



Edwin M. Lee, Mayor
Philip A. Ginsburg, General Manager

LEASE

between

CITY AND COUNTY OF SAN FRANCISCO, Landlord

and

GOLDEN GATE PARK GOLF FOUNDATION, Lessee

For the Lease and Operation of a Portion of the

Golden Gate Park Golf Course

**located in Golden Gate Park
near the intersection of 47th Avenue and Fulton Street,
San Francisco, California**

_____, 2013

**CITY AND COUNTY OF SAN FRANCISCO
Edwin M. Lee, Mayor**

**SAN FRANCISCO RECREATION and PARK COMMISSION
Mark Buell, President
Allan Low, Vice President
Paige Arata, Commissioner
Gloria Bonilla, Commissioner
Tom Harrison, Commissioner
Meagan Levitan, Commissioner
Lawrence Martin, Commissioner**

Philip A. Ginsburg, General Manager



**RECREATION AND PARK DEPARTMENT
LEASE
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EXHIBITS

- Exhibit A – General Depiction of Premises
- Exhibit B – Recreation and Park Department Rules and Regulations
- Exhibit C – Golf Course Rules
- Exhibit D – Baseline Maintenance Schedule
- Exhibit E – Guidelines for Minimum Required Capital Improvements
- Exhibit F – Mobile Classroom Dimensions and Specifications

RECREATION AND PARK DEPARTMENT

LEASE

THIS LEASE (this "Lease") dated for reference purposes only as of _____, 2013, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), acting by and through its Recreation and Park Commission (the "Commission"), and GOLDEN GATE PARK GOLF FOUNDATION, a California nonprofit corporation ("Lessee").

City and Lessee 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 Article and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date: _____, 2013

Landlord: CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

Lessee: GOLDEN GATE PARK GOLF FOUNDATION,
a California nonprofit corporation

Golf Course: The Golden Gate Park Golf Course, located in Golden Gate Park near the intersection of 47th Avenue and Fulton Street, San Francisco, California (the "Golf Course"). The Golf Course is owned by City, is under the jurisdiction of the Commission, and is operated by the San Francisco Recreation and Park Department (the "Department").

Premises (Section 3.1): The Premises are comprised of only those portions of the Golf Course more particularly described in **Section 3.1** and generally delineated on Exhibit A. Among other areas, the Premises include the clubhouse, patio around the clubhouse, the driving range, the practice area, and a portion of the parking lot on which Lessee's portable classroom trailer may be installed, all as generally shown on Exhibit A.

Term (Section 4.1): The initial term of this Lease shall be approximately five (5) years, as described in **Section 4.1**, subject to Lessee's option to the extend the term as set forth in **Section 4.5**.

Estimated commencement date: November 1, 2013

Estimated expiration date: October 31, 2018

Extension Term (Section 4.5) Lessee shall have the option to extend the term of this Lease for one additional two (2) year extension period, commencing on the date immediately following the Expiration Date, on the terms and conditions set forth **Section 4.5**, provided that Lessee completes the Minimum Required Capital Improvements described in **Section 8.4**.

Rent (Article 5) Lessee shall pay Base Rent and City's Share of Green Fee Receipts as defined below.

Base Rent (Section 5.1): Annual Base Rent: \$225,000 per year, payable monthly in accordance with the following schedule:
Monthly Base Rent Schedule:
 March through October: \$23,125 per month
 November through February: \$10,000 per month

Shared Greens Fee Receipts (Section 5.2): In addition to the Base Rent, Lessee shall pay City City's Share of Greens Fee Receipts in excess of \$350,000 in the manner described in Section 5.2 in accordance with the following schedule:

<u>Annual Greens Fee Receipts</u>	<u>City's Share</u>
Less than \$350,000	0%
\$350,000 to \$500,000	100%
Above \$500,000	50%

Use; Exclusive Use (Section 7.1): Exclusive right to operate the Golf Course as a fee-based public nine-hole golf course and to operate associated facilities, including collecting greens fees for the Golf Course and managing the tee sheet, providing paid professional golf lessons, operating a practice facility, related learning center, golf pro shop, and providing food and beverage service, as more particularly described in **Section 7.1**.

Security Deposit (Section 23): \$50,000

Notice Address of City (Section 27.1): Recreation and Park Department
 Property Management
 501 Stanyan Street
 San Francisco, CA 94117

:
 with a copy to Office of the City Attorney
 City Hall, Room 234
 1 Dr. Carlton B. Goodlett Place
 San Francisco, California 94102-4682
 Attn: Real Estate/Finance Team

Key Contact for City: Tom Hart

Telephone No.: 415.831.2773

Address for Lessee (Section 27.1):	Golden Gate Park Golf Foundation 99 Harding Road San Francisco, California 94132 Attn: Judith Powell
Key Contact for Lessee:	Judith Powell
Telephone No.:	(415) 290-6017
Brokers (Section 27.8):	None.
Minimum Required Capital Improvements (Section 8.4)::	During the Term of the Lease, Lessee will perform not less than \$150,000 of Minimum Required Capital Improvements, as described in Section 8.4 .
Maintenance of Golf Course Other than Premises (Section 9.2):	City shall maintain the Golf Course other than the Premises in accordance with the provisions of Section 9.2 .
Waste Reduction and Sustainable Foods (Section 26.42 and Section 30):	Without limiting the other provisions of this Lease, Lessee's food and beverage operations on the Premises shall comply with the provisions of the City's Food Service Waste Reduction Ordinance, as described in Section 26.42 , and the provisions of Section 30 requiring Lessee to attempt to incorporate sustainable food concepts into Lessee's everyday operations.
Limited Abatement Right (Section 31)	Lessee has certain limited rights to Rent abatement and a limited early termination right on the terms and conditions described in Section 31 .

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, insurance premiums and other costs, impositions and expenses described in hereof or otherwise payable by Lessee under this Lease.

"Affiliate of Lessee" means any person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under the common control with, Lessee. As used above, the words "control," "controlled" and "controls" mean the right and power, directly or indirectly through one or more intermediaries, to direct or cause the direction of substantially all of the management and policies of a person or entity through ownership of voting securities or by contract, including, but not limited to, the right to fifty percent (50%) or more of the capital or earnings of a partnership or, alternatively, ownership of fifty percent (50%) or more of the voting stock of a corporation.

"**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 alterations, installations or additions to any Improvements or to the Premises, including but not limited to any interior alterations or renovations.

"**Anniversary Date**" means the annual anniversaries of the Commencement Date.

"**Assignment**" has the meaning given in **Section 16.1** hereof.

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

"**Base Rent**" means the annual Base Rent specified in the Basic Lease Information and described in **Section 5.1** hereof.

"**Basic Lease Information**" means the information with respect to this Lease summarized in **Article 1** hereof.

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

"**City's Share of Greens Fee Receipts**" means a sum equal to the stated percentage of the Greens Fee Receipts during each Lease Year, or portion thereof, of the Term in the respective percentage amounts set forth in the Basic Lease Information.

"**Commencement Date**" means the date on which the Term of this Lease commences as described in **Section 4.1** hereof.

"**Commission**" means the City and County of San Francisco Recreation and Park Commission or its successor.

"**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 Lessee is dispossessed.

"**Department**" means City's Recreation and Park Department.

"**Department Facilities**" means any and all surface and subsurface facilities owned by the City and now or later located in, under, on or about the Golf Course, including, without limitation, sidewalks, plazas and street improvements.

"**Effective Date**" means the date on which this Lease becomes effective pursuant to **Section 4.4** hereof.

"**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, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including any permitted Improvements) and any other property, including, without limitation, soil, air and groundwater conditions.

"Event of Default" means any one of the events of default described in **Section 17.1** hereof.

"Expiration Date" means the date on which the Term of this Lease expires as described in **Section 4.1** hereof.

"General Manager" means the General Manager of the Recreation and Park Department.

"Golf Course" has the meaning set forth in **Section 1**.

"Greens Fee Receipts" means all amounts received and receivable from greens fees for play at the Golf Course.

"Gross Receipts" means all amounts received and receivable from all sales and business conducted in, from or attributable to the Premises by Lessee, or by any other person, firm, partnership or corporation conducting sales or performing services of any sort in, upon, or from any part of the Premises as a sublessee, licensee, concessionaire, contractor or subcontractor of Lessee, including amounts received for golf lessons and rentals and from orders or bookings for rental or sales of merchandise made by telephone, mail or online or through tour operators or third parties.

"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, without limitation, any material or substance defined as a "hazardous substance," or "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 Premises, any Improvements to be constructed on the Premises by or on behalf of Lessee, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, 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 Department, their Agents, or the Premises or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.

"Improvements" means any and all buildings, structures, fixtures and other improvements constructed, installed or placed on the Premises by or on behalf of Lessee pursuant to this Lease, (including, without limitation, any trailers, mobile homes, permanent tent facilities, signs, billboards or other advertising materials, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping) with the exception of any Department Facilities.

"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, without limitation, the Department, 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 the Premises, any Improvements or any portion thereof or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

"Invitees" when used with respect to Lessee means the clients, customers, invitees, guests, members, contractors, licensees, assignees and sublessees of Lessee provided, however, such term shall expressly exclude members of the general public, customers or any patrons of the Golf Course during the use of portions of the Golf Course other than the Premises, except when accompanied by an instructor or other employee or contractor of Lessee during a lesson or otherwise.

"Landlord" means the City and County of San Francisco.

"Law" means any law, statute, ordinance, resolution, regulation, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, 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" shall be determined as follows: the first "Lease Year" shall be the period commencing on the Commencement Date and ending on the last day of the twelfth (12th) full calendar month thereafter, and each twelve (12) calendar month period thereafter shall also constitute a "Lease Year," provided that the final Lease Year shall end on the expiration or termination date of this Lease.

"Lessee" means the Party identified as Lessee in the Basic Lease Information and at the beginning of this Lease. Except when immediately followed by the word "itself," the term Lessee shall also refer to the successors and assigns of Lessee's interests under this Lease, provided that the rights and obligations of Lessee'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.

"**Lessee's Personal Property**" means the personal property of Lessee described in **Section 8.3** hereof.

"**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, without limitation, reasonable attorneys' and consultants' fees and costs.

"**Minimum Required Capital Improvements**" has the meaning given in **Section 8.4** hereof.

"**Mobile Classroom**" has the meaning given in **Section 8.3** hereof.

"**Party**" means City or Lessee; "**Parties**" means both City and Lessee.

"**Permitted Uses**" has the meaning given in **Section 7.1** hereof.

"**Premises**" has the meaning given in **Section 3.1** hereof. The Premises shall include any existing or permitted Improvements, together with any additions, modifications or other Alterations thereto permitted hereunder. Notwithstanding anything to the contrary in this Lease, the Premises do not include Department Facilities, nor any water, water rights, riparian rights, water stock, mineral rights or timber rights relating to the Premises.

"**Release**" when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed hereunder by or on behalf of Lessee, or in, on, under or about the Premises or Department Facilities or any portion thereof.

"**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 Department Facilities or which have been, are being, or threaten to be Released into the environment. Remediate includes, without limitation, 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 together with City's Share of Green Fees Receipts and any and all Additional Charges, whether or not any such amounts are specifically characterized as rent.

"**Sublease**" has the meaning given in **Section 16.1** hereof.

"**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, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

"**Term**" means the term of this Lease as determined under **Section 4.1** hereof.

"**Transfer**" means any Assignment or Sublease.

"**Transferee**" means any recognized assignee of any part of Lessee's leasehold interest hereunder or any recognized sublessee of any portion of the Premises, pursuant to a Transfer that complies with **Article 16** hereof.

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

3. PREMISES

3.1. Leased Premises. Subject to the terms, covenants and conditions of this Lease, City leases to Lessee and Lessee leases from City, the real property shown delineated on Exhibit A, attached hereto, located in the City and County of San Francisco, State of California, together with the Improvements thereon (the "Premises").

3.2. Rights Reserved to City. Notwithstanding anything to the contrary in this Lease, but without limiting any specific rights of abatement Lessee may have pursuant to **Section 31**, City reserves and retains all of the following rights relating to the Premises at all times:

(a) Any and all water and water rights, including, but not limited to (i) any and all surface water and surface water rights, including, without limitation, 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, without limitation, the right to export percolating groundwater for use by City or its water customers;

(b) Any and all timber and timber rights, including, without limitation, 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 the Premises, including, but not limited to, oil and gas and rights thereto, 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 thereof by Lessee, without Lessee's prior written consent;

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

(e) The right to grant future easements and rights of way over, across, under, in and upon the Premises as City shall determine 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 Lessee for damage to its property that Lessee may sustain hereunder as a result of the grantee's use of such easement or right of way;

(f) Without limiting the generality of **Section 3.2(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, without limitation, 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 Lessee's use of the Premises hereunder, 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 Lessee for damage to its

property that Lessee may sustain hereunder as a result of the grantee's use of such easement or right of way; and

(g) All rights of access provided for in **Article 20** below.

3.3. Subject to Public and Municipal Uses and Rules. Lessee acknowledges that the property of which the Premises are a part constitutes a portion of City's public park system, which City holds for public and municipal use. Lessee's rights under this Lease shall be subject and subordinate to City's use of the Premises for such purposes. However, so long as there is no Event of Default on the part of Lessee outstanding hereunder and subject to the terms and conditions of this Lease, Lessee shall have the exclusive right to use the Premises for the operation of a golf course facility and the City shall use its best efforts to avoid interfering with Lessee's quiet use and enjoyment of the Premises. Lessee shall comply with, cause Lessee's Invitees to comply with, and use reasonable good faith efforts to cause other customers and invitees using the Premises and Golf Course to comply with the Department's rules and regulations relating to its park property and to the Golf Course, as the same may change from time to time (the "Rules and Regulations"). Lessee may contact the Department's Park Patrol and, when warranted, the San Francisco Police Department for assistance in responding to a violation of the Rules and Regulations by parties other than Lessee's Agents and Invitees. A copy of the current Rules and Regulations can be downloaded from the City and County of San Francisco webpage using the following link:

http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca. Additionally, a separate list of Golf Course rules and regulations is attached to this lease as **Exhibit C**. The Golf Course rules are modified by City from time to time after consulting with the municipal golf course operators and considering Department input. Any changes in Golf Course rules must be approved by the Recreation and Park Commission prior to implementation. Lessee shall have the right to propose additional reasonable and non-discriminatory rules of fair play, conduct and behavior in connection with the operation of the golf course ("Special Course Rules") and shall have the right to require patrons of the Golf Course to follow the approved, implemented Golf Course rules as a condition to being permitted access to the Golf Course facilities. Without limiting the generality of the foregoing, City acknowledges that the proposed Special Course Rules may include (i) establishment of a reservation system for scheduling access to course facilities, including, establishment of scheduled periods for use of course facilities for Lessee's teaching activities and training by course professionals engaged by Lessee, and (ii) temporary restriction of access to portions of the course facilities to patrons enrolled in lessons sponsored by Lessee.

3.4. As Is Condition of Premises.

(a) **Inspection of Premises.** Lessee represents and warrants that Lessee has conducted a thorough and diligent inspection and investigation, either independently or through Agents of Lessee's own choosing, of the Premises and the Golf Course and the suitability of the Premises and the Golf Course for Lessee's intended use. Lessee is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises and Golf Course are suitable for its operations and intended uses.

(b) **As Is; Disclaimer of Representations.** Lessee acknowledges and agrees that the Premises are being leased and accepted, and the Golf Course is being accepted for operations, 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 and the Golf Course. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements

and other title matters affecting the Premises, Golf Course, or any portion thereof, whether or not of record. Lessee acknowledges and agrees that, with the exception of City's obligations pursuant to **Section 3.4(c)**, **Section 4.2**, **Section 9.2** and **Section 14.1** below, neither City, the Department, 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 or the Golf Course, (ii) the physical, geological, seismological or environmental condition of the Premises or the Golf Course, (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the present or future suitability of the Premises or the Golf Course for Lessee's business and intended uses, (v) the feasibility, cost or legality of constructing any Improvements on the Premises if required for Lessee's use and permitted under this Lease, or (vi) any other matter whatsoever relating to the Premises or the Golf Course or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(c) **Surrender of Operations by Current Operator.** Department staff and Lessee's representative have conducted a joint tour of the Premises and have prepared a narrative description along with photographs of the condition of the Premises as of the date of such inspection (the "Inspection Documentation"). Lessee acknowledges that the Current Operator (as defined in Section 4.2 below) shall have the right to remove certain personal property, fixtures and equipment from the Premises prior to the Commencement Date. Notwithstanding the provisions of **Section 3.4(b)** above, if during such removal and surrender by Current Operator, the walls, flooring, ceiling or other component of the Premises is damaged beyond reasonable wear and tear, City shall patch or otherwise repair such damage to the condition described in the Inspection Documentation. Upon notice from City that Current Operator has completed removal of Current Operator's personal property and equipment and has ceased operation of the Premises and Golf Course, Department staff and Lessee's representative shall tour the Premises and prepare a joint list of any items that must be repaired by City pursuant to the terms of this **Section 3.4(c)**. Except as otherwise specifically agreed by the General Manager at the time Lessee accepts delivery of the Premises, Lessee's acceptance of delivery of the Premises shall serve as an acknowledgement that no further repairs are required and that Lessee accepts the Premises in their then as-is condition.

4. TERM

4.1. Term of Lease; Commencement Date and Expiration Date. The Premises are leased for a term (the "Term") commencing on the later of the date specified in the Basic Lease Information as the estimated commencement date or the date on which City delivers possession of the Premises to Lessee vacant and free and clear of the Current Operator (as provided in **Section 4.2** below), subject to this Lease becoming effective pursuant to **Section 4.4** below. The Term of this Lease shall end on the expiration date specified in the Basic Lease Information (the "Expiration Date"), unless sooner terminated pursuant to the provisions of this Lease. The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date."

4.2. Delivery of Premises; Delay in Delivery of Possession; Lessee's Right to Terminate Lease. Lessee acknowledges that portions of the Premises and the Golf Course are subject to an existing pro shop and beverage concession management agreement for the Golf Course (the "Existing Management Agreement") between City and Global Golf Management ("Current Operator"). City shall terminate the Existing Management Agreement and cause the Current Operator to vacate and surrender possession of the Premises. If City fails to deliver the Premises and operation of the Golf Course to Lessee vacant and free of Current Operator on or before the scheduled Commencement Date, then the validity of this Lease shall not be affected thereby, except as specifically provided below in this **Section 4.2**, and City shall not be liable to

Lessee for any Losses resulting therefrom. Lessee waives all provisions of any Laws to the contrary. In the event of any such delay in delivery of possession, the Term and regular payments of Base Rent and Additional Charges shall not commence until City delivers possession of the Premises. If the Term commences later or earlier than the Commencement Date in accordance with the terms hereof, this Lease shall nevertheless expire on the Expiration Date, unless sooner terminated pursuant to the provisions of this Lease. If City fails to terminate the existing operating agreement with the Current Operator on or before November 30, 2013 and/or Current Operator fails to vacate the Premises on or before December 31, 2013, then Lessee shall have the right, exercisable in Lessee's sole discretion, to terminate this Lease upon delivery of written notice to City given at any time prior to the date City actually delivers the Premises to Lessee as required hereunder.

4.3. Delays Caused by Lessee. Notwithstanding anything to the contrary above, if City's inability to deliver possession of the Premises on the Commencement Date results from the acts or omissions of Lessee or any of Lessee's Agents, then the Base Rent and Additional Charges payable by Lessee hereunder shall commence on the date when City would have delivered possession of the Premises but for such acts or omissions.

4.4. Effective Date. This Lease shall become effective on the date (the "Effective Date") upon which (i) the Commission passes a resolution approving this Lease, (ii) the effective date of a resolution by the City's Board of Supervisors approving this Lease and authorizing the City's execution, and (iii) the Parties hereto have duly executed and delivered this Lease.

4.5. Option to Extend. City grants to Lessee a one-time option (the "Extension Option") to extend the Term of this Lease for an additional two (2) year period (the "Extension Term"), commencing upon the date immediately following the Expiration Date, upon the following terms and conditions. Lessee may exercise the Extension Option at any time during the Term following the date on which Lessee completes construction and installation of the Minimum Required Capital Improvements as provided in **Section 8.4**, by giving written notice to City of such exercise not less than one hundred eighty (180) days prior to the Expiration Date. Any such exercise notice by Lessee shall be irrevocable by Lessee. If any event of default by Lessee is outstanding hereunder either at the time of Lessee's exercise of the Extension Option or at any time following exercise of the Extension Option but prior to the first day of the Extension Term (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default, and such default is not cured within the applicable cure period provided in this Lease), then City may elect by notice to Lessee to reject Lessee's exercise of the Extension Option, whereupon the Extension Option shall be null and void. City shall also have the right to void the Extension Option if Lessee has assigned its interest or obligations hereunder or sublet part or all of the Premises. If Lessee exercises the Extension Option, then the lease for the Extension Term shall be upon all of the terms, covenants and conditions of this Lease.

5. RENT

5.1. Base Rent. Lessee shall pay to City monthly payments of Base Rent as specified in the Basic Lease Information during the Term of this Lease, beginning on the Commencement Date. Base Rent shall be payable monthly on or before the tenth (10th) day of each month, for the previous month's business operations, without prior demand and without any deduction, setoff or counterclaim whatsoever.

5.2. Monthly Greens Fee Receipts Statement; City's Share of Greens Fees Receipts. On or before the tenth (10th) business day of each full calendar month of the Lease Term and the tenth (10th) business day of the calendar month immediately following the

expiration or termination of this Lease, Lessee shall deliver to City a statement certified as correct by an officer or owner of Lessee and otherwise in form satisfactory to City, showing the Greens Fee Receipts during the last preceding calendar month and the cumulative Green Fees Receipts for such Lease Year (a "Monthly Greens Fee Receipts Statement"). Such statement shall detail the number of rounds played each day of the previous month by specific rate category and total revenue derived from said rounds. Lessee shall pay City as additional rent hereunder City's Share of Greens Fee Receipts in excess of \$350,000 in each Lease Year as follows. If the cumulative Greens Fees Receipts for such Lease Year exceeds \$350,000, then City's Share of Greens Fee Receipts shall be calculated for such calendar month based on the Monthly Gross Receipts Statement and together with delivery of the Monthly Greens Fee Receipts Statement Lessee shall pay City City's Share of Greens Fee Receipts calculated as provided in **Section 1** above.

5.3. Payment; Generally. Rent shall be paid in lawful money of the United States, at Revenue Unit, Recreation and Park Department, McLaren Lodge Annex, 501 Stanyan Street, San Francisco, California 94117, or such other place as City may designate in writing. If Lessee pays by check and such check is not honored, then City may charge Lessee a late payment charge as provided in **Section 5.6** below; provided, however, following a Chronic Monetary Default (as defined below) City may require Lessee to make all future payments in cash or by cashier's check. 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. In order to expedite payments, City reserves the right to direct Lessee, upon 30 days written notice, to deposit all payments required under this Lease from Lessee's account into the City designated revenue account by bank transfer or, at Lessee's election, wire transfer. As used herein, the term "Chronic Monetary Default" shall mean Lessee's failure to pay any Rent when due on more than three (3) occasions during any consecutive twenty-four (24) month period.

5.4. Cash Register Requirements.

(a) Lessee shall install on the Premises at least one cash register. Lessee shall use cash registers which segregate sales by categories and shall have separate function keys with non-resettable daily sequential transaction numbers and non-resettable daily cumulative sales totals. Such cash register(s) used on the Premises shall be of a type approved by General Manager in writing and shall register every transaction made in, on, about or from the Premises, including every type of Gross Receipts, and the tape or digital record of each such cash register shall be accessible to and subject to inspection by the General Manager or his/her agent, provided that such inspection shall be conducted in a manner reasonable designed to minimize interference with the conduct of Lessee's business at the Premises, and City shall not perform such inspection unless a manager of Lessee's business is present. Lessee shall make a manager available to City for such inspection during business hours upon request (which may be oral) by City.

(b) Mechanical cash register(s) must have a non-resettable cumulative total, a detail audit tape, a transaction number with a four-digit capacity, an indicator readily visible to customers as the amount rung, and a seven-digit capacity or grater, as determined by the General Manager based on the type of business, with a four-digit overrun counter. If computerized cash registers or other similar electronic devices are used, that system must accurately record all sales on the Premises and be no more subject to tampering than mechanical cash register(s).

(c) Each sale or other transaction on the Premises must be recorded at the time of each sale or other transaction, in the presence of the customer, and Lessee shall present a receipt from such sale or other transaction to the customer. Each customer must be issued a receipt or sales slip for each transaction, which transaction must be recorded either on serially

numbered sales slips or cash register types. All cash receipts must include Lessee's identification thereon. Each cash register (including computerized cash registers or other similar electronic devices) shall be serviced by an established contractor approved by General Manager. At General Manager's request, Lessee must furnish to City a statement from an established contractor that the transaction number, the cumulative total and the overrun counter have been sealed in a manner approved by General Manager.

(d) Upon the installation or removal of any cash register (including computerized cash registers or other similar electronic devices) used on the Premises, Lessee must immediately furnish to General Manager notice in writing stating make, model number, serial number and cumulative total reading and overrun counter reading of the cash register(s) (including computerized cash registers or other similar electronic devices). Any repair contractor employed to repair or replace any cash register (including computerized cash registers or other similar electronic devices if used) on the Premises is hereby authorized and directed to disclose and furnish to City or its auditors any information obtained by the contractor in the course of making such repair or replacement pertaining to such cash register (including computerized cash registers or other similar electronic devices if used). City shall have the right during business hours to examine the totals of the cash register(s) (including computerized cash registers other similar electronic devices if used) used on the Premises and to inspect for compliance with this section.

5.5. Reporting; Books and Records; Audits

(a) **Monthly Reporting.** Along with each monthly rent payment, Lessee shall be responsible for submitting via email to the City contact listed in the Basic Lease Information section a copy of a "Concessionaires' Payment Statement", detailing a true and factual accounting of all Greens Fee Receipts and rent figures calculated for that month.

(b) **Books and Records.** Lessee agrees to keep accurate books and records according to generally accepted accounting principles. For purposes herein "books and records" shall include, but not be limited to, daily sales journals, cash register tapes, pre-numbered receipts, guest checks, sales tickets, monthly sales summaries summarizing daily sales, general ledgers, income statements, sales tax returns, income tax returns and any other bookkeeping documents Lessee utilizes in its business operations. Lessee shall not co-mingle personal funds with business funds. Lessee shall use cash registers which segregate sales by categories and shall have separate function keys with non-resettable daily sequential transaction numbers and non-resettable daily cumulative sales totals.

(c) **Gross Receipts Statement; Review of Gross Receipts Records.** On or before the date which is 365 days prior to the last day of the Term or Extension Term of this Lease, Lessee shall deliver to City a statement (the "Gross Receipts Statement"), certified as correct by an officer or owner of Lessee, and otherwise in form satisfactory to City. The Gross Receipts Statement shall set forth the Gross Receipts, as defined above and shown on Lessee's books, for the entirety of the Term and Extension Term (if applicable), broken down by category, by month and year. Further, on or before the date which is thirty (30) days following the close of each City fiscal year during the Term and any Extension Term, Lessee shall make available for inspection by City all documents relating to Gross Receipts for the previous City fiscal year, including a summary by category and month, in a format sufficient for City to verify that Lessee is complying with the record keeping requirements of this Lease. If, upon any such inspection, City determines that Lessee is not complying with the record keeping requirements of this Lease, then, without limiting any other rights or remedies of City in connection with such failure, City may provide Lessee with written notice of such deficiency (a "Gross Receipts Records Deficiency

Notice") and Lessee shall thereupon promptly correct any identified deficiencies. Following receipt of a Gross Receipts Records Deficiency Notice, Lessee shall make all documents relating to Gross Receipts available for inspection by City from time to time on demand, until such time as City shall be satisfied that Lessee is complying with the record keeping requirements of this Lease, at which time such inspections shall be performed on an annual schedule. If City delivers a second Gross Receipts Records Deficiency Notice with respect to any City fiscal year, or delivers a Gross Receipts Records Deficiency Notice with respect to two (2) consecutive City fiscal years, then upon City's written request Lessee shall deliver to City a written Gross Receipts Statement, as described above for such fiscal year and for each fiscal year thereafter.

(d) **Audit.** Lessee agrees to make its books and records available to City, or to any City auditor, or to any auditor or representative designated by City, for the purpose of examining such books and records to determine the accuracy of the Monthly Greens Fee Receipts Statements submitted by Lessee. Such books and records shall be kept for four (4) years and shall be maintained and/or made available in San Francisco to City's representative for the purpose of auditing or re-auditing these accounts; except that, if an audit is made within such four-year period and City claims that errors or omissions have occurred, the books and records shall be retained and made available until those matters are resolved. If an audit reveals that Lessee has understated its Greens Fee Receipts, Lessee shall pay City, promptly upon demand, the difference between the amount Lessee has paid and the amount it should have paid to City. If Lessee understates its Greens Fee Receipts by three percent (3%) or more, the cost of the audit shall be borne by Lessee. If Lessee understates its Greens Fee Receipts actually collected with actual knowledge of such understatement or by reason of gross negligence, then, in addition to paying for the cost of the audit, on the first such occasion Lessee shall pay City ten (10) times the amount of the difference between the amount City should have received and amount City actually received. A second such understatement made with actual knowledge of such understatement or by reason of gross negligence shall be considered an Event of Default.

(e) **Patrons Audit.** Lessee shall participate in the City's Patrons Audit program whereby signs provided by the City will be clearly posted at each point of sale, stating that receipts are to be given for each purchase, and that if a receipt is not given, the patron shall be allowed some form of compensation as mutually agreed upon by the City and Lessee.

5.6. Late Charge. If Lessee fails to pay any Rent and/or fails to submit a Monthly Greens Fee Receipts Statement by the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to five percent (5%) of the amount due, in each instance. The late payment charge has been agreed upon by City and Lessee, 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 Lessee, the actual costs thereof 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 Lessee shall promptly pay such charge to City together with such unpaid amount.

5.7. Default Interest. If any Rent is not paid on 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. However, interest shall not be payable on late charges incurred by Lessee nor on any amounts on which late charges are paid by Lessee 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 Lessee.

5.8. Net Lease. This Lease is a "net lease." Accordingly, Lessee shall pay to City all Rent (including the Base Rent, City's Share of Green Fees Receipts, Additional Charges and any other payments hereunder) free of any charges, assessments or deductions of any kind, without prior demand and without abatement, counterclaim or setoff. Under no circumstances, whether now existing or hereafter 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 Lessee's use or occupancy of the Premises and any permitted Improvements, Lessee's operation of the Golf Course, or this Lease, except as may otherwise be expressly set forth herein. Without limiting the foregoing, except as may otherwise be expressly set forth herein, Lessee shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which City would otherwise be or become liable by reason of its estate or interests in the Premises and any Improvements, 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 the Premises, any permitted Improvements, or any portion thereof. 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 Lessee from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Lessee from any of its obligations under this Lease, or shall give Lessee any right to terminate this Lease in whole or in part. Except as may be specifically and expressly provided otherwise in this Lease, Lessee waives any rights now or hereafter 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.

6. TAXES, ASSESSMENTS AND OTHER EXPENSES

6.1. Taxes and Assessments, Licenses, Permit Fees and Liens.

(a) **Payment Responsibility.** Lessee 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 the Premises, any Improvements, Lessee's Personal Property, the leasehold estate or any subleasehold estate, or Lessee's use of the Premises or any Improvements. Lessee shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency, subject to Lessee's right to contest the validity of such charge pursuant to **Section 6.1(c)**. However, 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, Lessee shall reimburse City for payment of such sums immediately upon demand.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Lessee recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that Lessee may be subject to the payment of property taxes levied on such interest.

(c) **No Liens.** Lessee shall not allow or suffer a lien for any taxes payable by Lessee hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without promptly discharging the same. Lessee may have a reasonable opportunity to contest the validity of any such taxes provided Lessee, 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 of City. The bond shall insure payment of any judgment that may be rendered should Lessee be unsuccessful in any such contest. Lessee shall

Indemnify City, the other Indemnified Parties, and the Premises from and against any Losses arising out of any proceeding or contest provided for hereunder. The foregoing Indemnity shall not be limited by the amount of the bond.

(d) **Reporting Requirement.** Lessee 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. Lessee 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 Improvements permitted thereon, including, without limitation, the cost of any utilities or services necessary for Lessee's use.

6.3. Evidence of Payment. Lessee shall, upon City's request, 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 thereof.

7. USE; COVENANTS TO PROTECT PREMISES AND DEPARTMENT FACILITIES

7.1. Lessee's Permitted Use. Lessee shall have the exclusive right to operate the Golf Course and associated facilities located within the Golf Course during the Term and any Extension Term. Lessee shall continuously use the Premises and Improvements and operate the Golf Course as a fee-based public nine-hole golf course and practice facility together with a related learning center, golf pro-shop and food and beverage operation (collectively, the "Permitted Uses"), including the uses and subject to the conditions described below.

(a) **Golf Activities.** Lessee shall supervise all golf activities on the Golf Course, including, but not limited to, the collection of all greens fees paid for the use of the Golf Course, starter and player activity functions, registration of players, marshalling, and taking daily and tournament reservations. Lessee's staff shall handle the day-to-day business operations, managing a smooth flow of play by coordinating all tee times, managing smaller and larger tournaments, ordering, merchandising and marketing.

(1) **Youth Reservations.** Lessee shall not reserve more than 10,000 tee times on an annual basis for the exclusive use of youth programming without the written approval of the General Manager. Lessee may from time to time during the course of the Term or Extension Term of this Lease submit to City written requests for additional tee times for youth programming in increments of 2,000. Approval of any such requested increases shall be at the sole discretion of the General Manager.

(2) **Greens Fees.** Rates for all greens fees in all available categories offered by the Golf Course are set by the Board of Supervisors. Lessee shall post for public view all pertinent greens fees and shall charge the approved rates at all times. Lessee shall not exercise any discretion in altering such fees without the prior written approval from the General Manager.

(3) **Tee Time Reservation System.** Lessee shall implement a tee time reservation system for the Golf Course as soon as reasonably possible after the Commencement Date.

(b) **Pro Shop.** Lessee shall operate a golf shop in the clubhouse for, including but not limited to, the promotion and sale of golf-related items, the rental of golf equipment, the rental of buckets of balls for the driving cage, and the advertising, promotion and offering of quality golf instruction. The hours of operation of the pro shop shall be subject to the reasonable approval of the General Manager. Lessee will carry on its business diligently and continuously at the pro shop throughout the Term. Lessee shall carefully supervise and control the operation of its business in the pro shop, and shall employ a competent and adequate staff therefor, all of whom shall be Lessee's employees and none of whom shall be deemed for any purpose whatsoever to be City's employees. All displays in the pro shop which are visible to the public, including advertising matter, signs, merchandise and fixtures, shall be attractive, dignified and uncluttered and shall be maintained in a first-class manner in keeping with the character and standards of the Golf Course. Lessee shall make rental equipment available for parties taking lessons and for group and tournament outings.

(c) **Driving Cage.** Lessee shall operate the day-to-day business operations of the driving cage.

(d) **Food and Beverage Operation.** Lessee shall operate a food and beverage operation for golfing and non-golfing clientele. Lessee shall propose minimum hours of operation of the food and beverage operations from time to time, which minimum hours shall be subject to the approval of the General Manager, which shall not be unreasonably withheld. Lessee shall strive to obtain a valid beer or beer and wine license in compliance with all applicable Laws, subject to Lessee obtaining the insurance required pursuant to item (i) of **Section 19.1** below. City shall reasonably cooperate with Lessee in connection with Lessee's application for such license. All food and beverages sold on the Premises will be properly prepared and served in compliance with all applicable health and sanitary standards, including, without limitation, all applicable rules, regulations and codes including, without limitation, San Francisco Department of Public Health regulations. The quality of food and service and maintenance of the preparation and serving areas shall be commensurate with comparable courses. Lessee shall carefully supervise and control the food and beverage operations, and shall employ a competent and adequate staff therefor, all of whom shall be Lessee's employees and none of whom shall be deemed for any purpose whatsoever to be City's employees. Lessee shall keep the food site free of debris and in a neat, clean, orderly and attractive condition at all times and shall, as necessary, provide and empty garbage, compost and recycling receptacles serving such area.

(e) **Instruction.** City hereby grants Lessee the sole right and authority to promote and conduct golf instruction at the Golf Course. Lessee shall offer programs and instruction to the general public at reasonable rates and every effort shall be made to include economically disadvantaged youth in all junior golf programs and camps, either through reduced rates or scholarship programs. All payments for instruction, whether made to Lessee, the pros, or any other party, shall be made in the pro shop and shall be properly recorded in Lessee's books. Lessee shall offer classroom instruction in the Mobile Classroom.

(f) **Maintenance Duties.** Except for the gardeners' and City crew maintenance areas of the Golf Course, which will be maintained by City staff, Lessee will provide minor building and janitorial maintenance services to all structures that are part of the Premises, as provided in **Section 9.1**. Lessee shall make every reasonable effort to regularly inspect, clean and maintain all such areas.

(g) **Other Uses: Change in Manner of Operation.** If Lessee desires to engage in an additional use not enumerated above, or desires to materially change the manner in which Lessee conducts a Permitted Use, Lessee shall request such additional use or modification

in writing, and such addition or modification shall be subject to the approval of the General Manager, which may be withheld in his or her sole discretion.

(h) **Public Restrooms.** The restrooms within the Premises shall remain open for public use for any visitor to Golden Gate Park during the hours of operation of the Golf Course.

7.2. Days and Hours of Operation. Lessee shall actively operate the Premises and Golf Course and use its best business efforts to further the operations thereof and maximize its potential revenue and to serve the public. Except as otherwise permitted by the General Manager in his or her sole discretion, Lessee shall not schedule in advance any youth programming on the Golf Course to commence before 9:30 A.M. on Saturdays, Sundays or holidays recognized in the San Francisco Municipal Golf Courses Policies and Rules for Play, attached hereto as **Exhibit C**, during the Term or any Extension Term of this Lease. The hours of operation for all municipal golf courses under the jurisdiction of the Commission are sunrise to sundown. The schedule is approved by the Commission and may not be altered in any manner without prior written approval from the Commission. Closures due to course or weather conditions are the sole right of the City course superintendent.

7.3. Rates and Charges. The rates and charges for goods sold and services offered at the Premises shall be reasonable and competitively priced with similar businesses in San Francisco. Prices for greens fees are set by the Board of Supervisors and may not be altered in any manner without prior written approval.

7.4. Branded Products.

(a) Lessee may, at Lessee's expense, and with Department's consent, develop and sell products including clothing that are "branded" with some form of artwork, logos, trademarks or service marks, related to Golden Gate Park Golf Course or similar/related logo, artwork and/or words (collectively "Logo").

(b) Alternatively, the Department may decide to develop a master logo for Golden Gate Park and require the Park's concessionaires to participate in the cost of the development of the logo in return for the right to sell the Park logo products.

(c) Lessee shall not use the Logo until it has been approved in writing by the Department. The Logo and any other original works of authorship or designs (including any domain names or website designs, source code, and content) related to the facility, or Lessee's services or operations in or for the facility ("Works") shall be works for hire under Title 17 of the United States Code, and all copyrights in such Logo and other Works are the City's property. If the Department or Lessee's use of the Logo or Works creates trademark, service mark or trade dress rights in connection with the Logo or Works, the City shall also have an exclusive and irrevocable right in such trademark, service mark, or trade dress. If any Logo or Works created by Lessee or its subcontractors under this Lease are not works for hire under federal law, the Lessee hereby assigns all copyrights to such Logo and Works to the City and further agrees to provide any material and execute any documents necessary to effectuate such assignment.

(d) The Department shall have the right to pre-approve or disapprove all products that are to receive the Logo, including the use and placement of such Logo on the products.

7.5. Covenants Regarding Use. As a material inducement to City to enter into this Lease, Lessee covenants with City as follows:

(i) **No Unlawful Uses or Nuisances.** Lessee shall not use or occupy any of the Premises or any Improvements, or permit the use or occupancy thereof, 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. Lessee shall take all precautions to eliminate immediately any nuisances or hazards relating to its activities on or about the Premises or any Improvements permitted hereunder.

(ii) **Covenant Against Waste.** Lessee shall not cause or permit any waste, damage or injury to the Premises.

(iii) **Covenant to Protect Premises and Department Facilities.** At all times during the Term of this Lease, Lessee shall protect the Premises, the Golf Course and the Department Facilities, if any, from any damage, injury or disturbance caused by Lessee or its Agents or Invitees. If Lessee or any of its Agents or Invitees damages, injures or disturbs any of the Premises, the Golf Course or the Department Facilities, or any portion thereof, Lessee shall immediately notify City of that occurrence. Without limiting any of its other rights hereunder, if Lessee or any of its Agents or Invitees cause any damage, injury or disturbance, then the City may immediately take all actions it deems proper to repair the Department Facilities or Golf Course at Lessee's sole expense, and, following notice and a reasonable opportunity to cure (except in the event of an emergency in which case no notice or cure period is required), City may take all actions it deems proper to repair the Premises at Lessee's sole expense; provided, however, that ordinary divots, scuffs or similar type wear upon the greens and/or Golf Course shall not constitute damage or injury for which Lessee has liability hereunder. Lessee shall promptly, upon City's request, remove or alter to City's satisfaction and at Lessee's sole cost, any Improvements, Alterations or Lessee's Personal Property placed on the Premises by or on behalf of Lessee as necessary to avoid interference with City's use of the Premises for municipal purposes; provided, such removal shall be at City's sole cost if the applicable Improvements or Alterations were approved by City in writing pursuant to the terms of this Lease. Subject to the provisions of **Section 20.1(e)** and **Section 31**, City may adopt from time to time such rules and regulations with regard to Lessee's facilities and operations hereunder as City may determine are necessary or appropriate to safeguard the Department Facilities and City's interests in the Premises. Lessee shall comply with all such rules and regulations upon receipt of a copy thereof.

(iv) **Covenant Against Dumping; Waste Disposal.** Lessee 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 the human health or safety, native vegetation or wildlife, or the environment. Organic wastes from the Premises shall be composted on-site to the extent reasonably possible. Lessee shall use its best efforts to reduce the amount of trash and waste generated from the Premises, to acquire products for use on the Premises which reuse or recycle packaging, and to recycle all materials used on the Premises to the extent reasonably possible.

(v) **Covenant to Protect Trees or Other Native Vegetation.** Lessee shall not engage in or permit the cutting, removal, or destruction of trees or any other native vegetation on the Premises, without the prior written approval of the General Manager.

(vi) **No Tree Planting.** Lessee shall not plant any trees on the Premises, nor shall Lessee plant any other vegetation on the Premises without the prior written approval of the General Manager.

(vii) **Covenant Against Hunting.** Lessee shall not engage in or permit any hunting or, trapping 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 the General Manager in writing, 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. Lessee shall not use poison bait, cyanide guns, traps or other similar non-selective control techniques. In no event may Lessee 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.

(viii) Pesticides Prohibition. Lessee shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Lessee to submit to the Department an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Lessee may need to apply to the Premises during the terms of this Lease, (b) describes the steps Lessee will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Lessee's primary IPM contact person with the City. In addition, Lessee shall comply with the requirements of Sections 39.4(a) and 39.4(b) of the Pesticide Ordinance as of January 1, 1999 and January 1, 2000, respectively. Notwithstanding the foregoing, Lessee shall not be obligated to verify City's compliance with the Pesticide Ordinance in connection with City's performance of its obligations pursuant to **Section 9.2** below.

(ix) Weed Control. Lessee shall not introduce any noxious weeds on or about the Premises or the Golf Course.

(x) Covenant Against Burning. Lessee shall not burn any weeds, debris or other substances on or about the Premises.

(xi) Sewerage System. City shall maintain at its sole cost and expense the sewerage system now installed on the Premises. Lessee shall not permit any sewage or fouled waste water to be disposed of on the Premises, except as provided for and as customary per such sewerage system.

(xii) Soil Erosion. Lessee shall not cause any material erosion of soil on or around the Premises. Lessee shall not engage in any activity that causes a material change, disturbance, fill, alteration or impairment to the topography of the Premises by placing on it any soil, dredging, spoils, landfill, or other material, nor shall Lessee engage in any activity that would change, disturb, alter or impair the significant relatively natural ecological features and values of the Premises, without the prior written approval of the General Manager.

(xiii) Operating Covenants. Lessee shall use the Premises and Golf Course continuously for the permitted use specified in the Basic Lease Information and shall not allow the Premises to remain unoccupied or unused without City's prior written consent, which City may give or withhold in its sole discretion. Lessee shall use and operate its business on the Premises in a first class and professional manner, and shall take all commercially reasonable steps to maximize revenue (and Greens Fee Receipts) from its operations on the Premises.

(xiv) Recycling and Resource Conservation. The City of San Francisco has set ambitious recycling and composting goals for City Departments including 75% landfill diversion by 2010 and maximum participation the City's municipal composting program at all City Department locations where there is food service. In addition, the City has recently passed the Food Service Waste Reduction Ordinance (see Section 26.42) which, in part, "Prohibits the use of polystyrene foam dispensable food service ware and requires the use of recyclable or compostable food service ware by restaurants, retail food vendors, City Departments and the

City's contractors and lessee." City contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities and while performing under a City contract or lease. City contractors and lessees using any Disposable Food Service Ware shall use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware in City Facilities and while performing under a City contract or lease unless there is no suitable Affordable Biodegradable/Compostable or recyclable product available as determined by the City Administrator in accordance with Subsection 1604(a). Lessee shall develop a program to work toward a zero waste goal, including the implementation of a composting system for food waste, packaging and 100% biodegradable supplies whenever practical. Lessee shall submit a recycling and composting plan at Commencement of Lease, and provide an annual report on each anniversary date of this Lease outlining their progress toward meeting the recycling and composting goals described above and their success toward a zero waste goal.

(xv) **Americans with Disabilities Act.** Lessee acknowledges that the Americans with Disabilities Act (the "ADA") requires that programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Lessee further acknowledges its obligation to comply with the ADA and any other federal, state or local disability rights legislation. Without limiting the provisions of **Section 8.1** and **Article 11** below, Lessee warrants that it will fulfill that obligation, and that it will not discriminate against disabled persons in the provision of services, benefits or activities pursuant to this Lease. City shall bear all responsibility and cost for mandated physical changes to the Property resulting from disability access laws.

(xvi) **Security Measures.** Before Lessee or Lessee's employees leave the Premises each day Lessee shall see that the doors of the Mobile Classroom, pro shop, and restrooms are closed and locked or otherwise secured, that all water faucets and water apparatus servicing the Premises and utilities servicing the Premises are shut off, and that the alarm to the pro shop is activated, so as to minimize the risk of vandalism, waste or damage.

8. ALTERATIONS AND IMPROVEMENTS

8.1. Construction of Alterations and Improvements. Lessee shall not construct, install or otherwise place any Improvements or make or permit any Alterations in, to or about the Premises, without the General Manager's prior written consent in each instance, which the General Manager may give or withhold in its sole and absolute discretion. Subject to the General Manager's consent as provided above, any permitted Improvements or Alterations shall be done at Lessee's sole expense (i) in strict accordance with designs, plans and specifications approved in advance by the General Manager in writing, (ii) by duly licensed and bonded contractors or mechanics approved by the General Manager, (iii) in a good and professional manner, (iv) in strict compliance with all Laws (including, without limitation, all health, disabled access and building codes and ordinances), and (v) subject to all other conditions that the General Manager or the Commission may reasonably impose, including, without limitation, provision of such completion security as is acceptable to City. In no event shall the construction or installation of any such Improvements or the making of any Alterations impair the use or operation of Department Facilities (if any), or any portion thereof, or the Department's access thereto. Prior to the commencement of any work on the Premises to construct any permitted Improvements or make any permitted Alterations, Lessee, at its sole expense, 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 shall have the right to inspect the course of such construction at all times. Upon completion of such Improvements or Alterations, Lessee shall furnish City with a complete set of final as-built plans and specifications. Lessee shall require from each contractor and subcontractor performing any work on or about the Premises a policy of

commercial general liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars (\$1,000,000) combined single limit. Such insurance shall also be in compliance with the requirements set forth in **Section 19.2**.

8.2. Ownership of Improvements. Any Improvements or Alterations constructed on or affixed to the Premises by or on behalf of Lessee above shall be and remain Lessee's property during the Term. Upon the Expiration Date or any earlier termination hereof, Lessee shall, upon City's request, remove all such Improvements and Alterations from the Premises in accordance with the provisions of **Section 22.1** hereof, unless City, at its sole option and without limiting any of the provisions of **Section 8.1** above, specifies at the time of City's approval of any such Improvements or Alterations that such Alterations or Improvements may remain on the Premises following the expiration or termination of this Lease.

8.3. Lessee's Personal Property; Mobile Classroom. All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Lessee that can be removed without structural or other material damage to the Premises (all of which are herein called "Lessee's Personal Property") shall be and remain the property of Lessee and may be removed by it subject to the provisions of **Section 22.1** hereof. At least ten (10) days prior to delinquency, Lessee shall pay all taxes levied or assessed upon Lessee's Personal Property and shall deliver satisfactory evidence of such payment to City. City hereby acknowledges that City has approved Lessee's purchase, installation and operation of one mobile classroom trailer unit with the dimensions and specifications as shown in **Exhibit F** attached hereto ("Mobile Classroom") to be placed at the northernmost end of the parking lot in the location generally depicted in the photographs attached as part of **Exhibit A**. The Mobile Classroom shall be the site for golf instruction courses. In no event shall the Mobile Classroom be affixed to the Premises by any means whatsoever, including, but not limited to, poured fittings, a concrete pad or asphalt. Lessee shall remove the Mobile Classroom and restore the area occupied by the Mobile Classroom to its initial condition at the end of the Lease Term, unless earlier terminated in accordance with this Lease.

8.4. Minimum Required Capital Improvements. Lessee and City acknowledge that the Premises and the balance of the Golf Course could benefit from a number of capital improvements and capital upgrades. As a material consideration for City's agreement to enter into this Lease, Lessee hereby agrees that Lessee shall design and install, at Lessee's sole cost, one or more capital improvements or capital upgrades to the Golf Course or its improvements or facilities, the cost of which, in the aggregate, shall be at least \$150,000 and which shall benefit the Golf Course and its facilities, not merely Lessee or Lessee's programs (the "Minimum Required Capital Improvements"), subject to the following conditions. Promptly following the execution of this Lease, Lessee and the General Manager or his or her designee shall attempt in good faith to develop a list of Minimum Required Capital Improvements. Examples of the types of improvements and upgrades contemplated hereunder are listed on the attached **Exhibit E** by way of example only. If City and Lessee have not agreed upon a list of Minimum Required Capital Improvements by the date which is one year after the Commencement Date, the General Manager shall have the right to unilaterally develop the list of Minimum Required Capital Improvements. The exact site for, and the size and design of any improvements or installations hereunder shall be subject to the mutual agreement of Lessee and the General Manager. All plans and specifications for such Minimum Required Capital Improvements shall reviewed and approved by the City prior to commencement of any work at the site. City and Lessee understand, acknowledge and agree that prior to commencing the work required to construct and install Minimum Required Capital Improvement, Lessee may, at the election of the General Manager, be required to obtain the approval of the Commission and shall in all events be required

to obtain the approval of any other regulatory agency that may have jurisdiction. Lessee and City agree that any such work shall be performed at times mutually agreed by Lessee and the General Manager and that, subject to receipt of approval of all applicable regulatory agencies, such work shall be completed as soon as reasonably possible, and in no event later than the third anniversary of the Commencement Date, except as otherwise approved by the General Manager. Lessee understands that Lessee was selected to enter into this Lease, in part, on account of Lessee's agreement to perform improvements to the Golf Course and if Lessee does not complete the Minimum Required Capital Improvements in the manner and by the date provided herein, such failure shall constitute a breach of the Lease. Lessee shall provide City with invoices and other appropriate documentation for the costs of performing the Minimum Required Capital Improvements as required to evidence that Lessee satisfied the \$150,000 minimum threshold for such work.

8.5. Notice to Proceed with Improvements. Lessee agrees that the alterations, improvements and repairs to be made by Lessee pursuant to the terms and conditions of this Lease shall not commence until this Lease has been approved by the Board of Supervisors of the City and County of San Francisco and the Lessee obtains from City written approval to proceed.

9. REPAIRS AND MAINTENANCE

9.1. Lessee Responsible for Maintenance and Repair.

(a) Except as provided in **Section 9.2** below, City shall not under any circumstances be responsible for the performance of any Alterations or Improvements to the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises), nor shall City be liable for any portion of the cost thereof.

(b) Lessee shall maintain the Premises and any existing and permitted Improvements at all times in clean, safe, attractive and sanitary condition and in good order and repair, to City's reasonable satisfaction, subject to City's obligations under **Section 9.2** below; provided, however, that, except as provided below in this **Section 9.1(b)**, Lessee's obligation for maintenance and repair shall not include the obligation to make any capital repairs, replacements or improvements to the Premises and/or any structural repairs or replacements, except where such repair, replacement or improvement is triggered by or required as a result of any Improvements or Alterations made by Lessee. If any portion of the Premises or any of City's personal property located on or about the Premises is damaged by any of the activities conducted by Lessee or its Agents or Invitees hereunder, Lessee shall immediately, at its sole cost, repair any and all such damage and restore the Premises or City's personal property to its previous condition.

(c) Lessee shall keep all fixtures and equipment on the Premises clean, neat, safe, sanitary and in good order at all times. Lessee shall remove all waste, trash, rubbish, papers, cartons and refuse from the Premises, pick up trash and debris in the immediate vicinity of the Premises and dispose of trash in containers provided by Lessee that are large enough to adequately serve the needs of the facility. Lessee shall provide a dumpster and shall keep it in clean and orderly condition.

(d) **Food Service and Seating Areas.** During the hours Lessee is open for business, Lessee shall keep the food service and seating areas and any furniture free of dishes, utensils, debris and spills and in a neat, clean, orderly and attractive condition at all times and shall, as necessary, provide and empty garbage receptacles serving such area. The tables and chairs in any seating areas shall be configured so that there are walkways and sufficient area for pedestrian ingress and egress on either side of the tables and to minimize any potential tripping or other hazards.

(e) **Public Restrooms.** Lessee shall be responsible for the regular cleaning of the public restrooms located on the Premises. The restrooms shall be open to the public at all times the Premises are open to the public. The restrooms shall be kept clean and neat at all times. Lessee, at its own expense, shall provide all necessary items for the restrooms including, but limited to, toilet tissue, paper towels, seat covers and hand soap. Lessee shall provide, at its sole expense, all cleaning materials and supplies necessary to maintain the public restrooms in the condition as described above. Restrooms shall be thoroughly cleaned daily and inspected for supplies and neatness a minimum of two (2) times during each day Lessee's business is open to the public.

9.2. City's Maintenance and Repair Obligations. Notwithstanding **Section 9.1**, City shall maintain, repair and keep in good condition those portions of the Golf Course other than the Premises, including gardening and landscaping services at the levels set forth in the attached Exhibit E. Lessee shall provide City with prompt written notice of any required repair or maintenance item. Further, City shall maintain, repair and replace if necessary all structural elements of the Premises, excepting the Mobile Classroom and any Improvements or Alterations made by Lessee. Without limiting the foregoing, City shall be responsible for maintaining in good condition and repair the roof, including the roof membrane, structural walls (both interior and exterior), floors (but not flooring), doors and windows and the plumbing, electrical and HVAC (if applicable) systems for the buildings on the Premises (other than Mobile Classroom), except to the extent repairs are necessitated due to the negligence or willful misconduct of Lessee or Lessee's Agents or Invitees.

9.3. No Right to Repair and Deduct. Lessee expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Lessee to make repairs or replacements at City's expense, or, except as may be specifically and expressly provided otherwise in this Lease, to terminate this Lease because of City's failure to keep the Premises, Golf Course or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof in good order, condition or repair, or, except as may be specifically and expressly provided otherwise in this Lease, to abate or reduce any of Lessee's obligations hereunder on account of the Premises, Golf Course, or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof being in need of repair or replacement. Without limiting the foregoing, Lessee expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Lessee to terminate this Lease and with respect to any obligations of City for tenantability of the Premises and any right of Lessee to make repairs or replacements and deduct the cost thereof from Rent.

10. UTILITIES

10.1. Utilities and Services. City shall pay for water, gas and electricity to the Premises. If Lessee desires any upgrades to water, gas or electricity services in connection with the operation of Lessee's business at the Premises, such upgrades shall be subject to City's prior written consent, and shall be made at Lessee's sole cost and expense. Lessee shall pay for sewer charges billed to Lessee by the Water Department, charges for garbage and recycling disposal and all telephone, fax and internet connection charges, including the cost of bringing any such service(s) to locations in the Premises.

10.2. Interruption of Services. City's obligation to provide utilities and services for the Premises are subject to applicable Laws (including the rules or actions of the public utility company furnishing the utility or service), and shutdowns for maintenance and repairs, for security purposes, or due to strikes, lockouts, labor disputes, fire or other casualty, acts of God, or

other causes beyond the control of City. In the event of an interruption in, or failure or inability to provide any service or utility for the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Lessee, constructive or otherwise, or impose upon City any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Lessee. Lessee hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future Law permitting the termination of this Lease due to such interruption, failure or inability. Notwithstanding the foregoing, in the event that such disruption in services or utilities results in City's failure to maintain the Golf Course in the manner required hereunder, then the provisions of this **Section 10.2** shall not act as a waiver or limitation of any rights of abatement of Lessee set forth in **Section 31** below.

10.3. Water and Energy Conservation; Mandatory or Voluntary Restrictions. In the event any law, ordinance, code or governmental or regulatory guideline imposes mandatory or voluntary controls on City or the Property or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Lease, or in the event City is required or elects to make alterations to any part of the Improvements on the Premises in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such alterations shall in no event entitle Lessee to any damages, relieve Lessee of the obligation to pay the full Base Rent and Additional Charges reserved hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Lessee. Notwithstanding the foregoing, in the event that the application of any such law, ordinance, code or governmental or regulatory guideline results in City's failure to maintain the Golf Course in the manner required hereunder, then the provisions of this **Section 10.3** shall not act as a waiver or limitation of any rights of abatement of Lessee set forth in **Section 31** below.

10.4. Antennae. No antennae or telecommunication dish may be installed on the Premises without the advance written approval of City. No such antennae or telecommunications dishes shall interfere with City's emergency and non-emergency communications facilities or the transmission facilities of City. Lessee agrees, at the request of City, to permit City to install, at City's sole cost, transmission equipment for City's emergency or 800 MHz City wide radio system communications facilities (or its successor) at a location on top of the Improvements acceptable to Lessee.

11. LIENS

Lessee shall keep the Premises and all of City's property free from any liens arising out of any work performed, material furnished or obligations incurred by or for Lessee. In the event Lessee does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have in addition to all other remedies provided herein and by Law or equity 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, without limitation, reasonable attorneys' fees) shall be payable to City by Lessee upon demand. City shall have the right at all times to 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 materialmen's liens. Lessee 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, Lessee shall have the right, upon posting of an adequate bond or other security acceptable to City, to contest any such lien, and in such case City shall not seek to satisfy or discharge such lien unless Lessee has

failed to do so within ten (10) days after final determination of the validity thereof. Lessee shall Indemnify City, the other Indemnified Parties and the Premises against any and all Losses arising out of any such contest.

12. COMPLIANCE WITH LAWS

12.1. Compliance with Laws. Lessee shall not do or permit anything to be done in or about the Premises which will in any way conflict with any Laws now in force or which may hereafter be enacted. Except as otherwise provided in this Lease, Lessee shall promptly, at its sole expense, maintain the Premises, any Improvements and Alterations permitted hereunder and Lessee's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary. Notwithstanding the foregoing, Lessee's obligation under this Section shall not include the obligation to make substantial or structural repairs and alterations to the Premises (including any Improvements), except to the extent the requirement for such compliance arises in connection with and as a result of any of Lessee's Alterations or Improvements.

12.2. Regulatory Approvals

(a) Responsible Party. Lessee understands and agrees that Lessee's use of the Premises may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Lessee shall be solely responsible for obtaining any and all such regulatory approvals. Lessee shall not seek any regulatory approval without first obtaining the written consent of the General Manager. Lessee 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. Any fines or penalties levied as a result of Lessee's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Lessee, and City shall have no liability, monetary or otherwise, for any such fines or penalties. Lessee shall Indemnify City and the other Indemnified Parties against all Losses arising in connection with Lessee's failure to obtain or comply with the terms and conditions of any regulatory approval.

(b) City Acting as Owner of Real Property. Lessee further understands and agrees that City, acting by and through the Commission, 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 Lessee's obligation to obtain any required approvals from City departments, boards or commissions having jurisdiction over the Premises. By entering into this Lease, City is in no way modifying or limiting Lessee's obligation to cause the Premises or any permitted Improvements to be used and occupied in accordance with all applicable Laws, as provided further above.

12.3. Compliance with City's Risk Management Requirements. Lessee shall not do anything, or permit anything to be done, in or about the Premises or any Improvements permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect City from any potential premises liability. Lessee shall faithfully observe, at its expense, any and all reasonable requirements of City's Risk Manager with respect thereto 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 Improvements as required hereunder; provided, however, that the foregoing shall not require Lessee to assume responsibility for any of City's obligations under this Lease.

12.4. Reports. Lessee shall submit a report and provide such documentation to City as City may from time to time request regarding Lessee's operations and evidencing compliance thereof with this Lease and all Laws. In the event that Lessee prepares or obtains any report or other informational document relating to the Premises or any Improvements thereon, Lessee shall promptly deliver a copy of such report or document to City.

13. FINANCING; ENCUMBRANCES; SUBORDINATION

13.1. 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 Lessee 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 hereunder.

(b) **Encumbrance By Lessee.** Lessee shall not under any circumstances whatsoever Encumber in any manner City's estate in the Premises or any adjoining property, or City's interest under this Lease, or any portion thereof.

13.2. Leasehold Encumbrances. Without limiting **Article 15** hereof, Lessee shall not Encumber this Lease or Lessee's interest in this Lease, or assign or pledge assignment of the same as security for any debt, without first obtaining the written consent of City, which City may give or withhold in its sole discretion.

14. DAMAGE OR DESTRUCTION

14.1. Damage or Destruction to the Improvements. If the Golf Course, Premises or the Improvements are damaged by fire or other casualty, then City shall repair the same (subject to the provisions of Section 14.2 below) provided that funds for such repairs are appropriated by City's Board of Supervisors, in its sole discretion, for such purpose and provided further that such repairs can be made within two hundred ten (210) days after the date of such damage (the "Repair Period"). In the event such conditions are satisfied, this Lease shall remain in full force and effect except that Lessee shall be entitled to a proportionate reduction of Base Rent and Additional Charges during the period commencing on the date of such damage and continuing through and including the completion of such repairs based upon the extent to which such damage and the making of such repairs materially interferes with Lessee's use or occupancy of the Premises (except to the extent that the damage or destruction was caused by the negligence or intentional misconduct of Lessee or its Agents) City hereby acknowledging that the Premises is used in conjunction with a 9 hole golf course and any interference that renders one or more holes of the Golf Course unusable may effectively render the entire Premises unusable during the continuation of such interference. City shall use good faith efforts to notify Lessee within ninety (90) days after the date of such damage whether or not such repairs can be made within the Repair Period, and City's determination thereof shall be binding on Lessee. If City determines that such repairs cannot be made within the Repair Period, City shall have the option to notify Lessee of:

(a) City's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period after the Repair Period, subject to the Board of Supervisor's appropriation of all necessary funds, in which event this Lease shall continue in full force and effect and the Base Rent and Additional Charges shall be reduced as provided herein; or

(b) City's election to terminate this Lease as of a date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by City. In case of termination, the Base Rent and Additional Charges shall be reduced as provided above, and Lessee shall pay such reduced Base Rent and Additional Charges up to the date of termination. If at any time during the last twelve (12) months of the Term of this Lease, the Premises or the Improvements are damaged or destroyed, then either City or Lessee may terminate this Lease by giving written notice to the other party of its election to do so within thirty (30) days after the date of the occurrence of such damage; provided, however, Lessee may terminate only if such damage or destruction substantially impairs its use of the Premises for the uses permitted hereunder. The effective date of termination shall be specified in the notice of termination, which date shall not be more than thirty (30) days from the date of the notice.

14.2. Lessee's Obligations. . Notwithstanding anything to the contrary in this Lease, City shall have no obligation to repair the Golf Course, the Premises or the Improvements in the event the damage or destruction is attributable to the negligence or willful misconduct of Lessee or its Agents. In no event shall City be required to repair any damage to Lessee's Personal Property (including the Mobile Classroom) or any Improvements or Alterations installed or made on the Premises by or at the expense of Lessee. With respect to any damage to or destruction by fire or any other casualty to any Alterations or Improvements on the Premises permitted hereunder made by or on behalf of Lessee during the Term hereof, Lessee shall, at its sole cost, restore, repair, replace or rebuild such Alterations or Improvements to the condition such Alterations or Improvements were in prior to such damage or destruction, subject to any changes made in strict accordance with the requirements of **Section 8.1** above, unless this Lease is terminated as provided in **Section 14.1** above. If this Lease is terminated as provided in **Section 14.1** above, then at City's written request Lessee shall promptly, at its sole cost, demolish such damaged Alterations and damaged Improvements or Alterations that were installed or made on the Premises by or at the expense of Lessee and remove them (including all debris) from the Premises in compliance with the provisions of **Section 22.1** below.

14.3. 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 Improvements, and City and Lessee 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 Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

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 hereunder shall be determined pursuant to this Section. City and Lessee intend that the provisions hereof govern fully in the event of a Taking and accordingly, the Parties each 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 or Golf Course 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 Lessee, City hereby acknowledging that the Premises is used in conjunction with a 9 hole golf course and any taking of one or more holes of the Golf Course may effectively render the entire Premises unsuitable for continued use by Lessee where sufficient area (as reasonably and in good faith determined by Lessee) cannot be made available on the remainder of the Golf Course for construction of a replacement hole or holes, (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) Lessee elects to terminate; or (ii) if City elects to terminate, except that this Lease shall not terminate if Lessee agrees to, and does, pay full Rent and Additional Charges, without abatement, and otherwise agrees to, and does, fully perform all of its obligations hereunder.

(b) City shall have the right to terminate this Lease in the event of a partial Taking of a substantial portion of any of City's adjoining real property, even if the Taking does not directly affect the Premises.

(c) Either Party electing to terminate under the provisions of this **Article 15** 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 day after such written notice is given or the Date of Taking.

15.4. Rent; Award. Upon termination of this Lease pursuant to an election under **Section 15.3** above, then: (i) Lessee's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced to the extent, if any, as provided in **Section 15.5** below for any period during which this Lease continues in effect after the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Lessee shall have no claim against City for the value of any unexpired term of this Lease, provided that Lessee may make a separate claim for compensation, and Lessee shall receive any Award made specifically to Lessee, for Lessee's relocation expenses or the interruption of or damage to Lessee's business or damage to Lessee's Personal Property.

15.5. Partial Taking; Continuation of Lease. If a partial Taking of the Premises or the Golf Course occurs and this Lease is not terminated in its entirety under **Section 15.3** above, then this Lease shall terminate as to the portion of the Premises so taken, if applicable, but shall remain in full force and effect as to the portion not taken, and each Party shall be entitled to seek a separate Award in connection therewith (including, but not limited to, an Award made for the value of the leasehold estate created by this Lease), or upon the mutual written agreement of Lessee and City, Base Rent shall be reduced in an amount agreed by the Parties at the time of such Taking and City shall be entitled to the entire Award. Lessee shall have no claim against City, in its proprietary capacity as Landlord under this Lease, for the value of any unexpired Term of this Lease, provided that Lessee may make a separate claim for compensation. Lessee shall retain any Award made specifically to Lessee for Lessee's relocation expenses or the interruption of or damage to Lessee's business or damage to Lessee's Personal Property.

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 or Golf Course for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and Lessee 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, Lessee 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 Lessee 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. Lessee shall not directly or indirectly (including, without limitation, by merger, acquisition, sale or other transfer of any controlling interest in Lessee), 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, any Improvements or its leasehold estate hereunder (collectively, "Assignment"), or permit any portion of the Premises or any Improvements to be occupied by anyone other than itself, or sublet any portion of the Premises or any permitted Improvements thereon. (collectively, "Sublease"). Any Assignment or Sublease shall be voidable at the option of the City in its sole and absolute discretion; and the City shall have the right to terminate immediately this Lease by sending written notice to Lessee.

16.2. Effect of Transfer. No Sublease or Assignment by Lessee shall relieve Lessee, or any guarantor, of any obligation to be performed by Lessee under this Lease. Any Sublease or Assignment shall constitute a material Event of Default by Lessee under this Lease. The acceptance of any Rent or other payments by City from a proposed Transferee shall not constitute consent to such Sublease or Assignment by City or a recognition of any Transferee, or a waiver by City of any failure of Lessee or other transferor to comply with this Section.

16.3. Indemnity for Relocation Benefits. Without limiting **Section 16.2**, Lessee shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Lessee 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.

17. DEFAULT; REMEDIES

17.1. Events of Default. Any of the following shall constitute an event of default ("Event of Default") by Lessee hereunder:

(a) **Rent.** Any failure to pay any Rent or other sums as and when due, provided Lessee shall have a period of three (3) days from the date of written notice of such failure from City 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 Lessee's failure to make such payments when due more than twice during any calendar year, and any such failure by Lessee after Lessee has received two such notices in any calendar year from City shall constitute a default by Lessee hereunder without any requirement on the part of City to give Lessee 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) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Lease, provided Lessee shall have a period of fifteen (15) days from the date of written notice from City 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, Lessee shall have a reasonable period to complete such cure if Lessee promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion and Lessee uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from City; provided, however, that upon the occurrence during the Term of two (2) defaults of the same obligation during any

consecutive twenty-four (24) month period City shall not be required to provide any notice regarding Lessee's failure to perform such obligation, and any subsequent failure by Lessee after Lessee has received two such notices shall constitute a default by Lessee hereunder without any requirement on the part of City to give Lessee notice of such failure or an opportunity to cure;

(c) **Vacation or Abandonment.** Any vacation or abandonment of the Premises for more than fourteen (14) consecutive days; and

(d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Lessee, or an assignment by Lessee for the benefit of creditors, or any action taken or suffered by Lessee 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 Lessee, 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 Lessee'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 Lessee 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 Lessee's breach of this Lease shall not waive 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 Lessee's right to possession, if Lessee has the right to sublet or assign, subject only to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of Lessee's right of possession: acts of maintenance or preservation; efforts to relet the Premises or 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 Lessee specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof on Lessee's behalf for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Lessee shall be immediately liable for payment to City of, in addition to Base Rent and Additional Charges due hereunder, 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 hereunder 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 **Section 17.2(b)** shall be deemed a waiver of any default by Lessee and, notwithstanding any such subletting without termination, City may at any time thereafter elect to terminate this Lease for such previous default.

(c) **Appointment of Receiver.** The right to have a receiver appointed for Lessee upon application by City to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to City pursuant to this Lease.

17.3. City's Right to Cure Lessee's Defaults. If Lessee defaults in the performance of any of its obligations under this Lease, then City may at any time thereafter with three (3) days prior oral or written notice (except in the event of an emergency as determined by City), remedy such Event of Default for Lessee's account and at Lessee's expense. Lessee shall pay to City, as Additional Rent, promptly upon demand, all sums expended by City, or other costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Lessee's obligations under this Section shall survive the termination of this Lease. Nothing herein shall imply any duty of City to do any act that Lessee is obligated to perform under any provision of this Lease, and City's cure or attempted cure of Lessee's Event of Default shall not constitute a waiver of Lessee's Event of Default or any rights or remedies of City on account of such Event of Default.

18. WAIVER OF CLAIMS; INDEMNIFICATION

18.1. Waiver of Claims. Lessee covenants and agrees that City shall not be responsible for or liable to Lessee for, and, to the fullest extent allowed by Law, Lessee 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. The foregoing shall not relieve City from providing Lessee with the abatement rights under Article 31 below. Further, nothing herein 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) Lessee expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to the Improvements or Lessee's uses hereunder. City would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Lessee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Lessee or other waivers contained in this Lease and as a material part of the consideration for this Lease, Lessee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against City for consequential and incidental damages (including without limitation, 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 hereunder, including, without limitation, any interference with uses conducted by Lessee 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, Lessee 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.

Lessee acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Lessee 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 Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Lease.

18.2. Lessee's Indemnity. Lessee, on behalf of itself and its successors and assigns, 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, without limitation, Agents and Invitees of Lessee, or loss of or damage to property (including, without limitation, the Department Facilities) howsoever or by whomsoever caused, occurring in or on the Premises; (b) any default by Lessee in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Lessee's part; (c) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Lessee, its Agents or Invitees or any person or entity claiming through or under any of them, of the Premises, Golf Course or any Improvements; (d) the condition of the Premises, Mobile Classroom or any Improvements constructed by or on behalf of Lessee, or Lessee's failure to properly repair or maintain the Mobile Classroom or any Improvements on the Premises; (e) any construction or other work undertaken by Lessee on or about the Premises or any Improvements whether before or during the Term of this Lease; or (f) any acts, omissions or negligence of Lessee, its Agents or Invitees, in, on or about the Premises, Golf Course, or any Improvements; all regardless of the active or passive 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 (i) such Indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Lease, or (ii) such Losses as are caused exclusively by the gross negligence or intentional wrongful acts or omissions of the Indemnified Parties, or (iii) such losses are caused by the misconduct of trespassers. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Loss. Lessee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which 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 Lessee by City and continues at all times thereafter. Lessee's obligations under this Section shall survive the expiration or sooner termination of the Lease. City acknowledges that for the purposes of this Section 18 members of the public using the Golf Course shall not be deemed to be Invitees of Lessee while using portions of the Golf Course other than the Premises unless such individuals are engaged in lessons or other activities managed, supervised or sponsored by Lessee, and Lessee's mere scheduling of tee times, acceptance of reservations, or collection of greens fees from such individuals shall not make such individuals Lessee's Invitees hereunder.

19. INSURANCE

19.1. Lessee's Insurance. Lessee, at no cost to the City, shall procure and keep in effect at all times during the Term insurance as follows

(i) Commercial general 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 contractual liability, independent contractors,

broad-form property damage, fire damage legal liability of not less than Two Hundred Fifty Thousand Dollars (\$250,000), personal injury, products and completed operations, and explosion, collapse and underground (XCU). If the operation of Lessee's business includes food sales, such coverage shall include Food Products Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence. If the operation of Lessee's business includes the sale of alcoholic beverages, such coverage shall include legal liquor liability coverage with limits not less than One Million Dollars (\$1,000,000) each occurrence.

(ii) Worker's Compensation Insurance with Employer's Liability Limits not less than One Million Dollars (\$1,000,000) each accident.

(iii) 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 and non-owned and hired vehicles, as applicable, if Lessee uses automobiles in connection with its use of the Premises.

(iv) Such other risks in such amounts as City's Risk Manager may from time to time reasonably require.

19.2. General Requirements. 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.

(a) Should any of the required insurance be provided under a claims-made form, Lessee shall maintain such coverage continuously throughout the term hereof 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.

(b) 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 double the occurrence or claims limits specified above.

(c) All liability insurance policies shall be endorsed to provide the following:

Name Lessee as the insured and the City and County of San Francisco, its officers, agents and employees, as additional insureds, as their respective interests may appear hereunder.

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. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

All policies shall be endorsed to provide thirty (30) days' advance written notice to City of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for City set forth in the Basic Lease Information.

(d) Each insurance policy required hereunder 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.

19.3. Proof of Insurance. Lessee shall deliver to City certificates of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Lessee shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Lessee shall fail to procure such insurance, or to deliver such policies or certificates, City may, at its option, procure the same for the account of Lessee, and the cost thereof shall be paid to City within five (5) days after delivery to Lessee of bills therefor.

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

19.5. No Limitation on Indemnities. Lessee's compliance with the provisions of this Section shall in no way relieve or decrease Lessee's indemnification obligations under **Sections 18.2** and **23.2** hereof, or any of Lessee's other obligations or liabilities under this Lease.

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

19.7. Lessee's Personal Property and Alterations and Improvements. Lessee shall be responsible, at its expense, for separately insuring Lessee's Personal Property (including the Mobile Classroom) and any Improvements and/or Alterations installed or made on the Premises by or at the expense of Lessee.

19.8. City's Self Insurance. Lessee acknowledges that City self-insures against casualty, property damage and public liability risks and agrees City shall not be required to carry any third party insurance with respect to the Premises or otherwise.

19.9. Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, City and Lessee each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises or other City property and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, other City Property or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises or other City property carried by Lessee does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Lessee shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against City or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

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 the Premises and any portion thereof at all reasonable times upon not less than forty-eight (48) hours oral or written notice to Lessee (except in the event of an emergency) for any of the following purposes:

To determine whether the Premises are in good condition and to inspect the Premises (including, without limitation, soil borings or other Hazardous Material Investigations);

To determine whether Lessee is in compliance with its obligations hereunder and to cure or attempt to cure any such default in accordance with the provisions of **Section 17.3** hereof;

To serve, post or keep posted any notices required or allowed under any of the provisions of this Lease;

To do any maintenance or repairs to the Premises that City has the right or the obligation, if any, to perform hereunder; and

To show it to any prospective purchasers, brokers, Encumbrancers or public officials, or, during the last year of the Term of this Lease, exhibiting the Premises to prospective tenants or other occupants, and to post any "for sale" or "for lease" or "coming soon" signs in connection therewith.

(b) **Emergency Access.** In the event of any emergency, as determined by City, City may, at its sole option and without notice, enter the Premises and alter or remove Lessee's Personal Property on or about the Premises. City shall have the right to 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, 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 Lessee, its Agents or Invitees. 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 Lessee from the Premises or any portion thereof.

(c) **No Liability.** City shall not be liable in any manner, and Lessee 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 Lessee, its Agents or Invitees.

(d) **No Abatement.** Except as may be specifically and expressly provided otherwise in this Lease, Lessee 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 Lease in a manner that, to the extent practicable, will minimize any disruption to Lessee's use hereunder.

20.2. Department Facilities and Utility Installations. Without limiting **Section 20.1** above, City shall have the right at all times, to enter upon the Premises upon forty eight (48) hours advance written or oral notice (except in cases of emergency as determined by City), to use, install, construct, repair, maintain, operate, replace, inspect, and remove the Department Facilities, if any, or any public park or utility facilities. City shall bear the expense of any such activities, unless the need is occasioned by the acts, omissions or negligence of Lessee, its Agents or Invitees. City shall not be responsible for any temporary loss or disruption of Lessee's use of the Premises occasioned by any such facility installations or other activities, except as may be specifically and expressly provided otherwise in this Lease.

20.3. Roadways. City and its Agents shall have the right to enter upon and pass through and across the Premises on any existing or future roadways and as City desires.

20.4. Rights of Public. Lessee shall keep the Premises open to the public at all times consistent with the uses permitted hereunder, subject to the Rules and Regulations or as otherwise approved by the General Manager in writing.

21. ESTOPPEL CERTIFICATES

Either Party hereto shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other Party, execute, acknowledge and deliver to the other Party, or such persons or entities designated by such other Party, a statement in writing certifying: (a) the Commencement Date and 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 defaults under this Lease (or if so, specifying the same), (d) the dates, if any, to which the Rent has been paid, and (e) any other information that may be reasonably required by any such persons or entities. Any such certificate delivered pursuant to the provisions hereof may be relied upon by the other Party or any prospective purchaser or Encumbrancer of its estate. The General Manager shall be authorized to execute, acknowledge and deliver any such certificates of the City.

22. SURRENDER

22.1. Surrender of the Premises. Upon the Expiration Date or any earlier termination of this Lease pursuant hereto, Lessee 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 Lessee. On or before the Expiration Date or any earlier termination hereof, or later upon City's request, Lessee shall, at its sole cost, remove any and all of Lessee's Personal Property (including, without limitation, the Mobile Classroom) from the Premises and demolish and remove any and all Improvements and Alterations installed or made on the Premises by or at the expense of Lessee requested by City to be removed (except for any such Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2** above). In addition, Lessee shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of such Improvements or Alterations. In connection therewith, Lessee shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Lessee's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Lessee's Personal Property (including, without limitation, the Mobile Classroom) remaining on or about the Premises after the Expiration Date of this Lease may, at City's option, be deemed abandoned and in such case City may 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 Lessee fails to surrender the Premises to City on the Expiration Date or earlier termination of the Term as required by this Section, Lessee shall Indemnify City against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Lessee resulting from Lessee's failure to surrender the Premises.

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 Lessee or City, become the property of City, 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, Lessee 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 Lessee's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises or any permitted Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2** above.

23. HAZARDOUS MATERIALS

23.1. No Hazardous Materials. Lessee covenants and agrees that neither Lessee 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 Improvements or transported to or from the Premises or any Improvements. Lessee shall immediately notify City if and when Lessee learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises or any Improvements. City may from time to time request Lessee to provide adequate information for City to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and Lessee shall promptly provide all such information. Without limiting **Article 20** hereof, City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Lessee (except in the event of an emergency).

23.2. Lessee's Environmental Indemnity. If Lessee breaches any of its obligations contained in **Section 23.1** above, or, if any act or omission or negligence of Lessee or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Premises (including any Improvements thereon) or any adjacent City property, without limiting Lessee's general Indemnity contained in **Section 18.2** above, Lessee, 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 Materials Claims arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or any adjacent City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or adjacent City property. Without limiting the foregoing, if Lessee or any of Lessee's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or any other adjacent City property, Lessee shall, immediately, at no expense to City, 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. Lessee 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

Lessee shall pay to City upon execution of this Lease 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. Lessee agrees that City may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises, the Improvements, or the Department Facilities (if any) caused by Lessee, its Agents or Invitees, or any failure of Lessee to perform any other terms, covenants or conditions contained in this Lease, without waiving any of City's other rights and remedies hereunder or at Law or in equity. Should City use any portion of the security deposit to cure any Event of Default by Lessee hereunder, Lessee shall immediately replenish the security deposit to the original amount, and Lessee's failure to do so within five (5) days of City's notice 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 Lessee shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Lessee's liability for the performance of any of its obligations under this Lease.

25. HOLDING OVER

Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis at a monthly Base Rent equal to one hundred ten percent (110%) of the amount set forth in **Section 5.1** hereof, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term). Any holding over without City's consent shall constitute a default by Lessee and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term of this Lease. Any holding over after the expiration of the Term without the City's consent shall be at a monthly rental rate equal to one hundred fifty percent (150%) of the rate in effect at the end of the Term of this Lease.

26. GENERAL PROVISIONS

26.1. Notices. Except as otherwise expressly provided in this Lease, any notice given hereunder shall be effective only if in writing and given by delivering the notice in person, or by sending it first-class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to: (a) Lessee (i) at Lessee's address set forth in the Basic Lease Information, if sent prior to Lessee's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to Lessee's taking possession of the Premises, or (iii) at any place where Lessee or any Agent of Lessee may be found if sent subsequent to Lessee'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 Lessee may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first-class or certified mail, one day after the date it is made if sent by commercial overnight courier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this **Section 26.1** and applicable Laws, shall be deemed receipt of such notice. For convenience of the Parties, copies of notices may also be given by telefacsimile to the telefacsimile number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by

telexfacsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telexfacsimile copy of the notice.

26.2. No Implied Waiver. No failure by City to insist upon the strict performance of any obligation of Lessee under this Lease or to exercise any right, power or remedy arising out of a breach thereof, 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 prior to 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 hereof 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 hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of City given in any instance under the terms of this Lease shall not relieve Lessee of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

26.3. Amendments. Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto. Whenever this Lease requires or permits the giving by City of its consent or approval, the General Manager of the Department shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Lessee, and City's agreement may be made upon the sole approval of the General Manager of the Department provided such amendment or modification does not (i) decrease the amount of rental income payable by Lessee to City, (ii) materially increase City's liabilities or financial obligations under this Lease, (iii) materially increase the size of the Premises, (iv) change the Term of this Lease, or (v) materially change the permitted uses of the Premises. Any proposed amendment which falls into the above specified categories shall require the approval of the Commission, and, if required under the City's Charter or Administrative Code, the Mayor, and the Board of Supervisors.

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

26.5. Joint and Several Obligations. The word "Lessee" as used herein shall include the plural as well as the singular. If there is more than one Lessee, the obligations and liabilities under this Lease imposed on Lessee shall be joint and several.

26.6. Interpretation of Lease. The captions preceding the articles and sections 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 herein and 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 herein, whenever the consent of City is required to be obtained by Lessee hereunder, City may give or withhold such consent in its sole and absolute discretion. All such consents may be made by the General Manager acting alone, unless stated to the contrary herein.

26.7. Successors and Assigns. Subject to the provisions of **Article 16** hereof relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Lessee and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by City named herein (or by any subsequent landlord) of its interest in the Premises as owner or lessee, 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.

26.8. Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein except as identified in the Basic Lease Information, whose commission, if any is due, shall be paid pursuant to a separate written agreement between such broker and the party through which such broker contracted. In the event that 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.

26.9. Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, 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.

26.10. Governing Law. This Lease shall be subject to, and construed and enforced in accordance with, the Laws of the State of California and the City's Charter and Administrative Code.

26.11. Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Lease) contains the entire agreement between the Parties and 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 of this Lease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Lessee 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 herein, and no rights, easements or licenses are or shall be acquired by Lessee by implication or otherwise unless expressly set forth herein.

26.12. Attorneys' Fees. In the event that either City or Lessee fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or

interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Lease, reasonable fees of attorneys of 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.

26.13. 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.

26.14. Cumulative Remedies. All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

26.15. Survival of Indemnities. Termination of this Lease shall not affect the right of either party to enforce any and all indemnities, waivers 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 hereof. Lessee specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, Lessee has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which 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 Lessee by City and continues at all times thereafter.

26.16. Relationship of Parties. City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Lessee's business, or joint venturer or member in any joint enterprise with Lessee. Neither party shall act as the agent of the other party in any respect hereunder, and neither party shall have any authority to commit or bind the other party without such party's consent as provided herein. 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 authorization or approval by City of any activity conducted by Lessee on, in or relating to the Premises.

26.17. Transfer by City. If City sells or otherwise transfers the Premises, City shall be released from its obligations hereunder arising on or after the date of such sale or transfer and Lessee shall look solely to the successor-in-interest to City. Upon a sale of the Premises by City, Lessee 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 Lessee, with regard to any future sale or other disposition of the Premises, or any portion thereof.

26.18. Recording. Lessee agrees that it shall not record this Lease in the Official Records.

26.19. 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 Lessee, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Lessee, its successors and assigns, or for any obligation of City under this Lease or otherwise.

26.20. Wages and Working Conditions. With respect to the construction of any Improvements or Alterations, any employee performing services for Lessee shall be paid not less than the highest prevailing rate of wages, 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 the City and County of San Francisco. Lessee shall require any contractor to provide, and shall deliver to City every calendar month during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Improvements or Alterations on the Premises. Notwithstanding the foregoing, City hereby acknowledges and agrees that the obligations of this **Section 26.20** do not apply to volunteer services provided to or for the benefit of or on behalf of Lessee.

26.21. Prevailing Wages for Theatrical Workers. Pursuant to San Francisco Administrative Code Section 21.25-3, unless excepted, Contracts, Leases, Franchises, Permits, and Agreements awarded, let, issued or granted by the City and County of San Francisco for the use of property owned by the City and County of San Francisco shall require any Employee engaged in theatrical or technical services related to the presentation of a Show to be paid not less than the Prevailing Rate of Wages. Employees engaged in theatrical and technical services include, without limitation, those engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services. Capitalized terms in this Section that are not defined in this Lease shall have the meanings provided in Administrative Code Section 21.25-3. Lessee agrees to comply with and be fully bound by, and to require its Subcontractors to comply with and be fully bound by, the provisions of Administrative Code Section 21.25-3, including, without limitation, the payment of any penalties for noncompliance and other remedies available to the City. The provisions of Administrative Code Section 21.25-3 are hereby incorporated by reference and made a part of this Lease. Lessee shall cooperate fully with the Labor Standards Enforcement Officer and any other City official or employee, or any of their respective agents, in the administration and enforcement of the requirements of Administrative Code Section 21.25-3, including, without limitation, any investigation of noncompliance by Lessee or its Subcontractors. Lessee agrees that the City may inspect and/or audit any workplace or job site involved in or related to the performance of this Lease, including, without limitation, interviewing Lessee's and any Subcontractor's employees and having immediate access to employee time sheets, payroll records, and paychecks for inspection. Lessee may obtain a copy of the current Prevailing Rate of Wages from City by contacting its Office of Labor Standards Enforcement. Lessee acknowledges that the City's Board of Supervisors may amend such Prevailing Rate of Wages and agrees that Lessee and any Subcontractors shall be bound by and shall fully comply with any such amendments by the Board of Supervisors.

26.22. Intellectual Property; Music Broadcasting Rights. Lessee shall be solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property on the Premises, including, but not limited to musical or other performance rights. (Note to Lessee: To obtain the appropriate music performance license, you may contact the BMI Licensing Executive toll free at 1-877-264-2137 Monday – Friday, 9-5 p.m. (Central Time) and the American Society of Composers, Authors and Publishers (“ASCAP”) at 1-800-505-4052 Monday – Friday, 9-5 p.m. (Eastern Time).)

26.23. Supervision of Minors.

(a) **Records Request.** If any person applies for employment or for a volunteer position with Lessee, or any sublessee or subcontractor, in which such applicant would have supervisory or disciplinary power over a minor or any person under such applicant's care, then Lessee, and any sublessee or subcontractors providing services at the Premises, shall request from the California Department of Justice records of all convictions or any arrest pending

adjudication of such applicant involving the offenses listed in Welfare and Institution Code Section 15660(a), in accordance with the procedures established in California Penal Code Section 11105.3.

(b) Restriction on Hires for Recreational Sites. If Lessee, or any sublessee or subcontractor, is providing services under this Lease at a City park, playground, recreational center or beach (separately and collectively, "Recreational Site"), Lessee shall not hire, and shall prevent its subcontractors from hiring, any person for employment or a volunteer position to provide supervisory or disciplinary power over a minor or any person under his or her care if that person has been convicted of any offense listed in Welfare and Institution Code Section 15660(a).

(c) Notice Required for Sites Other Than Recreational Sites. If Lessee, or any of its sublessees or subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code Section 11105.3(c), then Lessee shall comply, and cause its sublessees and subcontractors to comply, with Penal Code Section 11105.3(c) and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Lessee shall provide, or cause its sublessees or subcontractors to provide, City with a copy of any such notice at the same time that it provides notice to any parent or guardian, to the extent permitted by law.

(d) General Requirements. Lessee shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this Section of the Lease as a condition of its contract with the subcontractor. Lessee acknowledges and agrees that failure by Lessee or any of its subcontractors to comply with any provision of this Section of this Lease shall constitute an Event of Default. Lessee further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Lease, partially or in its entirety, to recover from Lessee any amounts paid under this Lease, and to withhold any future payments to Lessee. The remedies provided in this Section shall not limited any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

26.24. Employee Signature Authorization Ordinance. City has enacted an ordinance at Chapter 23, Article VI of its Administrative Code, commencing at Section 23.50 (the "Ordinance"), which may apply to employers of employees in hotel or restaurant projects on City property with more than fifty (50) employees. The terms of the Ordinance are expressly incorporated herein by reference. To the extent Lessee or its successors or assigns employs employees in a hotel or restaurant in the Premises within the scope of the Ordinance, Lessee hereby agrees as a material condition of this Lease to enter into and abide by a Card Check Agreement with a Labor Organization or Organizations seeking to represent Lessee's employees, if and as required by the Ordinance, and to otherwise fully comply with the requirements of the Ordinance. Lessee recognizes that, if the Ordinance applies to Lessee's operations on the Premises, Lessee must enter into a Card Check Agreement with a Labor Organization(s) as specified by the Ordinance before executing this Lease, and that being party to such a Card Check Agreement(s) is a condition precedent of rights or obligations under this Lease.

26.25. Non-Discrimination in City Contracts and Benefits Ordinance.

(a) Covenant Not to Discriminate. In the performance of this Lease, Lessee covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity,

domestic partner status, marital status, height, weight, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Lessee, in any of Lessee's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Lessee.

(b) Subleases and Other Subcontracts. Lessee shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Sublessee or other subcontractor in substantially the form of subsection (a) above. In addition, Lessee 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 sublessees and other subcontractors to comply with such provisions. Lessee's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Non-Discrimination in Benefits. Lessee does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco 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) Condition to Lease. As a condition to this Lease, Lessee shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(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 Lease as though fully set forth herein. Lessee 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, Lessee 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 Lessee and/or deducted from any payments due Lessee.

26.26. No Relocation Assistance; Waiver of Claims. Lessee acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Lessee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action (including, without limitation, 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, without limitation, 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.

26.27. MacBride Principles - Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Lessee acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

26.28. Conflicts of Interest. Through its execution of this Lease, Lessee acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of such provisions, and agrees that if Lessee becomes aware of any such fact during the term of this Lease Lessee shall immediately notify City.

26.29. Tropical Hardwood and Virgin Redwood Ban. Lessee shall not permit the use of any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product in or on the Premises or otherwise in the performance of this Lease. The City and County of San Francisco 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. In the event Lessee fails to comply in good faith with any of the provisions of Section 12I of the San Francisco Administrative Code, Lessee shall be liable for liquidated damages for each violation in any amount equal to Lessee's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Lessee acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Lessee from any contract with the City and County of San Francisco.

26.30. Tobacco Product Advertising Prohibition. Lessee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property which is the subject of this Lease. This prohibition includes the placement of the name of a company producing, selling, or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

26.31. First Source Hiring Ordinance. The provisions of San Francisco Administrative Code Chapter 83, the First Source Hiring Program, are incorporated in this Section by reference, and are made a material part of this Lease as though fully set forth herein. As an essential term of, and consideration for, this Lease, unless exempted by the City's Office of Economic and Workforce Development, Lessee shall enter into a First Source Hiring Agreement with the City, on or before the effective date of the Lease. Lessee shall keep, and provide to the City, accurate records demonstrating its compliance with the First Source Hiring Program. Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the Office of Economic and Workforce Development.

26.32. Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in

this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

26.33. Counterparts. This Lease may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

26.34. Vending Machine/Non-alcoholic Beverage Contract. Lessee hereby agrees to abide by any and all provisions of any contract entered into by City for the purpose of the sales of non-alcoholic beverages at City-owned facilities.

26.35. No Light, Air or View Easement. Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Premises shall in no way affect this Lease or impose any liability on City as landlord under this Lease.

26.36. City's Inability to Perform. If City is unable to perform or is delayed in performing any of City's obligations under this Lease, by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials or by any other reason beyond City's reasonable control, no such inability or delay shall constitute an eviction under this Lease, or impose any liability upon City or its Agents by reason of inconvenience, annoyance, interruption, injury or loss to or interference with Lessee's business or use and occupancy or quiet enjoyment of the Premises or any loss or damage occasioned thereby. Nothing contained in this Section shall limit the rights of Lessee pursuant to **Section 31** below.

26.37. Notification of Limitations on Contributions. Through its execution of this Lease, Lessee 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 the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, 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. Lessee 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. Lessee further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Lessee's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Lessee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Lessee. Additionally, Lessee acknowledges that Lessee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Lessee further agrees to provide to City the name of the each person, entity or committee described above.

26.38. Public Transit Information. Lessee shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Lessee employed on the Premises, including, without limitation, the distribution to such employees of

written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Lessee's sole expense.

26.39. Drug-Free Workplace. Lessee acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Lessee agrees that any violation of this prohibition by Lessee, its Agents or assigns shall be deemed a material breach of this Lease.

26.40. Preservative-Treated Wood Containing Arsenic. As of July 1, 2003, Lessee 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. Lessee 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 Lessee 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.

26.41. Resource Efficiency. Lessee acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient buildings and resource-efficient pilot projects. Lessee hereby agrees that it shall comply with all applicable provisions of such code sections.

26.42. Food Service Waste Reduction Requirements. Lessee agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Lease as though fully set forth. This provision is a material term of this Lease. By entering into this Lease, Lessee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Lessee agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$500 liquidated damages for subsequent breaches in the same year is 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 amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Lessee's failure to comply with this provision.

26.43. No Smoking in City Parks. Lessee agrees to comply with Section 1009.81 of the San Francisco Health Code, which provides: "Smoking is prohibited on any unenclosed area of property in the City and County of San Francisco that is open to the public and under the jurisdiction of the Recreation and Park Commission or any other City department if the property is a park, square, garden, sport or playing field, pier, or other property used for recreational purposes, or a farmers' market."

26.44. Prohibition of the Sale of Lottery Tickets. The selling of any lottery tickets on the Premises is expressly prohibited.

26.45. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Lessee shall promptly notify City of any graffiti on the Golf Course discovered by Lessee. Lessee shall remove all graffiti from the Mobile Classroom within forty eight (48) hours of the earlier of Lessee's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.). Any failure of Lessee to comply with this Section of this Lease shall constitute an Event of Default of this Lease.

27. QUALITY OF SERVICES AND PRODUCTS OFFERED.

Lessee hereby agrees that any food and refreshments offered for sale hereunder shall be of good quality and that the service shall be prompt, clean, courteous, and efficient. Department shall have the right to raise reasonable objections to the quality of the food, beverages, and service(s) provided and Lessee shall have the obligation to address those objections by modifying the causes of those objections until corrected to the satisfaction of the Department.

28. PARTICIPATION IN CITY CUSTOMER SATISFACTION PROGRAM.

Lessee hereby agrees to participate in any customer satisfaction program developed by the City, provided that the participation requirements of the Customer Satisfaction Program shall be reasonable.

29. SIGNS AND ADVERTISING.

Lessee hereby agrees not to erect or maintain, nor permit to be erected or maintained, upon any part of the Premises, any signs without obtaining City's written consent in advance.

30. SUSTAINABLE FOODS.

Sustainable foods are those which, through their production, purchase, and consumption, enhance the health of the environment, producers and consumers through one or more of these methods: growing, processing and distributing locally; using low or no synthetic agricultural chemicals; fairly trading with developing countries; meeting animal welfare standards; processing minimally; no genetic modification; no unnecessary antibiotics; and no added growth hormones.

Lessee shall use commercially reasonable efforts to incorporate sustainable food concepts into everyday operations of the business on the Premises. City encourages Lessee to source sustainable foods by buying certified and/or locally produced food products. Acceptable sustainability certifications are limited to organic certification under the National Organic Standards Act ("USDA Organic), Fair Trade certification, Protected Harvest certification, Food Alliance certification, Rainforest Alliance certification, Certified Humanely Raised and Handled certification, American Humane certification, Marine Stewardship Council certification, and Salmon-Safe certification. Sustainability-related product claims that are acceptable under this clause include "grass-fed" claims, "not treated with artificial growth hormones (RBGH)" claims," produced without the nontherapeutic use of antibiotics" claims, and "raised without added hormones/no hormones added" claims.

Locally produced food products are produced within 200 miles of San Francisco including the following counties in the North Coast, Central Coast, Sacramento and San Joaquin Valleys: Alameda, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Fresno, Glenn, Kern, Kings, Lake, Madera, Marin, Mariposa, Mendocino, Merced, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Sierra, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Tuolumne, Yolo, and Yuba counties.

Lessee shall also provide an annual report on each anniversary date of this Lease outlining how Lessee incorporated these sustainable food concepts into everyday operations of the food and beverage concession and how Lessee informed customers and the youth employed by the Lessee, if any, regarding sustainable foods. This report shall include the percentage of total sales that were products certified as sustainably produced.

31. LIMITED ABATEMENT RIGHT IN CONNECTION WITH GOLF COURSE DISRUPTION.

City hereby acknowledges that the Premises are used in conjunction with the operation of the balance of the Golf Course and any interference or circumstance that renders one or more holes of the Golf Course unusable may effectively render the entire 9 holes of the Golf Course and the Premises unusable during the continuation of such interference or circumstance. Accordingly, in the event that Lessee is prevented from using, and does not use, the Premises or the balance of the Golf Course or a material portion of the Premises or the Golf Course as a result of an event, circumstance or condition that is within City's reasonable control that renders one or more holes of the Golf Course unusable (a "City-Triggered Abatement Condition"), and if such City-Triggered Abatement Condition continues for a period of ten (10) business days after Lessee's delivery of any such notice (the "Eligibility Period"), then the Base Rent shall be abated or reduced, as the case may be, after expiration of the Eligibility Period for such time that Lessee continues to be so prevented from using, and does not use, the Premises or the balance of the Golf Course or a material portion of either, in the proportion to the loss of revenue that Lessee reasonably demonstrates is attributable to such City-Triggered Abatement Condition and could not have been reasonably avoided by Lessee. In the event that Lessee is prevented from using, and does not use, the Premises or the balance of the Golf Course or a material portion of the Premises or the Golf Course as a result of an event, circumstance or condition that is outside City's reasonable control that renders one or more holes of the Golf Course unusable (a "Non-City-Triggered Abatement Condition"), and if such Non-City-Triggered Abatement Condition continues for a period of thirty (30) days after Lessee's delivery of any such notice, then the Base Rent shall be abated or reduced, as the case may be, after expiration of the such period for such time that Lessee continues to be so prevented from using, and does not use, the Premises or the balance of the Golf Course or a material portion of either, in the proportion to the loss of revenue that Lessee reasonably demonstrates is attributable to such Non-City-Triggered Abatement

Condition and could not have been reasonably avoided by Lessee. The prior provisions of this Article 31 are inapplicable to disruptions that result from damage caused by fire or other casualty where such damage is governed by **Article 14**. If a City-Triggered Abatement Condition or a Non-City-Triggered Abatement Condition shall continue for more than one hundred fifty (150) days, then Lessee shall have the right to terminate this Lease on written notice to City given at any time prior to the date on which such condition has improved sufficiently to allow Lessee to resume normal operations of the Golf Course and its business in the Premises. If any abatement resulting from a Non-City-Triggered Abatement Condition shall continue for more one hundred fifty (150) consecutive days where the interruption is outside City's reasonable control, City may terminate this Lease by notice to Lessee prior to the cessation of such interruption.

[No further text this page.]

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

City and Lessee have executed this Lease as of the date first written above.

LESSEE:
GOLDEN GATE PARK GOLF FOUNDATION,
a California non profit corporation

By: _____

Its: _____

By: _____

Its: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____

PHILIP A. GINSBURG, General Manager
Recreation and Park Department

APPROVED BY
RECREATION AND PARK COMMISSION
PURSUANT TO RESOLUTION NO. _____ DATED: _____

Margaret McArthur, Commission Liaison

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By _____

Deputy City Attorney

EXHIBIT A- PREMISES MAPS

[Attached]

EXHIBIT B- DEPARTMENT RULES AND REGULATIONS

Please see following link for San Francisco Recreation and Park Department Park Code

<http://library.municode.com/index.aspx?clientId=14138&stateId=5&stateName=California>

EXHIBIT C- GOLF COURSE RULES

SAN FRANCISCO MUNICIPAL GOLF COURSES POLICIES AND RULES FOR PLAY

General Access:

1. All courses shall be open 365 days a year, with the exception of course or weather emergencies.
2. All courses shall be open for play from sunrise to sundown, unless special accommodations are necessary for course maintenance.
3. No play is allowed on any golf course or portion thereof which has been closed for any reason by the City.
4. The following holidays shall be observed and charged weekend rates: New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day following, and Christmas Day. When a holiday is officially observed on a different day, the holiday rate will be charged for the observed date only.

Course Rules:

5. USGA and local rules govern all play.
6. All golfers with a reserved tee time must check in with the pro shop at least 20 minutes prior to their start time.
7. No warming up or practicing is allowed on the first tee or any tee surface; no chipping on any practice surface or putting green.
8. Sharing equipment is strictly prohibited; each player must have a set of clubs and bag.
9. All rounds must begin on the first tee unless otherwise specified by the starter.
10. No practicing or use of more than one ball per golfer is allowed on the course.
11. Groups of more than four persons are not allowed on the course unless directed by the pro shop.
12. Pace of play for each course shall be determined by the Course Manager. Golfers unable to keep that pace must let others play through.
13. Metal spikes on shoes are prohibited anywhere on the property.
14. Golfers are required to repair their own divots and ball marks with provided divot mix and must rake bunker sand upon exiting the bunker.
15. Pull carts and golf bags must be left off greens, collars and tees at all times.
16. Unless approved by the Course Manager, golf instruction on the course or any other area of the facility is strictly prohibited.
17. Alcoholic beverages consumed on the course must be purchased on the premises.

18. Dogs or other pets are not allowed on the course or in the clubhouse at any time.
(Service dogs are allowed with prior approval from the pro shop.)
19. Non-golfers are not allowed on the course at any time unless:
- a person is accompanying a golfer on a cart and the applicable fee for such has been paid
 - a golfer requires special assistance and pre-approval has been obtained through the pro shop
 - local tournaments request additional presence on the course, which will require a waiver of liability to be signed by the tournament sponsor or the individual, in the case of spectators at high school tournaments. The Course Manager shall have the final authority administering this rule to allow for maximum public safety on his particular course.
20. Golfers may be refused playing privileges or may be removed from the course for:
- Submitting false information for the purpose of securing golfing privileges or discounts;
 - Playing without paying a green fee or for not registering with the starter;
 - Obvious inability to play golf;
 - Failure to comply with existing rules and regulations;
 - Intentionally hitting balls off the course into park areas or private property adjacent to the course;
 - Flagrant violation of rules of etiquette, such as obnoxious behavior, intoxication, damaging to the course and facilities or failure to follow course design on a hole-to-hole basis.

Motorized Carts:

21. Golfers must be at least 18 years old and have a valid driver's license available at the time of renting a golf cart.
22. On course, carts must stay on cart paths at all times.
- "90 degree rule" is applicable only with approval from Course Manager. Daily status shall be posted at each course.
 - Sharp Park shall never invoke the "90 degree rule" for any reason due to environmental concerns.
 - For safety reasons, carts at Sharp Park are not allowed in the parking lot.

High School Teams:

23. AAA San Francisco public school teams must present a request for scheduled playing times at least 60 days prior to the beginning of the school golf season and that request shall be subject to the course manager's approval. If approved, the

high school teams may have free access on weekdays at a time negotiated with the Course Manager during the school golf season. The teams must be accompanied by their coach.

24. When not accompanied by their coach, individual team members may practice on a space available basis and shall be given a special rate providing that (a) they are listed on the team roster and (b) they have identification. These policies apply only to Sharp Park, Lincoln Park and Golden Gate Park.
25. All practice range/cage time must be approved in advance by the course manager on a space-available basis. Only one stall may be used per bucket of balls, Standard fees shall apply.

EXHIBIT D- BASELINE MAINTENANCE SCHEDULE

Greens:

- Cut 6 days/week. One day rest.
- Fertilized every 6 to 8 weeks as determined by the growing season.
- Core aerated in the Spring and Fall. Over seeded, top dressed with sand, and fertilized.
- Pin placement changed 3 days per week.
- Iron applications for weed abatement as needed.

Tees/ Fairway/ Rough:

- All cut at the same height once per week.
- Tee blocks are moved daily.
- Divot mix as needed.
- Fertilized in the Spring and Fall.

Bunkers:

- Raked and cleaned daily as needed.

Watering:

- Nightly as needed.

Tree Work:

- As needed for hazards.
- Maintained by reforestation for regular pruning.

EXHIBIT E – GUIDELINES FOR MINIMUM REQUIRED CAPITAL IMPROVEMENTS

Types of improvements and upgrades contemplated in Section 8.4:

1. Renovation of the driving cage
2. Renovation of the restrooms
3. Renovation of existing tee boxes; possibly adding forward tees

EXHIBIT F – MOBILE CLASSROOM DIMENSIONS AND SPECIFICATIONS