. CITY's prior consent shall not be required with respect to any interior alterations or modifications to the Premises, which cost less than

Fifteen Thousand Dollars (\$15,000.00) and are non-structural in nature, as long as LESSEE delivers to CITY advance written notice and a copy of any final plans, specifications and working drawings for any such alterations or modifications.

- 9.8 Utilities. LESSEE shall order, obtain, and pay for all water, utilities, and service and installation charges in connection with the operation of the Premises. LESSEE shall reimburse CITY for the electricity usage within the Premises. Except for the above-ground propane tank, all other utilities shall be installed underground.
- 9.9 Construction Bond. If LESSEE develops or constructs improvements on the Premises, LESSEE shall deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.
- 9.10 Liens. LESSEE shall protect, defend, indemnify, and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorneys' fees. If LESSEE causes improvements, alterations, or repairs to be made to the Premises, and a lien or notice of lien is filed against the Premises, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
- 9.11 Prevailing Wages. Prevailing wage rates apply to this Lease. LESSEE shall comply with State prevailing wage laws, including, but not limited to, those requirements set forth in **Exhibit E: Prevailing Wage Requirements**, attached hereto
- 9.12 Signs. LESSEE 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, which will not to be unreasonably withheld or conditioned. Signs on the interior of the Premises that are not visible from the exterior of the Premises shall not require CITY's consent. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter remove the item at LESSEE's cost.
- 9.13 Ownership of Improvements and Personal Property.

- (a) Improvements. During the term of this Lease, LESSEE shall own all improvements, fixtures, structures, and installations or additions to the Premises constructed or installed on the Premises by LESSEE. Upon expiration or termination of this Lease, all such improvements, fixtures, structures, and installations or additions shall be deemed a part of the Premises and owned by CITY. Notwithstanding the foregoing, CITY may, upon notice to LESSEE at Lease termination or at any time prior to the expiration of the Term, elect to have part or all of such improvements, fixtures, structures, and installations or additions removed by LESSEE at the end of the Term. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice and restore the Premises to CITY's reasonable satisfaction as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Lease. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If LESSEE fails to remove the items as required herein, CITY may, at its option, remove them at LESSEE's sole cost and expense.
- (b) Personal Property. LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this Lease. Any such items which LESSEE fails to so remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at LESSEE's sole cost and expense. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.
- (c) Late Removal. Notwithstanding any provision of this Lease to the contrary, LESSEE shall pay rent to CITY for any period of time after the expiration or termination of this Lease needed to remove improvements or personal property as required by this Lease, whether by CITY or LESSEE. Such rent shall be calculated on a per diem basis using the then-current fair market rental rate as determined by an appraisal prepared by qualified CITY staff.
- (d) CITY's Right to Acquire Personal Property. If LESSEE wants to dispose of any of its personal property used in its operations on the Premises upon expiration or termination of this Lease, CITY shall have the first right to acquire such personal property.

10. GENERAL PROVISIONS

- 10.1 Notices. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by United States mail, postage prepaid, addressed as follows:

If to LESSEE:

STEVE TOBEY
9600 Halberns Boulevard
Santee, California 92071
(619) 933-2716

If to CITY:

THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

- 10.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, restoration and operation of the Premises comply with all applicable laws, rules, regulations, and requirements of competent legal authority at LESSEE's sole cost and expense. LESSEE shall promptly deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to LESSEE (e.g., validation of periodic inspection of LESSEE's fire-suppression equipment in the Premises).
- 10.3 California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE is or is not a public record subject to disclosure under the California Public Records Act (CPRA). If LESSEE notifies CITY that it objects to the disclosure of certain information to a third party, LESSEE shall deliver to CITY, with such notice, specific and detailed legal grounds, including any applicable case law, upon which CITY may rely for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by LESSEE, LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at LESSEE's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. 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, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

10.3.1 CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by LESSEE as a result of CITY's disclosure or non-disclosure of LESSEE information requested pursuant to the CPRA.

10.3.2 LESSEE's Waiver. LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS THAT LESSEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF LESSEE INFORMATION REQUESTED PURSUANT TO THE CPRA.

- 10.4 Equal Opportunity.** LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth. Upon CITY's request, LESSEE shall submit a current Workforce Report and, if required, an Equal Opportunity Plan which set forth the actions LESSEE will take to achieve the CITY's goals for the employment of African Americans, Native Americans, Asians, Latinos, women, and people with disabilities. LESSEE shall cause the foregoing provisions to be inserted in all subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each SUBLESSEE and contractor. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.
- 10.5 Equal Benefits.** LESSEE will comply with San Diego Municipal Code sections 22.4301-22.4308, as may be amended from time to time, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with registered domestic partners. By signing this Lease, LESSEE certifies that it will maintain such equal benefits throughout the term of this Lease. LESSEE's failure to maintain equal benefits will be a default of this Lease.
- 10.6 Equal Pay Ordinance.** Unless an exception applies, LESSEE will comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. By signing this Lease, LESSEE certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.
- (a) LESSEE and SUBLESSEE Requirement.** The Equal Pay Ordinance applies to any SUBLESSEE of the Premises to the same extent as it would apply to LESSEE. LESSEE will require SUBLESSEES to certify compliance with the Equal Pay Ordinance in their subleases.
 - (b) Notice Requirement.** LESSEE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.
- 10.7 Disabled Access Compliance.** LESSEE will, as applicable to the Premises and Lessee's possession, use and occupancy of the Premises, comply with 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 all other applicable laws, rules and regulations of competent governmental authority protecting the rights of people with disabilities. LESSEE's compliance will include without limitation the following:

- (a) LESSEE will not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment.
- (b) No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
- (c) LESSEE will include language in each sublease which indicates the sublessee's agreement to abide by the provisions of this section. LESSEE and each of its SUBLESSEE will be individually responsible for their own ADA employment programs.
- (d) Where required by law, all improvements, fixtures, structures or installations on the Premises will comply with municipal disabled-access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations will be at LESSEE's sole expense.
 - (i) LESSEE will post a statement addressing the requirements of the ADA in a prominent place at its work site.
 - (ii) LESSEE's failure to comply with the requirements of this section or submitting false information in response to these requirements, or both, will be a default of this Lease.

10.8 Accessibility Assessment. In accordance with California Civil Code section 1938, City hereby states that the Premises has not been inspected by a Certified Access Specialist (CASp).

Further, pursuant to California Civil Code section 1938(e), CITY is required to state: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the LESSEE or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the LESSEE or tenant, if requested by the LESSEE or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making

any repairs necessary to correct violations of construction-related accessibility standards within the premises.

10.9 Drug-free Workplace. LESSEE shall 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 Premises and specifying the actions that will be taken against employees for violations of the prohibition.
- (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) LESSEE's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations.
- (c) LESSEE shall include in each of its subleases and contracts related to this Lease language obligating each sublessee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sublessees and contractors, shall be individually responsible for their own drug-free workplace program.

10.10 CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.

10.11 Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Lease and to the extent legally possible, LESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.

- 10.12 Water Quality - Best Management Practices. The CITY and LESSEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Premises in a manner which aids in the protection of City's precious water resources. It is LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

Therefore, LESSEE will, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).

It is ultimately LESSEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, LESSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

- 10.13 Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which will run with the land, that LESSEE or any person claiming under or through LESSEE will not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender identity, gender expression, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the possession, use or occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees in the Premises.
- 10.14 Cumulative Remedies. CITY's and LESSEE's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's or LESSEE's rights or remedies at law or in equity.
- 10.15 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
- 10.16 Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.
- 10.17 No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.
- 10.18 Entire Agreement. This Lease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to this Lease and LESSEE's occupancy, use,

redevelopment, maintenance, and restoration of the Premises. Any modification, alteration, or amendment of this Lease shall be in writing and signed by all the parties hereto.

10.19 Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

10.20 Taxes. Subject to the provisions of Article XIII, Section 3(d) of the California Constitution and Section 202.2 of the California Revenue and Taxation Code, LESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon the Premises or upon LESSEE's use and occupancy of the Premises, including without limitation taxes upon licenses and permits, and including taxes upon the land and any improvements or fixtures installed or maintained by LESSEE thereon. LESSEE acknowledges that this Lease may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of taxes levied on that possessory interest. LESSEE alone shall pay all such possessory interest taxes. LESSEE's payment of taxes, fees and assessments shall not reduce any rent due to the CITY. CITY shall not incur or assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use, or occupancy of the Premises.

10.21 Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of hazardous or otherwise regulated substances in, on, under, or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate, or sell any hazardous substance on the Premises without CITY's prior written consent. LESSEE shall obtain and maintain all required licenses and permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a hazardous substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a hazardous substance or hazardous waste.

(a) Release. A release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous Substances" shall mean any hazardous liquid, solid, or gaseous material or waste substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents.

(b) Remediation. If LESSEE's occupancy, use, development, maintenance, or restoration of the Premises results in a release of a Hazardous Substance,

LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, and regulations of governmental authorities.

- (c) Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring Hazardous Substances onto the Premises, LESSEE shall remove or cause to be removed all Hazardous Substances from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the Hazardous Substances from the Premises. LESSEE shall be responsible for any and all costs incurred by CITY to remove or cause the removal of such Hazardous Substances from the Premises.
- (d) Indemnity. LESSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE's occupancy, use, redevelopment, maintenance, or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- (e) Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from, or beneath the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Administrative Code Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.
- (f) Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, redevelopment, maintenance, or restoration of the Premises ("LESSEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the

suspect area to 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 LESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by laws, rules and regulations of competent governmental authorities or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws, rules and regulations, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with the laws, rules and regulations of competent governmental authority is achieved, and LESSEE shall pay all costs and expenses therefor.

- 10.21 Unavoidable Delay. If the performance of an act required by this Lease is directly prevented or delayed by a cause beyond the reasonable control of the party required to perform the act, that party shall be excused from performing the act for a period equal to the period of the prevention or delay. This provision shall not apply to obligations to pay rent. The party claiming a delay shall notify the other party in writing within ten (10) days after the beginning of any claimed delay
- 10.22 Authority to Contract. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Lease 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 Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.
- 10.23 Controlling Law/Venue. This Lease and all Lease documents shall be deemed to be made under, and shall be construed in accordance with and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof. The venue for any suit or proceeding concerning this Lease, including the interpretation or application of any of its terms or any related disputes, shall be in the County of San Diego, State of California.

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

STEVE TOBEY, an individual

By: Steven E. Tobey
Name: Steven E. Tobey
Title: owner

CHRISTOPHER STEVEN TOBEY, an individual

By: Chris
Name: Christopher Steven Tobey
Title: co-owner

THE CITY OF SAN DIEGO, a California municipal corporation

By: [Signature]
Cybele L. Thompson
Director, Real Estate Assets Department

Environmental Analysis Section Environmental Clearance:

Categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities)

Date: 8/12/19

By: Heidi von Blum
Name: HEIDI VONBLUM
Planning Department

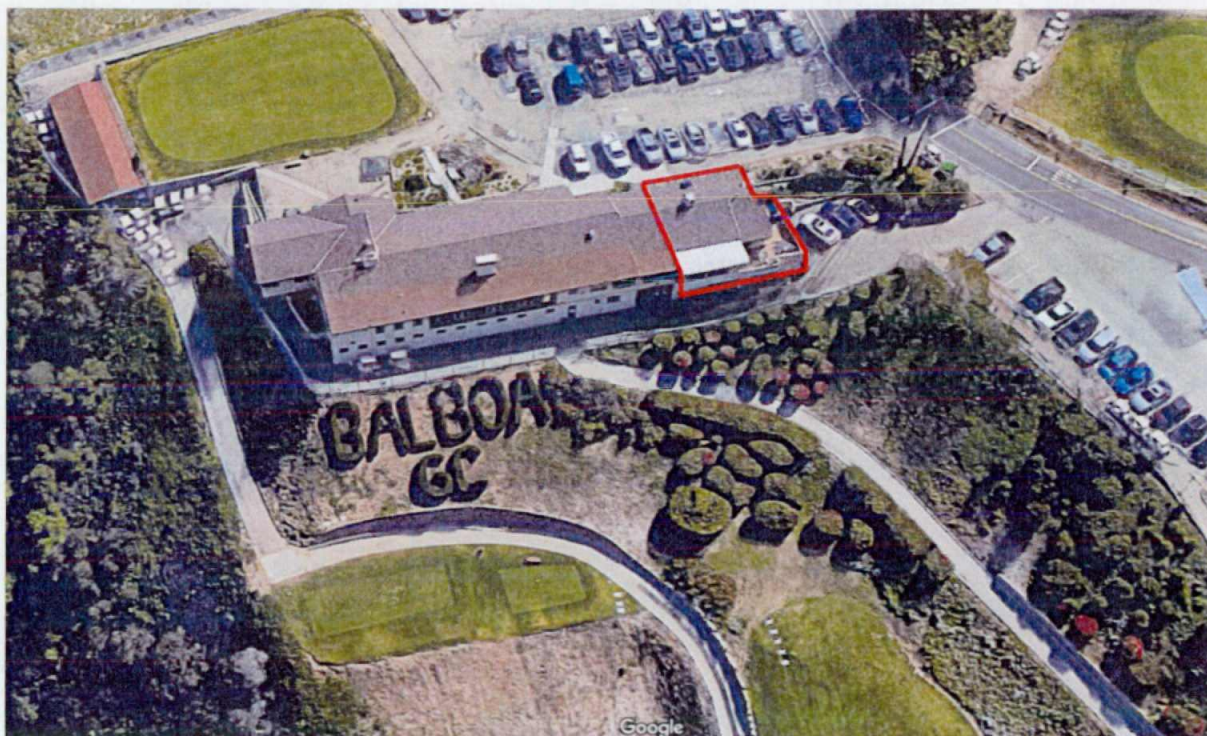
Approved as to form this

6th Day of September, 2019

MARA W. ELLIOTT, City Attorney

By: [Signature]
David Powell
Deputy City Attorney, City Attorney's Office

EXHIBIT A
PREMISES



Clubhouse



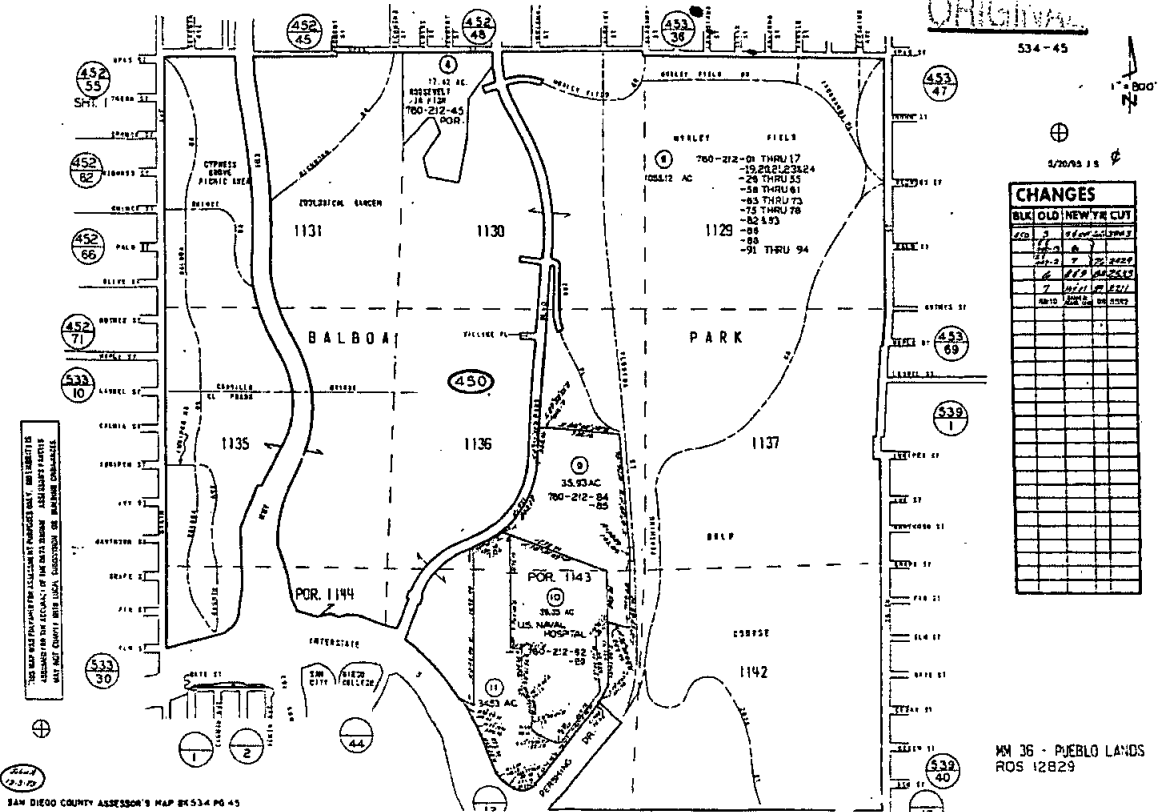
Halfway House

EXHIBIT B PARCEL MAP

Balboa Park Municipal Golf Course

08

534-40-450



MM 36 - PUEBLO LANDS
ROS 12829

EXHIBIT C
SERVICE LEVEL EXPECTATIONS

1. Café/Restaurant

- a. On-Course Hours of Operations:
 - i. 7 days per week, sunrise to 30 minutes past sunset
 - ii. If LESSEE would like to modify the operating hours, the request must be made in writing, within thirty (30) days to the Golf Division Deputy Director for approval.
 - iii. If the golf courses have been closed to players due to adverse weather conditions, LESSEE may, in consultation with the Golf Division Deputy Director or their designee, coordinate the appropriate business hours for that day. All operations will commence as normal on the next business day.
- b. Must provide offerings to the guests that are consistent with local golf course industry competitors.
- c. Minimum offerings must include:
 - 1. Drinks: Water, Sodas, Coffee, Sports Drinks and Beer
 - 2. Snacks: Chips, Candy, Fruit
 - 3. Food: Cold Sandwiches, Hot Dog, Wraps, Hamburgers
 - 4. Daily Specials: i.e. Fish Tacos
- d. A sample menu, including prices, must be submitted for approval to Golf Division Deputy Director for approval by June 1st of each calendar year of the lease.
- e. Restaurant staff will be responsible for setting the alarm for the building.

2. Group and Tournament Services

- a. City of San Diego retains the right to contract with outside caterers to provide tournament services if Lessee cannot meet the minimum standards outlined below.
- b. These services will be required on an as needed basis.
- c. If Lessee continues to meet the minimum standards outlined in this exhibit, Lessee will continue to have the First Right of Refusal for providing food.
- d. If Golf Division staff believe the minimum standards are not being met, Lessee will receive a written notice documenting the violations.
- e. A representative must coordinate with Balboa Park Golf Course City Staff and the customer within 72 hours of any food and beverage request.
- f. Must provide offerings to the guests that are consistent with local golf course industry competitors.
- g. Must provide service for alcoholic beverages and maintain a current ABC license.
- h. Minimum food offerings for tournaments must be consistent with the menu options provided in Exhibit E.

- i. Box Lunches must be served in a mutually agreeable container between Lessee and Golf Operations staff.
- j. A group menu, like the one provided in Exhibit E, that includes prices and minimum number of guests, which can be distributed to customers via Golf Operations staff, must be submitted for approval to Golf Division Deputy Director for approval by June 1st of each calendar year of the lease.
- k. There must be group options for seated dinning service or buffet style service.

3. Beverage Cart

- a. On-Course Hours of Operations: Friday – Sunday, 9 am to 2 hours before sunset.
- b. If the golf courses have been closed to players due to adverse weather conditions, LESSEE may, in consultation with the Golf Division Deputy Director or their designee, coordinate the appropriate business hours for that day. All operations will commence as normal on the next business day.
- c. Must provide offerings to the guests that are consistent with local golf course industry competitors.
- d. Minimum offerings must include:
 - 1. Drinks: Water, Sodas, Sports Drinks and Beer
 - 2. Snacks: Chips, Candy, Fruit
 - 3. Food: Cold Sandwiches
- e. A sample menu, including prices, must be submitted for approval to Golf Division Deputy Director for approval by June 1st of each calendar year of the lease.

4. Halfway House-

- a. On Course Hours of Operations: 7 days per week, 9 am - 2 hours prior to sunset
- b. If the golf courses have been closed to players due to adverse weather conditions, LESSEE may, in consultation with the Golf Division Deputy Director or their designee, coordinate the appropriate business hours for that day. All operations will commence as normal on the next business day.
- c. Must provide offerings to the guests that are consistent with local golf course industry competitors.
- d. Minimum offerings must include:
 - 1. Drinks: Water, Sodas, Coffee, Sports Drinks and Beer
 - 2. Snack: Chips, Candy, Fruit
 - 3. Food: Cold and Hot Sandwiches, Hot Dogs, Wraps
- e. A sample menu, including prices, must be submitted for approval to Golf Division Deputy Director for approval by June 1st of each calendar year of the lease.

5. Group/Banquet -

- a. City of San Diego retains the right to contract with outside caterers to provide tournament services if Lessee cannot meet the minimum standards outlined below
- b. These services will be required on an as needed basis.

- c. If Lessee continues to meet the minimum standards outlined in this exhibit, Lessee will continue to have the First Right of Refusal for providing food.
- d. If Golf Division staff believe the minimum standards are not being met, Lessee will receive a written notice documenting the violations.
- e. A representative must coordinate with Balboa Park Golf Course City Staff and the customer within 72 hours of any food and beverage request.
- f. Must provide offerings to the guests that are consistent with local golf course industry competitors.
- g. Minimum offerings for groups must include:

- | | |
|--------------------|--|
| 1. Appetizers: | Three (3) choices |
| 2. Salads: | Three (3) choices |
| 3. Lunch Entrees: | Four (4) choices, one (1) must be vegetarian |
| 4. Dinner Entrees: | Four (4) choices, one (1) must be vegetarian |
| 5. Dessert: | Two (2) choices |
| 6. Drinks: | Water, Sodas, Coffee, Beer and Wine |

- h. There must be options for seated dinning service or buffet style service
- i. A group menu, including prices and minimum number of guests, which can be distributed to customers via Golf Operations staff, must be submitted for approval to Golf Division Deputy Director for approval by June 1st of each calendar year of the lease.

EXHIBIT D
SAMPLE TOURNAMENT GROUP MENU

TOBEY'S 19TH HOLE CAFÉ TOURNAMENT GROUP MENU

BREAKFAST

Continental Breakfast **\$10.00 per person**

Assorted Danishes and Muffins, Bagels and Cream Cheese, Fresh Fruit

Plus Coffee or Tea.

Breakfast Buffet (25+ people) **\$15.00 per person**

Scrambled Eggs, Bacon, Sausage, Potatoes, Assorted Pastries and Muffins

Plus Coffee, Tea and assorted juices.

LUNCHEONS

Classic Box Lunch (no person minimum) **\$10.00 per person**

Your choice of Ham, Roast Beef or Turkey Sandwich, choice of Chips or Granola Bar

Plus Bottled Water.

Grilled Hamburger or Hot Dog **\$15.00 per person**

Quarter-Pound Angus Burger or Hot Dog with sliced Tomatoes, Pickles, Onions,

Sliced Cheese, Potato Salad, Choice of Classic Lays Potato Chips or cookies

Plus bottled water.

APPETIZERS

Breaded Zucchini	French Fries	Jalapeno Poppers	Taquitos	(Pricing Varies)
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Cheese Quesadilla	Tater Tots	Chicken Quesadilla
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Mozzarella Sticks	Onion Rings	Chicken Strips
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Lunch Buffet (25+ people) **\$15.00 per person**

Cold Cuts, 2 Salads, Assorted Cheese & Crackers, Bread, Chips & Dip

Plus Bottled Water.

Sit Down Dinner (25+ people) Chicken \$17.00/ Steak \$20.00/ BBQ Beef \$15.00 **per person**

Includes Salad, Potatoes, Vegetables, Bread, Dessert and Coffee, Tea or Soda.

A 15% Gratuity will be added to the total of each invoice.
Minimum of 25 people, 30+ includes 10% Discount on Beer & Wine
Steve Tobey (619)933-2716 All Prices Subject to Change.

EXHIBIT E
PREVAILING WAGE REQUIREMENTS

By signing this Lease, LESSEE certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before commencing any work.

Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Lease is subject to State prevailing wage laws. For construction work performed under this Lease cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Lease cumulatively exceeding \$15,000, LESSEE, its contractors and subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

1. Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, LESSEE, its contractors and subcontractors shall ensure that all workers who perform work under this Lease are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

1.1. Copies of such prevailing rate of per diem wages are on file at the City of San Diego's Equal Opportunity Contracting Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. LESSEE, its contractors and subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

1.2. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Lease. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Lease in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Lease, each successive predetermined wage rate shall apply to this Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Lease, such wage rate shall apply to the balance of the Lease.

2. Penalties for Violations. LESSEE, its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.

3. Payroll Records. LESSEE, its contractors and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. LESSEE shall require its contractors and subcontractors to also comply with section 1776. LESSEE, its contractors and subcontractors shall submit weekly certified payroll records online via the CITY's web-based Labor Compliance Program. LESSEE is responsible for ensuring its contractors and subcontractors submit certified payroll records to the CITY. LESSEE, its contractors and subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

4. Apprentices. LESSEE, its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. LESSEE shall be held responsible for their compliance as well as the compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.

5. Working Hours. LESSEE, its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

6. Required Provisions for Contracts and Subcontracts. LESSEE shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

7. Labor Code Section 1861 Certification. LESSEE in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Lease, LESSEE certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Lease."

8. Labor Compliance Program. The CITY has its own Labor Compliance Program authorized in August 2011 by the DIR. LESSEE shall withhold contract payments pursuant to the contract between LESSEE and LESSEE's contractors or subcontractors when payroll records are delinquent or deemed inadequate by the CITY or other governmental entity, or it has been established after an investigation by the CITY or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.

9. Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the

Public Contract Code, or enter into any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1.(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

9.1. A contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

9.2. A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of section 1725.5 of this section.

9.3. By signing this Lease, LESSEE certifies that he or she has verified that all contractors and subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and LESSEE shall provide proof of registration for themselves and all listed contractors and subcontractors to the CITY at the time of execution of this Lease or upon request.

10. Stop Order. For LESSEE or its contractor(s) or subcontractor(s) engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor(s) or unregistered subcontractor(s) on ALL public works until the unregistered contractor(s) or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

11. List of all Subcontractors. The CITY may ask LESSEE for the most current list of contractors or subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this Lease at any time during performance of this Lease, and LESSEE shall provide the list within ten (10) working days of the CITY's request. LESSEE shall notify CITY of any contractors or subcontractors, including their DIR registration numbers, which have not previously performed work on this Permit prior to said contractors or subcontractors performing work on this Lease. Additionally, LESSEE shall provide the CITY with a complete list of all contractors or subcontractors utilized on this Lease (regardless of tier), within ten (10) working days of the completion of the work authorized by this Lease, along with their DIR registration numbers. LESSEE shall withhold final payment to contractor(s) until at least 30 days after this information is provided to the CITY.

12. Exemptions for Small Projects. There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. LESSEE shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

12.1. Registration. LESSEE will not be required to register with the DIR for small projects. (Labor Code section 1771.1).

12.2. Certified Payroll Records. The records required in Labor Code section 1776 shall be required to be kept and submitted to the CITY, but will not be required to be submitted online with the DIR directly. LESSEE will need to keep those records for at least three years following the completion of the contract. (Labor Code section 1771.4).

12.3. List of all Subcontractors. LESSEE shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 11 above. (Labor Code section 1773.3).



Date of Notice: November 7, 2018

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION PLANNING DEPARTMENT

PROJECT NAME/NUMBER: Percentage Lease for Mr. Steve Tobey

COMMUNITY PLAN AREA: Balboa Park

COUNCIL DISTRICT: 3

LOCATION: Tobey's 19th Hole Restaurant within Balboa Park Municipal Golf Course, 2600 Golf Course Drive, San Diego, CA 92102

PROJECT DESCRIPTION: Percentage lease with Mr. Steve Tobey for the use, operation, and maintenance of a restaurant, concession stand, and other related purposes within the Balboa Park Municipal Golf Course.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego

ENVIRONMENTAL DETERMINATION: Categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities).

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego Mayor-Appointed Designee.

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION:

The City of San Diego conducted an environmental review and determined the project is exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities), which allows the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The exceptions listed in CEQA Section 15300.2 would not apply in that no cumulative impacts were identified; no significant effects on the environment were identified; the project is not adjacent to a scenic highway; no historical resources would be affected by the action; and the project was not identified on a list of hazardous waste sites pursuant to Section 65962.5 of the Government Code.

CITY CONTACT: Isaac Tanori, Property Agent, Real Estate Assets Department

MAILING ADDRESS: 1200 Third Avenue, Suite 1700, San Diego, CA 92101

PHONE NUMBER: 619-236-6264

On November 7, 2018, the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City Council. If you have any questions about this determination, contact the City Contact listed above.

Applications to appeal the CEQA determination to the City Council must be filed in the Office of the City Clerk within 10 business days from the date of the posting of this Notice (**November 22, 2018**). The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.

POSTED IN THE OFFICE OF DSD

POSTED: November 7, 2018

REMOVED: November 27, 2018

POSTED: E. Pascual

CITY ATTORNEY
19 AUG 14 PM 12:10
CIVIL DIVISION