

**SAN FRANCISCO PUBLIC UTILITIES COMMISSION**

**EDWIN M. LEE, MAYOR**

**GROUND LEASE**

**between**

**CITY AND COUNTY OF SAN FRANCISCO,  
as Landlord,**

**and**

**CRYSTAL SPRINGS GOLF PARTNERS, L.P.,  
as Tenant,**

**For the lease of  
approximately 199 acres in San Mateo County, California**

**August 1, 2017**

**SAN FRANCISCO PUBLIC UTILITIES COMMISSION**

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**General Manager of San Francisco Public Utilities Commission**

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**LIST OF EXHIBITS**

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EXHIBIT D	Proposed Work
EXHIBIT E	Maintenance Guidelines

**SAN FRANCISCO PUBLIC UTILITIES COMMISSION**

**GROUND LEASE No. 3736A**

THIS GROUND LEASE (this “**Lease**”) dated for reference purposes only as of \_\_\_\_\_, 2017, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”), acting by and through its Public Utilities Commission (“**SFPUC**”), and CRYSTAL SPRINGS GOLF PARTNERS, L.P., a California limited partnership (“**Tenant**”).

**RECITALS**

A. Tenant and City are parties to a lease dated November 26, 1996 (“**Original Lease**”) for Tenant’s use of approximately 199 acres of land located in Burlingame, California pursuant to which Tenant operates a regulation length, 18-hole public golf course and related facilities (“**Premises**”). The Original Lease is currently scheduled to expire on March 31, 2017.

B. In 2002, Tenant requested modifications to the Original Lease due to the declining economy and golf market. In response to Tenant’s request, the City obtained an independent assessment of the economics of the Original Lease.

C. On June 1, 2003 the Original Lease was amended to: (1) reduce the Base Rent and Percentage Rent; (2) establish a Capital Improvement Plan; (3) establish a Capital Improvement Reserve to fund the Capital Improvement Plan; (4) provide for the City’s contribution to the Capital Improvement Reserve; and (5) reduce the required Security Deposit and apply the excess then held by City to the Capital Improvement Reserve.

D. In 2013, in response to the Recession of 2007-2009, and a further decline in the golf market, Tenant requested a lease modification to further reduce the rent and extend the term of the Original Lease in order for Tenant to recover its capital investment in the Lease. In response to Tenant’s request, the City obtained a new independent assessment of the economics of the Original Lease, as amended in 2013. Because the Original Lease is close to expiring, the City also obtained an independent assessment by an economic consulting firm of the likelihood of a successful competitive bidding process for a new golf course lease, and based on that assessment, determined that a competitive bidding process would be impractical.

**AGREEMENT**

NOW, THEREFORE, IN CONSIDERATION of the foregoing recitals, City and Tenant hereby agree as follows:

**1. BASIC LEASE INFORMATION**

The following is a summary of basic lease information (the “**Basic Lease Information**”). Each item below shall be deemed to incorporate all of the terms set forth in this Lease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date: \_\_\_\_\_, 2017

Landlord: CITY AND COUNTY OF SAN FRANCISCO, acting by and through its Public Utilities Commission

Tenant: CRYSTAL SPRINGS GOLF PARTNERS, L.P.

Premises (**Section 3.1**): That real property located in Burlingame, California, as more particularly described in the attached **Exhibit A** and shown in the attached **Exhibit B**, together with the City's existing improvements which include an 18-hole golf course; a driving range; a parking lot; a two-story building housing the golf pro shop and administrative offices; a two-story clubhouse which includes locker rooms, a restaurant, lounge and banquet space; a maintenance and golf cart storage facility; restrooms and small structures at the driving range.

Term (**Section 4.1**): Commencement Date: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

Base Rent (**Section 5.1**): For the period beginning on the Commencement Date and ending on the last day of the third Lease Year, Base Rent will be payable in equal monthly installments of Eighty-Three Thousand Three Hundred Thirty-Three and 33/100 Dollars (\$83,333.33).

For the period commencing on the first day of the fourth Lease Year and ending on the expiration of the Term, Base Rent for each Lease Year shall be equal to eighty percent (80%) of the average of the annual accrued Gross Percentage Rent for the three (3) immediately preceding Lease Years, as calculated and paid in accordance with and subject to the terms of **Section 5.2**.

Adjustment Dates (**Section 5.2**): First (1st) day of the fourth Lease Year, the first day of each subsequent Lease Year during the Term, the first day of any Holdover, and the yearly anniversary of such date during any Holdover.

Gross Percentage Rent (**Section 5.3**) Seven percent (7%) of Gross Revenues derived from food and beverage sales; plus

Five percent (5%) of Gross Revenues derived from Merchandise Sales up to and including the Merchandise Revenue Threshold (as defined below), and six percent (6%) of Gross Revenues derived from Merchandise Sales that exceed the Merchandise Revenue Threshold; plus

Twenty-five percent (25%) of Gross Revenues derived from all other sources up to and including the Other



Sources Revenue Threshold (as defined below), and thirty percent (30%) of Gross Revenues derived from all other sources that exceed the Other Sources Revenue Threshold.

Use (**Section 7.1**): Operation of a regulation length, 18-hole golf course and related facilities.

Security Deposit (**Section 24**): \$300,000

Tenant's Share of Property Taxes (**Section 6.1**):

APN 093-050-040	21%
APN 093-050-130	1%
APN 093-050-120	60%
APN 093-060-130	23%
APN 093-060-120	25%

Notice Address of City (**Section 25.1**):

Real Estate Services  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 10<sup>th</sup> Floor  
San Francisco, California 94102  
Attn: Real Estate Director  
Re: Lease No. 3736A

with a copy to:

Office of the City Attorney  
City and County of San Francisco  
Room 234, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682  
Attn: Real Estate & Finance Team  
Re: SFPUC Lease No.3736A

Key Contact for City: Real Estate Director  
Real Estate Services Division  
San Francisco Public Utilities Commission

Telephone No.: (415) 487-5210

SFPUC Peninsula Watershed  
Manager: Joe Naras  
Telephone and email: (650) 652-3201; [jnaras@sfwater.org](mailto:jnaras@sfwater.org) (any contact with Mr. Naras shall be via *both* telephone and email)

Notice Address of Tenant (**Section 25.1**):

Tom Isaak  
President and CEO  
CourseCo  
1670 Corporate Circle Ste.201  
Petaluma, CA 94954

With a copy to: John C. Telischak  
President  
Telischak & Company  
45 Koch Road, Suite A  
Corte Madera, CA 94925

Key Contact for Tenant: Tom Isaak  
Telephone No.: (707) 763-0335  
Email Address: tisaak@courseco.com  
Alternate Key Contact for Tenant: John Telischak  
Telephone No.: (415) 945-9982  
Email Address: [jct@telischakco.com](mailto:jct@telischakco.com)  
Brokers (Section 25.8): N/A

## 2. DEFINITIONS

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section:

“**Additional Charges**” means any and all real and personal property taxes, possessory interest taxes, and other costs, impositions, and expenses described in **Section 6** (Taxes, Assessments, and Other Expenses) or otherwise payable by Tenant under this Lease.

“**Adjustment Date**” means the annual date for adjusting the Monthly Base Rent as specified in Basic Lease Information and **Section 5.2** (Adjustments in Base Rent).

“**Agents**” means, when used with reference to either Party to this Lease, the officers, directors, employees, agents, and contractors of such Party, and their respective heirs, legal representatives, successors, and assigns.

“**Alterations**” means any Improvements, as defined below, made, constructed, installed, or placed on, over, or under the Premises by or on behalf of Tenant under this Lease or the Original Lease, including any modifications of pre-existing Improvements.

“**Assignment**” has the meaning given in **Section 16.1** (Restriction on Assignment and Subletting).

“**Award**” means all compensation, sums, or value paid, awarded, or received for a Taking, whether pursuant to judgment, agreement, settlement, or otherwise.

“**Basic Lease Information**” means the information with respect to this Lease summarized in **Section 1** (Basic Lease Information).

“**Base Rent**” means the annual Base Rent, payable in monthly installments, as specified in the Basic Lease Information and described in **Section 5.1** (Base Rent), and as adjusted periodically pursuant to **Section 5.2** (Adjustments to Base Rent).

“**City**” means the City and County of San Francisco, a municipal corporation.

“**CMD**” means the San Francisco Contract Monitoring Division (formerly known as the San Francisco Human Rights Commission).

“**Commencement Date**” means the date on which the Term commences as described in **Section 4.1** (Commencement Date and Expiration Date). The Commencement Date is specified in the Basic Lease Information.

“**Date of Taking**” means the earlier of **(i)** the date upon which title to the portion of the Premises taken passes to and vests in the condemnor or **(ii)** the date on which Tenant is dispossessed.

“**Effective Date**” means the date on which this Agreement becomes effective pursuant to **Section 4.4** (Effective Date).

“**Encumber**” means create any Encumbrance; “**Encumbrance**” means any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance.

“**Encumbrancer**” means a mortgagee, beneficiary of a deed of trust, or other holder of an Encumbrance.

“**Environmental Laws**” means any present or future federal, state, or local Laws or policies relating to Hazardous Material (including its use, handling, transportation, production, disposal, release, discharge, storage, or cleanup) or to human health and safety, industrial hygiene, or environmental conditions in, on, under, or about the Premises (including any permitted Alterations) and any other property, including soil, air, and groundwater conditions.

“**Event of Default**” means any one of the events of default described in **Section 17.1** (Events of Default).

“**Expiration Date**” means the date on which the Term will expire, unless terminated earlier pursuant to the terms of this Lease. The Expiration Date is specified in the Basic Lease Information.

“**General Manager**” means the General Manager of the SFPUC.

“**Gross Percentage Rent**” means the sum equal to the percentages of Gross Revenues in the categories described in the Basic Lease Information made from or upon the Premises and from any Improvements during each Lease Year as specified in the Basic Lease Information.

“**Gross Revenues**” has the meaning given in **Section 5.3(a)**.

“**Hazardous Material**” means any material that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes any material or substance defined as a “hazardous substance,” “pollutant,” or “contaminant” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA,” also commonly known as the “Superfund” law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any “hazardous waste” listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing Improvements on the Land, any Alterations to be constructed on the Land by or on behalf of Tenant, or are naturally occurring substances on, in, or about the Land; and petroleum, including crude oil or any crude-oil fraction, and natural gas or natural gas liquids.

**“Hazardous Material Claims”** means any and all enforcement, Investigation, Remediation, or other governmental or regulatory actions, agreements, or orders threatened, instituted, or completed pursuant to any Environmental Laws, together with any and all Losses made or threatened by any third party against City, the SFPUC, their respective Agents, or the Premises or any Alterations, relating to damage, contribution, cost recovery compensation, loss, or injury resulting from the presence, release, or discharge of any Hazardous Material, including Losses based in common law. Hazardous Material Claims include Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Alterations, the loss or restriction of the use of any amenity of the Premises or any Alterations, attorneys' fees and costs, consultants' fees and costs, and experts' fees and costs.

**“Holdover”** means any period after the expiration of the Term during which the Premises continue to be occupied by or on behalf of Tenant (whether with or without City’s consent).

**“Improvements”** means any and all buildings, structures, fixtures, and other improvements (including Alterations) made, constructed, installed, or placed on, over or under the Premises, including signs, billboards, or other advertising materials, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings, utility infrastructure, and landscaping. “Improvements” includes any trailers, mobile homes, and permanent tent facilities that are affixed to the Premises so that they cannot be removed without structural or other material damage to the Premises.

**“Indemnify”** means indemnify, protect, defend, and hold harmless forever.

**“Indemnified Parties”** means City, including, but not limited to, all of its boards, commissions, departments, agencies, and other subdivisions, including its SFPUC, and all of its and their respective Agents, and their respective heirs, legal representatives, successors, and assigns, and each of them.

**“Investigation”** when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under, or about any portion of the Premises or any Alterations or that have been, are being, or threaten to be Released into the environment. Investigation shall include preparation of site history reports and sampling and analysis of environmental conditions in, on, under, or about the Premises or any Alterations.

**“Invitees”** when used with respect to Tenant means Tenant’s clients, customers, invitees, guests, members, licensees, assignees, and subtenants.

**“IPM”** and **“IPM Ordinance”** have the meanings given in **Section 7.2(j)**.

**“Land”** means the land described in the attached **Exhibit A**.

**“Landlord”** means the City and County of San Francisco, a municipal corporation.

**“Law”** means any law, statute, ordinance, resolution, regulation, proclamation, order, or decree of any municipal, county, regional, state, or federal government or other governmental or regulatory authority with jurisdiction over any portion of the Premises, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.

**“Lease”** means this Lease as it may be amended in accordance with its terms.

**“Lease Year”** is a calendar year, except that the first Lease Year shall commence on the Commencement Date and end on December 31 of the same calendar year, and the last Lease

Year shall end on the date this Lease expires or terminates, regardless of whether such first and last Lease Years comprise full calendar years.

“**Losses**” means any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits, and other proceedings, judgments and awards, and costs and expenses, including reasonable attorneys' and consultants' and experts' fees and costs.

“**Merchandise Revenue Threshold**” means Four Hundred Thousand Dollars (\$400,000) for Lease Years one and two, increasing by 1.5% for each Lease Year thereafter. If the first Lease Year or the final Lease Year is less than twelve full calendar months, the Merchandise Revenue Threshold for such partial year shall be prorated based on a 365-day year.

“**Merchandise Sales**” means (i) sales or rentals of apparel, equipment, magazines, newspapers, golf supplies, and other merchandise from the pro shop, (ii) sales or rentals of lockers, golf clubs and other golf equipment and supplies (excluding power golf carts), (iii) rental fees for the use of any clubhouse facilities, and (iv) fees charged for golf instruction, net of amounts paid to golf professional staff.

“**Official Records**” means the official real estate records of the county in which the Premises are located.

“**Other Sources Revenue Threshold**” means Four Million Dollars (\$4,000,000) for Lease Years one and two, increasing by 1.5% for each Lease Year thereafter. If the first Lease Year or the final Lease Year is less than twelve full calendar months, the Other Sources Revenue Threshold for such partial Lease Year shall be prorated based on a 365-day year.

“**Party**” means City or Tenant;

“**Parties**” means both City and Tenant.

“**Percentage Rent**” means rent in the sum equal to (i) the Gross Percentage Rent, as defined above, during each Lease Year, less (ii) Base Rent payable by Tenant during such Lease Year as provided in **Sections 5.1** and **5.2**. Percentage Rent is payable as provided in **Section 5.3**.

“**Percentage Rent Period**” means periods within each Lease Year ending on March 31, June 30, September 30 and December 31, whether or not consisting of three (3) full months.

“**Premises**” has the meaning given in **Section 3.1** (Leased Premises). The Premises shall include any existing and permitted future Improvements, together with any additions or Alterations to, or modifications of, the Premises or Improvements permitted under this Lease. Notwithstanding anything to the contrary in this Lease, however, the Premises do not include (i) the SFPUC Facilities, or (ii) any water, water rights, riparian rights, water stock, mineral rights, or timber rights relating to the Premises.

“**Project Review**” is the process by which construction projects or other activities proposed to be conducted within SFPUC's watershed lands or rights of way are presented to and reviewed by SFPUC's Project Review Committee. An applicant initiates the Project Review process by submitting an application available on the Project Review Committee page of sfwater.org.

“**Project Review Certificate**” means a Certificate of Completion of the Project Review Process issued by SFPUC following completion of Project Review.

“**Release**” when used with respect to Hazardous Material means any actual or imminent spilling, leaking, migrating, pumping, pouring, emitting, emptying, discharging, injecting,

escaping, leaching, dumping, or disposing into or inside any existing improvements or any Alterations constructed by or on behalf of Tenant, or in, on, under, or about any portion of the Premises or any of the SFPUC Facilities.

**“Remediation”** when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor, or otherwise control any Hazardous Material located in, on, under, or about the Premises or the SFPUC Facilities or that have been, are being, or threaten to be Released into the environment. Remediate includes those actions included within the definition of “remedy” or “remedial action” in California Health and Safety Code Section 25322 and “remove” or “removal” in California Health and Safety Code Section 25323.

**“Rent”** means the Base Rent plus Percentage Rent, together with any and all Additional Charges.

**“SFPUC”** means the Public Utilities Commission of the City and County of San Francisco.

**“SFPUC Facilities”** means any and all water pipelines, drainage pipelines, hatch covers, wells, electrical or telecommunications lines, conduits, and any other overhead, surface and subsurface facilities and appurtenances of any kind owned by City or the SFPUC and now or later located in, under, on, or about the Premises for the conveyance, transmission, storage, transportation, or distribution of water, power, or telecommunication for municipal purposes, together with all associated appurtenances and monuments.

**“SFPUC’s Real Estate Guidelines”** means the written Real Estate Guidelines adopted by SFPUC and in effect during the Term with respect to the polices, practices, and procedures to be used in the administration, lease, and use of real property (including any interests or rights in real property) subject to SFPUC jurisdiction, as such Real Estate Guidelines may be amended, supplemented, or replaced by SFPUC from time to time.

**“Sublease”** has the meaning given in **Section 16.1** (Restriction on Assignment and Subletting).

**“Taking”** means a taking or damaging, including severance damage, by eminent domain, inverse condemnation, or for any public or quasi-public use under Law. A Taking may occur pursuant to the recording of a final order of condemnation, by voluntary sale or conveyance in lieu of condemnation, or in settlement of a condemnation action.

**“Tenant”** means the Party identified as Tenant in the Basic Lease Information and at the beginning of this Lease. Except when immediately followed by the word “itself,” the term “Tenant” shall also refer to the successors and assigns of Tenant's interests under this Lease, provided that the rights and obligations of Tenant's successors and assigns shall be limited to only those rights and obligations that this Lease permits to be transferred and that have been transferred in accordance with this Lease.

**“Tenant’s Annual Statement”** has the meaning given in **Section 5.3(c)**.

**“Tenant's Personal Property”** has the meaning given in **Section 8.6** (Tenant’s Personal Property).

**“Term”** means the term of this Lease as determined under **Section 4.1** (Term of Lease).

**“Transfer”** means any Assignment or Sublease.

“**Transferee**” means an assignee under an Assignment or a subtenant under a Sublease, as described in **Section 16** (Assignment and Subletting).

“**Unmatured Event of Default**” means any default by Tenant under this Lease that, with the giving of notice or the passage of time, or both, would constitute an Event of Default under this Lease.

### **3. PREMISES; ACCESSIBILITY DISCLOSURES; AS IS CONDITION**

#### **3.1 Leased Premises**

Subject to the terms, covenants, and conditions of this Lease, City leases to Tenant and Tenant leases from City, the real property described in the attached **Exhibit A**, together with City’s existing improvements which include an eighteen hole golf course; a driving range; a parking lot; a two-story building housing the golf pro shop and administrative offices; a two-story clubhouse which includes locker rooms, a restaurant, a lounge and banquet space; a maintenance and golf cart storage facility; restrooms and small structures at the driving range. (the “**Premises**”), excluding from such lease and reserving during the Term unto City and its successors and assigns the rights described in **Section 3.2** (Rights Reserved to City). The Premises are shown generally on the attached **Exhibit B**. Any acreage stated in this Lease with respect to the Premises is an estimate only, and City does not warrant it to be correct. For all purposes of this Lease, however, the Parties agree that any such acreage shall be deemed to be correct. Nothing in this Lease is intended to grant Tenant any right whatsoever to possess, use, or operate any portion of the SFPUC Facilities.

#### **3.2 Rights Reserved to City**

Notwithstanding anything to the contrary in this Lease, City reserves and retains all of the following rights relating to the Premises:

(a) Any and all water and water rights, including, but not limited to (i) any and all surface water and surface water rights, including riparian rights and appropriative water rights to surface streams and the underflow of streams, and (ii) any and all groundwater and subterranean water rights, including the right to export percolating groundwater for use by City or its water customers;

(b) Any and all timber and timber rights, including all standing trees and downed timber;

(c) Any and all minerals and mineral rights of every kind and character now known to exist or hereafter discovered in, on, or under the Premises, including, but not limited to, oil and gas and rights, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to City or its successors and assigns, but without entering upon or using the surface of the lands of the Premises and in such manner as not to damage the surface of the Premises or to interfere with the permitted use of the Premises by Tenant, without Tenant's prior written consent;

(d) All rights to use, operate, maintain, repair, enlarge, modify, expand, replace, and reconstruct the SFPUC Facilities;

(e) The right to grant future easements and rights-of-way over, across, under, in, and upon the Premises as City determines to be in the public interest, provided that any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain as a result of the grantee's use of such easement or right-of-way;

(f) Without limiting the generality of Subsection (e) above, the right to grant future easements, rights-of-way, permits, and/or licenses over, across, under, in, and upon the Premises for the installation, operation, maintenance, repair, and removal of (i) equipment for furnishing cellular telephone, radio, or other telecommunications services, including antennas, radio, devices, cables, and other equipment associated with a telecommunications cell site, and (ii) commercial billboards, signs, and/or advertising kiosks, provided that any such easement or right-of-way shall not materially interfere with Tenant's permitted use of the Premises as authorized by this Lease, and provided further that the grant of any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain as a result of the grantee's use of such easement or right-of-way; and

(g) All rights of access provided for in **Section 20** (Access by City).

### **3.3 Subject to Municipal Uses**

Tenant acknowledges that the property of which the Premises are a part constitutes a portion of City's right-of-way for the SFPUC Facilities or the SFPUC water, power, or wastewater enterprise, which City holds for the purposes of transporting and distributing water and/or power or for other municipal uses. Tenant's rights under this Lease are subject to City's use of the Premises for such purposes and for other City uses. So long as there is no Event of Default or Unmatured Event of Default on the part of Tenant outstanding under this Lease, however, and subject to the terms and conditions of this Lease, City shall use reasonable efforts to avoid interfering with Tenant's quiet use and enjoyment of the Premises. The use of the term "right-of-way" or similar terms in this Lease shall not be deemed to imply that City holds less than fee title to the Premises or otherwise call into question the nature of City's title to any of its property. City shall in no way be liable for any damage to or destruction of Tenant's property and/or improvements resulting from any pipeline break or other malfunction with respect to the SFPUC Facilities or from any repair or maintenance activities with respect to the SFPUC Facilities. At City's request, Tenant shall remove immediately any property or improvements on the Premises to allow City's access to the SFPUC Facilities. If City deems it necessary, at City's sole discretion, City may remove any such property or improvements and City shall not be responsible for restoring or returning the same to its prior condition.

### **3.4 Accessibility Disclosures**

(a) California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that the Premises have not been inspected by a CASp.

(b) Tenant acknowledges that prior to the execution of this Lease, City provided Tenant with, and Tenant signed, the Disability Access Obligations Notice described in Section 38.3 of the San Francisco Administrative Code. Tenant and City each agree to use reasonable efforts to notify the other Party if making any Alterations that might impact accessibility to the Premises under any disability access laws.

### **3.5 As-Is Condition of Premises**

#### **(a) Inspection of Premises**

Tenant acknowledges that it has occupied the Premises for approximately 20 years and is thoroughly familiar with the condition of the Premises and the golf course operations on the Premises. Tenant represents and warrants that Tenant has conducted a



thorough and diligent inspection and investigation, either independently or through Agents of Tenant's own choosing, of the Premises and the suitability of the Premises for Tenant's intended use. Tenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses.

### **(b) As Is; Disclaimer of Representations**

Tenant acknowledges and agrees that the Premises are being leased and accepted strictly in their “**AS IS, WITH ALL FAULTS**” condition, without representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements, and other title matters affecting any portion of the Premises, whether or not of record. Tenant acknowledges and agrees that neither City, SFPUC, nor any of their Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning: (i) title or survey matters affecting the Premises; (ii) the physical, geological, seismological, or environmental condition of the Premises; (iii) the quality, nature, or adequacy of any utilities serving the Premises; (iv) the present or future suitability of the Premises for Tenant's business and intended uses; (v) the feasibility, cost, or legality of constructing any Alterations on the Premises if required for Tenant's use and permitted under this Lease; or (vi) any other matter whatsoever relating to the Premises or their use, including any implied warranties of merchantability or fitness for a particular purpose.

### **3.6 Energy Consumption**

[NOTE: The regulations requiring a Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist, and Facility Summary (all as defined in the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 9, Section 1680) for the Premises have been suspended. This year, the California Energy Commission is working on new disclosure regulations pursuant to AB 802. The new rules are expected to be effective sometime in 2017. For now, keep this bracketed note as a placeholder. If the new rules are not in effect when the Lease is executed, we may omit this Section 3.6.]

## **4. TERM**

### **4.1 Term of Lease**

The Premises are leased for a term (the “**Term**”) commencing on the date specified in the Basic Lease Information as the Commencement Date, subject to this Lease becoming effective pursuant to **Section 4.4** (Effective Date) and expiring on the Expiration Date specified in the Basic Lease Information, unless sooner terminated pursuant to the terms of this Lease.

### **4.2 Commencement Date and Expiration Date**

The dates on which the Term commences and expires pursuant to this Lease are referred to respectively as the “Commencement Date” and the “Expiration Date” as specified in the Basic Lease Information.

### **4.3 Possession; Termination of Original Lease**

Prior to the Commencement Date Tenant is in possession of the Premises under the Original Lease. City and Tenant agree that the Original Lease shall terminate effective upon the Commencement Date of this Lease.

#### 4.4 Effective Date

This Lease shall become effective on the last to occur of the following (the “**Effective Date**”): (a) the date SFPUC adopts a resolution approving this Lease, (b) the effective date of a Board of Supervisors resolution approving this Lease, and (c) the date the Parties have duly executed and delivered this Lease.

### 5. RENT

#### 5.1 Base Rent

Beginning on the Commencement Date and throughout the Term, Tenant shall pay to City the monthly installment of Base Rent specified in the Basic Lease Information (the “**Base Rent**”), subject to periodic adjustment as provided in **Section 5.2** (Adjustments to Base Rent). The Base Rent shall be payable in monthly installments on or before the first day of each month, in advance, at the San Francisco Public Utilities Commission, Customer Service Bureau, Attention: Real Estate Billing, 525 Golden Gate Avenue, 3<sup>rd</sup> Floor, San Francisco, California 94102 [*reference SFPUC Lease Number 3736A*], or such other place as City may designate in writing. If the Commencement Date occurs on a day other than the first day of a calendar month, or if the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

#### 5.2 Adjustments to Base Rent

Effective as of each Adjustment Date, as defined in the Basic Lease Information, the annual Base Rent payable during the Lease Year or Holdover period commencing on such Adjustment Date shall be equal to eighty percent (80%) of the average of the annual accrued Gross Percentage Rent for the three (3) immediately preceding Lease Years. For purposes of determining such average accrued Gross Percentage Rent, the Gross Percentage Rent for any preceding Lease Year consisting of less than 12 months shall be annualized. Tenant shall continue to pay Base Rent at the monthly rate that was payable during the preceding Lease Year (disregarding any temporary abatement of rent that may have been in effect during such preceding Lease Year or Holdover period) (“Interim Monthly Base Rent Payment” until the Gross Revenues for such preceding Lease Year have been determined in accordance with **Section 5.3(c)**). If the adjusted monthly Base Rent calculated as provided above exceeds the Interim Monthly Base Rent Payment, Tenant shall pay the deficiency to Landlord no later than two (2) months after the Adjustment Date. If the adjusted Base Rent calculated as provided above is less than the Interim Monthly Base Rent Payments made, the excess paid shall be applied to the next installment(s) of Base Rent falling due or, if any unused excess exists at the Expiration Date or other termination of the Lease, the unused excess shall be applied toward Percentage Rent, if any, payable for the final Lease Year, and any remaining excess shall be refunded by City to Tenant.

#### 5.3 Percentage Rent

In addition to the Base Rent, Tenant shall pay to City Percentage Rent under the following terms and conditions:

##### (a) Gross Revenues.

As used herein below, the term “**Gross Revenues**” means the gross selling price of all merchandise or services sold, leased, licensed or delivered in or from the Premises and any Improvements by Tenant, any Affiliate of Tenant, or any of its or their subtenants, licensees, or concessionaires, whether for cash or on credit (whether collected or not), including the gross

amount received by reason of orders taken on the Premises and any Improvements although filled elsewhere, and whether made by store personnel or vending machines, or whether made by catalog or Internet sales. Gross Revenues shall include, without limitation, all revenues and income derived from (i) admission fees, entry fees, green fees, driving range fees, tournament fees, instructional fees (net of amounts paid to the golf professional staff), advance booking fees, membership and club dues and other fees and dues of any kind (including nonrefundable deposits); (ii) rental fees for lockers, golf carts, golf clubs and other equipment and supplies (without deduction for any rent, interest or other payments made by Tenant, any Affiliate of Tenant, or any of its or their subtenants, licensees or concessionaires, for any such golf carts, clubs, equipment or supplies which are subject to equipment leases, installment sales contracts or other financing devices); (iii) the operation of restaurants, bars, cocktail lounges, banquet facilities, pro shops and parking facilities; (iv) proceeds from business interruption insurance, loss of earnings insurance or other insurance of a similar kind; and (v) pay telephone, stamp machines, music machines, amusement machines or public toilet locks. Any transaction made or fees paid on an installment basis, including without limitation any "lay-away" sale, installment or deferred payments of dues or fees, or like transactions, or any transaction otherwise involving the extension of credit, shall be treated as a sale for the full price at the time of the transaction, irrespective of the time of payment or when title passes. Gross Revenues in credit card transactions shall include only the actual amount received by Tenant from the credit card issuer. Gross Revenues shall not include the full retail price of California State Lottery tickets sold from the Premises, but shall include the full amount of compensation or any incentive bonuses paid to and received by Tenant for such sales, as such compensation and bonuses are determined from time to time by the State Lottery PUC and Director under California Government Code Section 8880.51 and other applicable California Laws. Gross Revenues shall not include, or if included there shall be deducted (but only to the extent they have been included), the following: (a) the selling price of all merchandise returned by customers and accepted for full credit, or the amount of discounts, refunds, and allowances made on such merchandise; (b) merchandise returned to sources or transferred to another store or warehouse owned by or affiliated with Tenant; (c) sums and credits received in the settlement of claims for loss of or damage to merchandise; (d) the price allowed on all merchandise traded in by customers for credit or the amount of credit for discounts and allowances made instead of acceptance of merchandise; (e) any sums paid to third parties (excluding, without limitation, any Affiliate of Tenant) for the use or rental of pay telephones, stamp machines, music machines, amusement machines, or public toilet locks; (f) gift certificates, or similar vouchers, until such time as they shall have been converted into a sale by redemption; (g) sales and use taxes, so-called luxury taxes, consumers' excise taxes, gross receipts taxes, and other similar taxes now or in the future imposed on the sale of merchandise or services; and (h) sales of fixtures, trade fixtures or personal property that are not merchandise as allowed in this Lease.

**(b) Payment.**

Tenant shall pay to City, as Percentage Rent, a sum equal to the amount by which the Gross Percentage Rent during each Lease Year as specified in the Basic Lease Information exceeds the Base Rent paid by Tenant during such Lease Year. Tenant shall compute Percentage Rent for each Percentage Rent Period, and on or before the twentieth (20th) day of the calendar month immediately following the close of each Percentage Rent Period, Tenant shall pay to City the amount by which the Gross Percentage Rent during the Percentage Rent Period exceeds the Base Rent that Tenant has paid during such Percentage Rent Period. Within sixty (60) days after receipt of Tenant's Annual Statement, as defined in **Section 5.3(c)**, City shall determine the amount of Percentage Rent based on the Gross Revenues during the Lease Year as disclosed by the reports delivered to City pursuant to **Section 5.3(c)** below, and the sums paid to City as Base Rent and Percentage Rent for the Lease Year. At such time, an adjustment shall be made between City and Tenant to the end that the total Percentage Rent paid to City for such Lease Year shall be a sum equal to the Gross Percentage Rent, as defined in the Basic Lease Information and **Section 2**, for such Lease Year, less the Base Rent paid pursuant to

**Section 5.1** (as adjusted periodically pursuant to **Section 5.2**) for such Lease Year, so that the Percentage Rent, although payable quarterly, shall be computed and reconciled on an annual basis. If such annual calculation determines that Tenant has paid to City Percentage Rent in an amount greater than the Percentage Rent it is obligated to pay for the Lease Year as determined in accordance with this Section, then the excess amount shall be applied against the next Percentage Rent due to City, except that if any unused excess exists at the Expiration Date or other termination of the Term, the sum of the unused excess shall be refunded by City to Tenant. If the annual calculation determines that Tenant has paid to City an amount of Percentage Rent less than Tenant is required to pay for the Lease Year, Tenant shall pay the difference to City within forty-five (45) days after delivery of City's invoice.

**(c) Reports.**

Tenant shall furnish to City a statement of Gross Revenues within twenty (20) days after the end of each Percentage Rent Period, and an annual statement of Gross Revenues ("**Tenant's Annual Statement**") within forty-five (45) days after the end of each Lease Year. Such statements shall be in a form acceptable to City. Each statement shall be signed and certified to be correct by Tenant's general partner or, if Tenant's general partner is a corporation, by a duly authorized officer of Tenant's general partner. In addition, each annual statement shall be audited by an independent certified public accountant reasonably acceptable to City, as provided in **Section 25.16** hereof. Tenant shall keep at the Premises complete and accurate books of account, records, cash receipts and other pertinent data, in accordance with generally accepted accounting principles or on a tax basis, and in a form approved by City, showing its Gross Revenues, including without limitation, accurate records of every sale and other transaction made from the Premises and any Improvements. If Tenant does not install receipt-printing cash registers, Tenant may use serialized sales slips provided that such sales slips are kept and maintained as required in this paragraph and Tenant records every sale and other transaction made from the Premises on such sales slips. Such books of account, records, cash receipts and other pertinent data shall be kept for a period of three (3) years after the end of each Lease Year. The receipt by City of any statement, or any payment of Percentage Rent for any period, shall not bind City as to the correctness of the statement or payment.

**(d) Inspection and Audit.**

City shall be entitled at any time and from time to time during the Term and within three (3) years after the Expiration Date or other termination of this Lease, to inspect, examine, copy and audit all of Tenant's books of account, records, cash receipts, tax returns and underlying tax preparation documents, financial statements and other pertinent data. The primary purpose of such examination is to enable City to ascertain, clearly and accurately, Tenant's Gross Revenues and to verify that the form and method of Tenant's record keeping provide adequate and proper control and check of all such revenues. Tenant shall cooperate fully with City and City's Agents in making the examination. City shall also be entitled at City's option, once during each Lease Year and once after the Expiration Date or other termination of this Lease, to cause an independent audit to be performed by a certified public accountant designated by City. The audit shall be conducted during usual business hours at the Premises. If the audit shows that there is a deficiency in the payment of any Percentage Rent, then Tenant shall immediately upon notice pay the deficiency to City, together with interest thereon at the Default Rate, which interest shall accrue from the date on which such deficient amount would have been due until such deficiency is paid. City shall pay the costs of the audit unless the audit shows that Tenant understated Gross Revenues by more than two percent (2%), in which case Tenant shall pay all City's costs of the audit.

**(e) Efforts to Maximize Revenue.**

Subject to the express terms and conditions of this Lease, Tenant shall use its best efforts to maximize the production of Gross Revenues from the Premises and any improvements thereon permitted hereunder.

**(f) Covenant not to Compete.**

Without the prior written consent of the General Manager, which consent shall not be unreasonably withheld, neither Tenant nor any Affiliate of Tenant shall own, operate, or become financially interested in a business similar to the one conducted by Tenant on the Premises within ten (10) miles in any direction from the Premises, the mileage to be measured on a straight-line basis on a map, not following contours of the land and streets. If Tenant defaults in performance under this Section, City can elect to include the Gross Revenues from such other business in the Gross Revenues made from or upon the Premises for the purpose of computing Percentage Rent payable under this Lease .

**5.4 Late Charge**

If Tenant fails to pay any Rent within five (5) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. This late payment charge has been agreed upon by City and Tenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Tenant, the actual costs of any such failure being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and Tenant shall promptly pay such charge to City, together with such unpaid amount.

**5.5 Default Interest**

If any Rent is not paid within five (5) days following the due date, such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under Law. Interest shall not be payable on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant, however, to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant.

**5.6 Net Lease**

This Lease is a “**net lease.**” Accordingly, Tenant shall pay to City the Base Rent, Percentage Rent, Additional Charges, and any other payments required by this Lease without prior demand and without abatement, deduction, counterclaim, or setoff. Under no circumstances, whether now existing or subsequently arising, and whether or not beyond the present contemplation of the Parties, shall City be expected or required to make any payment of any kind whatsoever with respect to Tenant's use or occupancy of the Premises and any permitted Alterations or this Lease, except as may otherwise be expressly set forth in this Lease. Without limiting the foregoing, Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which City otherwise would be or could become liable by reason of its estate or interests in the Premises and any Alterations, any rights or interests of City in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use, or occupancy of any portion of the Premises or any permitted Alterations. Except as may be specifically and expressly provided otherwise in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall

relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or otherwise relieve Tenant from any of its obligations under this Lease, or give Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or subsequently conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction, or suspension of payment of such sums on account of any such occurrence or situation.

### **5.7 Processing Fee**

Upon execution of this Lease, Tenant shall pay City a one-time non-refundable sum of Three Thousand Dollars (\$3,000.00) as a fee for processing this Lease. Tenant shall also reimburse City for all fees and costs, including attorney's fees and costs, incurred by City in seeking the approvals necessary to enter into this Lease, including completion of environmental reviews and review and approval of this Lease by the Commissioners of the SFPUC, the San Francisco Board of Supervisors, and the Mayor of San Francisco, as applicable, within thirty (30) days following the date of City's invoice.

## **6. TAXES, ASSESSMENTS, AND OTHER EXPENSES**

### **6.1 Taxes and Assessments, Licenses, Permit Fees, and Liens**

#### **(a) Payment Responsibility**

Tenant shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees, and other charges and impositions of every description levied on or assessed against all or any part of the Premises, any Alterations, Tenant's Personal Property, the leasehold estate, any subleasehold estate, or Tenant's use of the Premises or any Alterations. Tenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days before delinquency, subject to Tenant's right to contest the validity of such charge pursuant to Subsection (c) below. With respect to real property taxes and assessments levied on or assessed against the Premises for which City receives the tax bill directly from the taxing authority, however, Tenant shall reimburse City for payment of such sums immediately upon demand.

#### **(b) Taxability of Possessory Interest**

Without limiting the foregoing, Tenant recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest.

#### **(c) No Liens**

Tenant shall not allow or suffer a lien for any taxes payable by Tenant pursuant to this Lease to be imposed upon the Premises or upon any equipment or other property located on the Premises without promptly discharging the same. Tenant may have a reasonable opportunity to contest the validity of any such taxes provided Tenant, before commencement of any proceeding or contest, furnishes to City a surety bond issued by a surety company qualified to do business in California and acceptable to City's Controller. The amount of such bond shall be equal to one hundred twenty-five percent (125%) of the amount of taxes in dispute and shall be in such form as approved by the City Attorney. The bond shall insure payment of any judgment that may be rendered should Tenant be unsuccessful in any such contest. Tenant shall Indemnify City, the other Indemnified Parties, and the Premises from and against any Losses arising out of any such proceeding or contest. The foregoing Indemnity shall not be limited by the amount of the bond.

#### **(d) Reporting Requirement**

Tenant agrees to provide such information as City may request to enable City to comply with any tax reporting requirements applicable to this Lease.

#### **6.2 Other Expenses**

Tenant shall be responsible for any and all other charges, costs, and expenses related to its use, occupancy, operation, or enjoyment of the Premises or any Alterations permitted by this Lease, including the cost of any utilities or services necessary for Tenant's permitted use of the Premises.

#### **6.3 Evidence of Payment**

Upon City's request, Tenant shall furnish to City, within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to City, evidencing payment of such charges.

### **7. USE; COVENANTS TO PROTECT PREMISES AND SFPUC FACILITIES**

#### **7.1 Tenant's Permitted Use**

Tenant may use the Premises and any Alterations permitted by this Lease only for the use specified in the Basic Lease Information, and for no other purpose.

#### **7.2 Covenants Regarding Use**

As a material inducement to City to enter into this Lease, Tenant covenants with City as follows:

##### **(a) No Unlawful Uses or Nuisances**

Tenant shall not use or occupy any of the Premises or any Alterations, or permit their use or occupancy, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy, or hazardous use or any use in violation of the conditions of any certificate of occupancy. Tenant shall take all precautions to eliminate immediately any nuisances or hazards relating to its activities on or about the Premises or any Alterations permitted by this Lease.

##### **(b) Covenant Against Waste**

Tenant shall not cause or permit any waste, damage, or injury to the Premises.

##### **(c) Covenant to Protect SFPUC Facilities**

At all times during the Term, Tenant shall protect the SFPUC Facilities from any damage, injury, or disturbance. If Tenant or any of its Agents or Invitees damages, injures, or disturbs any portion of the SFPUC Facilities (including monuments), Tenant shall immediately notify City of that occurrence. Without limiting any of its other rights under this Lease or at Law or equity, City may take all actions it deems proper to repair such SFPUC Facilities (including relocation of monuments) at Tenant's sole expense. Upon City's request, Tenant shall promptly remove or alter to City's satisfaction and at Tenant's sole cost, any Alterations or Tenant's Personal Property placed on the Premises by or on behalf of Tenant as necessary to avoid interference with City's use of the Premises for municipal utility purposes. Alternatively, subject

to the General Manager's approval at his or her sole discretion, Tenant may pay City for the costs determined by the General Manager that City will incur as a result of such interference.

City may adopt from time to time such rules and regulations with regard to Tenant's facilities and operations placed upon, or occurring on or about, the Premises as City may determine are necessary or appropriate to protect the SFPUC Facilities or prevent or safeguard against the corrosion or failure of the SFPUC Facilities. Upon receipt of a copy of such rules and regulations, Tenant shall fully comply with them.

**(d) Covenant to Protect Water Courses**

Tenant shall not cause any ponding on the Premises or any flooding on adjacent land. Tenant shall not engage in any activity that causes any change, disturbance, fill, alteration, or impairment to the bed, bank, or channel of any natural water course, wetland, or other body of water on, in, under, or about the Premises, nor shall Tenant engage in any activity that would pollute or degrade any surface or subsurface waters or result in the diminution or drainage of such waters.

**(e) Covenant Against Dumping**

Tenant shall not cause or permit the dumping or other disposal on, under, or about the Premises of landfill, refuse, Hazardous Material, or other materials that are unsightly or could pose a hazard to human health or safety, native vegetation or wildlife, or the environment.

**(f) Covenant to Protect Trees and Native Vegetation**

Tenant shall not engage in or permit the removal or destruction of trees or native vegetation without undergoing Project Review and obtaining prior SFPUC consent. However, if in Tenant's reasonable judgment a tree poses a significant risk of imminent harm to Tenant's staff, invitees, structures, or vehicles, and the risk cannot be satisfactorily mitigated through trimming or excluding people from the tree vicinity pending completion of Project Review, Tenant may remove the tree without completing Project Review. In that event, Tenant shall document the condition of the tree with photographs before taking action, if reasonably possible under the circumstances, and Tenant shall contact the SFPUC Peninsula Watershed Manager by email and telephone as directed in the Basic Lease Information (in advance if reasonably possible, or otherwise as soon as possible after eliminating the hazard). Tenant shall maintain all trees on the Premises in a safe condition at all times. On or before July 1, 2017, and on or before July 1 of each third year thereafter during the Term, Tenant shall provide SFPUC with a report on the status of golf course tree assets, prepared by a certified arborist or a member of the American Society of Golf Course Architects with qualifications reasonably acceptable to City. The report shall identify any diseased, hazardous or potentially problematic trees and Tenant's plan for addressing the problems. Provision of such reports shall not relieve Tenant of responsibility for eliminating any additional tree hazards that may develop during the intervals between reports. All tree trimming and any clearing of trees shall be conducted in accordance with applicable Law, including restrictions regarding nesting birds.

**(g) No Tree Planting**

Tenant shall not plant any trees on the Premises, nor plant any other vegetation on the Premises except as otherwise expressly provided in this Lease.

**(h) Covenant Against Hunting or Fishing**

Tenant shall not engage in or permit any hunting, trapping, or fishing on or about the Premises, except for hunting or trapping for the purpose of controlling predators or problem



animals by the appropriate use of selective control techniques approved in advance by SFPUC and provided such hunting and trapping is done in strict accordance with all applicable Laws. Whenever possible, all measures used for such control shall be limited in their application to the specific problem animals. Tenant shall not use poison bait, cyanide guns, traps, or other similar non-selective control techniques. In no event may Tenant use any prophylactic predator control measures. The restrictions of this Section applicable to the identification and control of predators and problem animals shall not apply to commensal rodents.

**(i) Integrated Vegetation Management Policy**

Tenant shall not perform any landscaping of the Premises or plant any plantings without first obtaining SFPUC's written consent pursuant to **Section 8.1**. All landscaping and plantings on the Premises must comply with SFPUC's Right of Way Integrated Vegetation Management Policy.

**(j) Restrictions on the Use of Pesticides**

Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or “**IPM Ordinance**”) describes an integrated pest management (“**IPM**”) policy to be implemented by all City departments. Tenant shall not use or apply or allow the use or application of any pesticides on the Premises or contract with any person or entity to provide pest abatement or control services to the Premises without first receiving City’s written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term of this Lease, (ii) describes the steps Tenant will take to meet the City’s IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Tenant’s primary IPM contact person with the City. Tenant shall provide a copy of its IPM Plan to Joe Naras, SFPUC Peninsula Watershed Manager (at the contact information in the Basic Lease Information). Tenant shall comply, and shall require all of Tenant’s contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City’s Department of the Environment), (c) impose certain notice requirements, and (d) require Tenant to keep certain records and to report to City all pesticide use at the Premises by Tenant’s staff or contractors.

If Tenant or Tenant’s contractor will apply pesticides to outdoor areas at the Premises, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation (“CDPR”) and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City’s current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

**(k) Weed Control**

Tenant shall not introduce any noxious weeds on or about the Premises. Tenant shall control noxious weeds, provided that Tenant may use chemical herbicides only if such use complies with the requirements of **Subsection (j)** above.

**(l) Maintenance of Roads**

Tenant shall keep all roads on the Premises open and in the same condition as such roads are now in, ordinary wear and tear excepted, and shall not interfere with any travel on such roads.

**(m) Covenant Against Burning**

Tenant shall not burn any weeds, debris, or other substances on or about the Premises.

**(n) No Off-Road Vehicles**

Tenant shall not use or permit the use of off-road vehicles on any portion of the Premises except on existing roads and in the manner for which such roads are intended.

**(o) Restrictions on Heavy Equipment and Vehicles**

To prevent damage to any subterranean SFPUC Utilities installed on or about the Premises, Tenant shall strictly adhere to the following restrictions when using, or allowing the use of, vehicles and equipment within twenty feet (20') of any subterranean SFPUC Facilities:

**(i)** The depth of soil cover over the tops of any subterranean SFPUC Facilities must be at least three feet (3') for steel cylinder pipe and four feet (4') for reinforced pre-stressed concrete cylinder pipe to accommodate the loading as defined below in Subsection (ii) below. If any equipment with axle loading exceeds the weight stated in Subsection (ii) below or if the depth of soil cover is less than stated above, Tenant shall submit to SFPUC for review and approval, engineering calculations prepared by a registered civil engineer to provide adequate protection of subterranean SFPUC Facilities showing that the subterranean SFPUC Facilities will not be adversely affected.

**(ii)** The effects of vehicle and equipment loads to subterranean SFPUC Facilities must not exceed the effects of the "AASHTO Standard H-10 Loading." H-10 loading is defined as loading caused by a two-axle truck with a gross weight of ten tons (20,000 lbs.), axles fourteen feet (14') apart, and rear axle carrying eight tons (16,000 lbs.). Tenant shall be responsible to provide SFPUC adequate evidence that Tenant's equipment and vehicles meet the foregoing requirements.

**(iii)** Tenant shall not use vibrating compaction equipment unless it first obtains SFPUC's written approval.

**(iv)** If the depth of the soil cover over any subterranean SFPUC Facilities (determined by potholing or other proof procedure) is less than the minimum stated in Subsection (i) above, unless SFPUC approves an alternate method, all excavation and grading over the subterranean SFPUC Facilities shall be performed manually. For any machinery equipment excavation and grading over and within twenty feet (20') on each side of the centerline of the subterranean SFPUC Facilities (measured on the surface), Tenant shall submit a written proposal together with all supporting calculations and data to SFPUC for review and approval. In any case, the two feet (2') of soil around the subterranean SFPUC Facilities shall be removed manually or by other methods approved by SFPUC with due care as provided above.

**(p) Watershed Management Plan**

Tenant shall comply with any and all other regulations or requirements resulting from City's development of a watershed management plan, and any modifications or additions to

such plan, provided that such regulations or requirements do not unreasonably interfere with Tenant's use and enjoyment of the Premises as contemplated by this Lease.

**(q) Trespassing**

Tenant shall exercise reasonable diligence and care to protect the Premises from trespass at all times. Tenant shall post signs and adopt rules that advise its employees, contractors, customers, guests, permittees, and licensees that trespassing on adjoining property of the City is not permitted. City reserves the right to take steps, either within or without the Premises to prevent trespassing onto adjoining property of the City.

**(r) Sewage System**

Tenant shall maintain the existing sewage system at its sole cost and expense, and in accordance with the direction of and to the satisfaction of the General Manager of the SFPUC. Tenant shall not permit any sewage or contaminated or waste water to be disposed of on the Premises by any means other than the existing sewage system except as otherwise required by **Section 23** [Hazardous Material] and/or applicable Laws.

**(s) Golf Course Operation**

Tenant shall maintain and operate the golf course and related facilities located on the Premises as a public golf course, and the general public shall not be wholly or permanently excluded from any portion of the Premises. Tenant may encourage, create and accommodate golfing organizations, so long as such organizations comply with the nondiscrimination covenant and Laws set forth in **Section 25.24** of this Lease. Tenant shall operate the golf course and related facilities located on the Premises every day of the year at least from dawn to dusk, except in the event of emergency or inclement weather. Tenant shall at all times operate the Premises and conduct all operations on the Premises in a good businesslike manner, and in such capacity shall provide the public with good quality products and efficient and courteous service. Tenant shall provide services customarily associated with the operation of a golf course and the related facilities located on the Premises, including the rental of golf-related equipment, provision of golf instruction, and sale of food, beverages (including alcoholic beverages), golf supplies, apparel, and equipment.

**(t) Inventory and FF&E**

Without limiting any other provision contained in this Lease, Tenant shall, at its sole expense, acquire and maintain throughout the Term sufficient furniture, fixtures, equipment, and inventory as are required to operate the golf course and related facilities located on the Premises as contemplated by this Lease.

**(u) Golf Carts**

Tenant shall provide, through purchase or lease at its sole cost and expense, a sufficient number of golf carts to meet the public demand for golf carts at the Premises. Tenant shall provide all maintenance, repair and service required by such golf carts, and shall replace them as reasonably required or appropriate, to maintain the fleet in good, clean condition and repair. Tenant shall charge a reasonable fee for the use of golf carts.

**(v) Food and Beverage Service**

Tenant, or its designee shall operate a restaurant, bar, banquet facilities and related facilities serving food and beverages (including alcoholic beverages) on the Premises throughout the Term. Tenant or its designee shall acquire and maintain throughout the Term

such furniture, equipment, Personal property and inventory as is required to operate a restaurant, bar, banquet facilities and related facilities serving food and beverage as contemplated by this Lease. All food and beverages sold on the Premises will be properly prepared and served in compliance with all applicable health and sanitary standards. The quality of food and service will be at least equal to that available at comparable golf courses in the San Francisco Bay Area. All dining facilities and adjacent areas will be maintained in a clean and sanitary manner. The prices to be charged by Tenant or its designee for all services, food, and beverages provided on the Premises shall be fair and reasonable.

**(w) Name**

Tenant shall use the name “Crystal Springs Golf Course” as the name of the golf course and related facilities located on the Premise. In connection with Tenant's use of the Premises during the Term, Tenant shall be entitled to use the name “Crystal Springs Golf Course” and any other logo, trademark, trade name, emblem, insignia, slogan, color scheme or distinguishing characteristic which belongs to City and relates only to the Premises. Upon the Expiration Date or any earlier termination of this Lease, Tenant shall have no further rights to any use of such logos, trademarks, trade names, emblems, insignia, slogans, color schemes or distinguishing characteristics associated with the Premises.

**(x) Advertising**

**(i) Base Promotion Budget.** Tenant shall at all times during the Term of this Lease expend annually not less than the sum of \$45,000 (as adjusted annually as provided below) (the “**Base Promotion Budget**”) to promote and advertise the Crystal Springs Golf Course.

**(ii) Annual Adjustment.** The Base Promotion Budget shall be adjusted for the second and each subsequent Lease Year during the Term (each, an “**Adjustment Year**”) as follows:

The Consumer Price Index Urban Wage Earners and Clerical Workers (base years 1982-1984 = 100) for San Francisco-Oakland-San Jose area published by the United States Department of Labor, Bureau of Labor Statistics (“**Index**”) published most immediately preceding January 1 of the Adjustment Year (“**Adjustment Index**”), shall be compared with the Index published most immediately preceding the Commencement Date (“**Beginning Index**”).

If the Adjustment Index has increased over the Beginning Index, the Base Promotion Budget for the Adjustment Year shall be set by multiplying the sum of \$45,000 by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index. However, in no event shall the Base Promotion Budget in any Adjustment Year be less than the Base Promotion Budget in effect immediately prior to such CPI Adjustment Date.

If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

**(iii) Proposed Reduction of Budget.** Upon written request by Tenant, the General Manager, in his or her reasonable discretion, may approve in advance a lower amount in any Lease Year.

**(iv) Annual Report.** Tenant shall provide an annual written report, on or before January 15 of each Lease Year, detailing and verifying the nature of actual advertising and promotion and all expenditures therefor, made during the preceding Lease Year.

**(y) Tenant's Staff**

Tenant, at its cost, shall maintain an adequate and proper staff with the skills and experience necessary to operate all services to be provided under this Lease. Without limiting the foregoing, Tenant shall employ a qualified Class "A" member of the Professional Golfers of America (or LPGA equivalent) at the Premises and all other appropriate personnel, which may include a superintendent, starters and instructors. Tenant shall discharge any employee whose conduct or activity, in Tenant's reasonable business judgment, shall be deemed to be detrimental or offensive to the public patronizing the Premises

**8. IMPROVEMENTS AND ALTERATIONS**

**8.1 Construction or Installation of Alterations**

**(a) Conditions and Requirements for Alterations**

Tenant shall not construct, install, or permit any Alterations (including modifying any existing Improvements) in, to, or about the Premises, without City's prior written consent in each instance, which City may give or withhold at its sole and absolute discretion. Tenant shall submit a project review application to City at least ninety (90) days before the proposed commencement of construction of proposed Alterations, and shall undergo SFPUC's Project Review process, unless the General Manager or his or her designee, in consultation with SFPUC's Bureau of Environmental Management, determines that the proposed project is appropriate for administrative review. The Parties acknowledge that City may not consider any proposed Alteration before any environmental review required under applicable Law, as defined in **Section 2** (Definitions), is completed. Tenant shall consult with SFPUC regarding environmental review and shall bear the cost of any investigations and studies needed for such environmental review. If the City approves any proposed Alterations, such approvals shall be conditioned upon Tenant obtaining any regulatory permits and approvals that may be required under applicable Law in accordance with **Section 11.2** (Regulatory Approvals). In considering any proposed Alterations, the City retains sole discretion to (1) make such modifications to any of the proposed Alterations as may be necessary to mitigate significant environmental impacts; (2) select feasible alternatives to the proposed Alterations that avoid significant adverse impacts; (3) require the implementation of specific measures to mitigate the significant adverse environmental impacts as part of the decision to approve the Alterations; (4) balance the benefits of the proposed Alterations against any significant environmental impacts before taking final actions to approve the proposed Alterations if such significant impacts cannot otherwise be avoided; or (5) determine not to approve the proposed Alterations. Subject to such approval, any allowed Alterations shall be done at Tenant's sole expense **(i)** in strict accordance with plans and specifications approved in advance by City in writing and any conditions and requirements specified by SFPUC in a Project Review Certificate, **(ii)** by duly licensed and bonded contractors or mechanics approved by City, **(iii)** in a good and professional manner, **(iv)** in strict compliance with all applicable Laws, and **(v)** subject to all other conditions that City may reasonably impose, including provision of such completion security as is acceptable to City. In no event shall the making, construction, or installation of any such Alterations impair the use or operation of any portion of the SFPUC Facilities, or City's

access to the Premises or the SFPUC Facilities. Before the commencement of any work on the Premises to construct any allowed Alterations, at its sole expense, Tenant shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to City. No material change from the plans and specifications approved by City may be made without City's prior, written consent. City and its Agents may observe and inspect the course of such construction at all times. Tenant shall require from each contractor and subcontractor performing any work on or about the Premises insurance as specified in **Section 19** (Tenant's Insurance).

In no event shall City's approval of any plans, specifications or working drawings be deemed to constitute a representation or warranty by City concerning the suitability of the proposed Alterations or repairs for Tenant's purposes or that the work called for in the plans and specifications complies with applicable building codes or other applicable Laws or industry standards nor shall such approval release Tenant from Tenant's obligation to supply plans and specifications that conform to applicable codes, other Laws and industry standards.

Tenant shall construct, perform, complete and maintain all construction and installations covered by this Lease in a good and professional manner and with quality materials, and shall furnish all tools, equipment, labor and material necessary to perform and complete all construction and installations.

Upon completion of any Alterations, Tenant shall furnish City with two (2) complete sets of as-built construction drawings on mylar or its equivalent acceptable to the City, and an electronic copy in a software program acceptable to the City. Such drawings shall include, if applicable, all circuit breakers, mechanical equipment, switches, plumbing and fire sprinkler section and main valves plainly labeled and a master index. With the as-builts, Tenant shall provide the operating manuals for all building equipment and systems; and copies of all written warranties.

Upon termination of this Lease, whether upon expiration of the Term or sooner termination or cancellation, Tenant shall assign to City all express warranties furnished by other persons in connection with the provision of labor and/or material to the Improvements covered by this Lease.

**(b) Local Hiring Requirements**

If the estimated cost of an Alteration exceeds Seven Hundred Fifty Thousand Dollars (\$750,000), unless otherwise exempt, Tenant shall comply with the Local Hiring Policy set forth in San Francisco Administrative Code Section 6.22(G) (the "**Local Hiring Policy**") in the construction or performance of the Alteration. Before starting any such Alteration, Tenant shall contact City's Office of Economic Workforce and Development ("**OEWD**") to verify the Local Hiring Policy requirements that apply to the Alteration, and Tenant shall comply with all such requirements. Failure to comply shall be deemed a breach of this Lease, and may subject Tenant to penalties as set forth in the Local Hiring Policy.

Any capitalized term used in this Section that is not defined will have the meaning given to such term in the Local Hiring Policy.

**(c) Tenant's Alterations that Disturb or Remove Lead Based Paint**

Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the San Francisco Building Code, Section 3407, and all other applicable present or future Laws (including the requirements of any board of fire underwriters or other similar body, any directive or occupancy certificate issued pursuant to any Law by any public officer or officers acting in their regulatory capacity, and the California and United States Occupational Health and Safety Acts and their implementing regulations) when the work of improvement or

alteration disturbs or removes exterior lead-based or “presumed” lead-based paint (as defined below). Tenant and its Agents or Invitees shall give City three (3) business days’ prior, written notice of any disturbance or removal of exterior lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing exterior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (i) acetylene or propane burning and torching; (ii) scraping, sanding, or grinding without containment barriers or a High Efficiency Particulate Air filter (“HEPA”) local vacuum exhaust tool; (iii) hydroblasting or high-pressure wash without containment barriers; (iv) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (v) heat guns operating above 1,100 degrees Fahrenheit. Paint on the exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3407 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the exterior surfaces of such buildings. Under this Section, lead-based paint is “disturbed or removed” if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface. Notice to City under this Lease shall not constitute notice to the City's Department of Building Inspection required under Section 3407 of the San Francisco Building Code.

## 8.2 Proposed Work

(a) Tenant shall contribute a minimum of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) to repairs and Alterations to the Premises in consideration of City's leasing of the Premises to Tenant pursuant to this Lease. To implement such requirement, Tenant proposes to perform the Alterations and repairs described in attached **Exhibit D** (the “**Proposed Work**”), subject to and in accordance with **Section 8.1** and this **Section 8.2**. If the Proposed Work is approved in accordance with such Sections, and the actual cost of the Proposed Work turns out to be less than \$1,250,000, Tenant shall contribute the excess funds to the Capital Improvement Fund described in **Section 8.4** or perform additional repairs or Alterations, as approved by City.

(b) Within 60 days of the Commencement Date and prior to the commencement of the Proposed Work, Tenant shall download and complete a Project Review Application by visiting the Project Review Committee webpage at <http://sfwater.org/Project>. Tenant shall submit the completed application, along with any plans, specifications and construction cost estimates (together, an “**Initial Capital Improvement Plan**”) for the Proposed Work to [jsmendoza@sfwater.org](mailto:jsmendoza@sfwater.org). At the next available Project Review Committee meeting Tenant shall present its Initial Capital Improvement Plan. During Project Review, the committee may require modifications to the project and/or implementation of avoidance and minimization measures related to performance of the Proposed Work. The Project Review Committee will issue a Project Review Certificate upon successful completion of its review and approval of the Initial Capital Improvement Plan.

(c) Tenant shall not approve any material changes from the SFPUC-approved plans and specifications and working drawings without the SFPUC's prior written approval. Where changes require SFPUC approval, said approval shall not be unreasonably withheld or delayed.

(d) Prior to the Commencement Date, Tenant shall furnish to the SFPUC suitable evidence of funds available, in an amount of not less than One Million Two Hundred Fifty Thousand Dollars (\$1,250,000), in order to complete all of the Proposed Work. Such evidence may take the form of any of the following, in form approved by City in consultation with the City Attorney: (i) a payment and performance bond naming City as a beneficiary; (ii) an irrevocable letter of credit; (iii) cash deposited in an escrow acceptable to the General Manager with interest to accrue to Tenant, but with instructions to the escrow agent that funds deposited

in the escrow may not be released or pledged without the written approval of the SFPUC General Manager or Deputy General Manager; (iv) another security arrangement acceptable to City, ensuring available funds sufficient to cover the cost of the unfinished Proposed Work; or (v) a combination of the foregoing. The foregoing shall be a condition precedent to the effectiveness of this Lease for the sole benefit of City. If such condition precedent is not satisfied before the Commencement Date, the General Manager, on behalf of City, shall have the right in its sole discretion either to waive it in writing (provided that the General Manager may reserve the right to require that such condition be satisfied after the Commencement Date) or, alternatively, terminate this Lease.

(e) If the form of the security is cash deposited in an escrow account described in **subparagraph (d)** above, following completion of each line item listed on **Exhibit D** and within 15 days following written request and notice thereof to City by Tenant, including satisfactory evidence of the completion of such work and the payment of all such costs and materials therefor by Tenant, City shall release to Tenant from the escrow an amount equal to the lesser of: (i) the actual cumulative cost for such completed work or (ii) the estimated cost of such work listed on **Exhibit D**. In addition, in the case of any line item listed on **Exhibit D** which exceeds \$100,000 and as to which the time to complete such work exceeds 30 days, City will release interim payments to Tenant from the escrow/security described in **subparagraph (d)** above, upon Tenant's request made at intervals of not less than 30 days, in an amount equal to 80% of the actual amounts which have been incurred and paid by Tenant for any portion of such line item as shown by satisfactory written evidence of payment by Tenant of such costs and materials. In no event shall total interim payments to Tenant for any line item exceed the estimated cost of such line item on **Exhibit D**.

(f) Upon completion of the Proposed Work, Tenant shall furnish the City with copies of as-built drawings, operating manuals and warranties, in accordance with **Section 8.1(a)**.

(g) At least ten (10) business days before the proposed commencement of the Proposed Work, Tenant shall submit the proposed construction schedule to Joe Naras, the SFPUC's Peninsula Watershed Manager (at the contact information in the Basic Lease Information) for approval. All work must be performed Monday through Friday between 8:00 a.m. and 4:30 p.m., excluding City holidays. Any work performed at any other time must be approved by the City in writing at least two (2) business days prior to the commencement of the work. The construction of the Proposed Work, may, at the discretion of Tenant be performed in phases, each phase being separated from the other by a period of time to be determined by Tenant. However, the nature of the construction to be performed in each phase, the commencement and completion dates of each phase, and the time interval between phases shall be subject to review and approval by the SFPUC. Subject to the provisions of subparagraph (i) below, if the Proposed Work is phased as herein provided, each phase shall be commenced on or before the SFPUC-approved date for commencement thereof, and all Proposed Work shall be completed no later than the two (2) year anniversary of the Commencement Date.

(h) Tenant agrees that City has the right to inspect the construction work at any time during the construction period, and Tenant shall provide access for any such inspections. City shall have the right to post any applicable notices of nonresponsibility on the Premises.

(i) The parties agree that any delay in the construction due to fire, earthquake, war, weather, unavailability of supplies or materials, labor dispute or other similar events beyond the reasonable control of Tenant shall extend the time in which construction must be completed by the length of time of such delay.



### 8.3 All-Gender Toilet Facilities

If applicable, Tenant shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City where extensive renovations are made. An “all-gender toilet facility” means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and “extensive renovations” means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact the City's Director of Property for guidance.

### 8.4 Capital Improvement Fund

(a) Tenant established and maintains a separate, interest-bearing account (the “**Capital Improvement Fund**”) pursuant to the Original Lease. Amounts in the Capital Improvement Fund are held by Tenant in trust for the benefit of the City's interest in the Premises, including its reversionary interest in the Premises upon the expiration or earlier termination of the Original Lease. City desires that Tenant continue to maintain the Capital Improvement Fund for the duration of the Lease Term under this Lease, and carry the balance remaining at the expiration of the Original Lease forward to the Capital Improvement Fund under this Lease in lieu of Tenant remitting the balance of the Capital Improvement Fund to City upon termination of the Original Lease.

(b) For the duration of the Term Tenant shall, on or before the twentieth day of each month, deposit an amount into the Capital Improvement Fund equal to two percent (2%) of the Gross Revenues from the preceding month. In addition to Tenant's contributions, City shall make contributions to the Capital Improvement Fund in the amount of two percent (2%) of Gross Revenues (the “City's Capital Improvement Fund Contribution”). The City shall make the City's Capital Improvement Fund Contribution in the form of monthly rent credits to Tenant, the amounts of which Tenant shall immediately deposit into the Capital Improvement Fund.

(c) Interest earned on funds held in Capital Improvement Fund account shall become part of the Capital Improvement Fund and all amounts remaining in the Capital Improvement Fund at the end of the Term or any earlier termination of this Lease shall be remitted to City.

(d) Funds held in the Capital Improvement Fund shall be used exclusively for the repair and replacement of capital items, including Alterations, fixtures, furniture or equipment, which are needed to repair or replace, over time, capital items which are subject to wearing out after a useful life and which are included in, located on or used in connection with the Premises, and which if not maintained or repaired, could adversely affect the City's interest in the Premises, including its reversionary interest in the Premises upon the expiration or earlier termination of this Lease. Construction of any such capital improvements shall be conducted in accordance with all provisions of **Section 8.1**. Funds held in the Capital Improvement Fund may not be expended for any of the Proposed Work.

(e) Within the first thirty (30) days of start of the second Lease Year and every second Lease Year thereafter, Tenant shall submit to City for approval a bi-annual plan for the use of the Capital Improvement Fund moneys in the ensuing two Lease Years (each, a “**Capital Improvement Plan**”). Each Capital Improvement Plan shall include the description of each improvement project, estimated improvement cost and the projected time frame for commencement and completion of each project. Each Capital Improvement Plan shall have, as an attachment, documentation showing the expenditures made during the previous two years (date of purchase or lease, amounts expended, descriptive material, and, as appropriate, serial numbers on equipment leased or purchased). City shall review each Capital Improvement Plan

and shall not unreasonably withhold its consent thereto. City may also propose additions or deletions to any Capital Improvement Plan. Tenant agrees to consult with City during the first fifteen days of City's review period to explain any Capital Improvement Plan. If City fails to respond within forty-five (45) days after receipt of Tenant's written request for approval of the proposed Capital Improvement Plan (accompanied by a copy of the plan), and thereafter does not approve or disapprove the proposed plan within twenty (20) days after receipt of notice from Tenant of such failure, City shall be deemed to have consented to such plan.

(f) If capital improvements are expressly required in accordance with any approved Capital Improvement Plan (as distinguished from improvements which are merely being considered or desired) and insufficient funds remain in the Capital Improvement Fund with which to make such capital improvements, then Tenant agrees to use its best efforts to provide the necessary funds. Any funds so provided shall be advanced to the Capital Improvement Fund by Tenant and shall bear interest from the date so advanced until repaid at the then-applicable prime rate.

### **8.5 Ownership of Alterations**

Any Alterations constructed on or affixed to the Premises by or on behalf of Tenant shall become City's property upon installation unless City, at its sole option, elects in writing to require Tenant to remove such Alterations at the expiration or termination of this Lease [in which event, Tenant shall remove all such Alterations from the Premises in accordance with the provisions of **Section 22.1** (Surrender of the Premises)].

### **8.6 Tenant's Personal Property**

All furniture, furnishings, and articles of movable personal property and equipment installed in the Premises by or for the account of Tenant that can be removed without structural or other material damage to the Premises (all of which are referred to in this Lease as "**Tenant's Personal Property**") shall be and remain the property of Tenant and may be removed by it subject to the provisions of **Section 22.1** (Surrender of the Premises). At least ten (10) days before delinquency, Tenant shall pay all taxes levied or assessed upon Tenant's Personal Property and shall deliver to City satisfactory evidence of such payment.

## **9. REPAIRS AND MAINTENANCE**

### **9.1 Tenant Responsible for Maintenance and Repair**

Tenant assumes full and sole responsibility for the condition, operation, repair, maintenance, and management of the Premises and any Alterations from and after the Commencement Date. City shall not under any circumstances be responsible for the performance of any repairs, changes, or Alterations to the Premises or any adjoining property (including access roads, utilities, and other infrastructure serving the Premises), nor shall City be liable for any portion of the cost of any such repairs, changes, or Alterations. However, to the extent such Alterations are included in an approved Capital Improvement Plan or such repair or replacement is of a capital nature, the cost thereof may be paid from the Capital Improvement Fund in accordance with **Section 8.4(d)**. Tenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, that may be necessary to maintain the Premises including the existing Improvements and any permitted Alterations at all times in clean, safe, attractive, and sanitary condition and in good order and repair, and in a condition appropriate for a first class golf course to City's reasonable satisfaction and so that the Premises, including the Improvements and Alterations, shall be at least equal in quality, value, and utility to the Premises as it exists on the Commencement Date. Maintenance shall be performed in accordance with the guidelines attached hereto as **Exhibit E**. If any portion of the Premises or any of City's property located on

or about the Premises is damaged by any of the activities conducted by Tenant or its Agents or Invitees under or pursuant to this Lease, at its sole cost, Tenant shall immediately repair any and all such damage and restore the Premises or City's property to its previous condition.

## **9.2 Utilities**

Except for the SFPUC Facilities, City has no responsibility or liability of any kind with respect to any utility facilities that may be on or about the Premises. With respect to the use of the Premises by or on behalf of Tenant, its Agents, and its Invitees, Tenant has the sole responsibility to locate any utility facilities and protect them from damage. With respect to services needed for Tenant's operations at the Premises, Tenant shall make all arrangements directly with the utility companies for, and shall pay for, any and all utilities and services furnished to or used by it, including gas, electricity, water, sewage, telephone service, trash collection, and janitorial service, and for all deposits, connection, and installation charges. Tenant shall be responsible for installation and maintenance of all facilities required in connection with such utility services. All electricity necessary for operations in the Premises shall be purchased from SFPUC, at SFPUC's standard rates charged to third parties, unless SFPUC determines, in its sole judgment, that it is not feasible to provide such service to the Premises. SFPUC is the provider of electric services to City property, and the Interconnection Services Department of SFPUC's Power Enterprise coordinates with Pacific Gas and Electric Company and others to implement this service. To arrange for electric service to the Premises, Tenant shall contact the Interconnection Services Department in the Power Enterprise of the SFPUC. Any and all utility improvements shall be subject to the provisions of **Section 8.1** (Construction of Alterations), and shall be deemed Alterations. During the Term, Tenant shall be obligated to repair and maintain any and all utility systems and improvements located on or within the Premises (except for the SFPUC Facilities) in good operating condition. City shall not be liable for any failure or interruption of any utility service furnished to the Premises, and no such failure or interruption shall entitle Tenant to any abatement in Rent or to terminate this Lease.

## **9.3 Maintenance of Fences**

Tenant shall maintain in good condition and repair at its expense any existing fences along or about the property line of the Premises.

## **9.4 No Right to Repair and Deduct**

Tenant expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Tenant to make repairs or replacements at City's expense, or to terminate this Lease because of City's failure to keep any part of the Premises or any adjoining property (including access roads, utilities, and other infrastructure serving the Premises) in good order, condition, or repair, or to abate or reduce any of Tenant's obligations under this Lease on account of any part of the Premises or any adjoining property (including access roads, utilities, and other infrastructure serving any part of the Premises) being in need of repair or replacement. Without limiting the foregoing, Tenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 and any similar Laws with respect to any right of Tenant to terminate this Lease and with respect to any obligations of City for tenantability of the Premises and any right of Tenant to make repairs or replacements and deduct the cost of any such repairs or replacements from Rent.

## **10. LIENS**

Tenant shall keep the Premises and all of City's property free (including the SFPUC Facilities) from any liens arising out of any work performed, material furnished, or obligations incurred by or for Tenant. If, within five (5) days following the imposition of any such lien,

Tenant does not cause the lien to be released of record by payment or posting of a proper bond, in addition to all other remedies provided under this Lease and by Law or equity, City shall have the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses it incurs in connection therewith (including reasonable attorneys' fees) shall be payable to City by Tenant upon demand. At all times, City may post and keep posted on the Premises any notices permitted or required by Law or that City deems proper for its protection and protection of the Premises and City's property, from mechanics' and material supplier's liens. Tenant shall give City at least fifteen (15) days' prior, written notice of the commencement of any repair or construction on any of the Premises. Notwithstanding the foregoing, upon posting of an adequate bond or other security acceptable to City, Tenant may contest any such lien, and, in such case, City shall not seek to satisfy or discharge such lien unless Tenant has failed to do so within ten (10) days after final determination of the validity of such lien. Tenant shall Indemnify City, the other Indemnified Parties, and the Premises against any and all Losses arising out of any such contest.

## **11. COMPLIANCE WITH LAWS**

### **11.1 Compliance with Laws**

At no cost to City, Tenant shall maintain the Premises and any permitted Alterations, and conduct its use and operations on and about the Premises, in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary. Such Laws shall include all Laws relating to health and safety and disabled accessibility including the Americans with Disabilities Act, 42 U.S.C. Sections 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Lease below), and all present and future life safety, fire sprinkler, seismic retrofit, and other building code requirements. The Parties acknowledge and agree that Tenant's obligation to comply with all laws as provided in this Lease is a material part of the bargained-for consideration under this Lease. Tenant's obligation under this Section shall include Tenant's responsibility to make substantial or structural repairs and alterations to the Premises, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term, the relative benefit of the repairs to Tenant or City, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Law involved, and whether the Law involved is related to Tenant's particular use of the Premises. Without limiting **Section 5.6** (Net Lease), no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction, or suspension of payment of Rent, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

### **11.2 Regulatory Approvals**

#### **(a) Responsible Party**

Tenant understands and agrees that Tenant's use of the Premises may require authorizations, approvals, or permits from governmental regulatory agencies with jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any and all such regulatory approvals. Tenant shall not seek any regulatory approval without first obtaining City's written consent. Tenant shall bear all costs associated with applying for, obtaining, and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Tenant shall

pay and discharge immediately any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval and City shall have no liability, monetary or otherwise, for any such fines or penalties. Tenant shall Indemnify City and the other Indemnified Parties against all Losses arising in connection with Tenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

#### **(b) City Acting as Owner of Real Property**

Tenant acknowledges that City, acting by and through its SFPUC, is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Tenant's obligation to obtain any required approvals from any governmental authority or agency (including City departments, boards, or commissions) having jurisdiction over the Premises. By entering into this Lease, City is in no way modifying or limiting Tenant's obligation to cause the Premises and any permitted Alterations to be used and occupied in accordance with all applicable Laws, as provided further above.

### **11.3 Compliance with City's Risk Management Requirements**

Tenant shall not do anything, or permit anything to be done, in or about the Premises or any Alterations permitted under this Lease that would create any unusual fire risk, and shall take commercially reasonable steps to protect City from any potential premises liability. At its expense, Tenant shall faithfully observe any and all reasonable requirements of City's Risk Manager with respect to such obligations and with the requirements of any policies of public liability, fire, or other policies of insurance at any time in force with respect to the Premises and any Alterations as required by this Lease.

### **11.4 Reports**

Tenant shall submit a report and provide such documentation to City as City may from time to time request regarding Tenant's operations and evidencing compliance with this Lease and all Laws.

## **12. FINANCING; ENCUMBRANCES; SUBORDINATION**

### **12.1 Encumbrance of City's Fee Interest**

The following provisions shall apply notwithstanding anything to the contrary contained in this Lease.

#### **(a) Encumbrance by City**

To the extent permitted by applicable Law, City may at any time sell or otherwise transfer or encumber its fee estate in any portion of the Premises provided that **(i)** any such sale or Encumbrance shall be subject and subordinate to all of the terms of this Lease and the leasehold estate created hereby, **(ii)** the right of possession of Tenant to the Premises shall not be affected or disturbed by any such sale or Encumbrance, or by the exercise of any rights or remedies by any purchaser or Encumbrancer arising out of any instrument reflecting such sale or Encumbrance, so long as no Event of Default or Unmatured Event of Default is outstanding under this Lease.

## **(b) Encumbrance By Tenant**

Tenant shall not under any circumstances whatsoever Encumber in any manner any portion of: the Premises, the SFPUC Facilities, City's estate in the Premises or any adjoining property, or City's interest under this Lease.

### **12.2 Leasehold Encumbrances**

Without limiting **Section 16** (Assignment and Subletting), Tenant shall not Encumber this Lease, or assign or pledge assignment of the same as security for any debt, without first obtaining City's written consent, which City may give or withhold at its sole discretion.

## **13. DAMAGE OR DESTRUCTION**

### **13.1 Damage to or Destruction of the Improvements**

In the case of damage to or destruction of the Premises by fire or any other casualty, whether insured or uninsured, at its sole cost and with reasonable promptness and diligence, Tenant shall restore, repair, replace, or rebuild the Premises as nearly as possible to the same condition, quality, and class the Premises were in immediately before such damage or destruction, unless such damage or destruction was caused solely and directly by the gross negligence or willful misconduct of City or its Agents. Tenant shall comply with the requirements of **Section 8.1** (Construction or Installation of Alterations) in connection with such restoration, repairs, replacement and/or rebuilding.

### **13.2 Abatement in Rent**

In the event of any damage or destruction to the Premises or any permitted Alterations, there shall be no abatement in the Base Rent or Additional Charges payable pursuant to this Lease.

### **13.3 Waiver**

The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or any permitted Alterations, and City and Tenant each hereby waives and releases any right to terminate this Lease in whole or in part under Sections 1932.2 and 1933.4 of the California Civil Code or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions of this Lease.

## **14. CONSTRUCTION PROJECTS**

Tenant acknowledges that during the Term, it is likely that one or more significant construction projects will be undertaken on property in the vicinity of the Premises, including, but not limited to SFPUC utility work and Caltrans work on the I-280 on- and off-ramps. Tenant is aware that the construction of such projects and the activities associated with such construction could generate certain adverse impacts, which may result in some inconvenience to or disturbance of Tenant or its business at the Premises. Such impacts may include increased vehicle and truck traffic, traffic delays and re-routing, impediments to access, loss of street and public parking, dust, dirt, construction noise, and visual obstructions. Tenant hereby waives any and all claims against SFPUC, City, and their respective Agents based on such inconvenience or disturbance, including any abatement or reduction of Rent.

## **15. EMINENT DOMAIN**

### **15.1 General**

If during the Term or during the period between the execution of this Lease and the Commencement Date, any Taking of all or any part of the Premises or any interest in this Lease occurs, the rights and obligations of the Parties shall be determined pursuant to this Section. City and Tenant intend that the provisions hereof govern fully in the event of a Taking and accordingly, each Party hereby waives any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar Law now or hereafter in effect.

### **15.2 Total Taking; Automatic Termination**

If a total Taking of the Premises occurs, then this Lease shall terminate as of the Date of Taking.

### **15.3 Partial Taking; Election to Terminate**

(a) If a Taking of any portion (but less than all) of the Premises occurs, then this Lease shall terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant, (B) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition, and (C) Tenant elects to terminate; or (ii) if City elects to terminate, except that this Lease shall not terminate if Tenant agrees to, and does, continue to pay full Rent and Additional Charges, without abatement, and otherwise agrees to, and does, fully perform all of its obligations under this Lease.

(b) If a partial Taking of a substantial portion of the SFPUC Facilities or any of City's adjoining real property, but not the Premises, occurs, City may terminate this Lease in its entirety.

(c) Either Party electing to terminate under the provisions of this Section shall do so by giving written notice to the other Party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30th) day after such written notice is given or the Date of Taking.

### **15.4 Termination of Lease; Rent and Award**

Upon termination of this Lease in its entirety pursuant to **Section 15.2** (Total Taking; Automatic Termination), or pursuant to an election under **Section 15.3** (Partial Taking; Election to Terminate), then: (a) Tenant's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (b) City shall be entitled to the entire Award in connection therewith, except that Tenant may make a claim, and receive an Award for Tenant's relocation expenses allowed by applicable Law, the interruption of or damage to Tenant's business, damage to Tenant's Personal Property, and the value of Tenant's leasehold interest for the unexpired Term.

### **15.5 Partial Taking; Continuation of Lease**

If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under **Section 15.3** (Partial Taking; Election to Terminate), then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the Parties shall be as follows: (a) Base Rent shall be

reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises before the Date of Taking, and **(b)** City shall be entitled to the entire Award, except that Tenant may make a claim and receive an Award for the interruption of or damage to Tenant's business, damage to Tenant's Personal Property, and the value of Tenant's leasehold interest in the Premises Taken for the unexpired Term.

## **15.6 Temporary Takings**

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected by such Taking, and Tenant shall continue to pay Rent and to perform all of the terms, conditions, and covenants of this Lease. In the event of such temporary Taking, Tenant shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Tenant for the period of the Taking, and City shall be entitled to receive the balance of any Award.

## **16. ASSIGNMENT AND SUBLETTING**

### **16.1 Restriction on Assignment and Subletting**

Tenant shall not directly or indirectly (including by merger, acquisition, sale, or other transfer of any controlling interest in Tenant or any entity controlling Tenant), voluntarily or by operation of Law, sell, assign, encumber, pledge, or otherwise transfer any part of its interest in or rights with respect to the Premises, the business conducted on the Premises, any Alterations, or its leasehold estate created by this Lease (each, an "**Assignment**"), or permit any portion of the Premises or any Alterations to be occupied by anyone other than itself, or sublet any portion of the Premises or any permitted Alterations placed or to be placed on the Premises (each, a "**Sublease**"), without City's prior, written consent in each instance, which City shall not unreasonably withhold. Any Assignment or Sublease, without City's prior written consent, shall be voidable at City's option at its sole and absolute discretion; and the General Manager may terminate this Lease immediately by sending written notice to Tenant. For purposes of this **Section 16**, "control" or a "controlling interest" shall mean direct or indirect ownership of 50% or more of all of the voting stock of a corporation or 50% or more of the legal or equitable interest in any other business entity, or the power to direct the operations of any entity (by equity ownership, contract or otherwise).

Tenant further agrees and understands that the intent and purpose of this Lease is to allow for use or uses as provided in the Basic Lease Information, and not for the purpose of creating an investment in property. Therefore, while Tenant may charge to a City-approved assignee or sublessee an amount in excess of that rent which is at the time being charged by City to Tenant, all rental income or other consideration received by Tenant that is attributable to the value of the leasehold estate created by this Lease over and above that Rent charged to Tenant by City shall be paid directly to City with no profit, direct or indirect, to Tenant attributable to the value of the leasehold estate created by this Lease.

### **16.2 Notice of Proposed Transfer**

If Tenant desires to enter into an Assignment or a Sublease, then it shall give written notice (a "**Notice of Proposed Transfer**") to City of its intention to do so. The Notice of Proposed Transfer shall include a copy of the proposed Assignment or Sublease (or, in the case of a merger or other change of control, a detailed description of the proposed change), identify the proposed Transferee, and state the terms and conditions under which Tenant is willing to enter into such proposed Assignment or Sublease, including a copy of the proposed Assignment or Sublease agreement. Tenant shall provide City with financial statements for the proposed



Transferee and such additional information regarding the proposed Transfer as City may reasonably request.

### **16.3 City's Response**

Within twenty (20) business days after City's receipt of the Notice of Proposed Transfer and any such additional information requested by City (the "**Response Period**"), by written notice to Tenant, City may elect to: (a) sublease the portion of the Premises specified in the Notice of Proposed Transfer on the terms and conditions set forth in such notice, except as otherwise provided in **Section 16.4** (Sublease or Recapture Premises), or (b) terminate this Lease as to the portion (including all) of the Premises that is specified in the Notice of Proposed Transfer, with a proportionate reduction in Base Rent (a "**Recapture**").

If City declines to exercise either of the options provided in clauses (a) and (b) above, then, for a period of ninety (90) days following the earlier of City's notice that it will not elect either such option or the expiration of the Response Period, Tenant may enter into such Assignment or Sublease, subject to City's prior, written approval of the proposed Transferee and the terms and conditions of the proposed Transfer. The Parties recognize and agree that the purpose of this Lease is to allow for the permitted uses and not to create an investment in property, and, therefore, City may condition its consent to any Assignment or Sublease on the receipt of some or all of the consideration realized by Tenant under any such Assignment or Sublease (or the amount of such consideration attributable to the Premises if the transaction includes other properties) in excess of the Base Rent and Additional Charges payable pursuant to this Lease, after deducting the proportionate share of any reasonable broker's commissions or transaction costs incurred by Tenant. Tenant shall provide City with such information regarding the proposed Transferee and the proposed Assignment or Sublease as City may reasonably request.

Notwithstanding the foregoing, if following City's decline to exercise the foregoing options, Tenant desires to enter into such Assignment or Sublease on terms and conditions materially more favorable to Tenant than those contained in the Notice of Proposed Transfer, then Tenant shall give City a new Notice of Proposed Transfer, which notice shall state the terms and conditions of such Assignment or Sublease and identify the proposed Transferee, and City shall again be entitled to elect one of the options provided in clauses (a) and (b) above at any time within fifteen (15) business days after City's receipt of such new Notice of Proposed Transfer.

If City elects either of the options provided in clauses (a) or (b) above, at its sole option, City may enter into a lease, sublease, or assignment agreement with respect to the Premises (or portion of the Premises specified in such new Notice of Proposed Transfer) with the proposed Transferee identified in Tenant's notice.

Notwithstanding the foregoing, if any Event of Default or Unmatured Event of Default by Tenant exists at the time of Tenant's Notice of Proposed Transfer, then City may elect by notice to Tenant to refuse to consent to Tenant's proposed Transfer and pursue any of its rights or remedies pursuant to this Lease or at Law or in equity.

### **16.4 Sublease or Recapture Premises**

If City elects to Sublease or Recapture from Tenant as provided in **Section 16.3** (City's Response), the following shall apply:

### **(a) Sublease**

In the case of a Sublease, **(i)** City may use the portion of the Premises covered by the Notice of Proposed Transfer (the “**Sublease Premises**”) for any legal purpose, **(ii)** the rent payable by City to Tenant shall be the lesser of that set forth in the Notice of Proposed Transfer or the Rent payable by Tenant under this Lease at the time of the Sublease (or the amount of such Rent proportionate to the Sublease Premises if for less than the entire Premises), **(iii)** City may make alterations and improvements to the Sublease Premises as it may elect, and City may remove any such alterations or improvements, in whole or in part, before or upon the expiration of the Sublease, provided that City shall repair any damage or injury to the Sublease Premises caused by such removal, **(iv)** City may further sublease or assign the Sublease Premises to any party, without Tenant’s consent, and **(v)** Tenant shall pay to City on demand any costs incurred by City in physically separating the Sublease Premises (if less than the entire Premises) from the balance of the Premises and in complying with any applicable Laws relating to such separation.

### **(b) Recapture**

In the case of Recapture, **(i)** the portion of the Premises subject to the Recapture (the “**Recapture Premises**”) shall be deleted from the Premises for all purposes under this Lease, and Tenant and City shall be relieved of all of their rights and obligations under this Lease with respect to the Recapture Premises except to the extent the same would survive the Expiration Date or other termination of this Lease pursuant to its terms, and **(ii)** City shall pay any cost incurred in physically separating the Recapture Premises (if less than the entire Premises) from the balance of the Premises and in complying with any applicable governmental Laws relating to such separation.

## **16.5 Effect of Transfer**

No Sublease or Assignment by Tenant, nor any City consent to a Sublease or Assignment, shall relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. At its sole and absolute discretion, City may determine that any Sublease or Assignment that does not comply with this Section is void and, at City's option, shall constitute a material Event of Default by Tenant under this Lease. City’s acceptance of any Rent or other payments from a proposed Transferee shall not constitute City’s consent to such Sublease or Assignment or its recognition of any Transferee, or its waiver of any failure of Tenant or other transferor to comply with this Section.

## **16.6 Assumption by Transferee**

Each authorized Transferee shall assume all of Tenant’s obligations under this Lease and shall be and remain liable jointly and severally with the assignor or sublessor for the payment of Rent, and for the performance of all of the terms, covenants, and conditions to be performed by Tenant under this Lease. No Assignment shall be binding on City unless Tenant or Transferee shall deliver to City a copy of the fully executed Assignment and the fully executed instrument that contains a covenant of assumption by such Transferee satisfactory in substance and form to City, and consistent with the requirements of this Section. A Transferee’s failure or refusal to execute such instrument of assumption, however, shall not release such Transferee from its liability as set forth above. Tenant shall reimburse City on demand for any of City’s reasonable costs incurred in connection with any proposed Transfer, including the costs of making investigations as to the acceptability of the proposed Transferee and legal costs incurred in connection with the granting of any requested consent.

## **16.7 Indemnity for Relocation Benefits**

Without limiting **Section 16.6** (Assumption by Transferee), Tenant shall cause any authorized Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant shall Indemnify City and the other Indemnified Parties for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

## **16.8 IPM Plan and Form CMD-12B-101**

As a condition to any Assignment or Sublease, the approved Transferee shall execute Form CMD 12B-101 (as such term is defined in **Section 25.24** (Non Discrimination in City Contracts and Benefits Ordinance)) with supporting documentation and secure the CMD's approval of such form. As a condition to any Assignment or Sublease, the approved Transferee shall assume the IPM plan of Tenant or submit a new IPM plan in accordance with the requirements of **Section 7.2(j)** (Pesticides Prohibition) or obtain an exemption, through SFPUC. Any transferee must also comply with all other provisions of this Lease, including but not limited to the insurance provisions.

## **16.9 CourseCo Agreement**

The Parties acknowledge and agree that Tenant has entered into a separate management agreement dated March 15, 1996, with CourseCo, Inc., a California corporation ("**CourseCo**"), in form and substance satisfactory to City (the "**CourseCo Agreement**") attached hereto as **Exhibit F**, pursuant to which Tenant has contracted with CourseCo to manage the daily operations of the Premises and supervise the operations and the employees at the Premises, all in accordance with the terms and conditions of this Lease. The Parties acknowledge that City is relying on the special skill, experience and expertise of CourseCo and the principals and employees of CourseCo as a material consideration for entering into this Lease. Accordingly, Tenant shall not terminate, amend, or allow the expiration or termination of the CourseCo Agreement, or any change in "control" (as defined in **Section 16.1**) of the CourseCo Agreement, during the Term without the prior written consent of City, which consent shall be governed by this **Article 16** when such action is in connection with an Assignment.

## **17. DEFAULT; REMEDIES**

### **17.1 Events of Default**

Any of the following shall constitute an event of default ("**Event of Default**") by Tenant under this Lease:

#### **(a) Rent**

Any failure to pay any Rent or other sums as and when due, provided Tenant shall have a period of three (3) days from the effective date of City's written notice of such failure within which to cure any default in the payment of Rent or other sums; provided, however, that City shall not be required to provide such notice regarding Tenant's failure to make such payments when due more than twice during any calendar year, and any such failure by Tenant after Tenant has received two such notices in any calendar year from City shall constitute a default by Tenant under this Lease without any requirement on the part of City to give Tenant notice of such failure or an opportunity to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

**(b) Capital Improvement Fund**

Failure to make any required deposit into the Capital Improvement Fund as required by **Section 8.4**, or any withdrawal from the Capital Improvement Fund which is not in accordance with **Section 8.4**.

**(c) Termination or Amendment of CourseCo Agreement**

Termination, expiration or amendment of the CourseCo Agreement, or a change in control of CourseCo, without City's prior written consent;

**(d) Covenants, Conditions, and Representations**

Any failure to perform or comply with any other covenant, condition, or representation made under this Lease, provided Tenant shall have a period of fifteen (15) days from the effective date of City's written notice of such failure within which to cure such default under this Lease, or, if such default is not capable of cure within such 15-day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion and Tenant uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from City; provided further, however, that upon the occurrence during the Term of two defaults of the same obligation City shall not be required to provide any notice regarding Tenant's failure to perform such obligation, and any subsequent failure by Tenant after Tenant has received two such notices shall constitute a default by Tenant under this Lease without any requirement on the part of City to give Tenant notice of such failure or an opportunity to cure;

**(e) Vacation or Abandonment**

Any vacation or abandonment of the Premises for more than fourteen (14) consecutive days; and

**(f) Bankruptcy**

The appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization, moratorium, or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment, or action is not released, discharged, dismissed, or vacated within sixty (60) days.

**17.2 Remedies**

Upon the occurrence of an Event of Default by Tenant, City shall have the following rights and remedies, in addition to all other rights and remedies available to City at Law or in equity:

**(a) Terminate Lease and Recover Damages**

The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Tenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Base Rent and Additional Charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. City's

efforts to mitigate the damages caused by Tenant's breach of this Lease shall not constitute a waiver of City's rights to recover damages upon termination.

### **(b) Continue Lease and Enforce Rights**

The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as City does not terminate Tenant's right to possession, if Tenant has the right to sublet or assign, subject only to reasonable limitations. For purposes of this Lease, none of the following shall constitute a termination of Tenant's right of possession: acts of maintenance or preservation; efforts to relet the Premises, the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment or Sublease, or terminating an Assignment or Sublease if the withholding or termination does not violate the rights of Tenant specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, from time to time, City may sublet any part of the Premises for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City may deem advisable at its sole discretion, with the right to make alterations and repairs to the Premises. Upon each such subletting, in addition to Base Rent and Additional Charges due under this Lease, Tenant shall be immediately liable for payment to City of the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Base Rent and Additional Charges owing under this Lease for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount to be paid as Base Rent and Additional Charges for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this Subsection shall be deemed a waiver of any Tenant default and, notwithstanding any such subletting without termination, at any time thereafter, City may elect to terminate this Lease for such previous default.

### **(c) Appointment of Receiver**

The right to have a receiver appointed for Tenant upon application by City to take possession of the Premises, operate the business, and apply any revenue collected from the Premises to Rent and other obligations of Tenant under the Lease, and to exercise all other rights and remedies granted to City pursuant to this Lease.

## **17.3 City's Right to Cure Tenant's Defaults**

If Tenant defaults in the performance of any of its obligations under this Lease, then, at any time thereafter, City may remedy such Event of Default for Tenant's account and at Tenant's expense by giving Tenant at least three (3) days' prior oral or written notice (except in the event of an emergency as determined by City, when no such notice shall be required). Promptly upon demand, Tenant shall pay to City, as Additional Rent, all sums expended by City, or other costs, damages, expenses, or liabilities incurred by City, including reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Tenant's obligations under this Section shall survive the termination of this Lease. Nothing in this Lease shall imply any duty of City to do any act that Tenant is obligated to perform under any provision of this Lease, and City's cure or attempted cure of Tenant's Event of Default shall not constitute a waiver of Tenant's Event of Default or any of City's rights or remedies on account of such Event of Default.

## **17.4 Special Administrative Charges.**

Without limiting City's other rights and remedies set forth in this Lease, at law, or in equity, if Tenant (i) constructs or installs any Alteration without City's written approval as

required by **Section 8** (Improvements and Alterations) of this Lease, **(ii)** fails to make a repair required by **Section 9** (Repairs and Maintenance) on a timely basis, or **(iii)** fails to provide evidence of the required insurance coverage described in **Section 19** (Insurance) below on a timely basis, then, upon City's written notice of such failure or unauthorized action, Tenant shall pay, as Additional Charges, the respective amount specified in the table below in consideration of City's administrative cost and expense in providing notice or performing inspections. If Tenant fails to remove the unauthorized Alteration and restore the Premises or perform the necessary repair or provide the necessary document, as applicable, within the time period set forth in such notice and City delivers to Tenant additional written notice requesting such document or evidence of such repair, or performs additional inspections to verify compliance, then Tenant shall pay to City, as Additional Charges, the respective amount specified in the table below for each additional written notice City delivers to Tenant requesting such corrective action.

<u>Violation</u>	<u>Lease Section</u>	<u>Initial inspection and/or notice</u>	<u>Follow up inspection and/or notice</u>
Construction of Alterations that are not approved by City	8	\$700.00	\$800.00
Failure to make required repairs	9	\$600.00	\$700.00
Failure to obtain/maintain insurance	19	\$600.00	\$700.00

Such administrative fees shall be due and payable as Additional Rent. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the administrative cost and expense that City will incur in connection with providing notices or performing inspections as set forth above and that City's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. City may increase such administrative fees from time to time, but in no event more than once in any calendar year.

## **18. WAIVER OF CLAIMS; INDEMNIFICATION**

### **18.1 Waiver of Claims**

Tenant covenants and agrees that City shall not be responsible for, or liable to Tenant for, and, to the fullest extent allowed by Law, Tenant hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident, or death of any person or loss or damage to any property, in or about the Premises or any other City property, from any cause whatsoever. Nothing in this Lease shall relieve City from liability caused solely and directly by the gross negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental, or punitive damages. Without limiting the foregoing:

(a) Tenant expressly acknowledges and agrees that the Rent payable under this Lease does not take into account any potential liability of City for any consequential or incidental damages including lost profits arising out of disruption to any Improvements or Tenant's uses of the Premises pursuant to this Lease. City would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential or incidental damages

resulting from the acts or omissions of City or its Agents, and Tenant expressly assumes the risk with respect to such acts or omissions. Accordingly, without limiting any of Tenant's indemnification obligations or other waivers contained in this Lease and as a material part of the consideration for this Lease, Tenant fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action against City for consequential and incidental damages (including lost profits), and covenants not to sue for such damages City, its departments, commissions, officers, directors, and employees, and all persons acting by, through or under each of them, arising out of this Lease or the uses authorized by this Lease, including any interference with uses conducted by Tenant pursuant to this Lease regardless of the cause, and whether or not due to the negligence or gross negligence of City or its Agents.

(b) In connection with the foregoing releases, Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Tenant acknowledges that the releases contained in this Lease include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Tenant realizes and acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of California Civil Code Section 1542, or any statute or other similar law now or later in effect. Tenant's releases contained in this Lease shall survive any termination of this Lease.

## **18.2 Tenant's Indemnity**

On behalf of itself and its successors and assigns, Tenant shall Indemnify City and the other Indemnified Parties from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to, or death of a person, including Tenant's Agents and Invitees, or loss of or damage to property (including the SFPUC Facilities) howsoever or by whomsoever caused, occurring in or on the Premises; (b) any default by Tenant in the observation or performance of any of the terms, covenants, or conditions of this Lease to be observed or performed on Tenant's part; (c) the use, occupancy, conduct, or management, or manner of use, occupancy, conduct, or management by Tenant, its Agents, or its Invitees or any person or entity claiming through or under any of them, of the Premises; (d) the condition of the Premises; (e) any construction or other work undertaken by Tenant on or about the Premises whether before or during the Term; or (f) any acts, omissions, or negligence of Tenant, its Agents, or its Invitees, or of any trespassers, in, on, or about the Premises; all regardless of the sole negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Lease and further except only such Losses as are caused exclusively by the gross negligence and intentional wrongful acts and omissions of the Indemnified Parties. The foregoing Indemnity shall include reasonable fees of attorneys, consultants, and experts and related costs and City's costs of investigating any Loss. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim that actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter. Tenant's obligations under this Section shall survive the expiration or sooner termination of the Lease.

## **19. INSURANCE**

### **19.1 Tenant's Insurance**

Throughout the Term of this Lease, Tenant shall procure and maintain at its expense, and cause any contractor performing work on the Premises to procure and maintain at its expense, insurance in the following amounts and coverages:

#### **(a) Property Insurance**

Tenant shall procure and maintain property insurance, on the Improvements, personal property, merchandise, and equipment related to the business, on an all-risk form for one hundred percent (100%) of the full insurable value of the Premises including the Improvements with any deductible not to exceed Ten Thousand Dollars (\$10,000) each occurrence. Such insurance shall include Tenant and City as their respective interests may appear. Tenant shall further procure and maintain business income (business interruption) insurance and extra expense coverage with coverage amounts that will reimburse Tenant for all direct or indirect loss of income and charges and costs incurred arising out of all perils insured against by Tenant's property insurance coverage, including prevention of, or denial of use of or access to, all or part of the Premises, as a result of those perils. Such insurance shall also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion. The business income and extra expense coverage shall be issued by the insurer that issues Tenant's all-risk property insurance, shall provide coverage for no less than twelve (12) months of the loss of income, charges, and costs contemplated under the Lease and shall be carried in amounts necessary to avoid any coinsurance penalty that could apply. “**Full insurable value**” shall (i) mean the actual replacement cost of the Improvements (excluding foundation and excavation costs but without deduction for physical depreciation) and (ii) be determined at the inception, and each renewal of, policy coverage by the insurer(s) selected and paid by Tenant and reasonably acceptable to City; provided, however, that, at any time, City may ascertain the full insurable value at its own expense, except that if such full insurable value exceeds the value of the then existing amount of insurance coverage procured by Tenant, Tenant shall pay the expense of determining the full insurable value.

#### **(b) Boiler and Machinery Insurance**

Tenant shall procure and maintain boiler and machinery insurance, commercial form, covering damage to pressure vessels, heating and air conditioning systems, electrical apparatus, and similar property in an amount not less than One Million Dollars (\$1,000,000) each accident, including Tenant and City as named insureds as their respective interests may appear, with any deductible not to exceed Ten Thousand Dollars (\$10,000) each accident.

#### **(c) Commercial General Liability Insurance**

Tenant shall procure and maintain and cause any contractor performing work on the Premises to procure and maintain commercial general liability insurance with limits not less than Three Million Dollars (\$3,000,000) each occurrence combined single limit for bodily injury and broad-form all perils property damage, including contractual liability, independent contractors, liquor liability, personal injury, products, completed operations, and no exclusion for explosion, collapse and underground (XCU).

#### **(d) Builder's Risk Insurance**

During construction of any Alteration consisting of construction or modification of a structure and costing more than One Hundred Thousand Dollars (\$100,000), Tenant shall



procure and maintain or cause its contractor to procure and maintain builder's risk insurance on an all-risk form for one hundred percent (100%) of the completed value of the Alteration, including materials in transit and storage off-site, if such construction is beyond the scope of the coverage in Tenant's property policy for remodeling or renovation. Such policy shall name as insureds Tenant, City, any contractor in connection with such construction and subcontractors of all tiers, with any deductible not to exceed Ten Thousand Dollars (\$10,000) each occurrence. Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed

**(e) Worker's Compensation Insurance**

Tenant shall procure and maintain and cause any contractor performing work on the Premises to procure and maintain workers' compensation insurance in statutory amounts, with employer's liability coverage not less than One Million Dollars (\$1,000,000) each accident. Regarding workers' compensation, Tenant waives subrogation which any insurer of Tenant may acquire from Tenant by virtue of the payment of any loss. Tenant shall include in any contract between Tenant and a contractor for work to be performed on the Premises a provision by which the contractor waives subrogation which any insurer of the contractor may acquire from the contractor by virtue of the payment of any workers' compensation loss. Each workers' compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Tenant and its Agents related to this Lease or the Premises.

**(f) Business Automobile Liability**

Tenant shall procure and maintain and cause any contractor performing work on the Premises to procure and maintain business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including owned, non-owned, and hired vehicles as applicable, if Tenant or the contractor uses or causes to be used any vehicles in connection with its use of the Premises.

**(g) Environmental Pollution Liability**

Tenant shall procure and maintain during the Term, and shall cause any contractor performing Hazardous Material Remediation on the Premises to procure and maintain, pollution legal liability, environmental remediation liability and other environmental insurance, including coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; Environmental Damages; property damage including but not limited to physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense costs, charges and expenses incurred in the investigation, adjustment of defense claims for such compensatory damages; sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of Hazardous Material into or upon the Premises, other City property, Tenant's Alterations, the atmosphere or watercourse or body of water, which results in Environmental Damages; transportation coverage for the hauling of any Hazardous Material by Tenant or Tenant's contractors or Agents, from the Premises to the final disposal location; and first party environmental remediation that pays for the cost of cleanup and remediation of the Premises or any Alterations required to comply with all applicable Laws. Such insurance shall be endorsed to provide third party disposal site coverage that covers third party bodily injury, property damage and cleanup coverage for pollution conditions emanating from a disposal site or landfill used by the Tenant or Tenant's Agents. Tenant shall maintain limits no less than: One Million Dollars (\$1,000,000) per accident and Two Million Dollars (\$2,000,000) annual aggregate for bodily injury and property damage. The City and its officers, commissioners, agents, volunteers and employees shall be included as additional insureds and as

loss payees under the pollution legal liability/environmental remediation/cleanup liability insurance policy.

(h) Licensed professionals (i.e., architects, engineers, certified public accountants, etc.) shall provide professional liability insurance with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided to Tenant under this Lease or to the Premises.]

**(h) Other Insurance**

City reserves the right to change amounts and types of insurance as permitted use of the property may change from time to time.

**19.2 General Requirements**

(a) All insurance provided for under this Lease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by City.

(b) Should any of the required insurance be provided under a claims-made form, Tenant shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, such claims shall be covered by such claims-made policies.

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall be double the occurrence or claims limits specified above.

(d) All liability insurance policies required by this Lease shall be endorsed to:

(i) Name City, its officers, agents, and employees, as additional insureds, as their respective interests may appear with respect to the Premises or under this Lease.

(ii) Provide that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limit of liability.

(e) Each insurance policy required pursuant to **Section 19.1** (Tenant's Insurance) shall be issued by an insurance company licensed in the State of California and with a general policyholders' rating of "A-" or better and a financial size ranking of "Class VIII" or higher in the most recent edition of Best's Insurance Guide.

(f) All insurance policies required to be maintained by Tenant under this Lease shall be endorsed to provide written notice of cancellation, material reduction in coverage, or material depletion of insurance limits for any reason, including intent not to renew or to reduce coverage to both Tenant and City. Tenant shall provide a copy of any notice of intent to cancel or materially reduce, or cancellation, material reduction, or depletion of, its required coverage to City within one business day of Tenant's receipt and take prompt action to prevent cancellation, material reduction, or depletion of coverage, reinstate or replenish the cancelled, reduced, or depleted coverage, or obtain the full coverage required by **Section 19.1** (Tenant's Insurance) from a different insurer meeting the qualifications of this Section.

### **19.3 Proof of Insurance; Failure to Provide**

On or before the Commencement Date, Tenant shall deliver to City certificates of insurance and additional insured policy endorsements from insurers evidencing the coverages required by this Lease in a form satisfactory to City, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates thereafter at least ten (10) days before the expiration dates of expiring policies. Tenant and its contractors shall submit or cause their respective insurance brokers to submit requested information through the Exigis insurance verification program designated by City or any successor program used by City for verification of tenant and contractor insurance coverage. If Tenant or its contractors fail to procure required insurance, or to deliver such policies, certificates or information, at its option, City may procure the same for Tenant's account, and Tenant shall pay City the resulting cost within five (5) business days after delivery to Tenant of invoices reflecting the amounts so paid by City.

### **19.4 Review of Insurance Requirements**

Tenant and City shall periodically review the limits and types of insurance carried pursuant to **Section 19.1** (Tenant's Insurance). If the general commercial practice in the City and County of San Francisco is to carry insurance in an amount or coverage materially greater than the amount or coverage then being carried by Tenant with respect to risks comparable to those associated with the Premises, then, at City's option, Tenant shall increase at its sole cost the amounts or coverages carried by Tenant to conform to such general commercial practice.

### **19.5 No Limitation on Indemnities**

Tenant's compliance with the provisions of this Section shall not relieve or decrease in any way Tenant's indemnification obligations under **Sections 18.2** (Tenant's Indemnity) and **23.2** (Tenant's Environmental Indemnity), or any of Tenant's other obligations or liabilities under this Lease.

### **19.6 Lapse of Insurance**

Notwithstanding anything to the contrary in this Lease, at City's sole and absolute discretion, City may elect to terminate this Lease upon the lapse of any required insurance coverage by written notice to Tenant.

### **19.7 City's Self Insurance**

Tenant acknowledges that City self-insures against casualty, property damage and public liability risks and agrees that City may at its sole election, but shall not be required to, carry any third party insurance with respect to the Premises or otherwise.

### **19.8 Waiver of Subrogation**

Notwithstanding anything to the contrary in this Lease, City and Tenant (each a "**Waiving Party**") each hereby waives any right of recovery against the other Party for any loss or damage relating to the Premises or any operations or contents in or on the Premises, whether or not such loss is caused by the fault or negligence of such other Party, to the extent such loss or damage is covered by any insurance policy that is required to be purchased by the Waiving Party under this Lease (or would have been covered had such Waiving Party carried the required insurance) or is actually covered by any insurance policy held by the Waiving Party or its agents. Each Waiving Party agrees to obtain a waiver of subrogation rights endorsement from applicable

insurance carriers issuing policies relating to the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

## **20. ACCESS BY CITY**

### **20.1 Access to Premises by City**

#### **(a) General Access**

City reserves for itself and its designated Agents the right to enter any portion of the Premises at all reasonable times upon not less than forty-eight (48) hours' oral or written notice to Tenant (except in the event of an emergency) for any purpose.

#### **(b) Emergency Access**

In the event of any emergency, as determined by City, at its sole option and without notice, City may enter the Premises and alter or remove Tenant's Personal Property and any Improvements, including any Alterations, on or about the Premises. City may use any and all means City considers appropriate to gain access to any portion of the Premises in an emergency. In such case, City shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from any portion of the Premises.

#### **(c) No Liability**

City shall not be liable in any manner, and Tenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of City's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of City or its Agents and not contributed to by the acts, omissions, or negligence of Tenant, its Agents, or its Invitees.

#### **(d) No Abatement**

Tenant shall not be entitled to any abatement in Rent if City exercises any rights reserved in this Section.

#### **(e) Minimize Disruption**

City shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Tenant's use of the Premises pursuant to this Lease.

### **20.2 Pipeline and Utility Installations**

Without limiting **Section 20.1** (Access to Premises by City), at all times, City may enter upon the Premises upon forty-eight (48) hours' advance, written or oral notice (except in cases of emergency as determined by City), to inspect, use, install, construct, repair, maintain, operate, replace, and remove SFPUC Facilities or any other public utility facilities. City shall bear the expense of any such activities, unless the need is occasioned by the acts, omissions, or negligence of Tenant, its Agents, or its Invitees. City shall not be responsible for any temporary loss or disruption of Tenant's use of the Premises occasioned by any such facility installations or other activities.

### **20.3 Roadways**

City and its Agents may enter upon and pass through and across the Premises on any existing or future roadways and as City otherwise determines necessary or appropriate for purposes related to the inspection, operation, construction, maintenance, repair, or replacement of the SFPUC Facilities.

## **21. ESTOPPEL CERTIFICATES**

From time to time during the Term, upon not less than twenty (20) days' prior, written request from a Party, the other Party shall execute, acknowledge, and deliver to the requesting Party, or such persons or entities designated by such requesting Party, a statement in writing certifying: (a) the Expiration Date of this Lease; (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications); (c) that there are no known defaults under this Lease (or if so, specifying the same); and (d) the dates, if any, to which the Rent has been paid. Any such certificate shall be in one of the forms attached as **Exhibit C**, and may be relied upon by the requesting Party or any prospective purchaser or Encumbrancer of its estate. The General Manager shall be authorized to execute, acknowledge, and deliver any such certificates requested of City.

## **22. SURRENDER**

### **22.1 Surrender of the Premises**

Upon the Expiration Date or any earlier termination of this Lease pursuant to its terms, Tenant shall surrender to City the Premises, in good condition, order, and repair, free from debris and hazards, and free and clear of all liens, easements, and other Encumbrances created or suffered by, through, or under Tenant. On or before the Expiration Date or any earlier termination of this Lease, at its sole cost, Tenant shall remove from the Premises any and all of Tenant's Personal Property and any Improvements installed by or for Tenant that City has required in writing be removed from the Premises. In addition, at its sole expense, Tenant shall repair any damage to the Premises resulting from the removal of any such Tenant's Personal Property and Improvements and restore the Premises to their condition immediately prior to the presence of such items. In connection with any such repair, Tenant shall obtain any and all necessary permits and approvals, including any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal, or restoration work required by this Lease. Tenant's obligations under this Section shall survive the expiration or other termination of this Lease. At City's option, any items of Tenant's Personal Property remaining on or about the Premises after the Expiration Date or sooner termination of this Lease may be deemed abandoned and, in such case, City may assume ownership of such property or dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law.

If Tenant fails to surrender the Premises to City on the Expiration Date or earlier termination of the Term as required by this Section, Tenant shall Indemnify City against all resulting Losses, including Losses incurred by a succeeding tenant resulting from Tenant's failure to surrender the Premises as required by this Section.

Tenant hereby waives any and all rights, benefits, or privileges of the California Relocation Assistance Law, California Government Code Sections 7260 et seq., the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Sections 4601 et seq., or under any similar Law now or hereafter in effect, except as provided in **Section 15** (Eminent Domain).

## **22.2 Automatic Reversion**

Upon the Expiration Date or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Tenant or City, become City's property, free and clear of all liens and Encumbrances and without payment therefor by City and shall be surrendered to City upon such date. Upon or at any time after the date of termination of this Lease, if requested by City, Tenant shall promptly deliver to City, without charge, a quitclaim deed to the Premises suitable for recordation and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Tenant's leasehold estate under this Lease and to effect such transfer or vesting of title to the Premises.

## **23. HAZARDOUS MATERIAL**

### **23.1 No Hazardous Material**

Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated, or disposed of in, on, or about the Premises or any Alterations or transported to or from the Premises or any Alterations. Notwithstanding the foregoing, Tenant is permitted to bring onto the Premises (i) motorized vehicles, containing fuel in the fuel tanks and motor oil, for the authorized uses described in this Lease, and (ii) fertilizer, pesticides and other materials and products that may contain material considered hazardous, of such types and in such quantities as are necessary for golf course operation, maintenance, construction or repair purposes, provided that any such products and materials shall be used, stored, and disposed of with due care, in compliance with all applicable Environmental Laws, all applicable provisions of this Lease (including an IPM plan approved in accordance with **Section 7.2(j)**), and SFPUC's reasonable requirements. Any storage of fuel on the Premises, other than in vehicle fuel tanks, shall require SFPUC's prior written consent, which may be granted or withheld at SFPUC's sole discretion. Tenant shall immediately notify City if and when Tenant learns or has reason to believe there has been any Release of Hazardous Material in, on, or about the Premises or any Alterations. From time to time, City may request that Tenant provide adequate information for City to determine that any Hazardous Material permitted by this Lease is being handled in compliance with all applicable Environmental Laws, and Tenant shall promptly provide all such information. Without limiting **Section 20** (Access by City), City and its Agents may inspect the Premises for Hazardous Material and compliance with the provisions of this Lease at all reasonable times upon reasonable, advance, oral or written notice to Tenant (except in the event of an emergency).

### **23.2 Tenant's Environmental Indemnity**

If Tenant breaches any of its obligations contained in **Section 23.1** (No Hazardous Material), or, if any act, omission, or negligence of Tenant or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under, or about the Premises (including any existing Improvements on the Premises), any Alterations, or any other City property, without limiting Tenant's general Indemnity contained in **Section 18.2** (Tenant's Indemnity), Tenant, on behalf of itself and its successors and assigns, shall Indemnify City and the Indemnified Parties, and each of them, from and against all Hazardous Material Claims arising during or after the Term and relating to such Release. The foregoing Indemnity includes all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or any other City property to its prior condition including fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other City property. Without limiting the foregoing, if Tenant or any of Tenant's Agents or Invitees, causes or permits the Release of any Hazardous Material in, on, under, or about the Premises or any other City property, immediately and at no expense to City, Tenant shall take any and all appropriate actions to return the Premises or other City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in

accordance with all Environmental Laws. Tenant shall provide City with written notice of, and afford City a full opportunity to participate in, any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

## **24. SECURITY DEPOSIT**

### **24.1 Security Deposit**

On or before the Effective Date, Tenant shall pay to City the sum specified for the security deposit in the Basic Lease Information as security for the faithful performance of all terms, covenants, and conditions of this Lease. City may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises or SFPUC Facilities caused by Tenant, its Agents, or its Invitees to pay any fines assessed against Tenant under this Lease, or for any other failure of Tenant to perform any other terms, covenants, or conditions contained in this Lease, without waiving any of City's other rights and remedies under this Lease, at Law, or in equity. Should City use any portion of the security deposit to cure any Event of Default by Tenant or pay any fine of Tenant, then Tenant shall immediately replenish the security deposit to the original amount, and Tenant's failure to do so within five (5) days of City's request shall constitute a material Event of Default under this Lease. City's obligations with respect to the security deposit are solely that of debtor and not trustee. City shall not be required to keep the security deposit separate from its general funds, and Tenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Tenant's liability for the performance of any of its obligations under this Lease.

### **24.2 Performance Bond; Letter of Credit**

In lieu of, or in replacement of, the security deposit provided in **Section 24.1** above, Tenant may deliver to City at any time during the Term a "clean" (i.e. unconditional), irrevocable letter of credit issued by a financial institution acceptable to SFPUC's General Manager and in form approved by the City Attorney with an original term of no less than one year and automatic extensions through the end of the Term of this Lease and thirty (30) days thereafter. Tenant shall keep such letter of credit, at its expense, in full force and effect until the sixtieth day after the Expiration Date or other termination hereof, to insure the faithful performance by Tenant of all of the covenants, terms and conditions of this Lease. Such letter of credit shall provide thirty (30) days' prior written notice to City of cancellation or material change thereof. In the event of any non-extension of the letter of credit, Tenant shall replace such security with another form permitted hereunder at least ten (10) days prior to expiration and if Tenant fails to do so City shall be entitled to present its written demand for payment of the entire face amount of such letter of credit and to hold the funds so obtained as the Security Deposit required hereunder. Any unused portion of the funds so obtained by City shall be returned to Tenant upon replacement of the letter of credit or deposit of cash security in the full amount required hereunder.

## **25. GENERAL PROVISIONS**

### **25.1 Notices**

Except as otherwise expressly provided in this Lease, any notice, consent, request, or approval given under or pursuant to this Lease shall be effective only if in writing and given by delivering such notice, consent, request, or approval in person or by sending it first-class or certified mail with a return receipt requested or via reliable commercial overnight courier, return receipt requested, with postage prepaid, to: **(a)** Tenant **(i)** at Tenant's address(es) set forth in the Basic Lease Information, if sent before Tenant's taking possession of the Premises, or **(ii)** at the Premises if sent on or subsequent to Tenant's taking possession of the Premises, or **(iii)** at any

place where Tenant or any Agent of Tenant may be found if sent subsequent to Tenant's vacating, abandoning, or surrendering the Premises; or (b) City at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other Party in accordance with the provisions of this Section at least ten (10) days before the effective date of such change. A properly addressed notice, consent, request, or approval transmitted by one of the foregoing methods shall be deemed received upon the confirmed date of delivery, attempted delivery, or rejected delivery, whichever occurs first. Any facsimile numbers provided are for convenience of communication and neither Party may give an official or binding notice, consent, request, or approval by facsimile. The effective time of a notice, consent, request, or approval shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice, consent, request, or approval.

## **25.2 No Implied Waiver**

No failure by City to insist upon the strict performance of any Tenant obligation under this Lease or to exercise any right, power, or remedy arising out of a breach, irrespective of the length of time for which such failure continues, no acceptance of full or partial Base Rent or Additional Charges during the continuance of any such breach, or possession of the Premises before the expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of City's right to demand strict compliance with such term, covenant, or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision of this Lease shall affect any other default or performance, or cover any other period of time, other than the default, performance, or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision of this Lease shall not be deemed to be a waiver of a subsequent default or performance. City's consent given in any instance under the provisions of this Lease shall not relieve Tenant of any obligation to secure City's consent in any other or future instance under this Lease.

## **25.3 Amendments**

Neither this Lease, nor any term or provision of this Lease, may be changed, waived, discharged, or terminated, except by a written instrument signed by the Parties.

## **25.4 Authority**

If Tenant signs as a corporation, partnership, or limited liability company, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has done and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon City's request, Tenant shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

## **25.5 Joint and Several Obligations**

The word "**Tenant**" as used in this Lease shall include the plural as well as the singular. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several.

## **25.6 Interpretation of Lease**

The captions preceding the sections and subsections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated



at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Lease and has been drafted through a cooperative effort of both Parties, with both Parties having the opportunity to have the Lease reviewed and revised by legal counsel. Accordingly, neither Party shall be considered the drafter of this Lease and this Lease shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice, or to undertake any other action occurs on a Saturday, Sunday, or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word “**including**” or similar words shall not be construed to limit any general term, statement, or other matter in this Lease, whether or not language of non-limitation, such as “without limitation” or similar words, are used. Unless otherwise provided in this Lease, whenever City’s consent is required to be obtained by Tenant pursuant to this Lease, City may give or withhold such consent at its sole and absolute discretion.

### **25.7 Successors and Assigns**

Subject to the provisions of **Section 16** (Assignment and Subletting), the terms, covenants, and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise provided in this Lease, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment, or transfer by City (or by any subsequent landlord) of its interest in the Premises as owner or lessor, including any transfer by operation of Law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment, or transfer.

### **25.8 Brokers**

Except as identified in the Basic Lease Information, neither Party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection with the leasing of the Premises, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with this Lease. Accordingly, any such commission or finder's fee, if due, shall be paid pursuant to a separate written agreement between such broker and the Party through which such broker contracted. If any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings, or communication, the Party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other Party from any and all Losses incurred by the indemnified Party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

### **25.9 Severability**

If any provision of this Lease or the application of such provision to any person, entity, or circumstance shall be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by Law, except to the extent that enforcement of this Lease without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Lease.

### **25.10 Governing Law**

This Lease shall be construed and enforced in accordance with the Laws of the State of California and the City’s Charter.

### **25.11 Entire Agreement**

This instrument (including all attached exhibits referenced in this instrument, which are made a part of this Lease) contains the entire agreement between the Parties concerning the subject matter of this Lease and, except for the Original Lease (which will be terminated effective upon the Commencement Date of this Lease) and any surviving obligations under such Original Lease, supersedes all prior written or oral negotiations, discussions, understandings, and agreements. The Parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts and any changes from such drafts) may be introduced in any judicial, administrative, or other legal proceeding involving this Lease. Tenant hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth in this Lease, and no rights, easements, or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth in this Lease.

### **25.12 Attorneys' Fees**

If either City or Tenant fails to perform any of its obligations under this Lease or if a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting Party or the non-prevailing Party in such dispute, as the case may be, shall pay the prevailing Party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing Party in connection with the prosecution or defense of such action and enforcing or establishing its rights under this Lease (whether or not such action is prosecuted to a judgment). For purposes of this Lease, reasonable attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" shall also include all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the Parties, which may include printing, duplicating, and other expenses, air freight charges, hiring of experts and consultants, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

### **25.13 Holding Over**

Any holding over by or on behalf of Tenant after the expiration of the Term with City's express consent shall be construed to automatically extend the Term on a month-to-month basis with ongoing adjustments in Base Rent on each Adjustment Date as set forth in **Section 5.2** (Adjustments in Base Rent) or at such other Base Rent as determined by City as part of its consent, and shall otherwise be on the terms and conditions specified in this Lease so far as applicable (except for those pertaining to the Term). Any holding over without City's consent shall constitute a default by Tenant, shall be at a Base Rent equal to 150% of the Base Rent in effect at the start of the Holdover, and shall entitle City to exercise any or all of its remedies as provided in this Lease, notwithstanding that City may elect to accept one or more payments of Rent.

### **25.14 Time of Essence**

Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

### **25.15 Cumulative Remedies**

All rights and remedies of either Party set forth in this Lease shall be cumulative, except as may otherwise be provided in this Lease.

### **25.16 Financial Statements.**

Within 45 days after the end of each Lease Year, Tenant shall provide to City a balance sheet and a detailed profit and loss statement for the Premises for the preceding Lease Year, and a detailed accounting of Gross Revenues and of the Capital Improvement Fund for the preceding Lease Year, all audited by an independent certified public accounting firm approved by City and in form acceptable to City.

### **25.17 Transition Procedures.**

Upon the expiration of the Term or earlier termination of this Lease, for whatever reason, Tenant and City shall do the following (and the provisions of this **Section 25.17** shall survive the expiration or termination of this Lease until they have been fully performed) and, in general, shall cooperate in good faith to effect an orderly transition of the management of the Premises.

#### **(a) Transfer of Licenses.**

Upon the expiration or earlier termination of the Lease, Tenant shall use its best efforts (i) to transfer to City or City's nominee all licenses, operating permits and other governmental authorizations and all contracts which City elects to assume, including contracts with governmental or quasi-governmental entities and management contracts, that may be necessary for the operation of the Premises and completion of any repairs, maintenance, or Alterations (collectively, "**Licenses**"), or (ii) if such transfer is prohibited by law or City otherwise elects, to cooperate with City or City's nominee in connection with the processing by City or City's nominee of any applications for, all Licenses; provided, in either case, that the costs and expenses of any such transfer or the processing of any such application shall be paid by City or City's nominee.

#### **(b) Leases and Concessions.**

Tenant shall assign to City or City's nominee simultaneously with the termination of this Lease, and the assignee shall assume, all leases, subleases, and concession agreements in effect with respect to the Premises then in Tenant's possession which City or City's nominee elects to assume.

#### **(c) Books and Records.**

All books and records for the Premises kept by Tenant shall be delivered promptly to City or City's nominee, simultaneously with the termination or expiration of this Lease, but such books and records shall thereafter be available to Tenant at all reasonable times for inspection, audit examination, and transcription for a period of one year and Tenant may retain (on a confidential basis) copies or computer records thereof.

#### **(d) Tenant's Personal Property.**

Tenant shall negotiate in good faith with City or City's nominee for the sale of all or any portion of Tenant's Personal Property which City or City's nominee elects to purchase.

### **25.18 Survival of Indemnities**

Termination of this Lease shall not affect the right of either Party to enforce any and all indemnities and representations and warranties given or made to the other Party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination of this Lease. Tenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, Tenant has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim that actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter.

### **25.19 Relationship of Parties**

City is not a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant, and none of the provisions in this Lease shall be deemed to render City as such a partner, joint venturer, or member. Neither Party shall act as the agent of the other Party in any respect with regard to this Lease, and, except as specifically provided in this Lease, neither Party shall have any authority to commit or bind the other Party without such Party's consent as provided in this Lease. This Lease is not intended nor shall it be construed to create any third-party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Lease by City does not constitute City's authorization or approval of any activity conducted by Tenant on, in, or relating to the Premises.

### **25.20 Transfer by City**

If City sells or otherwise transfers the Premises, City shall be released from its obligations under this Lease arising on or after the date of such sale or transfer and Tenant shall look solely to City's successor-in-interest with respect to the Premises. Upon City's sale of the Premises, Tenant shall attorn to the purchaser or transferee, such attornment to be effective and self-operative without the execution of any further instruments on the part of the parties to this Lease. This Lease shall not be deemed to constitute any commitment by City, or create any priority or right in favor of Tenant, with regard to any future sale or other disposition of all or any part of the Premises.

### **25.21 Recording**

Tenant shall not record this Lease nor any memorandum or short form of this Lease in the Official Records.

### **25.22 Non-Liability of City Officials, Employees, and Agents**

No elective or appointive board, commission, member, officer, employee, or other Agent of City shall be personally liable to Tenant or its successors and assigns for any City default or breach or for any amount that may become due to Tenant or its successors and assigns, or for any obligation of City under this Lease.

### **25.23 Wages and Working Conditions**

Tenant agrees that any person performing labor in connection with any Alteration at the Premises that is a "public work or improvement," as defined under Section 6.22(e) of the San Francisco Administrative Code or a "public work" as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds or the

equivalent of public funds) shall be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(e) of the San Francisco Administrative Code, and shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco County. Tenant shall include in any contract for such Alterations a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the Premises.

Tenant shall also pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, prevailing wages for the following activities and services on the Premises as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: Janitorial Services (as defined in Section 21C.2), Theatrical Services (as defined in Section 21C.4), Trade Show and Special Event Work (as defined in Section 21C.8), and Broadcast Services (as defined in Section 21C.9).

## **25.24 Non-Discrimination in City Contracts and Benefits Ordinance**

### **(a) Covenant Not to Discriminate**

In the performance of this Lease, Tenant agrees not to discriminate against any Tenant employee, any City employee working with Tenant, or any applicant for employment with Tenant, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

### **(b) Subleases and Other Subcontracts**

Tenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of Subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all Subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this Subsection shall constitute a material breach of this Lease.

### **(c) Non-Discrimination in Benefits**

As of the date of this Lease, Tenant does not, and will not during the Term, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

**(d) CMD Form**

As a condition to this Lease, Tenant shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the CMD. Tenant hereby represents that prior to execution of this Lease, **(i)** Tenant executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and **(ii)** the CMD approved such form.

**(e) Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth in this Lease. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

**25.25 Requiring Health Benefits for Covered Employees**

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (“HCAO”), as set forth in San Francisco Administrative Code Chapter 12Q (“**Chapter 12Q**”), including the implementing regulations, as the same may be amended or updated from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Lease as though fully set forth in this Lease. The text of the HCAO is currently available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

**(a)** For each Covered Employee, Tenant shall provide the applicable health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

**(b)** Notwithstanding the above, if Tenant meets the requirements of a “small business” as described in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with Subsection (a) above.

**(c)** Tenant’s failure to comply with the requirements of the HCAO shall constitute a material breach by Tenant of this Lease. If, within thirty (30) days after receiving City’s written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such thirty (30)-day period, Tenant fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, City shall have the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

**(d)** Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify the Purchasing Department when it enters into such a Sublease or Contract and shall certify to the

Purchasing Department that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO by each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor, or Subcontractor fails to comply, City may pursue the remedies set forth in this Section against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that the Contracting Department has first provided Tenant with notice and an opportunity to cure the violation.

(e) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against any employee for notifying City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Tenant shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon City's request, Tenant shall provide reports to City in accordance with any reporting standards promulgated by City under the HCAO, including reports on Subtenants, Contractors, and Subcontractors.

(i) Within five (5) business days after any City request, Tenant shall provide City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, City and its Agents may conduct random audits of Tenant at any time during the Term. Tenant shall cooperate with City in connection with any such audit.

#### **25.26 Notification of Limitations on Contributions**

By its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each entity constituting Tenant; each member of Tenant's board of directors, and Tenant's chief executive officer, chief financial officer, and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Tenant; any subcontractor listed in the contract with City; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Tenant shall provide City with the names of each person, entity, or committee described above.

### **25.27 Preservative-Treated Wood Containing Arsenic**

Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term “preservative-treated wood containing arsenic” shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

### **25.28 No Relocation Assistance; Waiver of Claims**

Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action (including consequential and incidental damages) against, and covenants not to sue, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through, or under each of them, under any Laws, including any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Lease with respect to a Taking.

### **25.29 MacBride Principles - Northern Ireland**

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Lease. By signing this Lease, Tenant confirms that Tenant has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

### **25.30 Conflicts of Interest**

Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of (a) San Francisco Charter Section 15.103; (b) Article III, San Francisco Campaign and Governmental Conduct Code, Chapter 2; and (c) California Government Code Sections 87100 et seq. and Sections 1090 et seq. and certifies that it does not know of any facts that would constitute a violation of said provisions, and agrees that if Tenant becomes aware of any such fact during the Term, Tenant shall immediately notify the City.

### **25.31 Tropical Hardwood and Virgin Redwood Ban**

City urges companies not to import, purchase, obtain, or use for any purpose any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not provide any items to the construction of any Alterations, or otherwise in the performance of this Lease that are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. If Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to



Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

### **25.32 Prohibition of Tobacco Sales and Advertising**

Tenant acknowledges and agrees that no advertising or sale of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product.

### **25.33 Prohibition of Alcoholic Beverage Advertising**

Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product

### **25.34 Consents, Approvals, Elections, and Options**

Whenever this Lease requires or permits the giving by City or SFPUC of any consent or approval, the General Manager of SFPUC, or his or her designee, shall be authorized to provide such consent or approval, except as otherwise provided by applicable law, including City's Charter, or by SFPUC's Real Estate Guidelines. No consent, approval, election or option shall be effective unless given in writing.

### **25.35 Counterparts**

This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

### **25.36 Disclosure**

Tenant understands and agrees that the City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (California Gov't Code Section 6250 et seq.), apply to this Lease and any and all records, information, and materials submitted to the City in connection with this Lease. Accordingly, any and all such records, information, and materials may be subject to public disclosure in accordance with the City's Sunshine Ordinance and the State Public Records Law. Tenant hereby authorizes the City to disclose any records, information, and materials submitted to the City in connection with this Lease.

### **25.37 Food Service Waste Reduction**

Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided in that statute, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated in this Lease by reference and made a part of this Permit as though fully set forth in this Lease. This provision is a material term of this Lease. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting City's other rights and remedies, Tenant agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated

damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

### **25.38 Bottled Drinking Water**

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in San Francisco Environment Code Chapter 24, including the administrative fines, remedies, and implementing regulations provided in that statute, as the same may be amended from time to time. The provisions of Chapter 24 are incorporated by reference and made a part of this Lease as though fully set forth.

### **25.39 Criminal History in Hiring and Employment Decisions**

(a) Unless exempt, Tenant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; “**Chapter 12 T**”), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

(b) Tenant shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all Subtenants to comply with such provisions. Tenant’s failure to comply with the obligations in this Subsection shall constitute a material breach of this Lease.

(c) Tenant and any Subtenants shall not inquire about, require disclosure of, or if such information is received, base an Adverse Action on an applicant’s or potential applicant for employment, or employee’s: (i) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (ii) participation in or completion of a diversion or a deferral of judgment program; (iii) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (iv) a Conviction or any other adjudication in the juvenile justice system; (v) a Conviction that is more than seven years old, from the date of sentencing; or (vi) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Tenant and any Subtenants shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in Subsection (c) above. Tenant and Subtenants shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Tenant and any Subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and any Subtenants shall post the notice prepared by the Office of Labor Standards Enforcement (“**OLSE**”), available on OLSE’s website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese,

and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant and any Subtenants understand and agree that upon any failure to comply with the requirements of Chapter 12T, City may pursue any rights or remedies available under Chapter 12T or this Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Lease.

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact the City's Real Estate Division for additional information. City's Real Estate Division may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

#### **25.40 Vending Machines; Nutritional Standards**

Tenant shall not install or permit any vending machine on the Premises without the prior written consent of the City's Director of Property. Any permitted vending machine must comply with the food nutritional and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9-1(c), as may be amended from time to time (the "**Nutritional Standards Requirements**"). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this **Section 25.40** shall be deemed a material breach of this Lease. Without limiting Landlord's other rights and remedies under this Lease, Landlord shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any restaurant located on the Premises is encouraged to ensure that at least 25% of Meals (as defined in Administrative Code section 4.9-1(b)) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS AND UNTIL A RESOLUTION OF THE SFPUC AND OF THE CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY PASSED APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY AND THE MAYOR APPROVES THE SAME. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY UNDER AND PURSUANT TO THIS LEASE ARE CONTINGENT UPON PASSAGE OF SUCH RESOLUTIONS, AND THIS LEASE SHALL NOT BE EFFECTIVE UNLESS AND UNTIL THE SFPUC AND THE BOARD OF SUPERVISORS APPROVE THIS LEASE, EACH AT THEIR SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS.**

*[SIGNATURES ON FOLLOWING PAGES]*

City and Tenant have executed this Lease in triplicate as of the date first written above.

**CITY:**

**TENANT:**

**CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation

**CRYSTAL SPRINGS GOLF PARTNERS, L.P.**, a California limited partnership

By: \_\_\_\_\_  
HARLAN L. KELLY, JR.  
General Manager  
San Francisco Public Utilities  
Commission

By: \_\_\_\_\_  
  
Its: \_\_\_\_\_  
  
By: \_\_\_\_\_  
  
Its: \_\_\_\_\_

**AUTHORIZED BY**

**SAN FRANCISCO PUBLIC UTILITIES COMMISSION**

Resolution No. \_\_\_\_\_  
Adopted: \_\_\_\_\_

Attested: \_\_\_\_\_  
Secretary

[Board of Supervisors Resolution No. \_\_\_\_\_  
Adopted \_\_\_\_\_]

**APPROVED AS TO FORM:**

**DENNIS J. HERRERA**  
City Attorney

By: \_\_\_\_\_  
Carolyn Johnson Stein  
Deputy City Attorney

## EXHIBIT A

### LEGAL DESCRIPTION OF PREMISES

All that certain real property located in the County of San Mateo, State of California, described as follows:

Portions of Parcel 31 as conveyed by the Spring Valley Water Company to the City and County of San Francisco by deed dated and recorded March 3, 1930, in Volume 491 of Official Records San Mateo County of page 1; said portions being more particularly described as follows:

#### PARCEL 1.

Commencing at a point on the Westerly Right of Way Line of State of California Highway Route 280 opposite Sta. J 454+79.20; which point is South 37° 02' 04" East 868.4 feet measured southerly from the Rancho Line common to the Burlingame and San Mateo Ranchos; thence from said point commence Northerly and on a curve to the left with a radius of 1891 feet, through an angle of 24° 48' 58" with an arc length of 817.04 feet; thence North 65° 57' 00" 118.81 feet intersecting aforementioned San Mateo, Buri-Buri Ranchos line; thence continuing North 65° 57' 00" West 248.53 feet; thence North 71° 59' 04" West 181.74 feet; thence South 8° 00' 56" West 240.00 feet; thence South 0° 39' 48" West 209.07 feet, intersecting said Rancho line; thence South 31° 08' 43" East 2140.91 feet; thence South 37° 02' 04" East 1600.00 feet; thence South 45° 31' 38" East 711.00 feet; thence South 16° 12' 03" East 3064.26 feet: thence South 68° 32' 57" East 1372.46 feet; thence North 50° 29' 32" East 719.35 feet; thence, North 35° 03' 04" West 158.76 feet; thence North 42° 48' 59" West 201.68 feet; thence North 33° 30' 01" West 150.08 feet; thence North 31° 54' 31" West 425.80 feet; thence North 22° 52' 50" West 230.49 feet; thence North 29° 12' 46" West 352.06 feet; thence North 35° 24' 33" West 197.58 feet; thence North 33° 50' 45" West 203.33 feet; thence Northwesterly along a curve to the line right with a radius of 5122 feet, through an angle of 7° 56' 17", an arc length of 709.63 feet, through an angle of 7° 56' 17", an arc [acre?] length of 709.63 feet, and North 26° 37' 53" West 1415.61 feet; thence North 34° 51' 11" West 252.84 feet; thence North 25° 14' 23" West 147.01 feet; thence North 37° 02' 04" West 2847.49 feet to the point of commencement.

## PARCEL 2

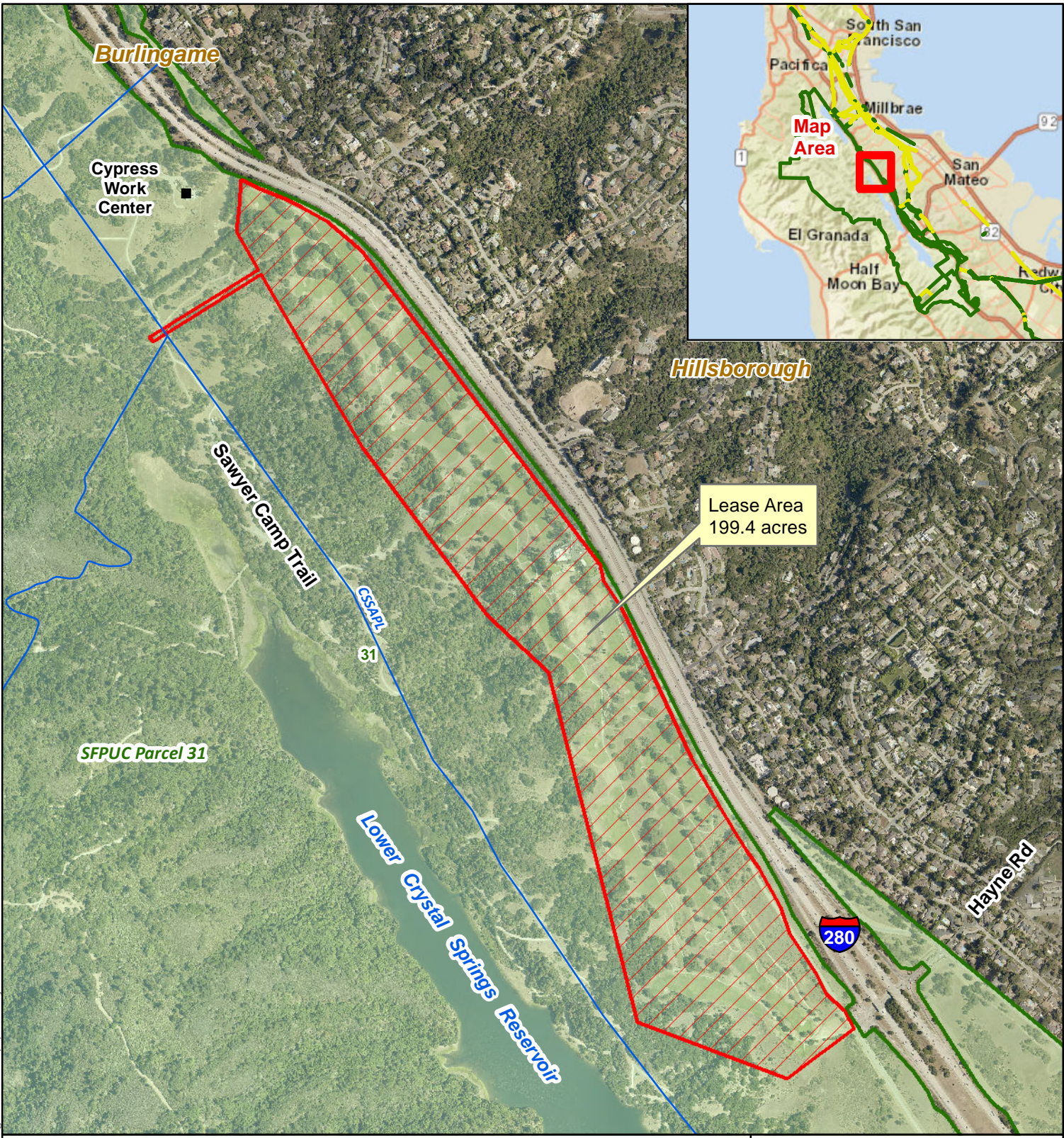
Commencing at a point on the line described as South  $31^{\circ}08'43''$  East 2,140.91 feet in the above-mentioned Parcel 1 and distant thereon 380.00 feet southeasterly from the northerly extremity of said course referred to as south  $31^{\circ}08'43''$  East 2,140.91 feet; thence from said point of commencement South  $53^{\circ}51'17''$  West 1100 feet; South  $36^{\circ}08'43''$  East 40,00 feet; North  $53^{\circ}51'17''$  East 1096.50 feet; North  $31^{\circ}08'43''$ , West 40.15 feet to the point of commencement.

THE ENTIRE AREA HEREBY DEMISED BEING 199 ACRES, MORE OR LESS.

**EXHIBIT B**



**SFPUC DRAWING OF PREMISES**



Drawing No. \_\_\_\_\_



Lease Area  
199.4 acres

**Legend**

-  Area of Lease / License
-  SFPUC Pipelines

-  SFPUC Parcels (Fee Owned)
-  SFPUC Parcels (Easement / Road)



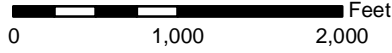
**Hetch Hetchy  
Regional Water System**  
San Francisco Public Utilities Commission  
Real Estate Services

**Lease 3736B to  
Crystal Springs  
Golf Partners**

The City does not guarantee that the information is accurate or complete. The City is not responsible for any damages arising from the use of data. Users should verify the information before making project commitments.

N

Scale 1:14,000



0 1,000 2,000 Feet

Date: 1-5-17 Author: JGL



**EXHIBIT C**

FORM OF ESTOPPEL CERTIFICATES

LANDLORD ESTOPPEL CERTIFICATE

[ADDRESS]

Re: Lease, dated \_\_\_\_\_, 20\_\_ (the “**Lease**”), by and between the City and County of San Francisco, a municipal corporation, acting by and through its Public Utilities Commission (“**City**”), as landlord, and \_\_\_\_\_, a \_\_\_\_\_ (“**Tenant**”), as tenant, relating to certain property located in the County of \_\_\_\_\_, California (the “**Premises**”)

Ladies and Gentlemen:

The undersigned hereby confirms, represents and warrants to Tenant that:

1. Attached is a true and correct copy of the Lease;
2. The Expiration Date of the Lease is \_\_\_\_\_;
3. The Lease is in full force and effect and, except as shown in the attachments to this Certificate, has not been assigned, modified, supplemented, or amended in any way;
4. The Lease represents the entire agreement between Tenant and City with respect to the Premises;
5. To City’s knowledge, on this date, there are no known defaults under this Lease and no event has occurred, which with the giving of notice, the passage of time, or both, would constitute a default by City or Tenant under the Lease [except as set forth in Schedule A attached to this Certificate];
6. All rent amounts due and owing to date have been paid, and no rental, other than for the current month, has been paid in advance [except as set forth in Schedule A to this Certificate];
7. The undersigned executing this estoppel certificate represents and warrants that he or she is duly authorized to execute this certificate on behalf of City.

The truth and accuracy of the certifications contained in this Certificate may be relied upon by Tenant and the addressee set forth above, and their successors and assigns.

Very truly yours

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation, acting through its Public  
Utilities Commission

By: \_\_\_\_\_  
Name:  
Title:  
Date: \_\_\_\_\_

**TENANT ESTOPPEL CERTIFICATE**

[ADDRESS]

Re: Lease, dated \_\_\_\_\_, 20\_\_ (the “**Lease**”), by and between the City and County of San Francisco, a municipal corporation, acting by and through its Public Utilities Commission (“**City**”), as landlord, and \_\_\_\_\_, a \_\_\_\_\_ (“**Tenant**”), as tenant, relating to certain property located in \_\_\_\_\_ County, California (the “**Premises**”)

Ladies and Gentlemen:

The undersigned hereby confirms, represents and warrants to City that:

- 1. Attached is a true and correct copy of the Lease;
- 2. Tenant has accepted possession of the Premises under the Lease;
- 3. The Expiration Date of the Lease is \_\_\_\_\_;
- 4. The Lease is in full force and effect and, except as shown in the attachments to this Certificate, has not been assigned, modified, supplemented, or amended in any way;
- 5. The Lease represents the entire agreement between Tenant and City with respect to the Premises;
- 6. To Tenant’s knowledge, on this date, there are no known defaults under this Lease and no event has occurred, which with the giving of notice, the passage of time, or both, would constitute a default by City or Tenant under the Lease [except as set forth in Schedule A attached to this Certificate];
- 7. All rent amounts due and owing to date have been paid, and no rental, other than for the current month, has been paid in advance [except as set forth in Schedule A to this Certificate];
- 8. The undersigned executing this estoppel certificate represents and warrants that he or she is duly authorized to execute this certificate on behalf of Tenant.

The truth and accuracy of the certifications contained in this Certificate may be relied upon by City and the addressee set forth above, and their successors and assigns.

Very truly yours

[SIGNATURE BLOCK FOR TENANT]

## EXHIBIT D

### Crystal Spring Golf Course

#### Proposed Work

Long-Term Capital Improvements and Cost Estimates (as of May 2016)

(See accompanying map showing project locations by number)

Capital Improvement Budget	Amount
1. Golf Course Entry	\$ 25,000
• Refurbish and paint signage at the property entrance.	
2. Parking Lot Paving	75,000
• Repair cracks and pot holes. Slurry seal and paint upper and lower lots.	
3. Entry Road Paving	85,000
• Repair cracks and pot holes. Slurry seal and paint entry road	
4. Irrigation Pump Station	75,000
• Replace aging pump and motor that supplies irrigation water for the course.	
5. Parking Lot Signage/Lighting	65,000
• Welcome signage and lighting to improve safety and appearance.	
6. Cart Paths	100,000
• Repair existing cart paths throughout the golf course.	
7. Property Signage (not shown on map)	30,000
• Replace and upgrade entire course signage including tee signs.	
8. Trees	50,000
• Remove and structurally prune trees to improve appearance and safety.	
9. Other Improvements to be Determined at a Later Date	495,000
<b>Subtotal</b>	<b>\$ 1,000,000</b>
Soft Costs- 15%	150,000
• Includes planning, design, engineering, insurance, etc.	
Contingency- 10%	100,000
• Allowance for cost over runs and unforeseen expenses	
<b>Total</b>	<b>\$ 1,250,000</b>

## Capital Project Descriptions

### **1. Golf Course Entry**

Refurbish and paint signage at the property entrance. Replace the wedding gate and golf course gate with automatic swinging gate openers to improve appearance and efficiency.

### **2. Parking Lot Paving**

Repair cracks and pot holes. Slurry seal and paint upper and lower lots along with the road down #18. We will update the handicap areas, curbs, and spacing around the entire lot to ensure we follow all state and federal codes.

### **3. Entry Road Paving**

Repair cracks and pot holes. Slurry seal and paint entry road. Replace the entire sidewalk to ensure our patrons can walk safely in and out of property.

### **4. Irrigation Pump Station**

The current pump and motor that supply water to our irrigation lake are old and in need of replacement. This past year we rebuilt the pump and know that the motor will fail soon. We will proactively replace while the current equipment is operational. We would keep the old unit as back up. This will secure a solid and relievable source of irrigation water.

### **5. Parking Lot Signage/Lighting**

Install new modern signage at the property entrance for safety and aesthetics. We will update the driving range lights and parking lot lights to high efficiency bulbs creating better lighting and more efficient use. The "Crystal Springs" welcome sign will be updated to match the rest of the facility.

### **6. Cart Paths**

Repair and resurface cart paths throughout the golf course.

### **7. Property Signage**

Replace and upgrade entire course signage including tee signs. Redesign signs and create consistency and continuity of signage in and around the clubhouse. Purchase new tee yardage signs made of recycled plastic to complement the clubhouse signage.

### **8. Trees**

Remove and structurally prune trees to improve appearance and safety. Consistent with the Migratory Birds Treaty Act, trees will be pruned/ removed outside of the nesting bird season (which extends from February 15-Aug. 15) or, if trimming or removal are proposed during the nesting season, trees to be

trimmed or removed will be inspected by a biologist, to be retained by the Tenant, in advance of work and, if active nests are present, work will be delayed under nestlings have fledged. Continue to structurally prune numerous cypress trees reducing canopy and crown of the trees increasing air flow and sunlight for turfgrass growth. Remove several dead trees leaving stumps in place. Stump grinding and tree replacement shall be subject to subsequent environmental review. .

## EXHIBIT E

### Maintenance Guidelines for Crystal Springs

(See Section 9.1)

Task	Maintenance Guidelines for Crystal Springs
<b>PUTTING GREENS:</b>	
Mowing Frequency	Spring, Summer and Fall. Five to six days per week, if tournament schedule they will be mowed on the seventh day. Winter - Two to three times per week, greens to be rolled on non-mowing days. Weather dependent.
Height of cut	1/8" - 3/16" (may increase during extreme heat).
Changing cups	Daily year round, when open. Pin placement per USGA recommended standards.
General Maintenance	Repair ballmarks, divots, or any other damaged turf on all greens and practice putting greens daily.
Fertilization	Pounds of N per year and other nutrients based on USGA research recommendations. Other nutrients will be based on soil sampling and/or tissue analysis. Foliar application will be worked into overall program. Applications will conform to the Chemical and Hazardous Materials Plan approved by SFPUC and IPM Plan approved by SFPUC pursuant to Lease Section 7.2(j) (" <b>CHAMP/IPM Plan</b> ").
Aerification	Three to five times per year, concentrated in March/April, September/October: Utilizing multiple methods (coring, PlanetAir, verti-drain, solid tine and HydroJect).
Spiking	As needed for compaction control and to improve water infiltration. To be used in conjunction with other forms of greens cultivation.
Top dressing	Topdress using approved material following three major aerifications, to fill aerification holes. Light topdressing as needed to maintain a smooth putting surface.
Vertical mowing	Vertical mowing each month during the growing season. Greens will be topdressed lightly w/sand following.

Task	Maintenance Guidelines for Crystal Springs
Pesticide Usage	Follow the CHAMP/IPM plan. PCA recommendation required, restricted materials use permit and notice of intent may be required. Certified applicator required on site during application.
<b>COLLAR MAINTENANCE:</b>	
Height of cut	1/2" to 3/4", height may vary to seasonal adjustment.
Fertilization	Follow greens program.
Pesticide Usage	Follow the CHAMP/IPM.
<b>TEE MAINTENANCE:</b>	
Mowing Frequency	Two to three times per week in peak season; one to 2 times in off-season, subject to weather.
Height of cut	7/16" to 3/4", height may vary due to seasonal adjustment.
Fertilization	Monthly, with formulation based on soil test and seasonal requirements. All applications will conform to CHAMP/IPM Plan.
Vertical Mowing	Tees will be cultivated (aerified, verticut, sliced and spiked) for grain and thatch control.
Aerification	Minimum two times per year. As needed to stimulate growth and eliminate compaction, solid tines may also be used.
Topdressing	Following aerification and during divot repair in conjunction with seeding.
Overseeding	Perennial rye grass used in conjunction with aerifications. May be broadcast or slice seeded. Tee will be spot seeded for divot replacement.
Tee Markers	Move daily and use program of tee marker/pin placement rotation. All tee equipment will be maintained as needed.
Permanent Yardage Markers	Keep visible at all times
Pesticide Usage	Follow the CHAMP/IPM plan.
<b>FAIRWAY MAINTENANCE:</b>	
Mowing Frequency	Minimum of three times per week in Spring/Summer/Fall: Minimum once per week In the winter as weather permits
Height of cut	1/2" to 3/4" dependent on season
Fertilization	Minimum of three times per year. Formulation based on soil test and in conformance with the CHAMP/IPM Plan.

Task	Maintenance Guidelines for Crystal Springs
Aerification	Minimum of two times per year, additional slicing during the growing season to relieve compaction and increase water infiltration.
Overseeding	An annual fall overseeding program will strengthen fairways, improve the lie of the ball.
Pesticide Usage	Follow the CHAMP/IPM Plan.

**SHOULDER MAINTENANCE:**

Mowing Frequency	Minimum of twice per week, increased frequency as needed.
Height of cut	1-1/4" to 2" dependent on seasonal variance.
Fertilization	Same as fairways
Aerification	Same as fairways.
Overseeding	Seed as necessary to maintain healthy stand of turf.
Pesticide Usage	Follow the CHAMP/IPM Plan.

**IRRIGATION:**

Maintenance	Maintain system, including valves, lateral lines, sprinkler heads and controllers in good repair, functioning properly and conforming to related codes and regulations. Maintain all landscaped and nursery irrigation to the same standard.
Frequency	Irrigate as required to maintain adequate moisture for growth rate and appearance.
Wind problems	In areas where wind creates problems of spraying onto private property or road right of way, operation should occur during periods of lowest wind velocity.
System check	System should be checked daily. Adjust or repair as needed.
Inspection of Controllers	Inspect daily and adjusted weekly or more frequently as required.
Priority water distribution	In the event of water reduction, priority is: 1) greens, 2) tees, 3) fairways, 4) trees, 5) other turf and landscape areas.

**NURSERY:**

Greens	Maintain same as putting green.
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**FORMULATIONS OF MATERIALS USED:**

All materials will be approved prior to use, including but not limited to fertilizers and pesticides. All applications will be in	
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Task	Maintenance Guidelines for Crystal Springs
conformance with CHAMP/IPM Plan filed with City.	
<b>OTHER AREAS:</b>	
Tee Markers	Three sets each hole. Replace immediately if broken or damaged.
Benches/Tee Signs	If vandalized, remove benches and tee signs from service immediately. Repair and replace.
Yard Markers	Replace as needed
Greens flags, poles, cups	Replace when discolored, frayed or well worn.
Ball washers	Check for water/soap daily. Replace tee towels as needed. Remove ball washer immediately if vandalized or broken. Replace with new washer or repair old one.
Sand trap rakes	One rake per trap or more as needed. Replace immediately if missing or broken.
Out of bounds/hazard stakes	Replace immediately if missing or broken. White for OB, red for water and lateral hazards.
Lakes	Aerate ponds for algae control. Weed control as needed by mechanical means or chemical means in conformance with CHAMP/IPM Plan.
Driving range	Keep area clean of debris, trash; edges free of weeds by means not destructive to netting.
Weed Control (Non-selective)	Follow the CHAMP/IPM Plan.
Litter	Remove daily
Trash and debris (from maintenance area)	Remove as it occurs.
Soil, water samples	Soil samples annually. Tissue samples as needed. Water samples minimum once per year and in conformance with CHAMP/IPM Plan.
Rodent Control	Manual control (trapping) will be the principal method. Specific steps will be taken to encourage raptors. Other eradication methods will be addressed in the CHAMP/IPM Plan.
Sand Traps	Keep sand at 4" depth minimum. Keep clean of weeds. When using power rake, stay about one foot from edge of bunker. When hand-raking edge, push sand inward on low side and pull outward on the high side. Edge sand bunkers monthly or as needed. Rake bunkers daily, weather dependent. Do not drag sand out of trap when exiting trap with power rake.

Task	Maintenance Guidelines for Crystal Springs
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Ideally to be raked every day.

Trees	<p>All new trees will be staked and protected from predation by deer and rodents. Keep basins (tree wells) clean and free of debris.</p> <p>Keep trimmed at least 6' from ground to prevent damage to golf cart tops/maintenance equipment. Maintain a safe, healthy and aesthetically pleasing condition at all times. Spray or mow tree wells as needed. Broken limbs to be removed immediately.</p> <p>All new trees will be irrigated to insure proper growth.</p> <p>Tree wells will be kept free of grass until the tree well is removed. No mechanical removal will be allowed; Roundup and Surflan can be used for weed control subject to CHAMP/IPM Plan.</p> <p>Remove damaged or downed trees immediately. Replace with approved species.</p>
Weed Control (Selective)	Follow the CHAMP/IPM Plan.
USGA Green Section visit	<p>Visits scheduled yearly during late summer so staff agronomist can clearly see changes to facility.</p> <p>Recommendations are to be considered and acted upon if appropriate.</p>
Leaf Pickup	Fall leaves to be totally removed from golf courses by January 1st. Needles removed back to drip line.
Vandalism/Graffiti	Graffiti to be removed within 72 hours. Vandalism to be corrected immediately.
Safety	<p>Hard hats, gloves, safety glasses, and all other required safety equipment will be worn. Hard hats must be worn when in or on an open vehicle on the golf course. Accidents must be reported immediately.</p> <p>If an accident occurs on a weekend, a supervisor must be notified. Observe and follow label instructions on chemical containers as to their use. Proper attire must be worn when working with pesticides.</p> <p>Correct all unsafe conditions or report them to your supervisor. Use safety lights on equipment when golfers are present. Clean equipment when finished and check for missing or damaged parts.</p>

**CLUBHOUSE & BUILDINGS:**

Task	Maintenance Guidelines for Crystal Springs
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	Golf staff must view clubhouse areas daily to ensure that areas are being maintained and cleaned properly to include the following. Litter is to be picked up immediately by all staff on site.
Restrooms	Maintain daily or more frequently as needed in a manner to provide a clean and sanitary facility. Management staff to inspect at least twice daily.
Lobby and patio	Vacuumed, dusted and swept daily.
General Maintenance & Repair	Maintain all structural areas and fixtures as needed to ensure proper function, safety and appearance. Mechanical systems to be inspected annually. Filters changed annually.

**ENTRY AREA/CLUBHOUSE GROUNDS:**

Flower beds/Planters	All annual plantings shall be maintained free of all trash, debris, weeds and be maintained and trimmed in a proper manner. Plantings, when appropriate shall be of the native, low water, low cultivation type. Landscape and Habitat Plans will identify appropriate species consistent with goals.
Fences	All fencing surrounding and inside the facility shall be maintained and repaired as necessary. Gates and locks replaced or repaired as needed.
Grass	Mowed weekly.
Trash	Picked up daily.
Foot brushes	Clean and check daily - replace when worn.
Walkways/Cart Paths	Daily, sweep or blow. Cart paths to be edged as needed.
Trash and cigarette cans	Dump daily
Leaks from golf carts	Clean up immediately and inform Pro shop staff of the problem.
Landscape shrubbery	Trim monthly, or as needed.
Annual plantings	Remove and replant as needed.

**PARKING LOTS:**

Sweeping	Monthly - may be done by contractor.
Loose trash and garbage cans	Picked up and checked daily.
Broken glass/bottles	Picked up immediately.

**CORPORATION YARD/FUEL STATIONS:**

Equipment	To be stored in an orderly and consistent fashion. To be cleaned prior to parking. Observe all legal requirements and
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Task	Maintenance Guidelines for Crystal Springs
	safety regulations according to CAL-OSHA
Yard	Maintain maintenance rooms and storage yards in clean, orderly, safe condition at all times, conforming to applicable laws and regulations.
Fuel stations	To remain accessible at all times.
Emergency shutoffs	Employees to know where emergency shutoffs are located.
Spilled fuel	To be cleaned up immediately, using proper techniques.
Employee bulletin board	Kept up-to-date.

**PESTICIDE/MATERIALS STORAGE:**

To be kept in neat and orderly fashion. The site to be approved by the City.

To be kept locked at all times.

Proper recording methods to be used. Only employees with certified applicator's license will be permitted access to facility.

Observe all legal requirements and safety regulations in accordance with CAL-OSHA.

**EXHIBIT F**

**CourseCo Agreement dated March 15, 1996**

(Per Lease Section 16.9)

MANAGEMENT AGREEMENT

This Management Agreement ("Agreement") is made as of March 15, 1996, between Crystal Springs Golf Partners, L.P., a California limited partnership ("Owner"), and CourseCo, Inc., a California corporation ("Manager").

W I T N E S S E T H:

WHEREAS, Owner has been awarded the right to operate the Crystal Springs Golf Course ("Golf Course") pursuant to that certain 12-month management agreement between Owner and the City and County of San Francisco ("City") ("12-Month Management Agreement"); and

WHEREAS, City has selected Owner as the probable recipient of a 20-year lease between Owner and City for the lease of the Golf Course ("20-Year Lease"); and

WHEREAS, the 12-Month Management Agreement and the 20-Year Lease shall be referred to herein as the "Golf Course Lease;" and

WHEREAS, the 12-Month Management Agreement and the right to negotiate for the 20-Year Lease has been awarded to Owner based upon proposals and commitments made by Manager and its affiliates Thomas B. Isaak and John C. Telischak; and

WHEREAS, City conditioned its award of the 12-Month Management Agreement and its selection of Owner as the probable recipient of the 20-Year Lease upon the management of the Golf Course by Manager; and

WHEREAS, Manager and Owner desire to appoint Manager to manage the Golf Course in order, among other things, to ensure that Manager and its affiliates have the authority to manage the Golf Course in a manner consistent with the commitments made by Manager, its affiliates, and the Partnership to the City and County of San Francisco in connection with obtaining the 12-Month Management Agreement and the 20-Year Lease; and

WHEREAS, Manager has been approved and named in that certain limited partnership agreement of Owner (the "Partnership Agreement"), as the manager of the Golf Course on the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

1. Defined Terms. The terms defined in the Partnership Agreement shall have the same meaning when used herein, except as otherwise herein indicated.
2. Designation and Appointment. Owner hereby appoints Manager, and Manager hereby accepts such appointment, as Manager for the Golf Course.
3. Term. The term of this Agreement shall commence on the date hereof and, unless earlier terminated in accordance with the terms of this Agreement shall end upon the termination of the Golf Course Lease and any extensions or renewals thereof. As described in the Recitals, one of the purposes of this Management Agreement is to assure that Manager and its affiliates

are able to fulfill the commitments they made to the City and County of San Francisco in connection with the proposals to manage and lease the Golf Course. Accordingly, the agency created by this Management Agreement is coupled with an interest, and this Management Agreement may not be terminated by Owner, except for a material default by Manager and otherwise in accordance with the terms and conditions of Paragraph 10.

4. Compensation of Manager.

a. Management Fee. Owner shall pay to Manager for its management services hereunder a fee equal to five percent (5%) of Gross Revenues (as defined below) received by Owner from the operations of the Golf Course. Such fee shall be paid on a monthly basis. As used herein, "Gross Revenues" shall have the same meaning as that term is given in the Golf Course Lease.

b. Development Supervision Fee. Owner shall pay Manager a Development Supervision Fee of the Applicable Percentage of the total soft and hard costs incurred in connection with the design, approval, and construction of the Improvements (as defined in the Golf Course Lease). Manager may elect to have this fee paid either (i) in installments as the Owner pays the soft and hard costs for design, approval, and construction of such Improvements, in which case the applicable percentage shall be five percent (5%) or (ii) in the third year of the term of this Management Agreement, in which case the Applicable Percentage shall be ten percent (10%).

5. Management Authority and Responsibility. Manager



shall have the authority and responsibility to manage the Golf Course in all respects, including the following:

- a. Develop and implement an operating plan, including appropriate staffing levels, job descriptions, and organizational structure.
- b. Develop and implement marketing strategies and plans.
- c. Create and implement merchandising plans with recommended inventory and pricing.
- d. Recommend and assist Owner in connection with acquisition of equipment necessary to carry out operational plans, including, but not limited to food, beverage, golf shop, maintenance, and administration.
- e. Develop and implement a strategy for food and beverage service, including menu and pricing.
- f. Supervision of on-site staff and management in the implementation of the operating plan and establishment of budgets.
- g. Supervision and oversight of establishment of accounting and control systems, including management reports, which provide appropriate operating information and comparisons with budget.
- h. Recruitment, interview, and hiring of professional and administrative staff.
- i. Planning and coordination with appropriate contractors to carry out construction undertaken by Owner.

j. Maintenance of active governmental and community relations that affect the operation of the Golf Course.

k. Periodic review of staff performance and provision of appropriate follow up evaluations and personnel decisions.

l. Consultation with Owner concerning improvements to golf course and maximizing profits to Owner.

m. Development of policies, criteria, and pricing for greens fees, tournament play, club membership, and Golf Course use.

n. Development of budgets and plans for the operation of the Golf Course as a whole.

o. Any other functions necessary to the management and operation of the Golf Course and the business related thereto.

6. Obligations of Owner. Owner shall perform the following obligations:

a. Provide the capital and funds necessary to perform the obligations of Owner under the Golf Course Lease and any other projects that Owner wishes Manager to carry out in connection with the Golf Course.

b. Owner shall place on its payroll all Golf Course personnel, including restaurant personnel, golf course professionals, and maintenance staff.

c. Owner shall provide for appropriate accounting services and functions.

7. Management of the Golf Course. During the term of this Agreement, upon and subject to the terms and conditions hereof, Manager shall have the authority and be responsible for the day-to-day maintenance and operation of the Golf Course, which shall be done in accordance with the standards set forth in the Golf Course Lease. Without limiting the generality of the foregoing, Manager's authority and duties hereunder shall include the following:

a. General Maintenance. Manager shall perform, or cause to be performed, all maintenance and repairs to the Golf Course as shall be required (i) by applicable laws, restrictions, regulations, ordinances, requirements, including the requirements of any insurance carriers providing insurance with respect to Owner or the Golf Course (hereafter "applicable laws"), and (ii) to maintain the Golf Course in accordance with prudent standards of property maintenance and in accordance with the terms of the Golf Course Lease. In connection with such maintenance, Manager is authorized to purchase such supplies and to make such Service Contracts (as hereinafter defined) as are necessary and appropriate therefor; provided, however, that each such contract shall provide, unless Owner shall otherwise consent, that such contract shall terminate within thirty (30) days of the termination of this Agreement.

b. Tenant Improvements and Installations. Manager shall perform, or cause to be performed, all of the obligations of Owner, as landlord, required under the Golf Course

Lease. All contracts for construction or other services shall be entered into by Owner.

c. Administration of Contracts. Manager, in the name of Owner, shall enter into any contracts approved and authorized by Owner, shall coordinate the performance of the Owner's obligations under any such contract and shall enforce the other parties' obligations thereunder. In the event any legal action is required to enforce any contract, Manager shall so inform Owner and, upon Owner's request, shall institute such legal action as it deems appropriate, for which purpose Manager may employ competent legal counsel approved by Owner. Any request by Owner shall be reasonable under the circumstances, including the amount at issue and the estimated cost to contest.

d. Insurance. Manager, at Owner's direction and cost, shall obtain and maintain insurance as required by the Golf Course Lease and such other insurance as Owner shall deem reasonably necessary or desirable for the protection of the Golf Course and of the interests of Owner and Manager in connection with the Golf Course. Each policy of insurance shall name at least Owner and Manager as insureds, and the public liability insurance policies shall contain a severability of interest clause and coverage for personal injury. Manager shall cooperate with and provide reasonable access to the Golf Course to agents of any and all insurance companies and/or insurance brokers or agencies who may, from time to time, be involved with the issuance of insurance policies or with inspections of the Golf Course in

connection with insurance policies then in force. Manager shall use its best efforts to comply with any and all requirements of such insurance companies or their agents.

e. Golf Course Lease. Manager shall advise Owner of its obligation to pay promptly when due all rent or other amounts payable to the City under the Golf Course Lease and any and all other obligations required of Owner thereunder.

f. Governmental Reports. Manager shall prepare and file, or cause to be prepared and filed, when due, all reports relating solely to the Golf Course required by the Golf Course Lease and/or by any applicable laws. In connection with unemployment insurance, social security taxes and like taxes and charges, if Owner employs the employees at the Golf Course, Manager shall, unless otherwise instructed by Owner, prepare and file all necessary reports with respect thereto. Manager may, if it deems it to be advisable, make use of the services of Owner's accountants and counsel in the preparation and filing of any such reports.

g. Damage, Injury and Legal Documents. Manager shall promptly notify Owner of any substantial damage to the Golf Course or any personal injury or property damage suffered by any person on or with respect to the Golf Course and Manager's recommendations with respect thereto. Manager shall forward to Owner all summonses, subpoenas and other like legal documents served upon Manager relating to actual or alleged liability of Owner or Manager, together with its recommendations with respect

thereto.

h. Supervision of Legal Activities. Manager shall provide advice and recommendations to Owner in connection with retaining legal counsel on matters which arise in the normal course of business. This shall include advice as to proper procedures for the enforcement of lease terms, the interpretations of legal obligations, and for the protection and enforcement of Owner's rights and duties. Said recommendations to retain counsel should include information on the law firm being proposed, including the estimated cost or fee for the legal services. Either Owner or Manager may request the commencement and prosecution of any legal action or proceeding; counsel shall be selected or approved by the parties hereto for that action or proceeding. Any request by Owner or Manager shall be reasonable under the circumstances, including the amount at issue and the estimated cost to contest.

i. Owner's Funds. Promptly upon receipt thereof, Manager shall deposit funds of Owner in an account or accounts of a type, in form and name and in a bank or banks approved by Owner. Within fifteen (15) days of the end of each month, Owner shall pay Manager the amount of Manager's fee owed for the preceding month.

8. Income and Expenses of the Golf Course. Owner shall be liable for the payment of, and shall pay any and all costs and expenses, of any kind whatsoever, whether seen or unforeseen, in connection with the construction, maintenance and

operation of the Golf Course, including all costs and expenses of Manager arising out of the performance of its duties hereunder.

9. Liability of Manager. Manager shall be liable only for bad faith, gross negligence or breach of an express provision of this Agreement (after notice and failure to cure after a reasonable time), but in other respects shall not be liable for mistakes of judgment.

10. Default. In the event of a Default (as defined below) on the part of either party hereunder, the other party may terminate this Agreement and pursue any or all remedies provided for by law. "Default" shall mean (i) the failure of a party to pay any sum due any party hereto or any third party required by this Agreement, and such failure continues for fifteen (15) days after notice thereof, (ii) the failure of a party to perform, observe or comply with any of the provisions contained in this Agreement, and such party shall fail to commence curing such failure within fifteen (15) days after notice thereof, (iii) the making by a party hereto or any guarantor of a party hereto of an assignment for the benefit of creditors, (iv) the filing by a party hereto or any guarantor of a party hereto of a voluntary petition under any bankruptcy or insolvency law alleging an act of bankruptcy or insolvency or seeking reorganization or any arrangement, and (v) the filing against a party hereto of an involuntary petition alleging an act of bankruptcy or insolvency or seeking reorganization which is not finally dismissed within sixty (60) days after filing. In the event that either party

alleges that the other party is in default hereunder and the other party contests that allegation, such party may commence arbitration pursuant to Paragraph 16, and the commencement of such arbitration, prior to the expiration of the time periods set forth above, shall suspend the termination of this Agreement until the matter is finally determined by arbitration.

11. Notices. Any notice or other communication required or permitted under this Agreement shall be in writing and shall be either personally delivered, transmitted by telecopy, or transmitted by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Owner:                   Crystal Springs Golf Partners, L.P.  
                                  P.O. Box 5668  
                                  Petaluma, CA 94955  
                                  Attn: John C. Telischak

If to Manager:                CourseCo, Inc.  
                                  P.O. Box 5668  
                                  1670 Corporate Circle, Suite 201  
                                  Petaluma, CA 94955  
                                  Attn: Thomas B. Isaak

The date of any notice or communication shall be deemed to be the date of receipt if delivered personally, the date of receipt with confirmed answerback if transmitted by telecopy, or the date seventy-two (72) hours after posting if transmitted by mail. Any party may change the address to which notices or other communications required or permitted under this Agreement shall be sent by providing written notice to the other party in accordance with the foregoing.

12. Construction and Headings. Words of any gender shall be held and construed to include any other gender, and



words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. The terms "include," "includes," "including" and similar terms shall be construed to mean "without limitation." The headings used in this Agreement are for convenience only and are not to be considered in connection with the interpretation or construction of this Agreement.

13. Applicable Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by the laws of the State of California.

14. Waiver. No consent or waiver, express or implied, by either party to or of any breach or default by the other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder.

15. Severability. If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

16. Arbitration or Judicial Reference. In the event of a dispute arising under this Agreement, the matter shall be resolved by arbitration under the jurisdiction and the rules of

the American Arbitration Association in San Francisco, California for the arbitration of commercial disputes. Notwithstanding anything to the contrary, in the event that either party purports to terminate this Agreement for a default of the other party, the party allegedly in default may file arbitration within twenty (20) days after the date of the alleged termination, which filing shall suspend the effect of the termination until the final resolution of the arbitration or agreement of the parties. During the pendency of arbitration, Manager and Owner shall have all of the rights, authority, and obligations provided herein.

17. Attorneys' Fees. Should any litigation or arbitration be commenced between the parties hereto or their representatives or should any party institute any proceeding in a bankruptcy or similar court which has jurisdiction over any other party hereto or any or all of his or its property or assets concerning any provision of this Agreement or the rights and duties of any person or entity in relation thereto, the party or parties prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for his or its or their attorneys' fees and court costs in such litigation, which shall be determined by the court in such litigation or in a separate action brought for that purpose.

18. Assignment by Manager. Manager shall have no right to assign its rights or obligations under this Agreement, except that Manager may assign its rights and obligations to a

management company in which Thomas B. Isaak and/or John C. Telischak owns more than 50% interest and/or over which they exercise effective control.

19. Owner's Approvals. Wherever Owner's approval or consent is required hereunder, Owner agrees not to unreasonably withhold or delay such consent or approval.

20. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.

OWNER: Crystal Springs Golf Partners, L.P.,  
a California Limited Partnership

By: Montgomery Street Golf  
Investors, Inc., a California  
corporation,  
General Partner

By: J. C. Telischak  
Its: CHIEF FINANCIAL OFFICER

MANAGER: CourseCo, Inc.  
a California corporation

By: Isaak  
Its: President