City of Palo Alto

City Council Staff Report

(ID # 8848)

Report Type: Action Items **Meeting Date: 4/16/2018**

Summary Title: Public Hearing: Golf Course Fees/Budget Amendments; Approve New Contract for OB Sports

Title: PUBLIC HEARING: Staff Requests Council: (1) Approve a Golf Management Agreement and Restaurant License Agreement With OB Sports for 39 Months in an Amount Not-to-Exceed $9,008,000; (2) Approve a Budget Amendment in the General Fund; (3) Adopt an Ordinance Amending the FY18 Municipal Fee Schedule to Amend the Golf Fees; (4) Amend a Management Agreement and a Lease With Brad Lozares to Increase the Not-to-Exceed Amount by $40,000 and Amend Both Terms to end April 17, 2018; (5) Amend the Lease With Hee King Bistro to Waive Lease and Utilities Payments of $45,633 and Authorize Buy-Back of Inventory/Liquor License Not-to-Exceed $48,311.

From: City Manager

Lead Department: Community Services

Recommendation

Staff recommends that Council:

1. Approve and authorize the City Manager or his designee to execute the attached Agreement with OB Sports (Attachment A) in an amount not to exceed $9,008,000 for golf management services on course, at the driving range, at the Golf Shop, and surrounding areas of the Palo Alto Baylands Golf Links (formerly the Palo Alto Municipal Golf Course) for the term of April 16, 2018 through June 30, 2021;

2. Approve and authorize the City Manager or his designee to execute the attached Agreement with OB Sports (Attachment B) for OB Sports to provide food and beverage services under a license arrangement for the term of April 16, 2018 through June 30, 2021 and OB Sports to pay a minimum of $132,013 which is subject to mutual increase based on net revenue expectations;

3. Amend the Fiscal Year 2018 Budget Appropriation Ordinance for the General Fund budget by:

a. Decreasing the estimate for revenue from Charges for Service in the Community Services Department by $1,334,642; and
b. Decreasing the General Fund Budget Stabilization Reserve by $1,344,642;

4. Adopt the attached ordinance (Attachment C) amending the FY2018 Municipal Fee Schedule to change the Community Services Division's Fees for golf;

5. Amend Professional Services Agreement C3151541A (Attachment D) with Brad Lozares Golf Shop for a change in compensation for an additional $40,000 and amend the term to April 17, 2018 (Attachment E);

6. Amend Lease # 211 (Attachment F) with Brad Lozares for the Golf Shop to end on April 17, 2018 (Attachment G); and

7. Authorize the City Manager to enter into an agreement to purchase the FF&E and operating liquor license from Hee King Bistro in an amount not to exceed $48,311 and absolve Hee King Bistro of past due lease and utilities payments in an amount not to exceed $45,633. (Attachments H and I)

Executive Summary

In 2012, the City sought designs for modification to the Palo Alto Municipal Golf Course due to an adjacent San Francisquito Creek levee expansion project which would change the boundaries of the golf course. After a course architect was selected and designs reviewed, the City Council selected a full course renovation and staff began a five-year process of planning, architectural review, environmental permitting, course management contract revisions, course construction, and new course management selections.

In 2013, several course management and maintenance contracts were negotiated to expire concurrently in 2018 to allow the City to issue a Request for Proposal (RFP) for a full-service golf course operator to provide services after completion of the full course renovation.

Upon receipt of environmental permits, the golf course closed in July 2016 to begin construction of a new course and expansion of the golf practice areas. With course construction and turf grow-in complete, the renamed Baylands Golf Links is planned to open in mid-Spring 2018 under a new agreement with a full service operator.

Background

On October 15, 2012, Council awarded a contract to Golf Group, Ltd. (aka Forrest Richardson & Associates) to design a reconfigured Municipal Golf Course, prepare final bid documents (plans, specifications, and cost estimate) for a reconfiguration project at the Palo Alto Municipal Golf Course, and prepare an Environmental Impact Report (EIR) for the proposed Golf Course modifications based on a conceptual layout plan approved by Council in July 2012. In

accordance with the adopted renovation plan, Forrest Richardson prepared construction documents based on a design concept to reconfigure the Golf Course to conform to its Baylands setting and rebrand the facility as the Baylands Golf Links at Palo Alto. The Golf Course Reconfiguration Project plan modified all 18 holes of the Golf Course, a portion of the driving range and practice facility, and replaced an outlying restroom facility, while retaining a regulation golf course with a par of 71. The reconfigured Golf Course incorporated or modified existing low-lying areas into the new Golf Course, reduced the area of managed irrigated turf, and introduced areas of native grassland and wetland habitat. The project design was developed to achieve the following objectives:

- Create a golf course that provides a more interesting layout for golfers of all levels, with enhanced wildlife habitat, improved wetland areas, and reduced usage of water, pesticides, and maintenance labor for turf and landscaping;
- Expand recreation areas to satisfy existing and projected needs;
- Integrate the Golf Course into the Baylands design theme;
- Mitigate for impacts on the Golf Course resulting from the San Francisquito Creek Joint Powers Authority's (JPA) flood control project;
- Improve Golf Course playing conditions – turf, drainage, and irrigation; and
- Increase rounds of play and expand recreational opportunities.

After a successful community engagement effort to design a new golf course, staff was delayed in starting the project. Permit acquisition became a much more significant obstacle than staff or our environmental consultant originally anticipated. The state and federal permitting processes were slow and cumbersome, and were complicated by the Golf Course Reconfiguration Project's location adjacent to and connectivity with the San Francisquito Creek Joint Powers Authority's (JPA) Bay-to-Highway 101 Flood Protection Project. After extensive efforts to secure the permits, the City finally secured the regulatory permits in June 2016, thus allowing the Golf Course Reconfiguration Project to proceed.

On June 20, 2016, Council awarded a construction contract for the Golf Course Reconfiguration Project to Wadsworth Golf Construction Company. Since June 2016, staff and the Wadsworth Golf Construction Company have been actively working on the project which is now complete; a golf construction summary is attached. (Attachment J)

If Council approves staffs' recommendations, the City will close-out existing contracts with the current vendors that have been operating the Golf Course, and enter into a new agreement with OB Sports, to serve as the City's new full-service Golf Course operator, and to open the Golf Course to the public in the spring of 2018.

Currently there are four separate, but related, contracts applicable to operations at the Palo Alto Golf Course.

In the spring of 2013, the first three contracts below were negotiated to expire concurrently with the existing fourth contract on April 30, 2018. The purpose for aligning the contract expiration dates for all golf course contracts was to allow the City to issue a Request for Proposal (RFP) for a full service golf course operator after completion of a full course renovation. (March 18, 2013 City Council Staff Report ID # 3576 on Golf Course Contracts.) The current golf course agreements are:

1. Golf Course Maintenance Services Agreement - BrightView Golf is the service provider.

2. Golf Course Management Services Agreement - Brad Lozares is the current services provider. The management services agreement provides Golf Course and driving range management, Golf Course marshaling, Golf Course revenue collection, customer service, starting time coordination, and cart rental services.

3. Golf Shop Lease - Brad Lozares is the tenant.

4. Food and Beverage Services Lease between the City and R&T Restaurant - This Lease has been assumed by Hee King Bistro Inc. to operate the Bay Café restaurant.

Per the intent of concurrent contract expirations, the City issued an RFP on August 21, 2017, seeking a full service golf course operator or lessor. Thirteen firms attended the pre-proposal meetings, of which six submitted formal proposals by the deadline of October 9, 2017. The City received five full service management proposals and one lease proposal for food and beverage service only. Upon review of all proposals, staff interviewed representatives of the five management proposals from BrightView/Kemper Sports, Course Co., Landscapes Unlimited, OB Sports, and Troon.

Of the five management proposals, OB Sports was evaluated as the preferred service provider and staff negotiated with them a modified full service contract. This service contract is modified to include a facility lease of the golf course restaurant with OB Sports.

OB Sports is a golf management company providing services in course operations, course maintenance, food and beverage, sales and marketing, and course design. Based in Scottsdale, Arizona the company operates or manages 55 courses in the United States and one course in the Bahamas. Courses managed include private, resort, and daily fee courses. Locally, OB Sports manages the Golf Club at Moffett Field, a daily fee course open to the public.

Discussion

RFP Review and Proposal Selection

The RFP proposal review process consisted of a multiple step evaluation process including assessment of financial pro-formas submitted with each proposal, comparison of management

fees, presentations and interviews of each company's proposal and management style to identify the best fit with the City, and reference checks. In addition to financial pro-formas, each company was asked of their confidence level in attaining revenues while remaining within their proposed budget. They were also asked if they would be willing to assume some risk as part of their financial compensation structure.

In assessing the proposals, interviews, and supplemental information, staff identified OB Sports as the preferred service provider and negotiated with them a modified full service golf management contract. The proposed contract with OB Sports consists of payment for a flat management fee, payment for direct costs associated with course maintenance and operations, incentive compensation for achieving a revenue threshold, and a lease for the provision of food and beverage services. The modified portion of the service contract is a provision for a lease contained within the contract for all food and beverage service outlets including the restaurant, catering, and on-course refreshments.

Termination of Existing Contracts

The contract with OB Sports necessitates early termination of the contract and lease with Brad Lozares which is set to expire April 30, 2018. The contract with Brad Lozares is for management services and the lease is for the Golf Shop. Early termination of the contract and lease will allow OB Sports to begin providing services prior to April 30, 2018.

Green Fee Structure and Associated Course Fees

OB Sports will re-open the new golf course on behalf of the City presenting a new links style course designed by Forrest Richardson. It is anticipated players will consist of Palo Alto residents, regional Bay Area residents, and non-Bay Area residents traveling a distance to play the course. As such, green fee pricing and priority tee time reservations are being structured by residency, with Palo Alto residents receiving a lower rate and non-Bay Area residents being charged the highest rate with the most advance reservation booking opportunity.

The lowest overall green fee rates are available through the purchase of an annual Baylands cardholder rewards program available to both Palo Alto residents and non-residents. However, Palo Alto residents will receive the lowest rate to purchase the Baylands cardholder rewards program. The Baylands card also further discounts green fee rates for seniors playing Monday through Thursday.

The Baylands cardholder reward program is a member program with the potential of providing benefits such as discounted green fees for cardholders and their guests, complimentary play on the day of purchase, early twilight play, complimentary events, travel benefits of discounted green fees at other OB Sports managed courses, and discounts for driving range, golf shop, and restaurant purchases. The actual benefits to be offered are to be determined in collaboration with City staff and OB Sports. At a minimum, discounted green fees, discounted travel green fees, and golf shop discounts will be included with a purchase of a Baylands cardholder reward program.

In addition to tiered green fee rates based on residency, OB Sports will also implement dynamic pricing with fluctuating fees dependent on time of day, day of the week, and demand. To facilitate dynamic pricing, green fees are proposed as fee ranges to accommodate these fluctuations. However, at any time when a tee time reservation is made, Palo Alto residents are assured the lower available rate for the selected tee time based on their residency.

Overall, the proposed green fees and associated course fees are competitive in the regions golf market and revenues are anticipated to recover operating costs, bond debt, and allow for the establishment of a capital reserve when revenue exceeds expenditures. The capital reserve would be applied towards future golf related improvements. The average green fee for fiscal year 2019 is estimated to be $33.33.

- Proposed fee rates for the Baylands Golf Links are shown in the following table:

BAYLANDS GOLF LINKS

Proposed Rate Schedule

	WEEKDAY Monday-Thursday				WEEKEND Friday - Sunday				ADVANCE TEE TIME RESERVATION
	Walking		Riding		Walking		Riding		
	Low	High	Low	High	Low	High	Low	High	
Non Resident	$50.00	$75.00	$64.00	$100.00	$65.00	$110.00	$79.00	$135.00	60+ days in advance
Bay Area Resident	$45.00	$65.00	$59.00	$90.00	$55.00	$95.00	$69.00	$120.00	14 days in advance
Palo Alto Resident	$40.00	$60.00	$54.00	$85.00	$52.00	$80.00	$66.00	$105.00	14 days in advance
Baylands Cardholder	$37.00	$57.00	$51.00	$82.00	$50.00	$75.00	$64.00	$100.00	7 days in advance
Senior (w/ Card)	$34.00	$52.00	$48.00	$77.00	n/a	n/a	n/a	n/a	7 days in advance
Replay Rate	$20.00	$30.00	$34.00	$55.00	$24.00	$40.00	$38.00	$65.00	Day of only
9 Hole/Twilight Non Resident	$32.00	$42.00	$41.00	$56.00	$38.00	$50.00	$52.00	$64.00	Day of only
9 Hole/Twilight Resident	$28.00	$38.00	$37.00	$52.00	$34.00	$46.00	$48.00	$60.00	Day of only
Juniors	$12.00	$21.00	n/a	n/a	$20.00	$35.00	n/a	n/a	Day of only
Cart Fees/18 Hole	$14.00	$25.00			$14.00	$25.00			
Cart Fees/9 Hole	$9.00	$14.00			$9.00	$14.00			

RENTAL / PURCHASE ITEMS:	Low	High
Hand Cart 18 Holes	$ 4.00	$ 10.00
Hand Cart 9 Holes	$ 2.00	$ 7.00
Club Rentals 9 Holes	$ 20.00	$ 50.00
Club Rentals 18 Holes	$ 40.00	$ 80.00
Driving Range - Small Bucket	$ 3.00	$ 10.00
Driving Range - Medium Bucket	$ 6.00	$ 15.00
Driving Range - Large Bucket	$ 9.00	$ 20.00
Driving Range - Jumbo Bucket	$ 10.00	$ 25.00
Driving Range - Medium Bucket Card-10	$ 60.00	$135.00
Driving Range - Large Bucket Card-10	$ 90.00	$180.00

Resource Impact

Management Contract, Lease, and Budget

The duration term of the proposed contract with OB Sports is 39 months with mutual renewal options. The contract will cover the three months remaining in FY 2018 (April, May, and June) and run for 36 additional months (FY 2019, FY 2020, and FY 2021). A 3-year renewal option for FY 2022, FY 2023, and FY 2024 is available if mutually agreed. An additional second 3-year option through FY 2027 is available if mutually agreed.

The golf course operating budget for FY 2018 was established at $2.14 million in revenue and $2.45 million in expenses. These amounts assumed a period of four months of turf grow-in while the course completed construction with the course reopening in November 2017 to offer approximately eight months of golf play. With the delayed course opening to Spring 2018, a reduction in revenue from golf course activities is recommended in the amount of $1,334,642 as a result of the extended closure, bringing the total estimated revenue from the golf course to approximately $808,000 in FY 2018.

Staff does not recommend a commensurate reduction in expenses, despite the course being closed for the majority of the year. At a high level, the $2.45 million of golf course expenses in FY 2018 are allocated as follows: $750,000 for the golf course maintenance contract with Brightview, $240,000 in management fees and revenue shares for the golf course management

contract with Brad Lozares, $165,000 in utilities, $125,000 in staff oversight and other charges, $840,000 for the golf course contract with OB Sports for start-up costs and expenses associated with their first quarter of operations, and approximately $50,000 in additional maintenance and supplies.

The course is expected to have a positive impact on the General Fund in future years, and as such, staff recommends that money be set aside in fiscal years 2019 through 2022 to repay to the General Fund some of the losses that the golf course has had in recent years. Beyond FY 2022, staff recommends that net revenue from the course be set aside for future golf course capital improvements to reduce the need to debt finance in the long term.

In FY 2019, the contract with OB Sports proposes an operating revenue target of $3,655,500 and an operating expenditure budget of $2,629,232. The expenditure budget consists of a flat fee for management services plus travel reimbursement, Direct Costs associated with course maintenance and operations, a 1% contingency, and incentive compensation. The flat fee for management services is $108,000 plus up to $12,000 for reimbursable travel expenses. The payment for Direct Costs associated with course maintenance and operations is $2,484,388 plus up to $24,844 in contingency (1%). The incentive compensation consists of 20% of revenue earned above the revenue target each year. In FY 2019, the revenue target is $3,655,000. For FY 2019, the incentive compensation amount is to be determined based on performance and would be added to the operating expenditure budget.

FY 2019 Management Contract	
Revenue	
Green Fees & Driving Range	**$3,655,000**
Expenditures	
Flat Mgmt. Fee	$108,000
Travel	$12,000
Maintenance & Operations	$2,484,000
	$2,604,000
Net Income*	**$1,051,000**

* Net Income excludes annual City costs in addition to management contract. These include utilities, City staff time and golf course debt service payments.

For FY 2020 and FY 2021, the budget is to be developed by OB Sports and reviewed by City staff and approved by Council during the annual budget process. However, it is limited to no more

than a 3% increase over the prior fiscal year.

Annually, the overall budget for golf course operations extends beyond the financial terms of the management contract. The City will incur costs for staff oversight of golf operations, water and other utility costs throughout the golf course premises, debt service cost associated with bond issuance to finance course construction, City cost plan charges, and setting aside a capital reserve with any remaining net income. The annual estimated costs beyond the financial terms of the Management Contract are as follows:

Estimated Annual Costs in FY 2019 in Addition to Management Contract	
Staff Oversight	$130,000
Water	$207,000
Other Utilities	$35,000
Debt Service	$611,000
Contingency Fund (1% of Operating Expenses)	$26,000
Total	**$1,009,000**

Subject to annual funding availability and Council approval, when total revenue from golf course activities exceeds the total expenses, staff recommends that money be set aside in fiscal years 2019 through 2022 to repay to the General Fund some of the losses that the golf course has had in recent years. Beyond FY 2022, staff recommends a Capital Reserve of up to 10% of revenue be established to fund future golf course capital improvements in fiscal years when the course operates with positive net income.

In the first full year of operations, Fiscal Year 2019, the City will need to make one final payment for the debt issued for the Golf Course in 1998 ($429,000) as well as one payment for the new debt issued in 2018 ($182,000). Despite this, staff projects that the additional debt payment will result in the golf course fully covering its costs in FY 2019. Moving forward into FY 2020, it is anticipated that the course will not need to rely on a subsidy from the General Fund as revenue from the restaurant lease, green fees, driving range, and golf shop are anticipated to be sufficient to cover the course management costs as well as the additional costs relating to staff oversight, water, other utilities, debt service, and City cost plan. If projections do not look likely to be met in future years, the City has the ability to reduce golf course operating expenses during the annual Council budget process.

The modified full service management arrangement consists of two agreements. One agreement is for golf management services on course, at the driving range, and at the golf shop. Another agreement is a lease agreement relating to food and beverage service. OB Sports will lease all food and beverage outlets including the restaurant, catering, and on course refreshments. The lease consists of a $1 per-month payment from OB Sports to the City through June 2019 and then increases to $4,000/month during FY 2020. Beyond FY 2020, the

monthly lease payment may increase, but will remain at a minimum of $4,000 per month through June 30, 2021. In addition, beginning in FY 2020, there is a $1,500 per month utility payment from OB Sports to the City for use of the restaurant. The City and OB Sports will negotiate new contract terms if the agreement is extended beyond the initial term.

Below is a 5 year pro-forma illustrating anticipated revenues and expenses to operate the renovated golf course. Below the pro-forma are actual revenues and expenses for the golf course prior to construction for comparison. The new operating structure, with one operator, as opposed to three separate contracts managing golf services, food and beverage, and course maintenance will be much more efficient towards providing a seamless customer experience for visitors. Moreover, the City oversight and support for the golf course operation will be significantly more efficient with one golf course operator managing all aspects of the new Baylands Golf Links. Staff engaged a golf management professional, James Keegan of Golf Convergence, to review the 5 year pro-forma. He determined that the projections are reasonable and achievable. His review can be found in Attachment K.

Five Year Financial Pro-Forma

Baylands Golf Links				**Projection**				
	FY 18 Current Budget	**FY18 Adjusted**	**FY19**	**FY20**	**FY21**	**FY22**	**FY23**	**FY24**
Revenue								
Revenue Target	2,054,052	804,253	3,655,000	3,764,650	3,877,590	3,993,917	4,113,735	4,237,147
Restaurant Lease	63,500	2,780	-	48,000	49,440	50,923	52,451	54,024
Restaurant Utilities	26,000	1,877	-	18,000	18,000	18,000	18,000	18,000
Total Estimated Revenue to the City	**2,143,552**	**808,910**	**3,655,000**	**3,830,650**	**3,945,030**	**4,062,840**	**4,184,186**	**4,309,171**
City Direct Expenses								
Golf Operator Management Fees	300,004	81,169	108,000	108,000	108,000	108,000	108,000	108,000
Golf Course Operator Reimburseable Expenses	-	2,500	12,000	12,000	12,000	12,000	12,000	12,000
Operating Expenses	1,249,502	1,768,556	2,484,388	2,558,920	2,635,687	2,714,758	2,796,201	2,880,087
City's Indirect Expenses								
Contingency for Operations	-	5,169	26,044	25,589	26,357	27,148	27,962	28,801
Existing Debt Service	429,020	429,020	429,020					
New Debt Service	-	-	181,794	395,770	395,186	404,568	398,578	562,700
Staff Oversight	112,653	112,653	130,000	133,900	137,917	142,055	146,316	150,706
Utilities	357,400	178,976	237,151	244,266	251,593	259,141	266,916	274,923
Total City Expenses	**2,448,579**	**2,578,043**	**3,608,397**	**3,478,444**	**3,566,741**	**3,667,669**	**3,755,972**	**4,017,216**
Available Funding for Capital Reserve/Net GF Impact	**(305,027)**	**(1,769,133)**	**46,603**	**352,206**	**378,289**	**395,171**	**428,213**	**291,955**
Green Fee Per Round (Increases 0.5% per year)	$ 34.80	$ 33.33	$ 33.33	$ 33.50	$ 33.66	$ 33.83	$ 33.99	$ 34.15
Total Paid Rounds (Increases 1.5% per	48,000	TBD	68,450	69,477	70,519	71,577	72,650	73,740

Although not a direct comparison, the golf course operated with a budget between $2.3M and $2.6M in the five prior years under the multiple service provider model.

PALO ALTO GOLF COURSE
FY 2013 - FY 2017 Budget

	FY13 Actuals	FY14 Actuals	FY15 Actuals	FY16 Actuals	FY17 Actuals (Course Closed)
REVENUES					
Tournament Fees	1,670	4,037	37,517	212	0
Gree Fees (+Cards)	1,781,405	1,103,410	922,800	918,910	0
Driving Range	343,883	313,633	296,933	292,092	228,348
Cart Fee	279,795	225,310	216,541	234,556	0
Proshop lease	27,248	25,051	24,818	24,601	13,175
Restaurant lease	48,880	53,487	39,191	44,592	32,657
restaurant Utilities	21,600	16,260	16,980	18,000	16,500
Other Fee	24,319	20,075	22,239	16,116	4,038
TOTAL REVENUE	**2,528,800**	**1,761,263**	**1,577,019**	**1,549,080**	**294,718**
EXPENDITURES					
Operating Expenses					
Salaries & Benefits	134,948	122,634	85,683	74,978	111,906
Advertising & Publishing	11,307	7,916	5,599	6,743	1,126
Supplies and Materials	3,292	6,986	1,106	1,477	27,008
General Expense	1,014	1,038	74	0	52
Facilities Repairs & Maintenanc	7,259		9,706	250	6,434
Water Expense	381,966	319,204	253,314	252,037	107,763
Other Direct Charges	48,448	46,126	44,173	43,243	46,948
Indirect Charges	93,702	35,858	31,017	20,532	2,038
Subtotal	**681,936**	**539,762**	**430,673**	**399,259**	**303,274**
Contract Services					
Golf Maintenance	808,801	780,755	831,130	845,297	413,734
Miscellaneous		546	940		0
Range fees	130,676	119,181	112,835	110,995	195,631
Cart rentals	112,083	86,034	81,767	88,906	0
Club rentals	5,951	4,666	4,880	4,804	0
Fixed Management Fees	339,045	338,292	319,057	349,116	30,500
Green Fees to Golf Professional (5%)	0	0		0	0
Credit Card Fees	38,000	30,000	TBD	TBD	TBD
Subtotal	**1,434,555**	**1,359,474**	**1,350,608**	**1,399,118**	**639,865**
Total Operating Expenses	**2,116,491**	**1,899,236**	**1,781,281**	**1,798,377**	**943,138**
Net Income From Operations	**412,309**	**(137,973)**	**(204,262)**	**(249,297)**	**(648,420)**
Debt and Other Charges					
1998 Debt Service	428,180	429,020	428,194	429,020	429,020
New 2017 Debt Service	0	0	0	0	0
Cost Plan Charges	23,871	27,349	20,459	25,000	25,000
Capital Reserve	0	0	0	0	0
Subtotal - Debt and Other Charges	452,051	456,369	448,653	454,020	454,020
Net Income (Loss)	**(39,742)**	**(594,342)**	**(652,915)**	**(703,317)**	**(1,102,440)**
Golf Rounds	58,026	46,527	42,048	42,573	0

Termination of Agreements with Brad Lozares, Compensation Adjustment, and exchange of FF&E for Outstanding Customer Credits and Gift Cards.

At present, Brad Lozares holds two agreements with the City, both are set to expire April 30, 2018 and both need to be terminated early in order for OB Sports to begin preparing for and operating the golf course. The effective date of the early termination for both agreements would be April 17, 2018.

During course closure and golf construction, compensation to Brad Lozares for course management was significantly reduced as services consisted primarily of operating the driving range, revenue collection, and customer service. The monthly compensation to Brad Lozares was reduced from $27,777 per month to $2,500 per month and augmented with an allowance for a higher percentage retention of driving range revenue. In 2013, Brad Lozares agreed to this planned reduction with the anticipation of the course re-opening in 2016 and resuming full compensation commensurate with resuming prior course management services. However, course construction was delayed due to extensive challenges with environmental permitting.

Due to this delay of construction, Brad Lozares continued to incur financial losses much longer than he or staff anticipated. As such, staff recommends adjusting Brad's compensation, with a retroactive adjustment date of November 2017. This recommendation would increase the monthly management payment from $2,500 to $7,500 for a period of six months, from November 2017 through April 2018. In addition, staff recommends an additional $10,000 payment for business expenses and travel, for a total compensation adjustment of $40,000.

A comparison of financial management compensation to Brad Lozares for the past five fiscal years follows:

Golf Professional Services Compensation to Brad Lozares					
	FY 2013	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**
					(Course Closed)
Fixed Fee	$345,333	$345,333	$345,333	$345,333	$30,500
Revenue Share					
Driving Range Revenue Share	$130,675	$119,180	$112,834	$110,994	$195,630
Cart Rental Revenue Share	$112,083	$86,034	$81,767	$88,905	$0
Club Rental Revenue Share	$5,950	$4,666	$4,879	$4,804	$0
Total Mgmt Compensation	**$594,041**	**$555,213**	**$544,813**	**$550,036**	**$226,130**

Per the Golf Shop lease, upon termination, the City is obligated to purchase the retail inventory from Brad Lozares at 90% of wholesale value. The approximate cost of inventory at 90% is estimated not to exceed $45,000. In addition to this inventory purchase, Brad Lozares has offered his Furniture, Fixtures, and Equipment (FF&E) to the City in exchange for accrued revenue he has received and retained from the sale of gift cards/certificates (estimated at $45,000) and in exchange for customer credits on account (estimated at $40,000). For this exchange, the City would honor gift cards/certificates and customer credits should customers request redemption in the form of green fees, driving range fees, or sales merchandise.

Hee King Bistro operating Bay Café and purchase of FF&E and Liquor License

In January 2016, Hee King Bistro assumed the Bay Café lease from R&T Restaurant. The lease is set to expire April 30, 2018. Upon Hee King Bistro vacating Bay Café, OB Sports will begin preparing for and operating the Bay Café under new license terms with the City.

Although assumption of the Bay Café lease from the prior tenant/owner was in January 2016, it was with an anticipation of customers from a new golf course starting in early 2017. Since 2012, there has been a decline in the number of golfers at the course resulting in loss of revenue for the golf operation and the restaurant. Furthermore, course construction was delayed due to extensive challenges with environmental permitting. The combination of declining visits by golfers and delays pushing out the construction start date impacted the restaurant's profitability. As the golf course closed six months after Hee King Bistro assumed the Bay Café lease and has not re-opened, the restaurant has struggled financially as the revenue stream for the restaurant is heavily dependent upon customers from course play. At present the restaurant is behind in submitting lease and utilities payments totaling $45,633 attributed to financial losses associated with course closure. Staff recommends forgiving the past due lease and utilities payments and this amount has been included in the budget adjustment to reduce revenue recommended above. In addition, staff recommends approval of the purchase of restaurant FF&E and City purchase of the existing liquor license in the name of OB Sports. Public agencies are not permitted to hold liquor licenses in the State of California. However the classification of this particular liquor license is for sales of alcohol at the golf course only and may not be transferred to another location. The City purchase of restaurant FF&E and liquor license is for an amount not to exceed $48,311.

Environmental Review

An Environmental Impact Report (EIR) was prepared to evaluate the potential impacts of the Palo Alto Municipal Golf Course Reconfiguration Project and to identify the appropriate mitigation measures in accordance with the provisions of the California Environmental Quality Act (CEQA). City Council, acting on behalf of the City of Palo Alto in its role as lead agency for purposes of CEQA, adopted a resolution on February 3, 2014, certifying the final EIR for the project.

Attachments:

- Attachment A - Golf
- Attachment B - Golf
- Attachment C: Ordinance to Amend the FY18 Municipal Fee Schedule to Amend the Golf Fees
- Attachment D: Golf Professional Services Agreement Ammendments #1 through #6
- Attachment E: Amendment 7 C3150541A Brad Lozares
- Attachment F: Golf Pro Shop Lease & Amendments #1, #2, #4
- Attachment G - Golf
- Attachment H: Golf Restaurant Lease, Amendment #1, #2, & Lease ReAssignment
- Attachment I - Golf
- Attachment J: Golf Construction Summary
- Attachment K: Baylands Golf Course - Opinion on Staff Financial Projections - 4 2 2018 - Final

Attachment A

Approve and authorize the City Manager or his designee to execute the attached Agreement with OB Sports (Attachment A) in an amount not to exceed $9,008,000 for golf management services on course, at the driving range, at the Golf Shop, and surrounding areas of the Palo Alto Baylands Golf Links (formerly the Palo Alto Municipal Golf Course) for the term of April 16, 2018 through June 30, 2021

This attachment is not ready and will be submitted in the late Council packet going out on April 12, 2018.

Attachment B

Approve and authorize the City Manager or his designee to execute the attached Agreement with OB Sports (Attachment B) for OB Sports to provide food and beverage services under a license arrangement for the term of April 16, 2018 through June 30, 2021 and OB Sports to pay a minimum of $132,013 which is subject to mutual increase based on net revenue expectations.

This attachment is not ready and will be submitted in the late Council packet going out on April 12, 2018.

Not Yet Approved

Ordinance No. _____

Ordinance of the Council of the City of Palo Alto Amending the Fiscal Year 2018 Municipal Fee Schedule to Amend the Community Service Division's Golf Fees.

The Council of the City of Palo Alto ORDAINS as follows:

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

A. The City of Palo Alto owns a municipal golf course in the Baylands that has recently been renewed with a new layout, new turf, and several other improvements.

B. The City's golf course is one of several in the region, including municipal-owned courses in San Jose, Mountain View, San Mateo, and San Francisco.

C. The City anticipates contracting with OB Sports, a golf management company, to take over management of the renewed golf course, including its pro shop and restaurant. During this period, the City and OB Sports anticipate making further improvements as the golf course re-opens to the public.

SECTION 2. The Council of the City of Palo Alto rescinds the existing golf fees (club & cart rental fees, driving range fees, green fees, and special fees) in the Community Services section of the Fiscal Year 2018 Adopted Municipal Fee Schedule ("Municipal Fee Schedule") and adopts the amendments to the Municipal Fee Schedule as set forth in Exhibit "A" and incorporated here by reference.

SECTION 3. The fees in this Ordinance are for voluntary entrance and/or use of government property. Pursuant to Art. XIII C, Section I(e)(4) of the California Constitution, such fees are not a tax.

SECTION 4. The Council finds that this project is exempt from the provisions of the California Environmental Quality Act ("CEQA"), pursuant to Section 15061 of the CEQA Guidelines, because it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION 5. This ordinance shall be effective thirty-one days after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

_____
City Clerk

_____
Mayor

APPROVED AS TO FORM:

APPROVED:

_____
City Attorney

_____
City Manager

_____
Director of

_____
Director of Administrative Services

Not Yet Approved

Attachment A

Fiscal Year 2018 Municipal Fee Schedule
Community Services Fees
Open Space, Parks, & Golf

	WEEKDAY Monday-Thursday			
	Walking		Riding	
	Low	High	Low	High
Non Resident	$50.00	$75.00	$64.00	$100.00
Bay Area Resident	$45.00	$65.00	$59.00	$90.00
Palo Alto Resident	$40.00	$60.00	$54.00	$85.00
Baylands Cardholder	$37.00	$57.00	$51.00	$82.00
Senior (w/ Card)	$34.00	$52.00	$48.00	$77.00
Replay Rate	$20.00	$30.00	$34.00	$55.00
9 Hole/Twilight Non Resident	$32.00	$42.00	$41.00	$56.00
9 Hole/Twilight Resident	$28.00	$38.00	$37.00	$52.00
Juniors	$12.00	$21.00	n/a	n/a
Cart Fees/18 Hole	$14.00	$25.00		
Cart Fees/9 Hole	$9.00	$14.00		

	WEEKEND Friday - Sunday			
	Walking		Riding	
	Low	High	Low	High
Non Resident	$65.00	$110.00	$79.00	$135.00
Bay Area Resident	$55.00	$95.00	$69.00	$120.00
Palo Alto Resident	$52.00	$80.00	$66.00	$105.00
Baylands Cardholder	$50.00	$75.00	$64.00	$100.00
Senior (w/ Card)	n/a	n/a	n/a	n/a
Replay Rate	$24.00	$40.00	$38.00	$65.00
9 Hole/Twilight Non Resident	$38.00	$50.00	$52.00	$64.00
9 Hole/Twilight Resident	$34.00	$46.00	$48.00	$60.00
Juniors	$20.00	$35.00	n/a	n/a
Cart Fees/18 Hole	$14.00	$25.00		
Cart Fees/9 Hole	$9.00	$14.00		

RENTAL / PURCHASE ITEMS:	Low	High
Hand Cart 18 Holes	$ 4.00	$ 10.00
Hand Cart 9 Holes	$ 2.00	$ 7.00
Club Rentals 9 Holes	$ 20.00	$ 50.00
Club Rentals 18 Holes	$ 40.00	$ 80.00
Driving Range - Small Bucket	$ 3.00	$ 10.00
Driving Range - Medium Bucket	$ 6.00	$ 15.00
Driving Range - Large Bucket	$ 9.00	$ 20.00
Driving Range - Jumbo Bucket	$ 10.00	$ 25.00
Driving Range - Medium Bucket Card-10	$ 60.00	$ 135.00
Driving Range - Large Bucket Card-10	$ 90.00	$ 180.00

AMENDMENT NO. 6 TO MANAGEMENT AGREEMENT C3151541A, BETWEEN THE CITY OF PALO ALTO AND BRAD LOZARES GOLF SHOP FOR PROFESSIONAL SERVICES AT 1875 EMBARCADERO ROAD, PALO ALTO

THIS AMENDMENT NO.6 to the Management Agreement C3151541A ("Amendment No. 6"), between the City of Palo Alto and Brad Lozares Golf Shop for Professional Services at the Palo Alto Municipal Golf Course, (the "Agreement,") is made and entered into this 1st day of March, 2013 (the "Effective Date"), by and between the City of Palo Alto, a California chartered municipal corporation (the "CITY"), and Brad Lozares Golf Shop, a sole proprietorship("GOLF PROFESSIONAL").

RECITALS

A. GOLF PROFESSIONAL has assumed responsibility for and continued the operation and management of course play for the Palo Alto golf course ("Golf Course") facility on behalf of the CITY on the terms and conditions more particularly set forth in the Management Agreement, dated January 28, 2003.

B. On May 15, 2006, the parties amended the Agreement to extend the term until December 31, 2007, and to increase the fixed fee to $27,660.25 per month and reimburse GOLF PROFESSIONAL for sixty percent (60%) of finance charges associated with the payment of service charges for golf carts by credit card.

C. On May 15, 2007, the parties amended the Agreement to extend the term until December 31, 2008, and to increase the fixed fee to $28,213.46 per month.

D. On October 20, 2008, the parties amended the Agreement to extend the term until December 31, 2009, and to increase the fixed fee to $28,777.73 per month.

E. On December 7, 2009 the parties amended the Agreement to extend the term for one year to December 31, 2010 at the same fixed level of compensation established in 2008 of $28,777.73 per month.

F. On December 7, 2010 the parties amended the Agreement to extend the term for three years to April 30, 2013 at the same fixed level of compensation established in 2008 of $28,777.73 per month.

G. The parties are aware of a levee construction project that will directly impact the Golf Course for several years. Consequently, the City will be required to reconfigure the entire 18 holes of the Golf Course (the "Construction Project") during the construction period; this will entail the closure of the Golf Course for a temporary period of time (the "Closure period").

H. The parties now wish to amend the Agreement (1) to extend the term of the agreement to April 30, 2018, (2) maintain at the same fixed level of compensation

as established in 2008 of $28,777.73 per month during the period of time from the Effective Date until the commencement of the Construction Project (the "Pre-Closure period"), until such time as the CITY provides GOLF PROFESSIONAL with at least sixty (60) days' prior written notice of the commencement date of the Construction Project; and (3) upon the first day of the Closure period, the fixed compensation shall be adjusted according to Section 2 of this amendment.

NOW, THEREFORE, in consideration of the terms, conditions, and provisions of this Amendment No. 6, the parties agree as follows:

SECTION 1. Section III ("Term") is amended in its entirety to read, as follows:

"III. TERM

The term of this Agreement shall commence on January 28 2003 and end on April 30, 2018."

SECTION 2. Section IV, A ("Compensation"), is amended in its entirety to read, as follows:

"IV. COMPENSATION

Pre-Closure Period:

During the Pre-Closure period, from April 30, 2013 to the commencement date of the Construction Project, GOLF PROFESSIONAL shall receive a fixed fee and percentage fees as defined below (collectively the "Management Fee PHASE I").

A. Fixed Fee

GOLF PROFESSIONAL shall receive a fixed fee during PHASE I. The fixed fee shall be for GOLF PROFESSIONAL's Golf Course and driving range management, Golf Course marshaling and starting, and cart rental services. The fixed fee for this term of this Agreement will be $345,333 annually. The fixed fee will be paid in equal monthly installments.

The CITY shall forward the fixed fee by the 5th working day of the CITY's working month for the amount due for that month to the GOLF PROFESSIONAL. If the GOLF PROFESSIONAL has not received payment within ten calendar days after the fifth working day of the month, a late charge of one percent of monthly payment due and unpaid plus an administrative fee of $45.00 shall be added to the payment due and unpaid, and the total monthly sum shall become immediately due and payable to GOLF

PROFESSIONAL. The parties agree that such late charges represent a fair and reasonable estimate of the costs that GOLF PROFESSIONAL will incur by reason of the CITY's late payments and that acceptance of such late charges in no event constitutes a waiver of the CITY's default with respect to such overdue payment, nor prevents GOLF PROFESSIONAL from exercising any of the other rights and remedies granted hereunder or by any provision of law."

B. Percentage Fees

In addition to the fixed fee, GOLF PROFESSIONAL shall receive 38% percent of the gross revenues of the driving range and retain 40% of the gross revenue of the golf carts, golf club and pull cart rentals. Percentage fees for each month will be calculated and paid no later than the 10th day of the following month. In no event, however, shall the cumulative percentage fees paid to GOLF PROFESSIONAL for a single calendar year exceed the total fixed fee payments described in section IV-A herein for that same calendar year.

C. Golf Cart Fuel Reimbursement

GOLF PROFESSIONAL shall reimburse the CITY quarterly for fuel supplied to gas golf carts. Reimbursement shall be at the current retail full service pump price on the date of billing for unleaded fuel, determined quarterly by the CITY. GOLF PROFESSIONAL shall reimburse the CITY by no later than by the 20th day of the month following the close of each quarter.

Productivity Reward (Incentives)

In order to enhance overall golf division business incomes, customer service and golf professional revenues, a productivity reward equal to a stated dollar amount based on increases of golf rounds, gross power golf cart rentals and driving range sales becomes effective with this agreement. In addition to the fixed and percentage fees, the golf professional shall receive the following productivity rewards based on **exceeding** the following baseline golf rounds and gross sales:

PAID GOLF ROUNDS: (FEE, DISCOUNT CARD & REPLAY ROUNDS)

* Greater than 72,000 rounds	$3.00 PER ROUND

POWER GOLF CART RENTALS:

* Greater than $300,000	$100 PER $1,000 INCREASE

DRIVING RANGE SALES:

* Greater than $400,000. $200 PER $1,000 INCREASE

Closure Period:

During the Closure period and until the Construction Project is completed, GOLF PROFESSIONAL shall receive a fixed fee and percentage fees as defined below (collectively the "Management Fee Phase II").

A. Fixed Fee

GOLF PROFESSIONAL shall receive a fixed fee during the term of the Construction project. The fixed fee shall be for GOLF PROFESSIONAL's Golf Course and driving range management. The fixed fee for this term of this Agreement will be $30,500 annually. The fixed fee will be paid in equal monthly installments.

The CITY shall forward the fixed fee by the 5th working day of the CITY's working month for the amount due for that month to the GOLF PROFESSIONAL. If the GOLF PROFESSIONAL has not received payment within ten calendar days after the fifth working day of the month, a late charge of one percent of monthly payment due and unpaid plus an administrative fee of $45.00 shall be added to the payment due and unpaid, and the total monthly sum shall become immediately due and payable to GOLF PROFESSIONAL. The parties agree that such late charges represent a fair and reasonable estimate of the costs that GOLF PROFESSIONAL will incur by reason of the CITY's late payments and that acceptance of such late charges in no event constitutes a waiver of the CITY's default with respect to such overdue payment, nor prevents GOLF PROFESSIONAL from exercising any of the other rights and remedies granted hereunder or by any provision of law.

B. Percentage Fees

In addition to the fixed fee, GOLF PROFESSIONAL shall receive 85% percent of the gross revenues of the driving range. Percentage fees for each month will be calculated and paid no later than the 10th day of the following month.

C. Golf Cart Fuel Reimbursement

GOLF PROFESSIONAL shall reimburse the CITY quarterly for fuel supplied to gas golf carts. Reimbursement shall be at the current retail full service pump price on the date of billing for unleaded fuel, determined quarterly by the CITY. GOLF PROFESSIONAL shall reimburse the CITY by no later than by the 20th day of the month following the close of each quarter.

Post-Closure Period:

During the period, from the first day, on which the Golf Course re-opens until April 30, 2018, GOLF PROFESSIONAL shall receive a fixed fee and percentage fees as defined below (collectively the "Management Fee Phase III").

A. Fixed Fee

GOLF PROFESSIONAL shall receive a fixed fee during the remainder of the term of this Agreement (Phase III). The fixed fee shall be for GOLF PROFESSIONAL's Golf Course and driving range management, Golf Course marshaling and starting and cart rental services. The fixed fee for this term of this agreement will be $300,000 annually. The fixed fee will be paid in equal monthly installments.

The CITY shall forward the fixed fee by the 5th working day of the CITY's working month for the amount due for that month to the GOLF PROFESSIONAL. If not received within ten calendar days after the fifth working day of the month, a late charge of one percent of monthly payment due and unpaid plus an administrative fee of $45.00 shall be added to the payment due and unpaid, and the total monthly sum shall become immediately due and payable to GOLF PROFESSIONAL. The parties agree that such late charges represent a fair and reasonable estimate of the costs that GOLF PROFESSIONAL will incur by reason of the CITY's late payments and that acceptance of such late charges in no event constitutes a waiver of the CITY's default with respect to such overdue payment, nor prevents GOLF PROFESSIONAL from exercising any of the other rights and remedies granted hereunder or by any provision of law.

B. Percentage Fees

In addition to the fixed fee, GOLF PROFESSIONAL shall receive 20% percent of the gross revenues of the driving range and retain 20% percent of the gross revenue of the golf carts and 5% percent of the Green Fees. Percentage fees for each month will be calculated and paid no later than the 10th day of the following

month. In no event, however, shall the cumulative percentage fees paid to GOLF PROFESSIONAL for a single calendar year exceed the total fixed fee payments described in section IV-A herein for that same calendar year.

C. Golf Cart Fuel Reimbursement

GOLF PROFESSIONAL shall reimburse the CITY quarterly for fuel supplied to gas golf carts. Reimbursement shall be at the current retail full service pump price on the date of billing for unleaded fuel, determined quarterly by the CITY. GOLF PROFESSIONAL shall reimburse the CITY by no later than by the 20th day of the month following the close of each quarter.

Productivity Reward (Incentives)

In order to enhance overall golf division business incomes, customer service and golf professional revenues, a productivity reward equal to a stated dollar amount based on increases of golf rounds, gross power golf cart rentals and driving range sales becomes effective with this agreement. In addition to the fixed and percentage fees, the golf professional shall receive the following productivity rewards based on **exceeding** the following baseline golf rounds and gross sales:

PAID GOLF ROUNDS: (FEE, DISCOUNT CARD & REPLAY ROUNDS)

* Greater than 72,000 rounds	$3.00 PER ROUND

POWER GOLF CART RENTALS:

* Greater than $300,000	$100 PER $1,000 INCREASE

DRIVING RANGE SALES:

* Greater than $400,000.	$200 PER $1,000 INCREASE"

SECTION 4 Except as herein modified, all other provisions of the Agreement, including any exhibits and subsequent amendments thereto, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties by their duly appointed representatives have executed this Amendment No. 6 as of the Effective Date.

CITY OF PALO ALTO

_____
City Manager

BRAD LOZARES GOLF SHOP

By: Brad Lozares
Name: Brad Lozares
Title: Golf Professional

APPROVED AS TO FORM:

_____
Senior Asst. City Attorney

AMENDMENT NO. 5 TO MANAGEMENT AGREEMENT C3150541A, BETWEEN THE CITY OF PALO ALTO AND BRAD LOZARES GOLF SHOP FOR PROFESSIONAL SERVICES AT 1875 EMBARCADERO ROAD, PALO ALTO

THIS AMENDMENT NO.5 to the Management Agreement C3150541A, between the City of Palo Alto and Brad Lozares Golf Shop for Professional Services at the Palo Alto Municipal Golf Course, ("Agreement,") is made and entered into this 7th day of December, 2010, by and between the City of Palo Alto, a municipal corporation (the "CITY") and Brad Lozares ("GOLF PROFESSIONAL").

RECITALS

A. GOLF PROFESSIONAL has assumed responsibility for and continued the operation and management of course play for the Golf Course facility on behalf of the CITY on the terms and conditions set forth in the Management Agreement dated January 28, 2003.

B. On May 15, 2006, the parties amended the Agreement to extend the term December 31, 2007, and to increase the fixed fee to $27,660.25 per month and reimburse GOLF PROFESSIONAL for sixty percent (60%) of finance charges associated with the payment of service charges for golf carts by credit card.

C. On May 15, 2007, the parties amended the Agreement to extend the term to December 31, 2008, and to increase the fixed fee to $28,213.46 per month.

D. On October 20, 2008, the parties amended the Agreement to extend the term to December 31, 2009, and to increase the fixed fee to $28,777.73 per month.

E. On December 7, 2009 the parties amended the Agreement to extend the term for one year to December 31, 2010 at the same fixed level of compensation established in 2008 of $28,777.73 per month.

F. The parties now wish to amend the Agreement to extend the term of the agreement to April 30, 2013 at the same fixed level of compensation as established in 2008 of $28,777.73 per month.

NOW, THEREFORE, in consideration of the terms, conditions, and provisions of this Amendment, the parties agree as follows:

SECTION 1. Section III ("Term") is amended in its entirety to read, as follows:

"III. **TERM**

The term of this Agreement shall commence on January 8, 2003 and end on April 30, 2013.

SECTION 2. Section IV, A ("Compensation"), is amended in its entirety to read as follows:

"IV. **COMPENSATION**

During the term of the Agreement, GOLF PROFESSIONAL shall receive a fixed fee and percentage fees, as defined below (collectively the "Management Fee").

A. Fixed Fee

GOLF PROFESSIONAL shall receive a fixed fee during the term of this Agreement for GOLF PROFESSIONAL's Golf Course and driving range management, Golf Course marshaling and starting and cart rental services. The fixed fee for the term of this agreement will be $805,776.44. The fixed fee will be paid in twenty-eight equal monthly installments.

During the eighteen-month extension term from July 1, 2006 to December 31, 2007, GOLF PROFESSIONAL shall receive a fixed fee payable monthly in the amount of $27,660.25.

During the twelve-month extension term from January 1, 2008 to December 31, 2008, GOLF PROFESSIONAL shall receive a fixed fee in the amount of $28,213.46, monthly.

During the twelve-month extension term from January 1, 2009 to December 31, 2009, GOLF PROFESISONAL shall receive a fixed fee, in the amount of $28,777.73, monthly.

During the twelve-month extension term from January 1, 2010 to December 31, 2010, GOLF PROFESISONAL shall receive a fixed fee, in the amount of $28,777.73, monthly.

During the twenty-eight month extension term from January 1, 2011 to April 30, 2013, GOLF PROFESISONAL shall receive a fixed fee, in the amount of $28,777.73, monthly.

The CITY shall forward the fixed fee by the 5th working day of the CITY's working month for the amount due for that month to the GOLF PROFESSIONAL. If not received within ten calendar days after the fifth working day of the month, a late charge of one percent of monthly payment due and unpaid plus an administrative fee of $45.00 shall be added to the payment due and unpaid, and the total monthly sum shall become immediately due and payable

to GOLF PROFESSIONAL. The parties agree that such late charges represent a fair and reasonable estimate of the costs that GOLF PROFESSIONAL will incur by reason of the CITY's late payments and that acceptance of such late charges in no event constitutes a waiver of the CITY's default with respect to such overdue payment, nor prevents GOLF PROFESSIONAL from exercising any of the other rights and remedies granted hereunder or by any provision of law."

B. Percentage Fees

In addition to the fixed fee, GOLF PROFESSIONAL shall receive 38% percent of the gross revenues of the driving range and retain 40% of the gross revenue of the golf carts, golf club and pull cart rentals. Percentage fees for each month will be calculated and paid no later than the 10th day of the following month. In no event, however, shall the cumulative percentage fees paid to GOLF PROFESSIONAL for a single calendar year exceed the total fixed fee payments described in section IV-A herein for that same calendar year.

C. Golf Cart Fuel Reimbursement

GOLF PROFESSIONAL shall reimburse the CITY quarterly for fuel supplied to gas golf carts. Reimbursement shall be at the current retail full service pump price on the date of billing for unleaded fuel, determined quarterly by the CITY. GOLF PROFESSIONAL shall reimburse the CITY by no later than by the 20th day of the month following the close of each quarter.

D. Productivity Reward (Incentives)

In order to enhance overall golf division business incomes, customer service and golf professional revenues, a productivity reward equal to a stated dollar amount based on increases of golf rounds, gross power golf cart rentals and driving range sales becomes effective with this agreement. In addition to the fixed and percentage fees, the golf professional shall receive the following productivity rewards based on **exceeding** the following baseline golf rounds and gross sales:

PAID GOLF ROUNDS: (FEE, DISCOUNT CARD & REPLAY ROUNDS)

* Greater than 72,000 rounds	$3.00 PER ROUND

POWER GOLF CART RENTALS:
* Greater than $300,000 $100 PER $1,000 INCREASE

DRIVING RANGE SALES:
* Greater than $400,000. $200 PER $1,000 INCREASE

SECTION 3. Except as herein modified, all other provisions of the Agreement, including any exhibits and subsequent amendments thereto, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No 5 to Management Agreement on the date first written above.

CITY OF PALO ALTO

City Manager

Purchasing Manager

APPROVED AS TO FORM:

Senior Asst. City Attorney

BRAD LOZARES GOLF SHOP

By: Brad F. Lozares

Name: Brad F. Lozares

Title: owner / golf Professional

091120 jb 0073262

AMENDMENT NO. 4 TO MANAGEMENT AGREEMENT BETWEEN THE CITY OF PALO ALTO AND BRAD LOZARES GOLF SHOP FOR PROFESSIONAL SERVICES AT 1875 EMBARCADERO ROAD, PALO ALTO

THIS AMENDMENT NO.4 to the Management Agreement between the City of Palo Alto and Brad Lozares Golf Shop for Professional Services at the Palo Alto Municipal Golf Course, ("Agreement,") is made and entered into this _____ day of December 2009, by and between the City of Palo Alto, a municipal corporation ("CITY") and Brad Lozares Golf Shop, a sole proprietorship ("GOLF PROFESSIONAL").

RECITALS

A. GOLF PROFESSIONAL has assumed responsibility for and continued the operation and management of course play for the Golf Course facility on behalf of the CITY on the terms and conditions set forth in the Management Agreement dated January 28, 2003.

B. On May 15, 2006, the parties amended the Agreement to extend the term December 31, 2007, and to increase the fixed fee to $27,660.25 per month and reimburse GOLF PROFESSIONAL for sixty percent (60%) of finance charges associated with the payment of service charges for golf carts by credit card.

C. On May 15, 2007, the parties amended the Agreement to extend the term to December 31, 2008, and to increase the fixed fee to $28,213.46 per month.

D. On October 20, 2008, the parties amended the Agreement to extend the term to December 31, 2009, and to increase the fixed fee to $28,777.73 per month.

E. The parties now wish to amend the Agreement to extend the term of the agreement to December 31, 2010 at the current level of compensation.

NOW, THEREFORE, in consideration of the terms, conditions, and provisions of this Amendment, the parties agree as follows:

SECTION 1. Section III ("Term") is amended in its entirety to read as follows:

"**III. TERM**

The term of this Agreement shall commence on January 1, 2010, and end on December 31, 2010.

SECTION 2. (Section IV, A ("Compensation"), is amended in its entirety to read as follows:

"IV. COMPENSATION

DRAFT

During the term of the Agreement, GOLF PROFESSIONAL shall receive a fixed fee and percentage fees as defined below (collectively the Management Fee).

A. Fixed Fee

The GOLF PROFESSIONAL shall receive a fixed fee during the term of this Agreement for GOLF PROFESSIONAL's Golf Course and driving range management, Golf Course marshaling and starting and cart rental services. The fixed fee for the term of this agreement will be $345,333 annually, based on a calendar year. The fixed fee shall be paid in 12 equal monthly installments.

During the twelve month extension term from January 1, 2010 to December 31, 2010, the GOLF PROFESISONAL shall receive a fixed fee, in the amount of $28,777.73, monthly.

CITY shall forward the fixed fee by the 5th working day of the CITY's working month for the amount due for that month to the GOLF PROFESSIONAL. If not received within ten calendar days after the fifth working day of the month, a late charge of one percent of monthly payment due and unpaid plus an administrative fee of $45.00 shall be added to the payment due and unpaid, and the total monthly sum shall become immediately due and payable to GOLF PROFESSIONAL. The parties agree that such late charges represent a fair and reasonable estimate of the costs that GOLF PROFESSIONAL will incur by reason of City's late payments and that acceptance of such late charges in no event constitutes a waiver of CITY's default with respect to such overdue payment, nor prevents GOLF PROFESSIONAL from exercising any of the other rights and remedies granted hereunder or by any provision of law."

SECTION 3. Except as herein modified, all other provisions of the Agreement, including any exhibits and subsequent amendments thereto, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this amendment the day and year first written.

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____

CITY OF PALO ALTO

_____
City Manager

BRAD LOZARES GOLF SHOP

DRAFT

Sr. Asst. City Attorney

By:_____

APPROVED:

Name:_____

_____

Title:_____

Director, Administrative
Services

Taxpayer Identification No.

_____

DRAFT

TO: **HONORABLE CITY COUNCIL**

FROM: **CITY MANAGER** **DEPARTMENT: COMMUNITY SERVICES**

DATE: **OCTOBER 20, 2008** **CMR: 410:08**

REPORT TYPE: CONSENT

SUBJECT: **Approval of Amendment No. 3 to Management Agreement with Brad Lozares Golf Shop for Golf Professional Services at 1875 Embarcadero Road, Palo Alto**

RECOMMENDATION

Staff recommends that the Council approve and authorize the City Manager or his designee to execute the attached Amendment No. 3 to the management agreement with Brad Lozares for golf course professional services at the Palo Alto Municipal Golf Course, 1875 Embarcadero Road.

BACKGROUND

On March 16, 1998, the City issued tax-exempt bonds to finance golf course improvements. For the 20-plus years prior to the bonds being issued, the City and the golf professional had operated under one lease agreement for both professional services and the lease of the City-owned pro-shop facility. When the bonds were issued in 1998, IRS regulations required that there be two agreements, a management agreement for golf course professional services and a lease to operate a golf retail establishment.

In 1998, the Council approved a 20-month management agreement and a 15-year lease with golf professional, Brad Lozares. The original management agreement was amended three times prior to the Council's approval of a new restated management agreement (Agreement) on January 27, 2003. On May 1, 2006, the Council approved Amendment No. 1 to the Agreement which: 1) extended the term for an additional eighteen months; 2) increased the fixed fee compensation by 3 percent; and 3) reimbursed the golf professional for 60 percent of the bank's credit card merchant charges attributed to golf cart rentals.

On May 14, 2007, the Council approved Amendment No. 2 to the Agreement, in which a 2 percent cost of living increase was approved with a City resource impact of $553.21 per month or $6,638.46 for the duration of the 12-month term - January 1, 2008 to December 31, 2008.

DISCUSSION

Brad Lozares and his staff have provided excellent services to the City of Palo Alto for more than 25 years, providing the primary interface between the Palo Alto Municipal Golf Course and

patrons. They are highly respected for their professionalism, knowledge of the game and quality of instruction.

Amendment No. 3 is an extension of the agreement for only one year primarily due to the pending golf course operational study recently conducted by Economic Research Associates. The golf course operational study will come before the Council in a study session on November 17th, 2008. A review of the study will provide an opportunity to develop short and long term strategies for the future of Palo Alto Golf Course

The study of the Palo Alto Golf Course examines Bay Area golf market trends, Palo Alto Golf Course market performance, the condition of existing facilities, capital improvement requirements, stakeholder and golfer responses to services and operational policies, and expected future financial performance of current and alternative operating options available for the golf course.

Staff and Brad Lozares recognize the golf course operational study may provide some new direction for the golf course. A one-year extension of the Brad Lozares Management Agreement will allow the Council and staff time to review and discuss the golf course operational study and then develop a plan for how to proceed, while still maintaining high quality golf professional services in the interim.

Term:
The attached proposed Amendment No. 3 to the Agreement will extend the term of the Agreement for an additional 12 months – January 1, 2009 to December 31, 2009.

Compensation changes:
A number of changes are recommended to the terms of compensation, Percentage Fees and Productivity Rewards, all of which are agreeable to Brad Lozares, and are described below:

A) Fixed Management Fee
It is recommended the golf professional receive a 2 percent cost of living increase of $564.27 per month, or $6,771.24 for the duration of the 12-month term, January 1, 2009 to December 31, 2009.

B) Percentage Fee Changes
In fiscal year 2007-08, the City of Palo Alto invested $559,086 to replace the deteriorated driving range synthetic turf and netting. The debt service for this investment is $82,186.40 annually for the next 5 years. To ensure there are sufficient revenues to cover the increased debt service, staff proposes an adjustment to the Driving Range fees percentage from the existing arrangement of 60% revenues to the City and 40% of revenues to Brad Lozares to a new arrangement of 62% of revenues to the City and 38% of revenues to Brad Lozares. The result of this change, along with increased fees and increased play is expected to generate sufficient revenue to meet the new debt obligation.

C) Productivity Reward Changes

The productivity reward creates an additional incentive for the golf professional to increase revenues for both the City of Palo Alto and the Golf Professional. The current productivity reward terms have been in place since 2003 and need to be adjusted to reflect current market conditions for meaningful and achievable incentives. The changes are described below:

- Paid Golf Rounds (Discount Card & Replay Rounds)
  If more than 77,500 annual rounds are played per year, then the golf professional will receive $3.00 per round.

  Explanation of change:
  This is a change from 87,000 rounds to 77,500. The average annual paid rounds played over the last three years was 75,623 rounds, consequently 77,500 rounds is a more realistic and attainable incentive for the golf professional.

- Power Golf Cart Rentals
  If more than $300,000 in annual power cart rental revenue is generated, then the golf professional will receive $100 per $1,000.

  Explanation of change:
  This is a change from a target of $250,000 in annual power cart rental revenue with golf professional receiving $200 per $1,000. The average annual power cart sales for the last three years were $294,806. In 2009, the golf professional will increase the fleet size and quality of power carts, and will raise fees which will increase Power Cart revenues significantly. Consequently, $100 per $1000 exceeding $300,000 is a more appropriate incentive.

RESOURCE IMPACT

The changes proposed in Amendment No. 3 to the Agreement will result in an additional annual City expense of approximately $6,771.23 for the 12-month duration of the Agreement. The financial terms of the Agreement will be accommodated within the existing resources available to the Community Services Department. The golf course operation is expected to fully recover costs including debt service and cost plan charges during the term of this Agreement. The impact of changes in Productivity Reward and Percentage Fees are dependent on the amount of play at the golf course; staff anticipates an increase in overall golf course revenue as a result of more meaningful and achievable incentives.

POLICY IMPLICATIONS

The proposed amendment is consistent with prior Council direction.

ENVIRONMENTAL REVIEW

Approval of the amendment to agreement does not constitute a project under the California Environmental Quality Act (CEQA); therefore, no environmental assessment is required.

ATTACHMENTS

Attachment A: Amendment No. 3 to Management Agreement

PREPARED BY:_____

ROB DE GEUS
Division Manager, Recreation & Golf Services

DEPARTMENT HEAD APPROVAL:_____

GREG BETTS
Interim Director, Community Services Department

CITY MANAGER APPROVAL:_____

JAMES KEENE
City Manager

AMENDMENT NO. 2 TO MANAGEMENT AGREEMENT BETWEEN THE CITY OF PALO ALTO AND BRAD LOZARES GOLF SHOP FOR PROFESSIONAL SERVICES AT THE PALO ALTO MUNICIPAL GOLF COURSE, 1875 EMBARCADERO ROAD, PALO ALTO

THIS AMENDMENT NO. 2 to the Management Agreement between the City of Palo Alto and Brad Lozares Golf Shop for Professional Services at the Palo Alto Municipal Golf Course, dated January 28, 2003, ("Agreement,") is made and entered into this 15TH day of MAY, 2007, by and between the City of Palo Alto, a municipal corporation ("CITY") and Brad Lozares Golf Shop, a sole proprietorship ("GOLF PROFESSIONAL").

RECITALS

A. GOLF PROFESSIONAL has assumed responsibility for and continued the operation and management of course play for the Golf Course facility on behalf of the CITY on the terms and conditions set forth in the Agreement and its Amendment No. 1 to the Agreement dated May 1, 2006. The amended Agreement will expire on December 31, 2007.

B. The amended Agreement (Section, IV, A) provides the GOLF PROFESSIONAL with an annual fixed fee compensation of $331,923 payable in monthly installments.

C. CITY and GOLF PROFESSIONAL desire to amend the Agreement to extend the term by 12 months and increase the GOLF PROFESSIONAL's fixed fee compensation amount by two percent (2%).

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions, and provisions of this Amendment, the parties agree as follows:

SECTION 1. Section III (Term) is amended to extend the term by twelve (12) months and shall read in its entirety as follows:

"III. TERM

The initial term of this Agreement shall commence on January 28, 2003 and end on June 30, 2006. Commencing July 1, 2006, the term of this Agreement shall be extended by eighteen (18) months to December 31, 2007. Commencing January 1, 2008, the term of this Agreement shall be extended by twelve (12) months to December 31, 2008."

SECTION 2. Section IV (Compensation), Subparagraph A (Fixed Fee), is amended to increase the fixed fee by 2% during the twelve month period from January 1, 2008 to December 31, 2008, payable in monthly installments of $28,213.46, and shall read in its entirety as follows:

"A. Fixed Fee

The GOLF PROFESSIONAL shall receive a fixed fee during the term of this Agreement for GOLF PROFESSIONAL's Golf Course and driving range management, Golf Course marshaling and starting and cart rental services. The fixed fee for the initial term of this Agreement will be $322,251 annually, based on a calendar year. The fixed fee shall be paid in 12 equal installments.

During the eighteen-month extension term from July 1, 2006 to December 31, 2007, the GOLF PROFESSIONAL shall receive a fixed fee, payable monthly, in the amount of $27,660.25.

During the twelve month extension term from January 1, 2008 to December 31, 2008, the GOLF PROFESSIONAL shall receive a fixed fee, payable monthly, in the amount of $28,213.46.

CITY shall forward the fixed fee by the 5th working day of the CITY's working month for the amount due for that month to the GOLF ROFESSIONAL. If not received within ten calendar days after the fifth working day of the month, a late charge of one percent of monthly payment due and unpaid plus an administrative fee of $45.00 shall be added to the payment due and unpaid, and the total monthly sum shall become immediately due and payable to GOLF PROFESSIONAL. The parties agree that such late charges represent a fair and reasonable estimate of the costs that GOLF PROFESSIONAL will incur by reason of CITY's late payments and that acceptance of such late charges in no event constitutes a waiver of CITY's default with respect to such overdue payment nor prevents GOLF PROFESSIONAL from exercising any of the other rights and remedies granted hereunder or by any provision of law."

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SECTION 3. Except as herein modified, all other provisions of the Agreement, including any exhibits and subsequent amendments thereto, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this amendment the day and year first written.

ATTEST:

City Clerk

CITY OF PALO ALTO

Assistant City Manager

APPROVED AS TO FORM:

Sr. Asst. City Attorney

BRAD LOZARES GOLF SHOP

By: Brad Lozares

Name: BRAD LOZARES

Title: PGA DIRECTOR OF GOLF SOLE PROPRIETOR

APPROVED:

Director, Administrative Services

[redacted] Identification No.: [redacted]

ATTACHMENT A

AMENDMENT NO. 1 TO MANAGEMENT AGREEMENT BETWEEN THE CITY OF PALO ALTO AND BRAD LOZARES GOLF SHOP FOR PROFESSIONAL SERVICES AT THE PALO ALTO MUNICIPAL GOLF COURSE

THIS AMENDMENT NO. 1 to the Management Agreement between the City of Palo Alto and Brad Lozares Golf Shop for Professional Services at the Palo Alto Municipal Golf course, dated January 28, 2003, ("Agreement,") is made and entered into this _____ day of April, 2006, by and between the City of Palo Alto, a municipal corporation ("CITY") and Brad Lozares Golf Shop, a sole proprietorship ("GOLF PROFESSIONAL").

RECITALS

A. GOLF PROFESSIONAL has assumed responsibility for and continued the operation and management of course play for the Golf Course facility on behalf of the CITY on the terms and conditions set forth in the Agreement. The Agreement, by its terms will expire on June 30, 2006.

B. The Agreement, (Section IV.A) provides the GOLF PROFESSIONAL with an annual fixed fee compensation of $322,251.00 payable in monthly installments.

C. The Agreement (Section V.A.3.a) provides that the CITY shall reimburse the GOLF PROFESSIONAL for finance charges associated with the purchase of green fees, tournament fees and play cards paid by credit cards.

D. CITY and GOLF PROFESSIONAL desire to amend the Agreement to, extend the term by eighteen months, increase the GOLF PROFESSIONAL's fixed fee compensation amount by three percent (3%), and provide for reimbursement to the GOLF PROFESSIONAL of a portion of the finance charges associated with the payment of service charges for golf carts by credit card.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions, and provisions of this Amendment, the parties agree as follows:

SECTION 1. Section III (Term) is amended to extend the term by eighteen (18) months and shall read in its entirety as follows:

"III. TERM

The initial term of this Agreement shall commence on JANUARY 28, 2003 and end on JUNE 30, 2006. Commencing July 1, 2006 the term of this Agreement shall be extended by eighteen (18) months to December 31, 2007."

SECTION 2. Section IV (Compensation), Subparagraph A (Fixed Fee), is amended to increase the fixed fee by 3% during the eighteen month period from July 1, 2006 to December 31, 2007, payable in monthly installments of $27,660.25, and shall read in its entirety as follows:

"A. Fixed Fee

The GOLF PROFESSIONAL shall receive a fixed fee during the term of this Agreement for GOLF PROFESSIONAL's Golf Course and driving range management, Golf Course marshaling and starting and cart rental services. The fixed fee for the initial term of this agreement will be $322,251 annually, based on a calendar year. The fixed fee shall be paid in 12 equal monthly installments.

During the eighteen month extension term from July 1, 2006 to December 31, 2007, the GOLF PROFESSIONAL shall receive a fixed fee, payable monthly, in the amount of $27,660.25.

CITY shall forward the fixed fee by the 5th working day of the CITY's working month for the amount due for that month to the GOLF PROFESSIONAL. If not received within ten calendar days after the fifth working day of the month, a late charge of one percent of monthly payment due and unpaid plus an administrative fee of $45.00 shall be added to the payment due and unpaid, and the total monthly sum shall become immediately due and payable to GOLF PROFESSIONAL. The parties agree that such late charges represent a fair and reasonable estimate of the

costs that GOLF PROFESSIONAL will incur by reason of City's late payments and that acceptance of such late charges in no event constitutes a waiver of CITY's default with respect to such overdue payment, nor prevents GOLF PROFESSIONAL from exercising any of the other rights and remedies granted hereunder or by any provision of law."

SECTION 3. Section V (Records and Accounts), subparagraph A.3.a, is amended to reimburse the GOLF PROFESSIONAL for 60% of the finance charges associated with credit card payment for golf carts and shall read in its entirety as follows:

"a. GOLF PROFESSIONAL will pay for all banking fees, including all monthly service charges, armored courier pickup services and any credit and debit card service charges, excluding (i) those finance charges associated with the purchase of any and all green fees, tournament fees and play cards ("GFTFPC") paid by credit card and (ii) sixty percent (60%) of the finance charges associated with the payment of service charges for golf carts by credit card; (reimbursement of said Merchant Fees on GFTFPC sales and golf cart service charges is made monthly to the GOLF PROFESSIONAL upon receipt of settlement statements from credit card merchants."

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SECTION 4. Except as herein modified, all other provisions of the Agreement, including any exhibits and subsequent amendments thereto, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this amendment the day and year first written.

ATTEST:

City Clerk

APPROVED AS TO FORM:

Sr. Asst. City Attorney

APPROVED:

Director, Administrative Services

CITY OF PALO ALTO

Assistant City Manager

BRAD LOZARES GOLF SHOP

By: Brad F. Lozares

Name: Brad Lozares

Title: owner / Director of Golf POA

[redacted] Identification No. [redacted]

AMENDMENT NO. 7 TO MANAGEMENT AGREEMENT C3150541A BETWEEN THE CITY OF PALO ALTO AND BRAD LOZARES GOLF SHOP FOR PROFESSIONAL SERVICES AT 1875 EMBARCADERO ROAD, PALO ALTO

This Amendment No. 7 to Management Agreement C3151541A ("Contract") is entered into this 16th day of April 2018, by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("CITY"), and BRAD LOZARES GOLF SHOP, a sole proprietor, located at 1875 Embarcadero Road, Palo Alto, CA 94303 ("GOLF PROFESSIONAL").

R E C I T A L S

A. The Contract was entered into between the parties for the provision of continued operation and management of golf facility for the Palo Alto Municipal Golf Course facility on behalf of the CITY.

B. The parties wish to amend the Contract.

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions of this Amendment, the parties agree:

SECTION 1. TERM is hereby amended to read as follows:

"The term of this Agreement shall commence on January 28, 2003 and end on April 17, 2018."

SECTION 2. COMPENSATION-Closure Period is hereby amended to read as follows:

"GOLF PROFESSIONAL shall receive a fixed fee during the Phase II of the construction project. The fixed fee will be $7,500 per month starting November 1, 2017 through the end of the contract, without pro-rating any month. Compensation for the final month of April 2018 will include an additional $10,000. "

SECTION 3. Except as herein modified, all other provisions of the Contract, including any exhibits and subsequent amendments thereto, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

CITY OF PALO ALTO

City Manager or designee

APPROVED AS TO FORM:

City Attorney or designee

BRAD LOZARES GOLF SHOP

By:

Name: Brad Lozares

Title: Golf Professional

AMENDMENT NO. 4 TO LEASE #211 BETWEEN THE CITY OF PALO ALTO AND BRAD LOZARES

THIS AMENDMENT NO. 4 TO LEASE #211, dated, for convenience, March __, 2013, is entered into by the CITY OF PALO ALTO, a California chartered municipal corporation (the "CITY"), and BRAD LOZARES ("TENANT") (individually, a "Party" and, collectively, the "Parties"), in reference to the following facts:

RECITALS:

A. On March 16, 1998, the Parties entered into Lease #211 (the "Lease"), by which Section IV provides for a term of fifteen (15) years, commencing May 1, 1998 and expiring on April 30, 2013. Section VI provides for an option to the TENANT to extend the term of the Lease for one ten-year period, provided certain conditions have been met (the "Option").

B. The Parties wish to amend the Lease to change the Option to reduce the option term from ten (10) years to five (5) years. The TENANT will provide the CITY with prior written notice to exercise the Option.

AGREEMENT:

SECTION 1. Section VI. OPTION TO EXTEND is amended in its entirety to read, as follows:

"TENANT shall have the option to extend this Lease term for an additional five (5) years if the following conditions have been satisfied:

A. TENTANT has, to the satisfaction of the City Manager, faithfully performed each and every condition of this Lease throughout the Lease term. The City Manager's assessment of TENANT's performance shall be final and conclusive and shall be based on information received from CITY's staff, and other that may have knowledge of TENANT'S performance; and

B. TENANT has submitted to CITY, a written notice of TENANT'S intent to extend the Lease in accordance with the terms of this clause, on or before thirty (30) days prior to the end of the Lease term set forth in Clause IV (Term).

CITY may notify TENANT if TENANT'S performance has not been acceptable in accordance with subparagraph A of this clause within two (2) months of receipt of TENANT'S notice of intent to extent this Lease. CITY'S failure to notify shall not be deemed or construed as CITY'S approval of TENANT'S option to extend."

SECTION 2. Except as amended herein by this Amendment No. 4 to Lease #211 and consistent herewith, the terms of the Lease, as modified by Amendment Nos. 1, 2 and 3, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have by their duly appointed representatives executed this Amendment No. 4 to Lease #211 in Palo Alto, County of Santa Clara, State of California, on the date first above stated.

CITY OF PALO ALTO

_____
City Manager

APPROVED AS TO FORM

_____
Senior Asst. City Attorney

APPROVED:

_____
Director of Administrative Services

_____
Director of Community Services

TENANT

_____
BRAD LOZARES

AMENDMENT NO. 2 TO LEASE #211 BETWEEN THE CITY OF PALO ALTO AND BRAD LOZARES FOR THE PALO ALTO MUNICIPAL GOLF COURSE PRO-SHOP

THIS AMENDMENT to the Lease between the City of Palo Alto and Brad Lozares, dated , hereinafter referred to as "Lease,"is made and entered into this 19th day of Nov., 2001, by and between the City of Palo Alto, a municipal corporation, hereinafter referred to as "City" and Brad Lozares, hereinafter referred to as "Tenant, "

RECITALS

A. Section XVII-A provides for the City to reimburse Tenant for up to one-half the cost of the construction for tenant improvements to the Pro-shop, not to exceed $200,000 as amended by amendment number one dated November 23, 1998. TENANT'S reimbursement would be in the form of a no interest rent credit rendered in equal monthly amounts over the remaining term of the Lease, approximately Thirteen Years.

B. City and Tenant agree that term of the City's reimbursement to the TENANT has created an unnecessary hardship for the TENANT in that TENANT is obligated to pay both its share and the City's share of the cost of construction as part of a 5 year interest barring, conventional loan.

C. City and Tenant agree that the reimbursement to the TENANT by the City should be accelerated to match the TENANT's conventional loan term of 5 years.

D. City and Tenant desire to amend the Lease to accelerate the City's reimbursement to TENANT for City's share of the cost of construction for tenant improvements to the Pro-shop.

NOW THEREFORE, in consideration of their mutual covenants and agreements, the parties hereto agree as follows:

SECTION 1 SECTION XVII-A (CONSTRUCTION AND/OR ALTERATION BY TENANT), paragraph A is amended to read as follows:

A. CAPITAL IMPROVEMENTS. On May 15, 1995 the Palo Alto City Council approved a master plan for the golf course. The master plan includes various proposed projects for remodeling and improving the Golf Course facilities that will better service the needs of the golfers. (Pro-shop expansion and additional cart storage.) Tenant may choose to participate in the Pro-Shop and the additional cart storage expansions by building and constructing those improvements, with City's written approval, under City supervision and in conformance with the

City's bid procedures. Once the project is completed and Tenant has provided document proof of the actual costs, City agrees to reimburse Tenant for one-half the costs. Tenant's reimbursement will be in the form of a no-interest rent credit rendered in equal monthly amounts over a sixty (60) month period, commencing on the second full month after completion of the project. The City's payments for (23) months will be $1242 per month. On or before December 1, 2001 City shall pay to Tenant a lump sum amount of $48,095. Payments for the twenty-fourth (24th) month through the sixtieth (60th)months shall be $3,333 per month. City's share of the reimbursement shall not exceed $200,000, and the project must be completed within the first five years of the initial lease term. Notwithstanding any provisions of this clause, if Tenant wish to make improvements that are not covered in the Master Plan and the City does not wish to participate, Tenant may, upon necessary approvals from City, plan and implement capital improvements solely at its own expense.

SECTION 2 Except as herein modified, all other provisions of and exhibits to the Lease and Lease Amendment # 1 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment the day and year first above written.

24

CITY OF PALO ALTO

Assistant City Manager

BRAD LOZARES

BY

Golf Professional

12/2001-12-24
12/2002-12-36
12/2003-12-48
12/2004-12-60

APPROVED AS TO FORM:

Senior Assistant City Attorney

DATE: 12/24/98
A.P.N.: n/A
Project: BRAD LOZARES LEASE AMENDMENT

R.E. Project No.: n/A
O.K. to terminate this file on or after (date) 6/1/2013
Keep on Microfiche: ☐ yes/ ☐ not necessary
Or ☐ keep original on file indefinitely

TO:
- ☒ City Clerk (with City's original signed copy of document)
- ☐ _____ (Operating/Client Department)
- ☐ Risk Manager (If improved property)
- ☐ Public Works Engineering with City Clerk document number
- ☒ Real Estate Division File

FROM:
- ☐ Manager, Real Property
- ☐ Senior Financial Analyst
- ☒ Financial Analyst (Real Property)

SUBJECT: CONSUMMATED REAL ESTATE TRANSACTION

Attached is a
- ☐ Purchase Agreement
- ☐ Conveyance Agreement
- ☒ Lease AMENDMENT
- ☐ Grant Deed
- ☐ Easement Deed
- ☐ Other: _____

dated 11/23, 1998 between the City of Palo Alto and BRAD LOZARES

The document ☒ was not recorded with the County Recorder ☐ was recorded with the County Recorder in Book _____ Page _____, Serial No. _____.

Council action taken on n/A.

The document should be filed in the City Clerk's records. Cross-reference (if any): FILE WITH LEASE # 211. It is requested that the Clerk's Office use the bottom portion of this memo to inform Real Estate of its filing reference.

It ☐ is ☒ is not recommended that the property be added to the City's property insurance coverage. If added, the estimated value of the improvement is: $_____. Any evidence of insurance required of the other party ☐ has been filed ☐ will be filed by _____.

Public Works, Engineering ☐ should ☒ should not add a reference to this document on the City's Block Maps.

Project: _____
Project No.: LEASE # 211
Other Party: _____
APN: _____

The above referenced document forwarded to the Clerk's Office by your memo of 12/24/1998 has been filed by the Cit Clerk as Lease No. 211.

By: _____ Date: 1/8/99

OFFICE OF THE CITY CLERK
BEVERLY J. KLINE

REALESTA EFORM.1/CONSUMTR REV:06/95

AMENDMENT NO. 1 TO LEASE # 211 BETWEEN THE CITY OF PALO ALTO AND BRAD LOZARES FOR THE PALO ALTO MUNICIPAL GOLF COURSE PRO-SHOP

THIS AMENDMENT to the Lease between the City of Palo Alto and Brad Lozares, dated ____, hereinafter referred to as "Lease," is made and entered into this 23rd day of Nov, 1998, by and between the City of Palo Alto, a municipal corporation, hereinafter referred to as "City" and Brad Lozares, hereinafter referred to as "Tenant;"

RECITALS

A. Section XVII-A provides for the City to reimburse Tenant for up to one-half the cost of the construction for tenant improvements to the Pro-shop, not to exceed $150,000.

B. City and Tenant agree that the cost of the improvements has increased due to code requirements and other engineering considerations.

C. City and Tenant agree that the City's share of the reimbursement should be increased to to an amount not exceed $200,000.

D. City and Tenant agree to jointly fund the cost of a cash receipting system for Tenant's operation at the Golf Course; and

E. City and Tenant desire to amend the Lease to provide for the increase in the reimbursement for tenant constructed improvements and for funding of a cash receipting system.

NOW THEREFORE, in consideration of their mutual covenants and agreements, the parties hereto agree as follows:

SECTION 1 SECTION VII (INVENTORY BUY OUT), the first paragraph, is amended to read as follows:

Upon expiration or earlier termination, TENANT agrees to cooperate with any successor golf professional regarding sale of its remaining inventory, including the cash receipting system. CITY agrees to include a clause in any successor lease requiring the successor golf professional's cooperation with TENANT. Should TENANT and any successor golf professional not agree on a sale and purchase of the remaining inventory and cash receipting system within 30 days of successor announcement of the selection of the golf professional, CITY and TENANT agree that CITY will purchase the remaining inventory and cash receipting system from TENANT provided that:

SECTION 2 SECTION VII (INVENTORY BUY OUT), paragraph D, is added to read as

follows:

D. Cash Receipting System- City agrees to reimburse Tenant for its pro-rated share of the cost of the cash receipting system, should Tenant no longer provide services at the golf course. City and Tenant agree that the value of the cash receipting system as of the date of this amendment is $24,000. City and Tenant agree to use a prorated straight line depreciation with a 10-year economic life expectancy for the cash receipting system in order to determine the amount of the Golf Professional half interest at the time of the inventory buy out.

SECTION 3 SECTION XVI (EQUIPMENT TO BE PROVIDED BY TENANT) subparagraph C deleted in its entirety and replaced to read as follows:

C. Tenant shall provide a cash register or related cash receipting system. City will pay as reimbursement to Tenant one-half the cost (not to exceed $12,000) of the cash receipting system. Reimbursement will be made within 30 days after the computer system has been installed and the Tenant has provided proof of actual costs. Tenant shall keep receipts for accepting payments for merchandise sales and other incidental sales and golf course equipment rentals separate from golf round fees, driving range fees, and equipment rental receipts that are collected by the GOLF PROFESSIONAL under the Management Agreement (See Section XIII RECORDS AND ACCOUNTS).

SECTION 4 SECTION XVII (CONSTRUCTION AND/OR ALTERATION BY Tenant), paragraph A is amended to read as follows:

A. CAPITAL IMPROVEMENTS. On May 15, 1995 the Palo Alto City Council approved a master plan for the golf course. The master plan includes various proposed projects for remodeling and improving the Golf Course facilities that will better service the needs of the golfers. (Pro-shop expansion and additional cart storage.) Tenant may choose to participate in the Pro-Shop and the additional cart storage expansions by funding and constructing those improvements, with City's written approval, under City supervision and in conformance with the City's bid procedures. Once the project is completed and Tenant has provided documented proof of the actual costs, City agrees to reimburse Tenant for one-half the costs. Tenant's reimbursement will be in the form of a no-interest rent credit rendered in equal monthly amounts over the remaining term of the Lease, commencing on the second full month after completion of the project. City's share of the reimbursement shall not exceed ~~$150,000~~ $200,000, and the project must be completed within the first five years of the initial lease term. Should the Lease be terminated as defined in paragraph XXVI, subparagraph B (Termination of Lease), City will reimburse Tenant for the outstanding balance of City's share at time of termination. Notwithstanding any provisions of this clause, if Tenant

wishes to make improvements that are not covered in the Master Plan and the City does not wish to participate, Tenant may, upon necessary approvals from City, plan and implement capital improvements solely at its own cost.

Tenant and City acknowledge that the expansion of the Pro-Shop will require certain facilities and systems to be installed, improved and remodeled to meet current code compliance and to be compatible with the Pro-Shop expansion. They include the Clubhouse roof replacement, requirements to meet current Americans with Disabilities Act, installation of structural support piers, upgrade and improvement of the current security system, replacement of the fire alarm system, installation of a fire sprinkler system, restroom repair and remodel and replacement of the breeze-way walkway. The cost to improve these City facilities and systems is estimated to be $400,000. Tenant and City agree that Tenant shall construct these City improvements and systems at the same time the Pro-Shop is remodeled and that City will reimburse Tenant for the full cost of such improvements, up to the amount of $400,000. Tenant will be reimbursed as work is completed and Tenant has provided documented proof of the actual costs. Tenant agrees to comply with all the other terms and conditions of this lease, pertaining to construction of the City improvements.

SECTION 5 Except as herein modified, all other provisions of and exhibits to the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment the day and year first above written.

CITY OF PALO ALTO

Richard Rosenbaum
Mayor

BRAD LOZARES

By Brad F. Lozares

Its Golf Professional

ATTEST:

Kathi Hamilton
Interim City Clerk

APPROVED AS TO FORM:

Susan W. Case
Senior Assistant City Attorney

APPROVED:

City Manager

^Assistant

Director of Administrative Services

Director of Community Services

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Project:Golf Professional
Project Number:CL 27/25-97/5

LEASE #211

This Lease is made this 16th day of March, 1998 by and between the City of Palo Alto, a municipal corporation, (CITY) and Brad Lozares (TENANT).

RECITALS

A. CITY owns the Palo Alto Municipal Golf Course, par 72, 18 hole course covering approximately 180 acres within the City of Palo Alto;

B. CITY desires to lease a portion of the premises to provide for the operation of the course Pro-Shop and related golf professional services and activities; and

C. TENANT desires to lease the course Pro-Shop and to provide the necessary golf professional equipment and related services for the CITY.

D. TENANT, under a separate Management Agreement, will also assume some of the management and operation responsibilities of the Palo Alto Golf Course facility on behalf of the CITY.

Now, therefore, in consideration of these covenants, terms and conditions, the parties hereto mutually agree as follows:

I. PREMISES

Subject to the terms and conditions set forth in this Lease, CITY ... it certain property (PREMISES) shown ... e, made Maps. ... epts the

Project: GOLF
Project No.: CL ...
Other Party: BRA
APN:

The above referenced document forwarded to the Clerk's Office by your ... elated by the Cit Clerk as Lease 211 No. L 87-005.

By: B. Kline
REALESTATEFORM.1/CONSUMTR REV:06/95

cross ref X #C94-004 Am

III. REQUIRED AND OPTIONAL SERVICES AND USES

In furtherance of the purposes stated above, the following required and optional services and uses shall be provided, permitted or prohibited:

A. Required Services and Uses. Throughout the term of this Lease TENANT shall provide the following services and activities typically associated with a full-service golf professional. These shall include, as a minimum, the following services and activities:

1. Operation and management of a fully equipped golf shop including, as a minimum, sale and off course rental of quality golf equipment and related incidental merchandise, sufficient in inventory and diversity to meet the needs of the course users at rates and prices which are fair and reasonable;

2. Provide quality golf lessons and instruction for all levels of play and all other services customarily provided by a PGA class A Golf Professional and demanded by the course users;

3. Promotion of golf and golf related activities in cooperation with existing golf clubs, organizations and LESSOR.

4. Opening and closing premises for GOLF PROFESSIONAL, and his or her staff.

B. Optional Services and Uses. Subject to the prior written approval of the City Manager, TENANT may also use the PREMISES to provide additional services and uses which are ancillary to and compatible with the required services and uses stated above and not in conflict with the required uses stated above and not in conflict with the required uses of the golf course restaurant tenant. Approval of optional uses shall be within the sole discretion of the City Manager.

C. Restricted Uses. The above listed services and uses, both required and optional, shall be the only services and uses permitted upon or from the PREMISES. TENANT agrees not to use the PREMISES for any other purpose nor to engage in, or permit, any other business activity within or from the PREMISES.

IV. TERM

The term of this Lease shall be fifteen (15) years, commencing May 1, 1998 and ending on April 30, 2013.

V. TERMINATION OF PRIOR AGREEMENTS

This Lease supersedes any and all prior leases or agreements entered into by CITY for use of the PREMISES. All such prior leases or agreements are null and void.

VI. OPTION TO EXTEND

TENANT shall have the option to extend this Lease term for an additional ten (10) years if the following conditions have been satisfied:

A. TENANT has, to the satisfaction of the City Manager, faithfully performed each and every condition of this Lease throughout the Lease term. The City Manager's assessment of TENANT'S performance shall be final and conclusive and shall be based on information received from CITY'S staff, and others that may have knowledge of TENANT'S performance; and

B. TENANT has submitted to CITY, a written notice of TENANT'S intent to extend the Lease in accordance with the terms of this clause, on or before six (6) months prior to the end of the Lease term set forth in Clause IV (TERM).

CITY may notify TENANT if TENANT'S performance has not been acceptable in accordance with subparagraph A of this clause within two (2) months of receipt of TENANT'S notice of intent to extend this Lease. CITY'S failure to notify shall not be deemed or construed as CITY'S approval of TENANT'S option to extend.

VII. INVENTORY BUY OUT

Upon expiration or earlier termination, TENANT agrees to cooperate with any successor golf professional regarding sale of its remaining inventory. CITY agrees to include a clause in any successor lease requiring the successor golf professional's cooperation with TENANT. Should TENANT and any successor golf professional not agree on a sale and purchase of the remaining inventory within 30 days of the successor announcement of the selection of the golf professional, CITY and TENANT agree that CITY will purchase the remaining inventory from TENANT provided that:

A. The maximum purchase price shall be one hundred percent (100%) of the then wholesale value of the remaining inventory as determined by a mutually agreeable third party knowledgeable of the wholesale value of such merchandise during the first five years and at ninety percent of the wholesale value for the remainder of the term of the lease ;

B. The inventory so purchased shall be in good condition and of good quality and shall only be golf-related merchandise.

VIII. CONSIDERATION/RENT

In consideration for TENANT'S use of the PREMISES in accordance with the terms and conditions of this Lease, TENANT agrees to pay to CITY a monthly rent, which shall be the greater of the amount described in paragraph A (minimum rent) or the amount described in B (percentage rent).

A. Minimum Rent. The minimum monthly rental for the term of the lease shall be $2,000, with the exception that during the major golf-shop remodel project the minimum rent will be waived and only the percentage rent shall apply. The period that the minimum rent will be waived shall not to exceed 3 months.

B. Percentage Rent. Percentage rent for the PREMISES shall be calculated using the following percentages of gross receipts from business operations conducted on or from the premises:

Business Operations	Percentage
Gross sales from merchandise and equipment rented from but not used at the P.A. Golf Course	4%

1. Rent for Optional Services and Uses. TENANT shall, in addition to the above, pay to CITY rent for approved optional services and uses. Rent for optional services and uses approved in accordance with Clause III (REQUIRED & OPTIONAL SERVICES AND USES) subparagraph A., shall be mutually agreeable to the City Manager and TENANT. Should TENANT and the City Manager fail to agree to a rent for such approved optional uses, the City Council shall review data presented by TENANT and the City Manager and shall determine the appropriate rent. The City Council determination shall be final and conclusive. Should TENANT not agree to such rent determination, TENANT agrees not to engage in such activity, notwithstanding any prior approval of such optional uses.

2. Rent Revision. 180 days prior to the end of the fifth year and 180 days prior to the end of the tenth year TENANT and CITY shall meet and renegotiate the percentage rents.

3. Payment of Rent. Rental payments shall be made in accordance with the provisions of Clause XI (RENT PAYMENT PROCEDURES).

IX. CHARGE FOR UNAUTHORIZED SERVICES AND USES

TENANT shall pay CITY a sum equal to 30 percent (30%) of the gross receipts for any service or use that is not permitted or authorized by Clause III (REQUIRED & OPTIONAL USES). This payment is subject to the "due date" provided in Clause XI (RENT PAYMENT PROCEDURES) and the charge for "late payment" provided in Clause XII (CHARGE FOR LATE PAYMENT). The existence of such charge or the payment or receipt of money under this clause, does not constitute an authorization of a particular service or use and does not constitute a waiver of CITY'S right to terminate such service or use.

X. DEFINITION OF GROSS RECEIPTS

The term "gross receipts" upon which percentage rentals are to be based shall include:

A. The sale price of all goods, wares, merchandise, and products sold and rented on or from the PREMISES by TENANT, whether for cash or credit and whether payment is actually made or not; excluding however, fair and reasonable resale and employee discount purchases provided their transactions are made on a cost basis;

B. The charges made by TENANT for sale or rendition on or from the PREMISES of services of any nature or kind whatsoever, whether for cash or credit and whether payment is actually made or not;

C. All admission, entry rental, and other fees of any nature or kind charged by TENANT (including but not limited to deposits accepted by TENANT);

D. All sums deposited in any coin-operated vending machine or other device maintained on the PREMISES, regardless of the ownership of the machine or device, or whether such sums are removed and counted by TENANT or others, and regardless of what percentage thereof TENANT is entitled to receive;

E. The fair rental value of facilities used by TENANT or its employees for purposes other than the business purposes for which the PREMISES are leased;

F. Security deposits collected by TENANT from its subtenants, agents, concessionaires or licensees and not placed in an escrow or trust account with interest not accruing to the TENANT.

XI. RENT PAYMENT PROCEDURE

A. Payment of Rentals. On or before the twentieth day of each month, TENANT shall render to CITY rent as set forth in Clause VIII (CONSIDERATION/RENT) and a correct statement

of all applicable gross receipts for that portion of the year which ends with and includes the last day of the preceding calendar month. The statement shall be signed by TENANT or his responsible agent under penalty of perjury, and shall be in a form similar to Exhibit C attached to, and by this reference, incorporated into this lease.

B. TENANT's obligation to pay percentage rent to CITY for activity or occupancy of any sublessee of all or a portion of the PREMISES (whether or not CITY has approved the sublease and regardless of whether or not a percentage rent was established by CITY) shall commence with the earliest of the following dates which shall be deemed the "due date" for purposes of Clause XII (CHARGE FOR LATE PAYMENT):

1. Commencement date of sublease;

2. Date of physical occupancy; or

3. Date of earliest activity (i.e.,sale of goods, solicitation of business construction or alteration by sublessee, etc.).

C. Place of Payment and Filing. Rental payments shall be delivered to, and statements required by this clause and Clause XIV (RECORDS AND ACCOUNTS) shall be delivered to the Revenue Collections Division, 250 Hamilton Avenue, PO Box 10250, Palo Alto, California 94303. The designated place of payment and filing may be changed at any time by CITY upon ten (10) days written notice to TENANT. Rental payments may be made by check made payable to City of Palo Alto, however, TENANT assumes all risk of loss or delay if payments are made by mail.

D. Acceptance of Late or Incorrect Rent: TENANT specifically agrees that acceptance of any late or incorrect rentals submitted by TENANT shall not constitute an acquiescence or waiver by CITY and shall not prevent CITY from enforcing Clause XII (CHARGE FOR LATE PAYMENT) or any other remedy provided in this Lease.

XII. CHARGE FOR LATE PAYMENT

If any payment of rent as specified in Clause VIII (CONSIDERATION/RENT) or of any other sum due CITY is not received by CITY, a late charge equal to 1% percent of the payment due and unpaid plus an administrative fee of $45.00 shall be added to the payment, and the total sum shall become immediately due and payable to CITY.

Acceptance of late charges and/or any portion of the overdue payment by CITY shall in no event constitute a waiver of TENANT'S default with respect to such overdue payment, nor prevent CITY from exercising any of the other rights and remedies granted hereunder or by any provision of law.

XIII. RECORDS AND ACCOUNTS

A. Records. TENANT shall, at all times during the term of this Lease, keep or cause to be kept true and complete books, records, and accounts of all financial transactions conducted in the operation of all business activities, of whatever nature, conducted pursuant to the rights granted herein. The records, books and accounts shall be kept or made available to CITY at a location within Santa Clara or San Mateo County. The records must be supported by source documents such as sale slips, cash register tapes, purchase invoices, or other pertinent documents. Except as may be otherwise provided by this Lease, all retail sales, and other incidental business revenue shall be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers shall be equipped with devices which lock in sales totals and other transaction records, or with counters which are not resettable and which record transaction numbers and sales details. Totals registered shall be read and recorded at the beginning and end of each day (See Section XVI, C.) Retail sales may be recorded by a system other than cash registers or other comparable devices provided that system is approved by the Director of Administrative Services or his or her designee.

If the TENANT also provides Golf Professional services to the CITY under a separate agreement, and if the Golf Professional is responsible for depositing CITY golf revenue into a bank account in that agreement, then TENANT shall provide bank deposit information to CITY at least monthly which shows total funds deposited by TENANT and Golf Professional. While CITY agrees that detailed transaction, inventory, and purchasing information related to retail sales is proprietary information, TENANT agrees to supply CITY, on no less than a monthly basis, summary information for retail sales.

B. The Accounting Year. The accounting year shall be twelve full calendar months. The accounting year may be established by TENANT, provided TENANT has notified CITY in writing of the accounting year to be used. The accounting year shall be deemed to be approved by CITY unless CITY objects to TENANT'S selection in writing within sixty (60) days of receipt of TENANT'S written notification.

In the event TENANT fails to establish an accounting year of its choice, regardless of the cause, the accounting year shall be synonymous with the twelve (12) month period following commencement of this Lease.

Once an accounting year is established, it shall be continued through the term of the Lease unless CITY specifically approves in writing a different accounting year. CITY shall approve a change in accounting years only in the event of undue hardship being placed on either the TENANT or CITY, and not because of mere convenience or inconvenience.

C. Financial Statements and Audit by CITY. Within one hundred twenty (120) days after the end of each accounting year, TENANT shall, at its own expense, submit to CITY an

unaudited balance sheet and income statement. Within one hundred eighty (180) days after the end of each accounting year, TENANT shall, at its own expense, submit to CITY a balance sheet and income statement prepared and audited by a Certified Public Accountant, reflecting business transacted on or from the PREMISES during the preceding accounting year. The Certified Public Accountant must attest that the balance and income statement submitted are an accurate representation of TENANT'S records as reported to the United States of America for income tax purposes. At the same time, TENANT shall submit to CITY a statement certified as to the accuracy by a Certified Public Accountant wherein the total gross receipts for the accounting year are classified according to the categories of business established for percentage rental and listed in Clause VIII (CONSIDERATION/RENT) and for any other business conducted on or from the PREMISES. The Director of Administrative Services or his or her designee may accept alternatives to the above Certified Public Accountant-audited statement provided that in the Director's opinion, the alternative provides sufficient assurance that the financial statement accurately reflect business transacted on or from the PREMISES.

All of TENANT'S accounting records and supporting source documents shall be made available to CITY'S representatives at any and all reasonable time during the term of this Lease and within two (2) years after expiration or termination of this Lease, for the purpose of determining the accuracy of the monthly statements of sales and monies received, and rent due and paid to CITY.

Notwithstanding the previous paragraph, the full cost of any such audit by CITY, as determined by CITY, shall be borne by TENANT if either of the following conditions exists:

1. The audit reveals an underpayment of more than five percent (5%) between the rent due as reported and paid by TENANT in accordance with this Lease and the rent due as determined by the audit; or

2. TENANT has failed to maintain true and complete books, records, accounts, and supporting source documents in accordance with subparagraph A above. The adequacy of records shall be determined by the City Auditor. Otherwise, CITY shall bear the cost of any such audit.

Upon the request of CITY, TENANT shall promptly provide, at TENANT'S expense, necessary data to enable CITY to fully comply with any and all requirements of the State of California or the United States of America for information or reports relating to this Lease and to TENANT'S use of the PREMISES. Such data shall include, if required, a detailed breakdown of TENANT'S use of the PREMISES, and/or a detailed breakdown of TENANT'S receipts and expenses.

XIV. SECURITY DEPOSIT

A security deposit in the sum of Three Thousand Dollars ($3,000) shall be provided to LESSOR by TENANT. The security deposit shall take one of the forms set out below and shall guarantee TENANT'S full and faithful performance of all the terms, covenants, and conditions of this lease.

A. Cash.

B. The assignment to CITY of a savings deposit held in a financial institution in Santa Clara or San Mateo County acceptable to CITY. At a minimum, such assignment shall be evidenced by the delivery to CITY of the original passbook reflecting the savings deposit and a written assignment of the deposit to CITY in a form approved by the Real Property Manager.

C. A Time Certificate of Deposit from a financial institution in Santa Clara or San Mateo County wherein the principal sum is made payable to CITY on order. Both the financial institution and the form of the certificate must be approved by the Real Property Manager.

D. A Letter of Credit or other instrument of credit from a financial institution, subject to regulation by the state or federal government, pledging that funds necessary to secure performance of the Lease terms, covenants, and conditions, are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing TENANT'S performance and that all or any part shall be paid to CITY or order upon demand by CITY. Both the financial institution(s) and the form of the instrument(s) must be approved by Real Property Manager.

Regardless of the form in which TENANT elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to CITY for correcting any default or breach of this Lease incurred by CITY as a result of the failure by TENANT, its successors or assigns, to faithfully perform all of the terms, covenants, and conditions of this Lease. Should TENANT elect to provide a Time Certificate of Deposit, Letter of Credit, or other instrument of credit, hereinafter collectively referred to as "INSTRUMENT", to fulfill the security deposit requirements of this Lease, the INSTRUMENT shall contain a provision whereby the institution issuing the INSTRUMENT agrees to provide CITY with written notice of its intent not to renew the INSTRUMENT at least thirty (30) days prior to expiration or termination of the INSTRUMENT. If TENANT has not provided CITY with an acceptable alternate form of security deposit at least ten (10) days prior to expiration or termination of the INSTRUMENT, CITY may demand and obtain from the institution issuing the INSTRUMENT, the amount secured by the INSTRUMENT as satisfaction of the security deposit provision of this Lease.

Should TENANT elect to assign the savings deposit to CITY, or provide an alternate INSTRUMENT, to fulfill the security deposit requirements of this Lease, the assignment, or issuance of the INSTRUMENT shall have the effect of releasing the depositor or creditor therein from liability on account of the payment of any or all of the principal sum to CITY or order upon demand

of CITY. The agreement entered into by TENANT with a financial institution to establish the deposit necessary to permit assignment or issuance of a certificate as provided above, may allow the payment of interest accruing on account of the deposit to TENANT, or order.

TENANT shall maintain the required security deposit throughout the Lease term. Failure to do so shall be deemed a default and may be grounds for immediate termination of this Lease. The security deposit shall be rebated, reassigned, released, or endorsed to TENANT or order, as applicable, at the end of the Lease term, provided TENANT or order, as applicable, at the end of the Lease term, provided TENANT has fully and faithfully performed each and every term, covenant, and condition of this Lease.

On each five-year anniversary date of the commencement of this Lease, the amount of the security deposit set forth above shall be adjusted according to the following formula:

$$R = A \times 1.5$$ 1.5 The current minimum monthly rental

Where:

R = Revised security deposit.
A = Current minimum monthly rental

In no event shall the amount of the revised security deposit be less than the initial security deposit. The difference between the initial security deposit and the revised security deposit shall be due and payable to CITY within ten (10) days of receipt of a notice of revision of the security deposit from the Real Property Manager.

XV. MAINTENANCE AND COOPERATION

A. Maintenance of Facilities.

1. CITY shall maintain the following facilities related to the club house.

   a. parking lot;
   b. walkways and public restrooms;
   c. exterior of the clubhouse structure and support systems not exclusive to the Premises (heating, ventilating and air conditioning systems, electrical system, etc.) except that TENANT shall be responsible for any window breakage caused from within the premises;

2. TENANT expressly agrees to maintain the PREMISES in a safe, clean, wholesome, and sanitary condition and substantial repair, to the complete satisfaction of CITY and in compliance with all applicable laws. TENANT further agrees to provide approved containers for trash and garbage and to keep the PREMISES free and clear of rubbish and litter. CITY shall have the right to enter upon and inspect the

PREMISES at any time for cleanliness and safety. Notwithstanding the above provisions, TENANT shall be responsible for damage or repair to the PREMISES or any of its support systems resulting from TENANT'S use of the PREMISES and not occasioned by normal wear and tear, including plumbing and glass breakage. TENANT shall be responsible for the repair and replacement of the Pro Shop floor covering but not the sub-flooring and the Pro Shop burglar alarm installed by the CITY in 1998.

TENANT shall designate in writing to CITY an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness, and general order.

If TENANT fails to maintain or make repairs or replacements as required herein, CITY may notify TENANT in writing of the failure. Should TENANT fail to correct the situation within a reasonable time thereafter, as established by the City Manager, the Real Property Manager may make, or cause to be made, the necessary corrections and the cost thereof, including but not limited to the cost of labor, materials, and equipment and a fifteen percent (15%) charge for administration and overhead, shall be paid by TENANT within ten (10) days of receipt of a statement of the cost from the Real Property Manager. CITY may also, at its option, choose other remedies available herein, or available by law.

3. TENANT shall cooperate with the GOLF PROFESSIONAL in use of the golf shop facility. TENANT has overall responsibility for the facility on behalf of the CITY, and GOLF PROFESSIONAL will report any facility problems to TENANT. The parties acknowledge that as of the date of this Lease Agreement, TENANT is also the GOLF PROFESSIONAL.

4. During the course of the agreement, the CITY anticipates making improvements to the golf course consistent with the Golf Course Master Plan. In order for the TENANT to plan his business operations and staffing effectively, CITY will make every effort to give at least sixty (60) days notice for any planned improvements that will affect the TENANT's operations.

XVI. EQUIPMENT TO BE PROVIDED BY TENANT

Tenant shall provide:

A. Attractive fixtures, counters, showcases, equipment and devices necessary in the operation of high quality golf shop and in keeping with the architectural standards of the clubhouse and subject to the prior approval of CITY'S Director of Parks and Golf Course Division.

B. Adequate inventory of golfing supplies and golf-related merchandise consistent with the needs of the golfing public;

C. Cash register or related cash receipting systems for accepting payments for merchandise sales and other incidental sales and off course equipment rentals. TENANT shall keep these receipts separate from golf round fees, driving range fees, and equipment rental receipts that are collected by the GOLF PROFESSIONAL under the Management Agreement (See Section XIII RECORDS AND ACCOUNTS). If TENANT also provides services to the CITY under the Management Agreement, TENANT may use CITY provided cash receipting system for accepting payments.

XVII. CONSTRUCTION AND/OR ALTERATION BY TENANT

A. CAPITAL IMPROVEMENTS. On May 15, 1995 the Palo Alto City Council approved a master plan for the golf course. The master plan includes various proposed projects for remodeling and improving the Golf Course facilities that will better service the needs of the golfers. (Pro-shop expansion and additional cart storage.) TENANT may choose to participate in the Pro-Shop and the additional cart storage expansions by funding and constructing those improvements, with CITY's written approval, under CITY supervision and in conformance with the CITY's bid procedures. Once the project is completed and TENANT has provided documented proof of the actual costs, CITY agrees to reimburse TENANT for one-half the costs. TENANT's reimbursement will be in the form of a no interest rent credit rendered in equal monthly amounts over the remaining term of the Lease, commencing on the second full month after completion of the project. CITY's share of the reimbursement shall not exceed $150,000 and the project must be completed within the first five years of the initial lease term. Should the LEASE be terminated as defined in paragraph XXVI, subparagraph B (TERMINATION OF LEASE), CITY will reimburse tenant for the outstanding balance of CITY's share at time of termination. Notwithstanding any provisions of this clause, if TENANT wishes to make improvements that are not covered in the Master Plan and the CITY does not wish to participate, TENANT may, upon necessary approvals from CITY, plan and implement capital improvements solely at its own cost.

B. CITY's Consent. Any conditions relating to the manner, method, design, and construction of the structures, improvements, or facilities established by CITY shall be conditions of this article as though originally stated herein. TENANT may, at any time and at its sole expense, install and place business fixtures and equipment within any building constructed by CITY, provided such fixtures and installation have been reviewed and approved by the City Manager.

C. Strict Compliance with Plans and Specifications. All improvements constructed by TENANT within the PREMISES shall be constructed in an efficient and workmanlike manner and in strict compliance with detailed plans and specifications approved by the City

Council if required by City of Palo Alto procedures or ordinances or otherwise by the City Manager, or designee, and applicable City of Palo Alto codes and ordinances.

D. Condition Precedent. TENANT may not begin construction unless and until all the following conditions have been satisfied:

1) Architect. TENANT shall have engaged the services of a professional architect to handle all aspects of design and review of the Project.

2) Project Manager. TENANT shall have engaged the services of a professional project manager (the "Project Manager"), who may be TENANT'S architect for the Project, and CITY's Director of Public Works or his designee shall have reviewed and approved TENANT'S contract with the Project Manager. CITY'S approval of the contract is required prior to the commencement of construction, provided that CITY will not unreasonably delay its approval of the Project Manager's contract so long as it sets forth the Project Manager's responsibilities as follows:

(a) To serve as the point of contact for CITY staff's coordination with TENANT and TENANTS' contractor concerning the Project, from design through completion;

(b) To generally oversee construction of the Project, including conducting on-site inspections from time-to-time, as appropriate;

(c) To monitor the Project's conformance with the Construction Drawings (as hereinafter defined) ; and

E. Construction Drawings Approvals. TENANT shall have obtained approval of the construction drawings for the Project (the "Construction Drawings") from CITY'S City Engineer and Chief Building Official. Review of the Construction Drawings by the City Engineer shall have included those aspects of design pertaining to whether the Project can be effectively maintained after it is completed and given to CITY for operation and maintenance. The Construction Drawings shall include:

(a) Complete architectural, landscape, systems and engineering plans;
(b) Complete structural calculations;
(c) Complete construction specifications;
(d) Complete construction contract form; and
(e) Proposed construction schedule.

F. Certificate of Inspection. Upon completion of construction of any building, TENANT shall submit to the Real Property Manager, a Certificate of Inspection, verifying that the

construction was completed in conformance with Title 24 of the California Code of Regulations for non-residential construction.

XVIII. TENANT'S ASSURANCE OF CONSTRUCTION COMPLETION

Prior to commencement of construction of approved facilities, or any phase thereof, within the PREMISES by TENANT, TENANT shall furnish the Real Property Manager, evidence that assures CITY that sufficient monies will be available to complete the proposed construction. The amount of such assurance shall be at least the total estimated construction cost that was submitted to and approved by CITY in accordance with this Lease. Evidence of such assurance shall take one of the forms set out below and shall guarantee TENANT'S full and faithful performance of all of the terms, covenants, and conditions of this Lease:

A. Completion Bond;

B. Performance, labor and material bonds, supplied by TENANT'S contractor or contractors, provided the bonds are issued jointly to TENANT and CITY;

C. Irrevocable letter of credit from a financial institution; or

D. Any combination of the above.

All bonds and letters of credit must be issued by a company qualified to do business in the State of California and be acceptable to the Director of the Administrative Services Department and City Attorney. All bonds and letters of credit shall be in a form acceptable to the Director of the Administrative Services Department and City Attorney, and shall insure faithful and full observance and performance by TENANT of all of the terms, conditions, covenants, and agreements relating to the construction of improvements in accordance with plans approved by CITY as set forth in this Lease.

XIX. AS BUILT PLANS

Upon completion of any major TENANT-constructed improvements, TENANT shall provide the Real Property Manager with a complete set of reproducible "as built plans" reflecting actual construction within or upon the PREMISES. TENANT shall also provide the Real Property Manager with a statement signed by TENANT under penalty of perjury certified as to accuracy of actual construction costs for all such improvements.

XX. OWNERSHIP OF IMPROVEMENTS

All improvements constructed, erected or installed upon the PREMISES must be free and clear of all liens, claims, or liability for labor or material and shall become the property of CITY, at its election, upon expiration or earlier termination of this lease and, upon City's election, shall remain

upon the PREMISES upon termination of this Lease.

Title to all equipment, furniture, furnishings and trade fixtures placed by TENANT upon the PREMISES shall remain in TENANT, and replacements, substitutions and modifications thereof may be made by TENANT throughout the term of this Lease. TENANT may remove such fixtures and furnishings upon termination of this Lease if TENANT is not then in default under this Lease, provided that TENANT shall repair to the satisfaction of CITY any damage to the PREMISES and improvements caused by such removal and provided that usual and customary lighting, plumbing and heating fixtures shall remain upon the PREMISES upon termination of this Lease.

XXI. UTILITIES

CITY shall be responsible for and pay, prior to the delinquency date, all charges for utilities supplied to the PREMISES and the driving range, except that TENANT shall be responsible for any and all telephone charges. TENANT shall continue the recycle program for cardboard and other recyclable materials.

XXII. INSURANCE

TENANT shall maintain insurance acceptable to CITY in full force and effect throughout the term of this Lease. Should TENANT not provide evidence of such required coverage at least three (3) days prior to the expiration of any existing insurance coverage, CITY may purchase such insurance, on behalf of, and at the expense of TENANT to provide six-months coverage.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4) Course of Construction insurance form providing coverage for "all risks" of loss.

The policy or policies of insurance maintained by TENANT shall provide the following limits and coverages:

POLICY	MINIMUM LIMITS OF LIABILITY	
(1) WORKERS' COMPENSATION	Statutory	
(2) COMPREHENSIVE AUTOMOBILE LIABILITY, including owned, hired, and non-owned automobiles	Bodily Injury	$1,000,000 ea. person $1,000,000 ea. occurrence
	Property Damage	$1,000,000 ea. occurrence
(3) COMPREHENSIVE GENERAL LIABILITY including products and completed operations, broad form contractual, and personal injury.	Bodily Injury	$1,000,000 ea. person $1,000,000 ea. occurrence $1,000,000 aggregate
	Property Damage	$1,000,000 ea. occurrence
	Personal Injury	$1,000,000 ea. occurrence

(4) FIRE AND EXTENDED PREMISES COVERAGE Not less than one hundred percent (100%) of the replacement coverage cost of all insurable improvements within or upon the PREMISES. Such policies must include water damage and debris cleanup provisions. Additional fire and extended coverage must be upon completion of construction or installation of any major insurable improvement.

(5) COURSE OF CONSTRUCTION	Completed value of the project.

CITY shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of CITY's Risk Manager, the insurance provisions in this Lease do not provide adequate protection for CITY and for members of the public using the PREMISES, CITY's Manager, Real Property may require TENANT to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. CITY's requirements shall be reasonable and shall be designed to assure protection form and against the kind and extent of risk which exists at the time a change in insurance is required.

CITY'S Manager, Real Property shall notify TENANT in writing of changes in the insurance requirements; and if TENANT does not deposit copies of acceptable insurance policies with CITY incorporating such changes within sixty (60) days of receipt of such notice, or in the event TENANT fails to maintain in effect any required insurance coverage, this Lease shall be in default without further notice to TENANT. Such failure shall constitute a material breach and may be grounds for termination of this Lease at the option of CITY.

The procuring of such required policy or policies of insurance shall not be construed to limit TENANT's liability hereunder nor to fulfill the indemnification provision and requirements of this Lease. Notwithstanding said policy or policies of insurance, TENANT shall be obligated for the full and total amount of any damage, injury, or loss caused negligence or neglect connected with this Lease or with use or occupancy of the PREMISES.

B. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers; or the TENANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Insurance shall be in full force and effect commencing on the first day of the term of this Lease. Each insurance policy required by this Lease shall contain the following clauses:

1. "Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY."

2. "All rights of subrogation are hereby waived against the CITY OF PALO ALTO and the members of the City Council and elective or appointive officers or employees, when acting within the scope of their employment or appointment."

3. "The CITY OF PALO ALTO is named as a loss payee on the property and course of construction insurance policies described above."

4. "The CITY, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the TENANT; products and completed operations of the TENANT; premises owned, occupied or used by the TENANT; or automobiles owned, leased, hired or borrowed by the TENANT. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees, agents or volunteers."

5. "For any claims related to this Lease, the TENANT's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents or volunteers shall be excess of the TENANT's insurance and shall not contribute with it."

6. "Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY, its officers, officials, employees, agents or volunteers."

7. "The TENANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability."

C. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:X.

XXIII. ASSIGNING, SUBLETTING, AND ENCUMBERING

Any mortgage, pledge, hypothecation, encumbrance, transfer, sublease, or assignment (collectively referred to as ENCUMBRANCE) of TENANT'S interest in the PREMISES, or any part or portion there of, shall first be approved in writing by the City Manager or designee. Any ENCUMBRANCE which has not been approved by CITY in writing shall be void. Occupancy of the PREMISES by a prospective transferee, subtenant, or assignee before approval of the transfer, sublease, or assignment by CITY shall constitute a breach of this Lease.

If TENANT is a corporation, an unincorporated association or partnership, the ENCUMBRANCE or transfer of any stock or interest in corporation, association, or partnership in the aggregate exceeding twenty-five percent (25%) shall be deemed an assignment within the meaning of this Lease.

Should CITY consent to any ENCUMBRANCE, such consent shall not constitute a waiver of any of the terms, covenants, or conditions of this Lease. Such terms, covenants, or conditions shall apply to each and every ENCUMBRANCE hereunder and shall be severally binding upon each and every assignee, transferee, subtenant, or other successor in interest of TENANT. Any document to encumber, transfer, sublet, or assign the PREMISES or any part thereof shall incorporate directly or by reference all the provisions of this Lease.

CITY agrees that it will not arbitrarily withhold consent to any encumbrance, but CITY may withhold consent at its sole discretion if any of the following conditions exist:

A. TENANT or any of its successors or assigns is in default of any term, covenant, or condition of this Lease, whether notice of default has or has not been given by CITY;

B. The prospective ENCUMBRANCER does not indicate in writing that such ENCUMBRANCE is subject to all the terms, covenants, and conditions of this Lease;

C. All the terms, covenants, and conditions of the proposed ENCUMBRANCE including the consideration therefore of any and every kind, have not been revealed in writing to CITY;

D. Any construction required of TENANT as a condition of this Lease has not been completed to the satisfaction of CITY;

E. The processing fee required by CITY and set forth in the then current Palo Alto Municipal Fee Schedule has not been paid to CITY;

F. If an assignment or sublease is proposed, and TENANT has not provided CITY with sufficient information to permit CITY to completely evaluate the background, skills, financial position, proposed operating plan changes and references of the prospective assignee or subtenant; or

G. If the proposed assignee does not have the required skills, experience or financial standing to provide at least the same level of service as TENANT which determination shall be within the sole discretion of the City Manager.

The above list is not inclusive but is intended to give TENANT some idea of the types of situation where CITY may withhold its consent to any ENCUMBRANCE. CITY reserves the right to withhold its consent to any ENCUMBRANCE that will, in CITY'S sole option, adversely affect the provision of service required by this Lease or adversely affect CITY'S interest in and to the land and structures covered by this Lease. Hypothecation of the leasehold interest created by this Lease is expressly prohibited and any attempted hypothecation shall be null and void.

XXIV. DEFAULT IN TERMS OF THE LEASE BY TENANT

A. Act of Default Defined. The following events constitute acts of default under this Lease:

1. Should TENANT fail to pay all or any portion of rental or any other payment due CITY at the times and in the manner provided in this Lease;

2. Should TENANT a.) abandon or vacate the PREMISES (absence from the PREMISES for ten (10) days or more shall conclusively be deemed an abandonment of the PREMISES), b.) violate the provisions of Clause XXIII (ASSIGNING, SUBLETTING, and ENCUMBERING), or c.) fail to provide evidence of insurance coverage throughout the term of this Lease in accordance with Clause XXII (INSURANCE); and

3. Should TENANT violate any other provision of this Lease, and such violation shall not be cured within thirty (30) days after written notice of such violation by CITY to TENANT. However, in the event of a violation which cannot reasonably be cured

within thirty (30) days, TENANT shall have a reasonable period of time (as determined by the City Manager) to cure such violation.

4. Should TENANT:

   a. file a voluntary petition or have an involuntary petition filed against it in bankruptcy or under any insolvency act or law;

   b. be adjudicated a bankrupt; or

   c. attempt to make a general assignment for the benefit of its creditors.

B. Rights and Remedies of CITY. In the event TENANT commits an act of default, as defined in Subparagraph A. of this clause and subject to the provisions of Clauses XXV (Bankruptcy) and XXVI (Termination), the following rights and remedies shall be available to CITY which rights and remedies shall not be exclusive, but which shall be cumulative and in addition to any and all rights and remedies now or hereafter allowed by law or otherwise specifically provided in other clauses in this Lease:

1. CITY may, at its election, continue this Lease in full force and effect and not terminate TENANT'S right to possession of the PREMISES, in which event CITY shall have the right to collect rental and other payments when due;

2. CITY shall also have the right to terminate this Lease and TENANT'S right to possession of the PREMISES at any time after the occurrence of an act of default by TENANT upon written notice to TENANT together with the right to recover damages for such act of default;

3. CITY shall also have the right to have a receiver appointed to collect rentals and conduct TENANT'S business;

4. CITY may, at its election, at any time after TENANT commits an act of default and without notice, cure the act of default for the account and at the expense of TENANT. If CITY, by reason of an act of default by TENANT, is compelled to pay, or elect to pay, any sum of money or do any act that will require the payment of any sum of money, the sum or sums paid by CITY, together with an administrative charge equal to fifteen percent (15%) of said sum or sums, shall be deemed to be additional rental due CITY under this Lease and shall be due from TENANT with ten (10) days of CITY'S mailing an invoice therefore by certified mail;

5. CITY shall also have the right to seek an action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of CITY;

6. CITY shall also have the right to seek a mandamus or other suit, action of proceeding at law or in equity to enforce its right against TENANT and any of its officers, agents, employees, assigns or subtenants, and to compel it to perform and carry out its duties and obligations under the law, the covenants and agreements as provided in this Lease.

C. Termination and Damages

1. CITY and TENANT specifically agree that acts of maintenance or preservation or efforts to relet the PREMISES (including the making of alterations and/or improvements to the PREMISES in connection with any reletting), and/or the appointment of a receiver upon initiative of CITY to protect CITY'S interests under this Lease will not constitute a termination of TENANT'S right to possession.

2. Upon a termination of TENANT'S right to possession, CITY shall have the right to recover from TENANT:

   a. The worth at the time of award of the unpaid rental which had been earned at the time of termination of the Lease; and

   b. The worth at the time of award of the amount by which the unpaid rental which would have been earned after the date of termination of this Lease until the time of award exceeds the amount of such rental loss that TENANT proved could have been reasonably avoided; and

   c. The worth at the time of award of the amount by which the unpaid rental for the balance of the term after the time of award exceeds the amount of such rental loss that TENANT proves could be reasonably avoided; and

   d. Any other amount necessary to compensate CITY for all detriment approximately caused by TENANT'S act of default or which in the ordinary course of things would be likely to result therefrom, including, without limitation, all costs incurred by CITY in connection with reletting the PREMISES, court costs and reasonable attorney's fees.

The phrase "the worth at the time of the award" as contained herein is to be computed by allowing interest at the rate equal to CITY'S average rate of return on invested funds plus two percent (2%), or the maximum allowed by law, whichever is greater.

CITY'S efforts to mitigate the damages caused by TENANT'S act of default shall not constitute a waiver of CITY'S right to recover damages under the provisions of this clause. Upon termination of this Lease, pursuant to Subparagraph B. of this clause, CITY may immediately re-enter the PREMISES without due process of law, take possession of all buildings, improvements, additions, alterations, equipment, eject all parties in possession thereof therefrom, using such force for that purpose as may

be necessary, without being liable to any prosecution for the re-entry or the use of such force. Any such re-entry by CITY shall be allowed by TENANT without hindrance, and CITY shall not be liable in damages or guilty of trespass because of any such re-entry. In the event of any re-entry or taking of possession of the PREMISES, CITY shall have the right, but not be obligated, to remove therefrom all of any part of the personal property located therein, and CITY may place the same in storage at a public warehouse at the expense and risk of owner or owners thereof.

Nothing in this clause shall affect CITY'S right to indemnification for liability arising prior to termination of this Lease for personal injury or property damage pursuant to other provisions of this Lease.

D. Appointment of Receiver. If a receiver is appointed at the request of CITY in any action against TENANT to take possession of the PREMISES and/or to collect the rents or profits derived therefrom, the receiver may, if it is necessary or convenient in order to collect such rents from profits, conduct the business of TENANT then being carried on in the PREMISES, and may take possession of any personal property belonging to TENANT and used in the conduct of such business and may be used by the appointed receiver in conducting such business on behalf of CITY and TENANT. Neither the application for the appointment of such receiver nor the appointment of such receiver shall be construed as an election on CITY'S part to terminate this Lease unless a notice of such intention is given to TENANT. TENANT agrees to indemnify and hold CITY harmless from any liability arising out of the entry by any such receiver and the taking of possession of the PREMISES and/or use of personal property.

XXV. BANKRUPTCY BY TENANT

Neither TENANT'S interest in this Lease, nor any lesser interest of TENANT in this Lease, nor any estate of TENANT created by this Lease, shall pass to any trustee, receiver, assignee for the benefit of creditors, TENANT as a Debtor-In-Possession or any other person or entity (hereinafter collectively referred to as "TRUSTEE") by operation of law under the laws of any state having jurisdiction of the person or property of TENANT under any bankruptcy proceeding unless CITY shall specifically consent to such transfer (hereinafter referred to as "TRANSFER") or assignment in writing. Acceptance by CITY of rent or any other payments due CITY from any such TRUSTEE shall not be deemed to be a waiver of the need to obtain CITY'S consent to any such TRANSFER. CITY'S consent to any such TRANSFER and CITY'S right to terminate this Lease under any bankruptcy proceedings shall be governed by the following paragraphs of this Lease.

A. CITY'S Consent to Transfer. CITY shall consent to TRANSFER only if the following terms and conditions have been satisfied:

1. TRUSTEE has, in writing, elected to assume and has agreed to abide by all of the terms and conditions, specifically including the use restriction of this Lease within sixty (60) days from the date of the order for relief;

2. TENANT or TRUSTEE has cured, or provided adequate assurance that any monetary default under this Lease will be cured within thirty (30) days of such TRANSFER;

3. TENANT or TRUSTEE has compensated CITY or has provided CITY adequate assurance that within ten (10) days of such TRANSFER, CITY will be compensated for any pecuniary loss incurred by CITY arising from the default of TENANT or TRUSTEE;

4. TENANT or TRUSTEE has provided CITY with adequate assurance of the future performance of each and every obligation of TENANT or TRUSTEE under this Lease;

5. TENANT or TRUSTEE has deposited with CITY, as security for timely payment of rent, an amount equal to three (3) months rent and any other monetary charges which may accrue or come due within the three (3) months following such TRANSFER. Should rent be based on percentage rent, the rent shall be estimated by using the monthly average total rent paid by TENANT over the preceding three (3) years;

6. The TRANSFER shall not breach any provision relating to the leased PREMISES in any other lease, mortgage, financing agreement or other agreement by which CITY is bound.

7. TENANT or TRUSTEE has provided CITY with sufficient information regarding TRUSTEE, or any known proposed subsequent assignee, to enable CITY to determine that the TRUSTEE, or any known proposed subsequent assignee, has the skills, experience and financial standing to successfully provide the uses and services required by this Lease, which determination shall be within the discretion of the City Manager.

8. For the purposes of this subparagraph A, CITY and TENANT acknowledge that, in the context of the bankruptcy proceeding of TENANT, "adequate assurance" shall, as a minimum, mean:

   a. TRUSTEE or TENANT has and shall continue to have sufficient unencumbered assets after the payment of all secured obligations and administrative expenses to assure CITY that TENANT or TRUSTEE will have sufficient funds to fulfill the obligations of TENANT or TRUSTEE under this Lease, and to keep the PREMISES stocked with sufficient merchandise and/or supplies and properly staffed to conduct a fully operational actively promoted business on the PREMISES; and

   b. The Bankruptcy Court shall have entered an order segregating sufficient cash payable to CITY and/or TRUSTEE shall have granted a valid and perfected first lien and security interest and/or mortgage in property of TENANT or TRUSTEE, acceptable in value and kind to CITY securing TENANT'S or TRUSTEE'S obligation to cure the monetary defaults under this Lease within the

time limits set forth above, or TRUSTEE shall have obtained guarantees satisfactory in form and substance to CITY from one or more persons or entities who satisfy CITY'S standards of credit worthiness; and

c. CITY has obtained all consents or waivers from any third party required under any lease, mortgage, financing arrangement or other agreement by which CITY is bound to permit CITY to consent to such TRANSFERS.

XXVI. TERMINATION OF LEASE

A. This Lease shall, at CITY'S option, terminate if any of the following conditions exist:

1. If TENANT or TRUSTEE fails to assume this Lease in accordance with the requirements of subparagraph A. 1 of Clause XXV;

2. If a TRANSFER meeting each and every condition set forth in subparagraph A of Clause XXV has not been completed within 120 days of TENANT'S becoming a Debtor under Chapter 7 of the Bankruptcy Code, or within one hundred twenty (120) days of the date of filing of a Petition for reorganization or adjustment of debts under Chapter 11 or 13 of the Bankruptcy Code; or

3. If this Lease is assumed by a Trustee appointed for TENANT or by TENANT as Debtor-In-Possession under the provision of subparagraph A of Clause XXV and TENANT is thereafter liquidated or files a subsequent Petition for reorganization or adjustment of debts under Chapter 11 or 13 of the Bankruptcy Code.

   CITY'S election to terminate this Lease shall be delivered to TENANT in writing no later than thirty (30) days after the occurrence of any of the above events. CITY shall thereupon be immediately entitled to possession of the PREMISES without further obligation to TENANT or TRUSTEE, and this Lease shall be canceled, but CITY'S right to be compensated for damages in such liquidation proceeding shall survive.

4. The Management Agreement, under which TENANT provides certain services to CITY as GOLF PROFESSIONAL, is terminated.

B. If the Management Agreement is terminated or if this lease is terminated for a reason other than as set forth in this Clause, CITY will reimburse TENANT for TENANT's share of the actual construction cost for the project described in Clause XIX (AS BUILT PLANS). The amount of the reimbursement will be depreciated at an annual rate that is equal to the actual construction cost divided by the number of years remaining on the lease from the date of the termination.

Example: Total construction cost is $300,000 tenants share is $150,000. Construction

is completed in the first year of the lease (1998). The lease is terminated in the 10th year with 5 years remaining. The amount to be reimbursed would be $50,000. ($300,000 -:- 2 (tenants share) -:- 15yrs. x 5yrs= $50,000.

XXVII. RESERVATION OF NAVIGATIONAL EASEMENT

CITY hereby reserves for the use and benefits of the public, a right of navigation, flight and resulting noise for the passage of aircraft landing at, taking off or operating from the adjacent airport operated by the Santa Clara County Transportation Agency.

XXVIII. LIMITATION OF THE LEASEHOLD

This Lease and the rights and privileges granted TENANT in and to the PREMISES are subject to all covenants, conditions, restrictions, and physical or legal encumbrances, including those which are set out in the Palo Alto Golf Course Master Plan. Nothing contained in this Lease or in any document related hereto shall be construed to imply the conveyance to TENANT of rights in the PREMISES which exceed those owned by CITY.

XXIX. NOTICES

All notices pursuant to this lease shall be addressed as set forth below or as either party may subsequently designate by written notice.

TO: CITY

Real Property Manager
City of Palo Alto
P.O. Box 10250
250 Hamilton Avenue
Palo Alto, CA 94303
FAX: (415) 329-2468

TO: TENANT

Brad Lozares
Brad Lozares Golf Shop
835 Doverton Square
Mountain View, Calif. 94040

with a copy to:

City Clerk, City of Palo Alto
P.O. Box 10250
250 Hamilton Avenue
Palo Alto, CA 94303
FAX: (415) 329-2646

and

City Attorney, City of Palo Alto
P.O. Box 10250
250 Hamilton Avenue
Palo Alto CA 94303
FAX: (415) 329-2646

XXX. ATTACHMENT TO LEASE

This Lease includes the following exhibits, which are attached hereto and by this reference incorporated into this Lease:

Exhibit A - General Conditions
Exhibit B - Description of Leased Premises
Exhibit C - Statement of Gross Receipts and Rent

The inclusion of clauses in Exhibit A (GENERAL CONDITIONS) is not in any way intended to lessen the importance of these clauses, but is merely done to enhance the organization of various clauses and this Lease.

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

RL 26.0)

CITY:

CITY OF PALO ALTO (LESSOR)

By: Richard Rosenbaum
Mayor

TENANT:

By: Brad F. Lozares

[redacted]

[redacted] I.D. Number

ATTEST:

By: Kathi Hamilton
Asst. City Clerk

APPROVED AS TO FORM:

By: Susan W. Case
Senior Assistant City Attorney

APPROVED AS TO AUDIT AND ACCOUNTING:

(Subject to audit)

By:
City Auditor

RECOMMENDED FOR APPROVAL:

By:
Director, Parks and Golf Course Division

By:
Real Property Manager

EXHIBIT A
GENERAL CONDITIONS

1. DEFINITIONS

CITY shall mean the City Council of the City of Palo Alto, a municipal corporation.

The City Manager is hereby authorized to take any actions under this Lease on behalf of CITY except for termination of this Lease.

Clauses in this lease refer to specific officers or employees of CITY. Should these positions be eliminated or the title changes, it is understood and agreed that such references shall be considered to be to the new title for renamed positions or to the replacement official designated with the responsibilities of any eliminated position. Any reference to a City officer or employee includes a reference to the officer's or employee's designated representative.

2. PARTNERSHIP/CORPORATE AUTHORITY & LIABILITY

If TENANT is a partnership, each general partner:

A. represents and warrants that the partnership is a duly qualified partnership authorized to do business in Santa Clara County; and

B. shall be jointly and severally liable for performance of the terms and provisions of this Lease.

If TENANT is a corporation, each individual signing this Lease on behalf of TENANT represents and warrants that;

A. he is duly authorized to do so in accordance with an adopted Resolution of TENANT'S Board of Directors or in accordance with the Bylaws of the corporation; and

B. TENANT is a duly qualified corporation authorized to do business in State of California.

As used in this Lease, the term "TENANT" shall include TENANT, its agents, sublessees, concessionaires, or licensees, or any person acting under contract with TENANT; however, the definition of TENANT used herein, shall not be construed to authorize or permit any sublease or licenses not authorized or permitted elsewhere in this Lease.

3. TIME

Time is of the essence of this Lease.

4. SIGNS

TENANT agrees not to construct, maintain, or allow any sign to be placed upon the PREMISES except as may be approved by CITY. Unapproved signs, banners, etc., may be removed by CITY.

5. PERMITS AND LICENSES

TENANT shall be required to obtain any and all permits and/or licenses which may be required in connection with the operation of, and any approved TENANT construction upon, the PREMISES as set forth in this Lease.

6. CONTROL OF HOURS, PROCEDURES, AND PRICES

TENANT shall at all times maintain a written schedule delineating the operating hours and operating procedures for each operation on or from the PREMISES. A schedule of prices charged for all goods and/or services supplied to the public on or from the PREMISES shall also be maintained or individual golf merchandise must be clearly priced.

TENANT agrees that when alternate forms of packaging are available, only items packaged in a manner most compatible with the goals of reducing litter and preserving the environment shall be sold.

Upon written request, TENANT shall furnish CITY's Director of Parks and Golf a copy of said schedules and procedures. Should CITY's Director of Parks and Golf, upon review and conference with TENANT, decide that any part of said schedules or procedures is not justified with regard to fairly satisfying the needs of the public, TENANT, upon written notice from CITY's Director of Parks and Golf, shall modify said schedules or procedures.

If TENANT does not agree with the modifications effected by CITY's Director of Parks and Golf, TENANT may appeal the matter to the City Council or CITY's City Manager, whose decision shall be final and conclusive. TENANT's failure to comply with the provisions of this clause shall constitute a serious breach of this Lease and may be grounds for termination of the Lease.

Primary consideration shall be given to the public's benefit in implementing this clause. All prices charged for goods and/or services supplied to the public on or from the PREMISES shall be fair and reasonable.

TENANT agrees that it will operate and manage the services and facilities offered in a competent and efficient manner at least comparable to other well managed operations of similar type.

TENANT shall at all times retain active, qualified, competent, and experienced personnel to supervise TENANT's operation and to represent and act for TENANT.

TENANT shall require its attendants and employees to be properly dressed, clean, courteous, efficient,

and neat in appearance at all times. TENANT shall not employ any person(s) in or about the PREMISES who shall use offensive language and or act in a loud, boisterous, or otherwise improper manner.

TENANT shall maintain a close check over attendants and employees to insure the maintenance of a high standard of service to the public. TENANT shall replace any employee whose conduct is detrimental to the best interests of the public.

7. MECHANICS LIENS

TENANT shall at all times indemnify and save CITY harmless from all claims for labor or materials supplied in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the PREMISES, and from the cost of defending against such claims, including attorney fees. TENANT shall provide CITY with at least ten (10) days written notice prior to commencement of any work which could give rise to a mechanics lien or stop notice. CITY reserves the right to enter upon PREMISES for the purposes of posting Notices of Non-Responsibility.

In the event a lien is imposed upon the PREMISES as a result of such construction, repair, alteration, or installation, TENANT shall either:

A. Record a valid Release of Lien; or

B. Deposit sufficient cash with CITY to cover the amount of the claim on the lien in question and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to lienholder claim; or

C. Procure and record a bond in accordance with Section 3143 of the Civil Code, which releases the PREMISES from the claim of the lien from any action brought to foreclose the lien.

Should TENANT fail to accomplish one of the three optional actions within fifteen (15) days after the filing of such a lien, the Lease shall be in default and may be subject to immediate termination.

8. LEASE ORGANIZATION AND RULES OF CONSTRUCTION

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.

The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this agreement, refer to this agreement.

All the terms and provisions hereof shall be construed to effectuate the purposes set forth herein, and

to sustain the validity hereof.

The titles and headings of the sections of this agreement have been inserted for convenience of reference only, are not to be considered a part hereof and shall not in any way modify or restrict any of the terms of provisions hereof or be considered or given any effect in construing this agreement or any provision hereof in ascertaining intent, if any question of intent shall arise.

9. AMENDMENTS

This Lease sets forth all of the agreements and understandings of the parties and any modifications must be written and properly executed by both parties.

10. UNLAWFUL USE

TENANT agrees that no improvements shall be erected, placed upon, operated, nor maintained within the PREMISES, nor any business conducted or carried on therein or therefrom, in violation of the terms of this Lease, or of any regulation, order of law, statute, or ordinance of a governmental agency having jurisdiction over TENANT'S use of the PREMISES.

11. NONDISCRIMINATION

TENANT and its employees shall not discriminate against any person because of race, color, religion, ancestry, age, sex, national origin, disability or sexual preference. TENANT shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, national origin, disability or sexual preference. TENANT covenants to meet all requirements of the Palo Alto Municipal Code pertaining to nondiscrimination in employment. If TENANT is found in violation of the nondiscrimination provision of the State of California Fair Employment Practices Act or similar provisions of federal law or executive order in the conduct of its activities under this Lease by the State of California Fair Employment Practices Commission or the equivalent federal agency or officer, it shall thereby be found in default under this Lease, and such default shall constitute a material breach of this Lease. CITY shall then have the power to cancel or suspend this Lease in whole or in part.

12. INSPECTION

CITY'S employees and agents shall have the right at all reasonable times to inspect the PREMISES to determine if the provisions of this Lease are being complied with.

13. HOLD HARMLESS

TENANT hereby waives all claims, liability and recourse against CITY including the right of contribution for loss or damage of or to persons or property arising from, growing out of or in any way

connected with or related to this agreement. TENANT hereby agrees to indemnify, hold harmless and defend CITY, its officers, agents, and employees against any and all claims, liability, demands, damages, cost, expenses or attorneys' fees arising out of the operation or maintenance of the property described herein or TENANT'S performance or non performance of the terms of this Lease. In the event CITY is named as co-defendant, TENANT shall notify CITY of such fact and shall represent CITY in such legal action unless CITY undertakes to represent itself as co-defendant in such legal action, in which event TENANT shall pay to CITY one-half of the litigation costs, expenses and attorneys' fees.

14. TAXES AND ASSESSMENTS

This Lease may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to the possessory interest tax) which become due and payable upon the PREMISES or upon fixtures, equipment, or other property installed or constructed thereon, shall be the full responsibility of TENANT and TENANT shall pay the taxes and assessments prior to delinquency.

15. SUCCESSORS IN INTEREST

Unless otherwise provided in this Lease, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

16. CIRCUMSTANCES WHICH EXCUSE PERFORMANCE (FORCE MAJEURE)

If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, restrictive governmental laws or regulations, or other cause without fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

17. PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this Lease is determined to be invalid, void, or unenforceable, by a court of competent jurisdiction, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

18. WAIVER OF RIGHTS

The failure of CITY or TENANT to insist upon strict performance of any of the terms, covenants, or conditions of this Lease shall not be deemed a waiver of any right or remedy that CITY or TENANT may have, and shall not be deemed a waiver of the right to require strict performance of all the terms,

covenants, and conditions of the Lease thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the Lease.

19. COSTS OF SUSTAINING AN ACTION FOR BREACH OR DEFAULT

In the event either CITY or TENANT commences legal action against the other claiming a breach or default of this Lease, the prevailing party in such litigation shall be entitled to recover from the other cost of sustaining such action, including reasonable attorney fees, as may be fixed by the Court.

20. RESERVATIONS TO CITY

The PREMISES are accepted "as is" and "where is" by TENANT subject to any and all existing easements, and encumbrances. CITY reserves the right to install, lay, construct, maintain, repair, and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil, and gas pipelines; telephone and telegraph power lines; and the applications and appurtenances necessary or convenient for connection therewith, in, over, upon, through, across and along the PREMISES or any part thereof, and to enter the PREMISES for any and all such purposes. CITY also reserves the right to grant franchises, easements, rights of way, and permits, in, over, upon, through, across, and along any and all portions of the PREMISES. No right reserved by CITY in this clause shall be so exercised as to interfere unreasonably with TENANT'S operation hereunder.

CITY agrees that rights granted to third parties by reason of this clause shall contain provisions that the surface of the land shall be restored as nearly as practicable to the original condition upon the completion of any construction.

21. HOLDING OVER

In the event TENANT shall continue in possession of the PREMISES after the term of the Lease, such possession shall not be considered a renewal of this Lease but a tenancy from month to month and shall be governed by the conditions, and covenants contained in this Lease.

22. CONDITION OF PREMISES UPON TERMINATION

Upon termination of this Lease, except as otherwise agreed to herein, TENANT shall redeliver possession of the PREMISES to CITY in substantially the same condition that existed immediately prior to TENANT'S occupancy, reasonable wear and tear, flood, earthquake, war, and any act of war excepted.

23. DISPOSITION OF ABANDONED PERSONAL PROPERTY

If TENANT abandons the PREMISES or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to TENANT and left on the PREMISES forty-five (45) days after such abandonment or dispossession shall be deemed to have been transferred to CITY. CITY shall have

the right to remove and to dispose of such property without liability therefor to TENANT or to any person claiming under TENANT, and shall have no need to account therefor.

24. QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION

Upon termination of this Lease for any reason, including but not limited to termination because of default by TENANT, TENANT shall, at CITY'S request execute, acknowledge and deliver to CITY within five (5) days after receipt of written demand thereof, a good and sufficient deed whereby all rights, title, and interest of TENANT in the PREMISES, is quitclaimed to CITY. Should TENANT fail or refuse to deliver the required deed to CITY, CITY may prepare and record a notice reciting the failure of TENANT to execute, acknowledge and deliver such deed and the notice shall be conclusive evidence of the termination of this Lease, and of all right of TENANT or those claiming under TENANT in and to the PREMISES.

25. CITY'S RIGHT TO RE-ENTER

TENANT agrees to yield and peaceably deliver possession of the PREMISES to CITY on the date of termination of this Lease, whatsoever the reason for such termination.

Upon giving written notice of termination to TENANT, CITY shall have the right to re-enter and take possession of the PREMISES on the date such termination becomes effective without further notice of any kind and without institution of regular legal proceedings. Termination of the Lease and re-entry of the PREMISES by CITY shall in no way alter or diminish any obligation of TENANT under the Lease terms and shall constitute an acceptance or surrender.

TENANT waives any and all rights of redemption under any existing or future law or statute in the event of eviction from or dispossession of the PREMISES for any reason or in the event CITY re-enters and lawfully re-takes possession of the PREMISES.

26. CONFLICT OF INTEREST

TENANT warrants and covenants that no official or employee of CITY nor any business entity in which any official or employee of CITY is interested: (1) has been employed or retained to solicit or aid in the procuring of this agreement; or (2) will be employed in the performance of this agreement without the divulgence of such fact to CITY. In the event that CITY determines that the employment of any such official, employee or business entity is not compatible with such official's or employee's duties as an official or employee of CITY, TENANT upon request of CITY shall immediately terminate such employment. Violation of this provision constitutes a serious breach of this Lease and CITY may terminate this Lease as a result of such violation.

27. EMINENT DOMAIN

In the event the whole or any part of the PREMISES are condemned by a public entity in the lawful

exercise of its power of eminent domain, this Lease shall cease as to the part condemned. The date of such termination shall be the effective date of possession of the whole or part of the PREMISES by the condemning public entity.

If only a part is condemned and the condemnation of that part does not substantially impair the capacity of the remainder to be used for the purposes required by this Lease, TENANT shall continue to be bound by the terms, covenants and conditions of this Lease. However, the then current minimum annual rent shall be reduced in proportion to the relationship that the compensation paid by the condemning public entity for the portion condemned bears to the value of the entire PREMISES as of the date of possession of the part condemned. If the condemnation of a part of the PREMISES substantially impairs the capacity of the remainder to be used for the purposes required by this Lease, TENANT may:

A. Terminate this Lease and thereby be absolved of obligations under this Lease which have not accrued as of the date of possession by the condemning public entity; or

B. Continue to occupy the remaining PREMISES and thereby continue to be bound by the terms, covenants and conditions of this Lease. If TENANT elects to continue in possession of the remainder of the PREMISES, the then current annual minimum rental shall be reduced in proportion to the relationship that the compensation paid by the condemning public entity for the part condemned bears to the value of the entire leased PREMISES as of the date of possession by the condemning public entity.

TENANT shall provide CITY with written notice advising CITY of TENANT'S choice within thirty (30) days of possession of the part condemned by the condemning public entity.

CITY shall be entitled to and shall receive all compensation related to the condemnation of all or part of the PREMISES by the exercise of eminent domain except that TENANT shall be entitled to that portion of the compensation which represents the value of the TENANT constructed improvements for the remainder of the Lease term. The amount to which TENANT shall be entitled shall not exceed the actual cost of improvements constructed by TENANT reduced in proportion to the relationship of the remaining Lease term to the original Lease term, using a straight line approach.

28. CHANGES IN PRICE INDICES

Clauses contained in this Lease may provide for adjustment based on the Consumer Price Index, component indices, or other indices. Should these indices be changed, altered or cease to be published, the following conditions shall apply:

A. If the subject index is changed so that the base year differs from that used as of the month in which the term commences, the subject index shall be converted in accordance with the conversion factor published by the publisher of that index;

B. If the subject index is discontinued or revised during the Lease term, such index shall be replaced by another government index or computation which will obtain substantially the same result as would be obtained if the subject index had not been discontinued or revised.

29. POST-ACQUISITION TENANCY

TENANT hereby acknowledges that its occupancy of the PREMISES is subsequent to acquisition of the PREMISES by CITY. TENANT further understands and agrees that as a post-acquisition tenant, TENANT is not eligible and furthermore waives all claims for relocation assistance and benefits under federal, state or local law.

30. HAZARDOUS SUBSTANCES

A. Definition. As used herein, the term "Hazardous Materials" means any substance or material which has been determined by any state, federal or local governmental authority to be capable of posing risk of injury to health, safety, and property, including petroleum and petroleum products and all of those materials and substances designated as hazardous or toxic by the U.S. Environmental Protection Agency, the California Water Quality Control Board, the U.S. Department of Labor, the California Department of Industrial Relations, the California Department of Health Services, the California Health and Welfare Agency in connection with the Safe Water and Toxic Enforcement Act of 1986, the U.S. Department of Transportation, the U.S. Department of Agriculture, the U.S. Consumer Product Safety Commission, the U.S. Department of Health and Human Services, the U.S. Food and Drug Administration or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment. Without limiting the generality of the foregoing, the term "Hazardous Materials" shall include all of those materials and substances defined as "toxic materials" in Sections 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 20, as the same may be amended from time to time.

B. TENANT'S Use of PREMISES. During the term of this Lease, TENANT shall abide and be bound by all of the following requirements:

i. TENANT shall comply with all laws now or hereafter in effect relating to the use of Hazardous Materials on, under or about the PREMISES, and TENANT shall not contaminate the PREMISES, or its subsurfaces, with any Hazardous Materials.

ii. TENANT shall restrict its use of Hazardous Materials at the PREMISES to those kinds of materials that are normally used in construction, during construction of the proposed tenant improvements. Disposal of any Hazardous Materials at the Premises are strictly prohibited. Storage of such permissible Hazardous Materials is allowed only in accordance with all applicable laws now or hereafter in effect. All safety and monitoring features of any storage facilities shall be approved by CITY'S Fire Chief in accordance with all laws.

iii. TENANT shall be solely and fully responsible for the reporting of all Hazardous Materials releases to the appropriate public agencies, when such releases are caused by or result from TENANT'S activities on the PREMISES. TENANT shall immediately inform CITY of any release of Hazardous Materials, whether or not the release is in quantities that would otherwise be reportable to a public agency.

iv. TENANT shall take all necessary precautions to prevent any of its Hazardous Materials from entering into any storm or sewage drain system or from being released on the Premises. TENANT shall remove releases of its Hazardous Materials in accordance with all laws. In addition to all other rights and remedies of CITY hereunder, if the release of Hazardous Materials caused by TENANT is not removed by TENANT within ninety (90) days after discovery by TENANT, CITY or any other third party, CITY may pay to have the same removed and TENANT shall reimburse CITY for such costs within five (5) days of CITY'S demand for payment.

v. TENANT shall protect, defend, indemnify and hold harmless CITY from and against all loss, damage, or liability (including all foreseeable and unforeseeable consequential damages) and expenses (including, without limitation, the cost of any cleanup and remediation of Hazardous Materials) which CITY may sustain as a result of the presence or cleanup of Hazardous Materials on the PREMISES or released from the PREMISES.

vi. TENANT'S obligation under this Clause shall survive the expiration or earlier termination of this Lease.

31. ALL COVENANTS ARE CONDITIONS

All provisions of the Lease are expressly made conditions.

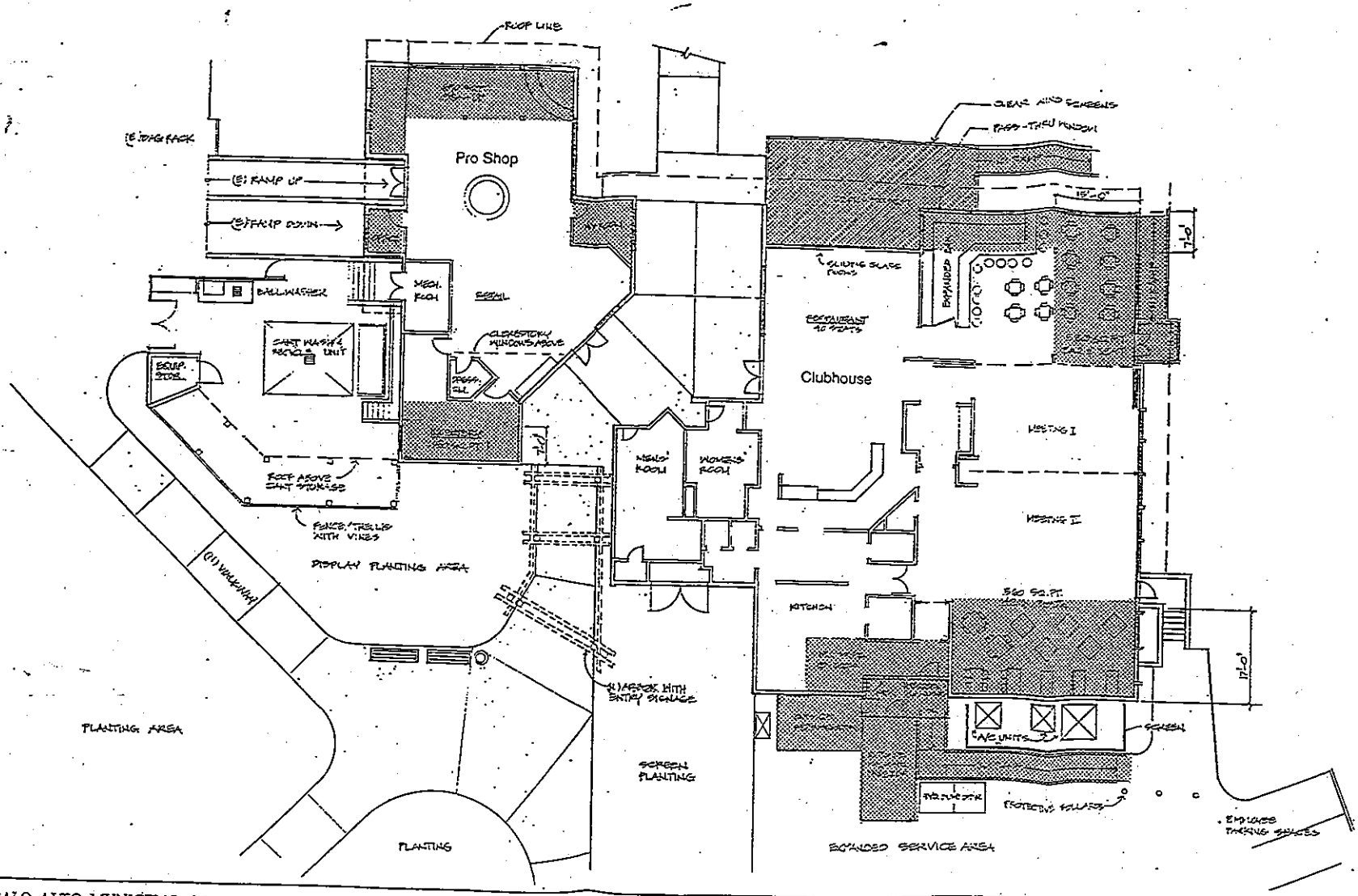
32. PARTIES OF INTEREST

Nothing in this agreement, expressed or implied, is intended to, or shall be construed to, confer upon or to give to any person or party other than CITY and TENANT the covenants, condition or stipulations hereof. All covenants, stipulations, promises and agreements in this Lease shall be for the sole and exclusive benefit of CITY and TENANT.

33. RECORDATION OF LEASE

Neither CITY nor TENANT shall record this Lease; however, a short-form memorandum of Lease may be recorded at CITY'S request.

Latest revision: 3-4-98



PALO ALTO MUNICIPAL GOLF COURSE

PALO ALTO CALIFORNIA

ARCHITECTS: Amphion

SCALE: 1/8" = 1'-0"
DATE: MAY 1994
DRAWN BY: KLD
CHECKED BY: EEH

NORTH

ARCHITECTURAL FLOOR PLAN **EXHIBIT B**

BRAD LOZARES GOLF SHOP - LEASE
STATEMENT OF GROSS RECEIPTS AND CONSIDERATIONS

Month _____ 19___

Business Category	Gross Receipts	Applicable Rent	Rent Due	Last Year
A. CONSIDERATION DUE CITY				
Merchandise Revenue	$ _____	4%	(1) $ _____	
(a) YTD	$ _____			
Option Service and Use Revenue	$ _____	Determined by Council	(2) $ _____	
(*) YTD	$ _____	(If applicable)		
Consideration Due City (1+2)			(3) $ _____	$ _____
Percentage Rent Due (3) OR Minimum $2,000		(whichever is higher)	(4) $ _____	
B. CONSIDERATION DUE GOLF PROFESSIONAL				
Capital Improvement Reimbursement				
Up to a Maximum of $150,000 for Project				
No Interest Rent Credit over Term of Lease (15 years)		$150,000 / 180 months	(5) $ 833.33	
Consideration Due Golf Professional (5)				
(b) YTD				
C. NET RENT DUE CITY				
Consideration Due City (4)		(4) $ _____		
Consideration Due Golf Professional (5)		(5) $ _____		
Indicated Rent to City (4 less 5)			(6) $ _____	
D. TOTAL NET RENT PAYMENT DUE CITY (6)				
Total YTD	$ _____		(7) $ _____	$ _____

EXHIBIT C

Attachment G

Amend Lease # 211 with Brad Lozares for the Golf Shop to end on April 17, 2018 (Attachment G).

This attachment is not ready and will be submitted in the late Council packet going out on April 12, 2018.

ASSIGNMENT AND ASSUMPTION OF THE LEASE AGREEMENT BETWEEN THE CITY OF PALO ALTO AND R&T RESTAURANT CORPORATION TO HEE KING BISTRO INC.

This Assignment and Assumption of the Original Lease Agreement ("Assignment") dated May 1, 1998 ("Lease") by and between the of the CITY OF PALO ALTO, a California Municipal Corporation of the State of California ("City/Lessor") and R&T RESTAURANT CORPORATION, a California Corporation ("Lessee/Assignor"), is entered into by Lessee/Assignor and HEE KING BISTRO INC., a California Corporation ("Assignee"), and approved by Lessor, and is effective as of January 1, 2016.

RECITALS

WHEREAS, on May 1, 1988, Assignor and the City entered into a lease for certain portions of the property known as the Palo Alto Golf Course located at 1875 Embarcadero Way, for specific uses and such lease is in full force and effect.

WHEREAS, on October 10, 2014, the Assignor and the City amended the Lease to provide for a temporary rent reduction. (The lease and all amendments are referred to collectively as Lease.)

WHEREAS, all parties to the Lease are currently in compliance with the terms and conditions of the Lease.

WHEREAS, Lessee/Assignor has entered into an agreement to sell a restaurant named R&T Restaurant Corporation, located at Palo Alto Golf Course, to Assignee.

WHEREAS, the Lease requires that any assignment of the original Lease to third parties receive prior approval from the City of Palo Alto.

WHEREAS, Lessee/Assignor desires to assign, transfer and convey to Assignee the rights and responsibilities of the Lease.

WHEREAS, Assignee/Lessee desires to accept the assignment and perform the obligations of Assignor in return for all rights and privileges provided in the Lease.

WITNESSETH

N0W, THEREFORE, in consideration of the foregoing, other good and valuable consideration and mutual covenants herein below, Assignor/Lessee and Assignee, agree as follows:

1. Lessee/Assignor hereby assigns and transfers to Assignee as of January 1, 2016 ("Effective Date") all of its rights, privileges and obligations in and to the Lease which shall continue in full force and effect. The Lessee/Assignor has performed its obligations to date or

otherwise satisfied the conditions of the Lease and the Assignee shall assume all obligations of the Assignor/Lessee, whether due before or after the date of this Assignment.

2. Notwithstanding City's consent, no subletting or assignment shall release Lessee/Assignor from its obligations or alter the primary liability to pay the rent and to perform all other obligations to be performed by Lessee/Assignor hereunder. The acceptance of rent by the City from any other person shall not be deemed to be a waiver by the City of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee or any successor of Lessee/Assignor, in the performance of any of the terms hereof, the City may proceed directly against the Lessee/Assignor without the necessity of exhausting remedies against said assignee. City may consent to subsequent assignments or subletting of this Lease or amendments or modifications to this Lease with assignees of Lessee/Assignor, without notifying Lessee/Assignor's successor, and without obtaining its or their consent thereto and such action shall not relieve Lessee/Assignor of liability under this Lease.

3. This Assignment, its covenants and conditions, do not constitute a waiver of any provisions of the original Lease attached hereto and incorporated herein, and any waiver by Assignee of any provision of this Amendment must be in writing. Any such written waiver shall affect only the provisions specified and only for the time and in the manner stated in the writing.

4. Assignee hereby accepts the assignment and agrees to perform all the obligations and duties under the Lease and waives any of its defenses based upon acts of the Lessee/Assignor or any breaches, defenses, or claims against the City that the assignor may have had under the Lease.

5. In the case of inconsistency between the Lease and this Assignment, this Assignment shall control with regard to the assignment of the Lease. All other provisions of the Lease shall remain in full force and effect.

6. The City of Palo Alto hereby consents to the assignment and the assumption of the Lease.

7. All other terms and conditions of the original Lease not modified by this Assignment shall remain unchanged and in full force and effect, and are incorporated herein by reference. This Assignment modifies and supersedes the Lease to the extent stated herein only. In any case of inconsistency between the Lease and this Assignment with regard to such modification, this Assignment shall control.

8. This Assignment represents the entire agreement of the parties with regard to the new assignment and no party hereto has made or relied upon any representations, warranties, promises, covenants or undertakings other than those expressly set forth herein.

9. All notices or correspondence provided for herein shall be effective only if made in writing, personally delivered with an executed acknowledgment of receipt or deposited in the United States mail, certified, postage prepaid, and addressed as follows:

City of Palo Alto
C/o Real Estate Division
250 Hamilton Avenue
Palo Alto, California 94301
Attention: Manager of Real property

Copies to:
City of Palo Alto, City Attorney's Office
250 Hamilton Avenue, 8th Floor
Palo Alto, California 94301
Attention: City Attorney

Lessee/Assignor: R&T Restaurant Corporation
PO Box 1209
Pleasanton, CA 94566
Attention: Tom Talai

Assignee: Hee King Bistro Inc.
231 Merritt Rd
Los Altos, CA 94610
Attention: His Mei Chu (Cecilia Chu)

IN WITNESS WHEREOF, the parties hereto have executed this Amendment the day and year first above written.

Lessee/Assignor: Lessee/Assignor: R&T Restaurant

By:_____ By:_____

Its:_____ Its:_____

Assignee: Hee King Bistro Inc.

By: _____

Its: _____

APPROVAL OF ASSIGNMENT

The City of Palo Alto, a California Municipal Corporation of the State of California

By: _____
City Manager

Approved as to form:

_____
Senior Assistant City Attorney

AMENDMENT NO. 2
TO LEASE BETWEEN CITY OF PALO ALTO AND
R & T RESTAURANT CORPORATION FOR THE
PALO ALTO MUNICIPAL GOLF COURSE RESTAURANT

This Amendment No. 2 to the Lease Between the City of Palo Alto and R & T Restaurant Corporation, dated May 1, 1998 ("Lease), is made and entered into this 10th day of OCTOBER 2014, by and between the CITY OF PALO ALTO, a California municipal corporation of the State of California ("CITY"), and R & T Restaurant Corporation, a California corporation ("TENANT");

RECITALS

WHEREAS, the Lease provides for TENANT to operate and maintain the property located at 1875 Embarcadero Road, Palo Alto ("PREMISES") as a restaurant serving primarily the public and customers using the Municipal Golf Course; and

WHEREAS, Section VI of the Lease requires the greater of the minimum annual rent of $48,000 or seven (7) percent of gross sale; and

WHEREAS, Section XXI of the Lease requires Tenant to Pay $1,500 for utilities except for telephone and refuse services; and

WHEREAS, currently the Tenant pays to the City the greater of $4,150 or 7% of the gross revenues for rent and $2,160 for utilities except for telephone and refuse services; and

WHEREAS, on October 15, 2012, City Council approved the Palo Alto Golf Course Reconfiguration project to improve the golf course and to create several playing fields; and

WHEREAS, delays in obtaining the permits has postpone the starting planned time for the project and has led to decrease in foot traffic, cancelation of golf tournaments and loss of revenues in the Tenant's business; and

WHEREAS, City and Tenant agree that a temporary reduction in the required minimum rental and utility charges is appropriate to offset the reduction in Tenant's revenues resulting from decrease in the golf course business caused by delays in securing the necessary permits, cancelation of golf tournaments and decrease in foot traffic; and

WHEREAS, TENANT and City desire to amend the Lease to provide for temporary reduction in rent and utility charges in order to provide relief to tenant during the preconstruction and construction period.

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

Item 1. Section VI (CONSIDERATION/RENT), paragraph A.1 is amended to read as

follows:

Minimum Annual Rent. The minimum annual rent starting on July 1, 2014 shall be the greater of $2,200 or 7% of the gross revenues up to the date of the closure of the golf course. The rent during the closure period of the golf course for the reconfiguration project will be set at 7% of the gross revenues. The rent payment after the reopening of the golf course will be the greater of $4,150 or 7% of the gross revenues.

Item 2. Section XXI (UTILITIES) is amended to read as follows:

XXI. Utilities. Tenant shall pay the City $1,500 per month for gas, water and electric supplied to the Premises starting on July 1, 2014 up to the date of reopening of the golf course. Utilities payment will reset to the preconstruction amount of $2160 after the reopening of the golf course date. City shall retain the right to adjust the monthly utility payment for any rate increase. Adjustment to the utility payment will be made in the even numbered years following the execution of this Amendment. City's Real Property will notify Tenant in writing of any adjustments. Should City install separate meters for all utilities to the premises, Tenant shall be responsible for and shall pay, prior to delinquency, all charges for utilities based on actual consumption.

Item 3. Except as herein modified, all other provisions of and exhibits to the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment the day and year first above written.

CITY OF PALO ALTO

City Manager

APPROVED AS TO FORM:

~~Senior~~ Assistant City Attorney

R & T RESTAURANT CORPORATION

By: Tom M. Tucker

Its: PRESIDENT

AMENDMENT NO. 1 TO LEASE #333 BETWEEN THE CITY OF PALO ALTO AND R&T RESTAURANT CORPORATION FOR THE PALO ALTO MUNICIPAL GOLF COURSE RESTAURANT

THIS AMENDMENT to the Lease between the City of Palo Alto and R&T Restaurant Corporation, dated May 1, 1998, hereinafter referred to as "Lease," is made and entered into this 20th day of October, 1998, by and between the City of Palo Alto, a municipal corporation, hereinafter referred to as "City" and R&T Restaurant Corporation, a California corporation, hereinafter referred to as "Tenant;"

RECITALS

A. Section VI of the Lease requires a minimum annual rental for the first lease year (May 1, 1998 to April 30, 1999) of $48,000, or $4,000 per month; and

B. Section XXI of the Lease requires Tenant to pay a monthly amount of $1,500 for utilities, except for telephone and refuse service; and

C. City and Tenant agree that a temporary reduction in the required minimum rental is appropriate to offset the reduction in Tenant's restaurant revenue resulting from the decrease in golf course business caused by the severe winter weather and City's construction project to refurbish the golf course; and

D. City and Tenant also agree that the provisions relating to payment of utilities should be amended to clarify that the fixed monthly charge for utility services, which is equal to the current estimated average cost of the utilities supplied for the restaurant use, shall be adjusted periodically based on utility rate increases, and that the Tenant would be required to pay a rate based on actual consumption if the City were to install separate utility meters at the leased Premises.

E. City and Tenant desire to amend the Lease to provide for the temporary reduction in rent and to clarify the Lease provisions relating to payment for utilities services.

G. NOW THEREFORE, in consideration of their mutual covenants and agreements, the parties hereto agree as follows:

ITEM 1. Section VI (CONSIDERATION/RENT), paragraph A.1 is amended to read as follows:

1. Minimum Annual Rent. The minimum annual rent for the first Lease Year (being the first twelve months following the commencement of this Lease) shall

be Thirty-six Thousand Dollars ($36,000), which shall be based on a monthly rental rate of Three Thousand Dollars ($3,000). The minimum annual rent for the second Lease Year shall be Forty-three Thousand Dollars ($43,000), which shall be based on a monthly rental rate of Three Thousand Dollars ($3,000) for the first five months (May 1, 1999-September 30, 1999) and a monthly rental rate of Four Thousand Dollars ($4,000) for the following seven months (October 1, 1999-April 30, 2000) of the second Lease Year.

The minimum annual rental for each subsequent Lease Year shall be adjusted automatically to the greater of the following:

a. Seventy-five percent (75%) of the annual rent paid by TENANT to CITY in accordance with this Clause for the previous Lease Year, or

b. The initial minimum annual rent adjusted in proportion to eighty-five percent (85%) of the change in the Consumer Price Index, All Urban Consumers (base years 1982-1984 = 100), San Francisco-Oakland-San Jose CSMA published by the United States Department of Labor, Bureau of Labor Statistics, or the official successor to this index. The adjustment shall be effective on each anniversary of the commencement of this Lease and in no event shall the minimum rent be less than the minimum rent for the preceding Lease Year. Should this Lease be terminated during the Lease year, the applicable minimum annual rental shall be prorated.

85% of CPI

ITEM 2. Section XXI (UTILITIES) is amended to read as follows:

XXI. Utilities

In addition to rent, TENANT shall pay CITY One Thousand Five Hundred Dollars ($1,500.00) per month for gas, water and electric utilities supplied to the PREMISES. TENANT will be responsible for refuse and phone service. CITY shall retain the right to adjust the monthly utility payment for any rate increases. Adjustment to the utility payment will be made in the even numbered years following the execution of this lease. CITY's Real Property Manager shall notify TENANT in writing of any adjustments. Should CITY install separate meters for all utilities supplied to the PREMISES, TENANT shall be responsible for and shall pay, prior to delinquency, all charges for utilities based on actual consumption.

ITEM 3. Except as herein modified, all other provisions of and exhibits to the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment the day and year

first above written.

CITY OF PALO ALTO

Richard Rosenbaum
Mayor

ATTEST:

Kathi Hamilton
Interim City Clerk

C. Harrison
City Manager
Assistant

APPROVED AS TO FORM:

Susan W. Case
Senior Assistant City Attorney

APPROVED:

for
Director of Administrative Services

Director of Community Services

R&T RESTAURANT CORPORATION

By Tom Talai

Its President

Project: GOLF COURSE RESTAURANT

Project Number: CL27/25-95/15

LEASE #333

This Lease is made this 1st day of MAY, 1998 by and between the City of Palo Alto, a municipal corporation, (CITY) and R & T Restaurant Corporation, a California Corporation (TENANT).

RECITALS

RL 2.0 S

Now, therefore, in consideration of these covenants, terms and conditions, the parties hereto mutually agree as follows:

1. CITY desires to lease the PREMISES to provide for the operation and maintenance of a restaurant serving primarily the public and customers using the Municipal Golf Course.

2. TENANT desires to lease the PREMISES from CITY to operate and maintain a restaurant serving primarily the public and customers using the Municipal Golf Course.

I. PREMISES

Subject to the terms and conditions set forth in this Lease, CITY leases to TENANT that certain property (PREMISES) described and shown in "Exhibit B". Exhibit B is attached to and, by this reference, made a part of this Lease. Unless specifically provided elsewhere in this Lease, TENANT accepts the PREMISES "as-is" on the date of execution of this Lease.

II. PURPOSE

The purpose of this Lease is to provide for the operation and maintenance of restaurant serving primarily the public and customers using the Municipal Golf Course.

III. REQUIRED AND OPTIONAL SERVICES AND USES

In furtherance of the purposes stated above, the following required

and optional services and uses shall be provided, permitted or prohibited:

A. Required Services and Uses. Throughout the term of this Lease TENANT shall provide the following services and activities:

TENANT is hereby authorized to and shall conduct in the PREMISES a food and beverage service, including sale of alcoholic beverages, in order to provide for the needs of the public and those persons utilizing the Palo Alto Municipal Golf Course in accordance with Exhibit D (Golf Course Restaurant Policy Statement), attached hereto. In addition, TENANT is authorized to and shall make available to various golf related groups, meeting rooms which are a part of the PREMISES, except that TENANT shall not be required to make available such meeting rooms during lunch hour, i.e., between the hours of 11:30 a.m. and 2:00 p.m. (This exception shall prevail over the provision in the Golf Course Restaurant Policy Statement with respect to meeting rooms, attached hereto as Exhibit D.)

Notwithstanding the above, TENANT shall give priority to the scheduling of meeting rooms for golf and golf-related activities including pre and post tournament activities in accordance with Exhibit D attached hereto. However, golf and golf-related activities shall not automatically bump already scheduled non-golf related activities. TENANT shall not charge room rental fee for any golf-related activities which are scheduled during TENANT's approved regular business hours. For golf-related meetings scheduled during TENANT's non business hours, TENANT may charge a reasonable room rental fee when no food service is provided. TENANT may charge reasonable room rental fees for all other scheduled uses of the meeting rooms permitted by this Lease. TENANT shall provide an express line or area for golf customers requiring service before or in between rounds of golf.

B. Optional Services and Uses. Subject to the prior written approval of the City Manager or designee, which approval shall be within the sole discretion of the City Manager or designee, TENANT may also use the demised PREMISES to provide additional services and uses which are ancillary to and compatible with the required services and uses set forth above. Examples of such ancillary services and uses may include, but are not limited to, the following:

1. Vending machines, including games and convenience items.
2. Meeting room rental for non-golf related activities.

TENANT may, at its cost, place one identification sign on or beneath the existing golf course sign and one identification

sign on the clubhouse building; and may place advertisements in newspapers, magazines or on radio. If, in the opinion of the City Manager, based upon his or her sole discretion, the number of non-golfing users is adversely affecting access to the facilities and services by the golfing public, TENANT agrees that upon 30 days' written notice from the City Manager, advertising shall cease or be modified to eliminate such adverse effect. The signs shall be approved by LESSOR in accordance with this Lease and applicable City of Palo Alto processes including ARB and Site and Design review prior to installation.

IV. TERM

This Lease shall commence on the date of execution by the CITY. The term of this Lease shall be in accordance with the following schedule:

Extent of Leasehold Improvements Made by Tenant within First Five Years of Lease	Initial Term
No Tenant Improvements	10 years
Addition of deck & pass through food service	15 years
Addition of deck & pass through food service and expansion of bar and club room	20 years

The extent of TENANT'S leasehold improvements shall be determined according to actual costs for work and services performed on or supplied to the PREMISES by TENANT and a fair and reasonable estimate of value of donated materials or services excluding in either case, the costs or value of any TENANT furnishings and fixtures (other than plumbing and electrical and other fixtures essential to the operation of the PREMISES and which must remain) which may be removed by TENANT without damage to the PREMISES as documented in accordance with Clause XIX (AS BUILT PLANS) below. Such costs shall hereinafter be referred to collectively as "DOCUMENTED COSTS".

V. TERMINATION OF PRIOR AGREEMENTS

This Lease supersedes any and all prior leases or agreements entered into by CITY for use of the PREMISES. All such prior leases or agreements are null and void.

VI. CONSIDERATION/RENT

A. Consideration to CITY. In consideration for TENANT'S use of the PREMISES provided by CITY, TENANT shall, in accordance

with Clause X (RENT PAYMENT PROCEDURE), pay to CITY, the greater of the minimum annual rent or the percentage rent as follows:

1. Minimum Annual Rent. The minimum annual rent for the first Lease year (being the first twelve months following the commencement of this Lease) shall be Forty Eight Thousand Dollars ($48,000.00).

AMENDED

The minimum annual rental for each subsequent Lease Year shall be adjusted automatically to the greater of the following:

a. Seventy-five percent (75% of the annual rent paid by TENANT to CITY in accordance with this Clause for the previous Lease Year, or

b. The initial minimum annual rent adjusted in proportion to eighty-five percent (85%) of the change in the Consumer Price Index, All Urban consumers (base years 1982-1984 = 100), San Francisco-Oakland-San Jose CSMA published by the United States Department of Labor, Bureau of Labor Statistics, or the official successor to this index. The adjustment shall be effective on each anniversary of the commencement of this Lease and in no event shall the minimum rent be less than the minimum rent for the preceding Lease Year. Should this Lease be terminated during the Lease year, the applicable minimum annual rental shall be prorated.

2. Percentage Rental. Percentage rental for TENANT's use of the PREMISES shall be calculated using the following percentages of gross receipts form business operations conducted on or from the PREMISES:

Year	Minimum Percentage Rent
First Year	6.0%
Second Year	6.5%
Third-Tenth Year	7.0%
Eleventh Year	Minimum of 7%, to be negotiated based on value of tenant improvements.

B. Rent for Optional Services and Uses. TENANT shall, in addition to the above, pay to CITY rent for approved optional services and uses. Rent for optional services and uses approved in accordance with Clause III (REQUIRED AND OPTIONAL SERVICES AND USES) subparagraph B, shall be mutually agreeable to the City Manager and TENANT.

VII. CHARGE FOR UNAUTHORIZED SERVICES AND USES

TENANT shall pay CITY a sum equal to one hundred percent (100%) of the gross receipts for any service or use that is not permitted or authorized by Clause III (REQUIRED AND OPTIONAL SERVICES AND USES). This payment is subject to the "due date" requirement provided in Clause XI(CHARGE FOR LATE PAYMENT). The existence of such charge or the payment or receipt of money under this clause, does not constitute an authorization of a particular service or use and does not constitute a waiver of CITY's right to terminate such service or use.

VIII. CONTROL OF HOURS, PRICES AND PROCEDURES

TENANT shall continuously use the PREMISES for the uses specified in Subparagraph A of Clause III (REQUIRED AND OPTIONAL SERVICES AND USES) during all usual business hours and on all such days as comparable businesses in the area or as are customary for the Required and Optional Services and Uses permitted in accordance with Clause III (REQUIRED AND OPTIONAL SERVICES AND USES). Minimum hours for food service are 6 a.m. to 3 p.m. during daylight savings time and 7 a.m. to 3 p.m. for the remainder of the year. Minimum hours of operation for the bar and meeting rooms are 11:00 a.m. to dusk year-round. TENANT shall use only such space within the PREMISES for office, clerical or other non-sales or services uses as is reasonably required for TENANT's required or approved uses of the PREMISES.

TENANT shall at all times maintain a written schedule setting forth the operating hours and operating procedures for each required and optional uses provided on or from the PREMISES. A schedule of prices charged for all goods and/or services related to the Required and Optional Services and Uses of this Lease shall also be maintained and individual merchandise must be clearly priced. TENANT agrees that when alternate forms of packaging are available, only items packaged in the manner most compatible with the goals of reducing litter and preserving the environment shall be sold.

Upon written request, TENANT shall furnish the City Manager or designee a copy of the schedules and procedures. Should the City Manager or designee decide that any part of these schedules or procedures is not justified with regard to fairly satisfying the needs of the golfers using the restaurant, TENANT, upon written notice from the City Manager or designee, shall modify these schedules or procedures to the satisfaction of the City Manager. Prior to issuing such a notice, the City Manager or designee shall personally review the schedule and procedures and confer with TENANT or its representative.

Primary consideration shall be given to the public's benefit in

implementing this clause. All prices charged for goods and/or service supplied to the public on or from the PREMISES shall be fair and reasonable, based upon the following considerations:

A. The degree of public service involved in the sale of the goods and/or services:

B. The market prices charged by other competing and/or comparable businesses; and

C. The reasonableness of the profit margin in relation to industry-wide standard.

TENANT's failure to comply with the provisions of this clause shall constitute a material breach of this Lease and shall be grounds for termination of this Lease.

TENANT agrees that it will operate and manage the services and facilities offered in a competent and efficient manner at least comparable to other well managed operations of a similar type.

TENANT shall at all times retain active, qualified, competent, and experienced personnel to supervise TENANT's operation and to represent and act for TENANT. TENANT shall require its attendants and employees to be properly dressed, clean, courteous, efficient, and neat in appearance at all times. TENANT shall not allow any person(s) in or about the PREMISES who shall use offensive language and/or act in a boisterous or otherwise improper manner. TENANT shall strictly monitor and supervise attendants and employees to insure the maintenance of a high standard of service to the public. TENANT shall replace any employee whose conduct is detrimental to the best interests of the public.

IX. DEFINITION OF GROSS RECEIPTS

The term "gross receipts" upon which parentage rentals are to be based shall include:

A. The sale price of all goods, wares, merchandise, and products sold on or from the PREMISES by TENANT, whether for cash or credit and whether payment is actually made or not;

B. The changes made by TENANT for sale or rendition on or from the PREMISES of services of any nature or kind whatsoever, whether for cash or credit and whether payment is actually made or not;

C. All admission, entry rental, and other fees of any nature or kind charged by TENANT (including but not limited to deposits accepted by TENANT);

D. All sums deposited in any coin-operated vending machine or another device maintained on the PREMISES, regardless of the ownership of the machine or device, or whether such sums are removed and counted by TENANT or others, and regardless of what percentage thereof TENANT is entitled to receive;

E. The fair rental value of facilities used by TENANT or its employees for purposes other than the business purposes for which the PREMISES are leased;

F. Security deposits collected by TENANT from its subtenants, agents, concessionaires or licensees and not placed in escrow or trust account with interest not accruing to the TENANT.

X. RENT PAYMENT PROCEDURE

A. Payment of Rentals. On or before the twentieth day of each month, TENANT shall pay rent to CITY as set forth in Clause VI (CONSIDERATION/RENT) and shall render to CITY a correct statement of all applicable gross receipts and rent due for that portion of the current accounting year which ends with and includes the last day of the preceding calendar month. The statement shall be signed by TENANT or its responsible agent under penalty of perjury, and shall be substantially in the form of Exhibit E attached to, and by this reference, incorporated into this Lease.

B. Commencement of Obligation to Pay. TENANT's obligation to pay percentage rent to CITY for activity or occupancy of any sublessee of all or a portion of the PREMISES shall commence with the earliest of the following dates (whether or not CITY has approved the sublease and regardless of whether or not a percentage rent was established by CITY):

1. Commencement date of sublease;

2. Date of physical occupancy; or

3. Date of earliest activity (i.e., sale of goods, solicitation of business, construction or alteration by sublessee, etc.).

Acceptance of rental hereunder shall not constitute approval of any unauthorized sublease or use.

C. Place of Payment and Filing. Rental payments shall be delivered to, and statements required by this clause and Clause XII (RECORDS AND ACCOUNTS) shall be delivered to the Revenue Collections Division, 250 Hamilton Avenue, PO Box 10250, Palo Alto, California 94303. The designated place of

payment and filing may be changed at any time by CITY upon ten (10) days written notice to TENANT. Rental payments may be made by check made payable to City of Palo Alto, however, TENANT assumes all risk of loss or delay if payments are made by mail.

D. Acceptance of Late or Incorrect Rent. TENANT specifically agrees that acceptance of any late or incorrect rentals submitted by TENANT shall not constitute an acquiescence or waiver by CITY and shall not prevent CITY from enforcing Clause XI (CHARGE FOR LATE PAYMENT) or any other remedy provided in this Lease.

XI. CHARGE FOR LATE PAYMENT

If any payment of rent as specified in Clause VI(CONSIDERATION/RENT) or if any other sum due CITY is not received by CITY, a late charge determined in accordance with the following formula shall be added to the delinquent payment, and the total sum shall become immediately due and payable to CITY:

$$L = A + D[(R + 2\%)/12)]$$

Where:

L = The charge for late payment due CITY

A = The administrative costs involved with collection of past due sum, e.g., Delinquent Notices, legal fees, telephone contacts, etc., which for the purpose of this clause, shall be no less than $40.00.

D = The amount of delinquent payments

R = The current average annual rate of return on the City's portfolio of invested funds as reported by Treasury Manager.

Acceptance of late charges and/or any portion of the overdue payment by CITY shall in no event constitute a waiver of TENANT's default with respect to such overdue payment, nor prevent CITY from exercising any of the other rights and remedies granted hereunder or by any provision of law.

XII. RECORDS AND ACCOUNTS

A. Records. TENANT shall, at all times during the term of this Lease, keep or cause to be kept true and complete books,

records, and accounts of all financial transactions conducted in the operation of all business activities, of whatever nature, conducted pursuant to the rights granted herein. The records, books and accounts shall be kept or made available to CITY at a location within Santa Clara or Alameda County. The records must be supported by source documents such as sale slips, cash register tapes, purchase invoices, or other pertinent documents. Except as may be otherwise provided by this Lease, all retail sales and charges shall be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers shall be equipped with devices which lock in sales totals and other transaction records, or with counters which are not resettable and which record transaction numbers and sales details. Totals registered shall be read and recorded at the beginning and end of each day. Retail sales and charges may be recorded by a system other than cash registers or other comparable devices provided that system is approved by the City Auditor.

In the event of admission charges or rentals, TENANT shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of the tickets, both issued and unissued.

Upon request of TENANT and at the City Auditor's sole discretion, the City Auditor may authorize the keeping of the above-referenced books of account and records and supporting source documents in a single location outside the limits of Santa Clara or Alameda County provided TENANT agrees to pay all expenses including, but not limited to, transportation, food, and lodging necessary for the City Auditor to send its representative to audit or review books and records. This right shall not be exercised by the City Auditor more than once each accounting year.

B. The Accounting Year. The accounting year shall be twelve full calendar months. The accounting year may be established by TENANT, provided TENANT has notified CITY in writing of the accounting year to be used. The accounting year shall be deemed to be approved by CITY unless CITY objects to TENANT's selection in writing within sixty (60) days of receipt of TENANT's written notification.

In the event TENANT fails to establish an accounting year of its choice, regardless of the cause, the accounting year shall be synonymous with the twelve (12) month period following commencement of this Lease.

Once an accounting year is established, it shall be continued through the term of the Lease unless CITY specifically approves in writing a different accounting year. CITY shall

approve a change in ascending years only in the event of undue hardship being place on either the TENANT or CITY, and not because of mere convenience or inconvenience.

C. Financial Statements and Audit by CITY. Within ninety (90) days after the end of each accounting year, TENANT shall, at its own expense, submit to CITY a balance sheet and income statement prepared and audited by a Certified Public Accountant, reflecting business transacted on or from the PREMISES during the preceding accounting year. The Certified Public Accountant must attest that the balance and income statement submitted are an accurate representation of TENANT's records as reported to the United States of America for income tax purposes. At the same time, TENANT shall submit to CITY a statement certified as to the accuracy by a Certified Public Accountant wherein the total gross receipts for the accounting year are classified according to the categories of business established for percentage rental and listed in Clause VI (CONSIDERATION/RENT) and for any other business conducted on or from the PREMISES. The City Auditor may accept alternatives to the Certified Public Accountant-audited statement provided that in the City Auditor's sole opinion, the alternative provides sufficient assurance that the financial statement accurately reflect business transacted on or from the PREMISES.

All of TENANT's books of account and records and supporting source documents shall be made available to CITY's representatives at any and all reasonable time during the term of this Lease and within two (2) years after expiration or termination of this Lease, for the purpose of determining the accuracy of the monthly statements of sales and monies received, and rent due and paid to CITY.

Notwithstanding the previous paragraph, the full cost of any such audit by CITY, as determined by CITY, shall be borne by TENANT if either of the following conditions exists:

1. The audit reveals an underpayment of more than two percent (2%) between the rent due as reported and paid by TENANT in accordance with this Lease and the rent due as determined by the audit; or

2. TENANT has failed to maintain true and complete books, records, accounts, and supporting source documents in accordance with subparagraph A above. The adequacy of records shall be determined by the City Auditor. Otherwise, CITY shall bear the cost of any such audit.

Upon the request of CITY, TENANT shall promptly provide, at TENANT's expense, necessary data to enable CITY to fully comply with any and all requirements of the State of

California or the United States of America for information or reports relating to this Lease and to TENANT's use of the PREMISES. Such data shall include, if required, a detailed breakdown of TENANT's use of the PREMISES, and/or a detailed breakdown of TENANT's receipts and expenses.

XIII. SECURITY DEPOSIT

A security deposit in the sum of Five Thousand Dollars ($5,000.00) shall be provided to CITY by TENANT. The security deposit shall take one of the forms set out below and shall guarantee TENANT's full and faithful performance of all the terms, covenants, and conditions of this Lease.

A. Cash.

B. The assignment to CITY of a savings deposit held in a financial institution in Santa Clara or Alameda County acceptable to CITY. At a minimum, such assignment shall be evidenced by the delivery to CITY of the original passbook reflecting the savings deposit and a written assignment of said deposit to CITY in a form approved by the Real Property Manager.

C. A Time Certificate of Deposit from a financial institution in Santa Clara or Alameda County wherein the principal sum is made payable to CITY or order. Both the financial institution and the form of the certificate must be approved by the Real Property Manager.

D. A Letter of Credit or other instrument of credit from a financial institution, subject to regulation by the state or federal government, pledging that fund necessary to secure performance of the Lease terms, covenants, and conditions, are on deposit and guaranteed for payment, and agreeing that the funds shall be trust funds securing TENANT's performance and that all or any part shall be paid to CITY or order upon demand by CITY. Both the financial institution(s) and the form of the instrument(s) must be approved by the Real Property Manager.

Regardless of the form in which TENANT elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to CITY for correcting any default or breach of this Lease incurred by CITY as a result of the failure by TENANT, its successors or assigns, to faithfully perform all of the terms, covenants, and conditions of this Lease. Should TENANT elect to provide a Time Certificate of Deposit, Letter of Credit, or other

instrument of credit, hereinafter collectively referred to as "INSTRUMENT", to fulfill the security deposit requirements of this Lease, the INSTRUMENT shall contain a provision whereby the institution issuing the INSTRUMENT agrees to provide CITY with written notice of its intent not to renew the INSTRUMENT at least thirty (30) days prior to expiration or termination of the INSTRUMENT. If TENANT has not provided CITY with an acceptable alternate form of security deposit at least ten (10) days prior to expiration or termination of the INSTRUMENT, CITY may demand and obtain from the institution issuing the INSTRUMENT, the amount secured by the INSTRUMENT as satisfaction of the security deposit provision of this Lease.

Should TENANT elect to assign the savings deposit to CITY, or provide an alternate INSTRUMENT, to fulfill the security deposit requirements of this Lease, the assignment, or issuance of the INSTRUMENT shall have the effect of releasing the depositor or creditor therein from liability on account of the payment of any or all of the principal sum to CITY or order upon demand of CITY. The agreement entered into by TENANT with a financial institution to establish the deposit necessary to permit assignment or issuance of a certificate as provided above, may allow the payment of interest accruing on account of the deposit to TENANT, or order.

TENANT shall maintain the required security deposit throughout the Lease term. Failure to do so shall be deemed a default and may be grounds for immediate termination of this Lease. The security deposit shall be rebated, reassigned, released, or endorsed to TENANT or order, as applicable, at the end of the Lease term, provided TENANT has fully and faithfully performed each and every term, covenant, and condition of this Lease.

XIV. MAINTENANCE OBLIGATIONS OF TENANT

TENANT shall, to the satisfaction of CITY, keep and maintain the demised PREMISES and all improvements of any kind which may be erected, installed or made thereon in good condition and in substantial repair, including doors and locks, carpeting and floor coverings and replacement of broken windows, if such breakage is caused from within the demised PREMISES. TENANT is responsible to keep and maintain all items owned and furnished by CITY listed in Exhibit D (Inventory of Golf Course Restaurant Furnishings). It shall be TENANT's responsibility to take all steps necessary or appropriate to maintain such a standard of condition and repair, including plumbing and electrical systems within the demised PREMISES or exclusively serving the demised PREMISES. CITY shall conduct an annual inspection of all cooking, refrigeration and other fixed equipment to assure that it is being maintained in good and safe condition.

TENANT expressly agrees to maintain the PREMISES in a safe, clean, wholesome, and sanitary condition and substantial repair, to the complete satisfaction of CITY and in compliance with all applicable laws. TENANT further agrees to provide approved containers for trash and garbage including recycling containers for recyclable trash and garbage, and to keep the PREMISES free and clear of rubbish and litter. CITY shall have the right to enter upon and inspect the PREMISES at any time for cleanliness and safety.

TENANT shall designate in writing to CITY an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness, and general order.

If TENANT fails to maintain or make repairs or replacements as required herein, CITY may notify TENANT in writing of the failure. Should TENANT fail to correct the situation within a reasonable time thereafter, as established by the City Manager, the Real Property Manager may make, or cause to be made, the necessary corrections and the cost thereof, including but not limited to the cost of labor, materials, and equipment and a fifteen percent (15%) charge for administration and overhead, shall be paid by TENANT within ten (10) days of receipt of a statement of the cost from the Real Property Manager. CITY may also, at its option, choose other remedies available herein, or available by law.

XV. MAINTENANCE OBLIGATIONS OF CITY

CITY shall maintain the three HVAC units and boiler serving the PREMISES, the exterior of the building, public restrooms, exterior walkways, parking lot and landscaping, all mechanical systems serving areas outside of the demised PREMISES and replacement of broken windows if such breakage is caused from outside of the demised PREMISES.

CITY shall also be responsible for any major structural repairs required, not as a result of damage caused by TENANT, its employees, agents or clients.

XVI. INITIAL CONSTRUCTION BY TENANT

A. Minimum Construction and Timing. TENANT shall in an efficient and workmanlike manner, cause to be designed, constructed, and installed within the PREMISES, at no cost to CITY, appropriate improvements to adequately accommodate those services and uses required by Clause III (REQUIRED AND OPTIONAL SERVICES AND USES). The plans prepared by TENANT and approved by CITY during the option period proceeding execution of this Lease shall be a master plan for development of the PREMISES, and the working drawings prepared by TENANT and approved by the

City Engineer during the same period shall be the plans, specifications, and time schedule for constructing such improvements. Development proposed by TENANT in the master plan may be scheduled in increments approved by the City Manager or designee.

B. Development Plan and Construction Standards. All design and construction shall conform with the construction and architectural standards contained in City-approved plans and construction drawings and shall meet all other requirements contained in this Lease.

XVII. CONSTRUCTION AND/OR ALTERATION BY TENANT

A. CITY's Consent. No structures, improvements, or facilities shall be constructed, erected, altered, or made within the PREMISES without the prior written consent of City Council if required by City of Palo Alto procedures or ordinances, or otherwise by the City Manager. Any conditions relating to the manner, method, design, and construction of the structures, improvements, or facilities established by CITY shall be conditions of this clause as though originally stated herein. TENANT may, at any time and at its sole expense, install and place business fixtures and equipment within any building constructed by CITY, provided such fixtures and installation have been reviewed and approved by the City Manager.

B. Strict Compliance with Plans and Specifications. All improvements constructed by TENANT within the PREMISES shall be constructed in an efficient and workerlike manner and in strict compliance with detailed plans and specifications approved by the City Council if required by City of Palo Alto procedures or ordinances or otherwise by the City Manager, or designee, and applicable City of Palo Alto codes and ordinances.

C. Certificate of Inspection. Upon completion of construction of any improvement, TENANT shall submit to the Real Property Manager, a Certificate of Inspection, verifying that the construction was completed in conformance with Title 20 of the California Code of Regulations for residential construction, or in conformance with Title 24 of the California Code of Regulations for non-residential construction, whichever is applicable.

XVIII. DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

A. Total Destruction. In the event the PREMISES or a substantial portion thereof are destroyed by any cause that renders the PREMISES unfit for the purposes designated in Clause III (REQUIRED AND OPTIONAL SERVICES AND USES) and if the PREMISES are so badly damaged that they cannot be repaired within ninety (90) days from the date of such damage, either party may terminate this Lease by giving to the other party written notice within thirty (30) days of the occurrence of such damage. After such notice of termination has been given, rental (excepting percentage rental, if any) shall be prorated to the date TENANT actually vacates the PREMISES which shall be no later than thirty (30) days from the giving of the notice of termination.

B. Insured Partial Destruction. If the PREMISES are partially destroyed by any cause insurable under fire insurance with a standard extended coverage casualty endorsement and the destroyed portion can be rebuilt or repaired within ninety (90) days from the date of destruction, CITY shall repair the damage or destruction with reasonable diligence. In such event, this Lease shall remain in full force and effect; however, until the destroyed PREMISES are repaired, rental (excepting percentage rental, if any) paid by TENANT to CITY shall be reduced in the same proportion that TENANT's square footage is reduced by such destruction. However there shall be no rent abatement or offset should the damage or destruction be caused by TENANT, its employees, agents or contractors.

C. Non-Insured Partial Destruction. If the PREMISES are partially destroyed by any cause not insurable by fire insurance with an extended coverage casualty endorsement but the PREMISES can still be used for the purposes designated in Clause III (REQUIRED AND OPTIONAL SERVICES AND USES), TENANT may, at its option, terminate this Lease unless CITY commences rebuilding or repair of the destroyed portion of the PREMISES within 90 days from the date of destruction. However, there shall be no rent abatement or offset should the damage or destruction be caused by TENANT, its employees, agents or contractors.

Such termination by TENANT shall be accomplished by giving CITY written notice of termination not sooner than ninety (90) days nor later than one hundred (100) days after the occurrence of such damage or destruction. This Lease shall terminate on the date such notice of termination is given to CITY. If CITY accomplishes such repair or if TENANT fails to exercise its option to terminate, this Lease shall remain in full force and effect, however, until the destroyed PREMISES

are repaired, rental paid by TENANT to CITY (excepting percentage rent, if any) shall be reduced in the same proportion that TENANT's leased square footage is reduced by such destruction. However, there shall be no rent abatement or offset should the damage or destruction be caused by TENANT, its employees, agents or contractors.

Glass breakage shall not be deemed a partial destruction within the meaning of this clause.

XIX. AS BUILT PLANS

Upon completion of any major TENANT-constructed improvements, TENANT shall provide the Real Property Manager with a complete set of reproducible "as built plans" reflecting actual construction within or upon the PREMISES. TENANT shall also provide the Real Property Manager with a statement signed by TENANT under penalty of perjury certified as to accuracy and of actual construction costs for all such improvements.

XX. OWNERSHIP OF IMPROVEMENTS

CITY has furnished and is owner of all items listed in Exhibit C (Inventory of Golf Course Restaurant Furnishings), and CITY shall retain ownership of this property during and following termination of the lease.

All improvements constructed, erected or installed upon the PREMISES must be free and clear of all liens, claims, or liability for labor or material and shall become the property of CITY, at its election, upon expiration or earlier termination of this Lease and, upon CITY's election, shall remain upon the PREMISES upon termination of this Lease.

Title to all equipment, furniture, furnishings and trade fixtures placed by TENANT upon the PREMISES shall remain in name of TENANT, and replacements, substitutions and modifications thereof may be made by TENANT throughout the term of this Lease. TENANT may remove such fixtures and furnishings upon termination of this Lease if TENANT is not then in default under this Lease, provided that TENANT shall repair to the satisfaction of CITY any damage to the PREMISES and improvements caused by such removal and provided that usual and customary lighting, plumbing and heating fixtures shall remain upon the PREMISES upon termination of this Lease.

XXI. UTILITIES

In addition to rent TENANT shall pay One Thousand Five Hundred Dollars ($1,500.00) per month for Utilities. TENANT will be responsible for refuse and phone service. CITY shall retain the right to adjust the monthly utility payment for any rate increases.

Adjustment to the utility payment will be made in the even numbered years following the execution of this lease. The Real Property Manager shall notify TENANT in writing of any adjustments. CITY also retains the right to establish separate meters for the leased PREMISES.

XXII. INSURANCE

TENANT shall maintain insurance acceptable to CITY in full force and effect throughout the term of this Lease.

Minimum Scope of Insurance
Coverage shall be at least as broad as:

1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4) Course of Construction insurance form providing coverage for "all risks" of loss.

The policy or policies of insurance maintained by TENANT shall provide the following limits and coverages:

	POLICY	MINIMUM LIMITS OF LIABILITY	
(1)	WORKERS' COMPENSATION	Statutory	
(2)	COMPREHENSIVE AUTOMOBILE LIABILITY, including owned, hired, and non-owned automobiles	Bodily Injury	$1,000,000 ea. person $1,000,000 ea. occurrence
		Property Damage	$1,000,000 ea. occurrence
(3)	COMPREHENSIVE GENERAL LIABILITY including products and completed operations, broad form contractual, and personal injury.	Bodily Injury	$1,000,000 ea. person $1,000,000 ea. occurrence $1,000,000 aggregate
		Property Damage	$1,000,000 ea. occurrence
		Personal Injury	$1,000,000 ea. occurrence
(4)	FIRE LEGAL LIABILITY	$ 500,000.00	Said sum represents the estimated cost of the improvements and fixtures within the care, custody and

		control of TENANT. Said sum shall be subject to annual review by LESSOR's Risk Manager to insure that coverage is adequate to cover changes in the replacement cost of improvements and fixtures within the care, custody and control of TENANT.
(5)	COURSE OF CONSTRUCTION	Completed value of the project.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers; or the TENANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Insurance shall be in full force and effect commencing on the first day of the term of this Lease. Each insurance policy required by this Lease shall contain the following clauses:

1. "Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY."

2. "All rights of subrogation are hereby waived against the CITY OF PALO ALTO and the members of the City Council and elective or appointive officers or employees, when acting within the scope of their employment or appointment."

3. "The CITY OF PALO ALTO is named as a loss payee on the property and course of construction insurance policies described above."

4. "The CITY, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the TENANT; products and completed operations of the TENANT; premises owned, occupied or used by the TENANT; or automobiles owned, leased, hired or borrowed by the TENANT. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees, agents or volunteers."

5. "For any claims related to this Lease, the TENANT's insurance coverage shall be primary insurance as respects

the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents or volunteers shall be excess of the TENANT's insurance and shall not contribute with it."

6. "Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY, its officers, officials, employees, agents or volunteers."

7. "The TENANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability."

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:X.

XXIII. INSURANCE

TENANT agrees to deposit with the Real Property Manager, on or before the effective date of this Lease, certificates of insurance necessary to satisfy CITY that the insurance provisions of this Lease have been complied with, and to keep such insurance in effect and the certificates therefore on deposit with CITY during the entire term of this Lease. Should TENANT not provide evidence of such required coverage at least three (3) days prior to the expiration of any existing insurance coverage, CITY may purchase such insurance, on behalf of and at the expense of TENANT to provide six months of coverage.

CITY shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the Risk Manager, the insurance provisions in this Lease do not provide adequate protection for CITY and for members of the public using the PREMISES, the Real Property Manager may require TENANT to obtain insurance sufficient in coverage, form, and amount to provide adequate protection as determined by the Risk Manager. CITY's requirements shall be reasonable and shall be designed to assure protection from and against the kind and extent of risk which exists at the time a change in insurance is required.

The Real Property Manager shall notify TENANT in writing of changes in the insurance requirements. If TENANT does not deposit copies of acceptable insurance policies with CITY incorporating such changes within sixty (60) days of receipt of such notice, or in the event TENANT fails to maintain in effect any required insurance coverage,

TENANT shall be in default under this Lease without further notice to TENANT. Such failure shall constitute a material breach and shall be grounds for immediate termination of this Lease at the option of CITY.

The procuring of such required policy or policies of insurance shall not be construed to limit TENANT's liability hereunder nor to fulfill the indemnification provision and requirements of this Lease. Notwithstanding the policy or policies of insurance, TENANT shall be obligated for the full and total amount of any damage, injury, or loss caused by or connected with this Lease or with use or occupancy of the PREMISES.

XXIV. ASSIGNING, SUBLETTING, AND ENCUMBERING

Any mortgage, pledge, hypothecation, encumbrance, transfer, sublease, or assignment (collectively referred to as ENCUMBRANCE) of TENANT's interest in the PREMISES, or any part or portion there of, shall first be approved in writing by the City Manager or designee. Any ENCUMBRANCE which has not been approved by CITY in writing shall be void. Occupancy of the PREMISES by a prospective transferee, subtenant, or assignee before approval of the transfer, sublease, or assignment by CITY shall constitute a breach of this Lease.

If TENANT is a corporation, an unincorporated association or partnership, the ENCUMBRANCE or transfer of any stock or interest in corporation, association, or partnership in the aggregate exceeding twenty-five percent (25%) shall be deemed an assignment within the meaning of this Lease.

Should CITY consent to any ENCUMBRANCE, such consent shall not constitute a waiver of any of the terms, covenants, or conditions of this Lease. Such terms, covenants, or conditions shall apply to each and every ENCUMBRANCE hereunder and shall be severally binding upon each and every assignee, transferee, subtenant, or other successor in interest of TENANT. Any document to encumber, transfer, sublet, or assign the PREMISES or any part thereof shall incorporate directly or by reference all the provisions of this Lease.

CITY agrees that it will not arbitrarily withhold consent to any encumbrance, but CITY may withhold consent at its sole discretion if any of the following conditions exist:

A. TENANT or any of its successors or assigns is in default of any term, covenant, or condition of this Lease, whether notice of default has or has not been given by CITY;

B. The prospective ENCUMBRANCER does not indicate in writing that such ENCUMBRANCE is subject to all the terms, covenants, and conditions of this Lease;

C. All the terms, covenants, and conditions of the proposed ENCUMBRANCE including the consideration therefore of any and every kind, have not been revealed in writing to CITY;

D. Any construction required of TENANT as a condition of this Lease has not been completed to the satisfaction of CITY;

E. The processing fee required by CITY and set forth in the then current Palo Alto Municipal Fee Schedule has not been paid to CITY;

F. If an assignment or sublease is proposed, and TENANT has not provided CITY with sufficient information to permit CITY to completely evaluate the background, skills, financial position, proposed operating plan changes and references of the prospective assignee or subtenant; or

G. If the proposed assignee does not have the required skills, experience or financial standing to provide at least the same level of service as TENANT which determination shall be within the sole discretion of the City Manager.

The above list is not inclusive but is intended to give TENANT some idea of the types of situation where CITY may withhold its consent to any ENCUMBRANCE. CITY reserves the right to withhold its consent to any ENCUMBRANCE that will, in CITY's sole option, adversely affect the provision of service required by this Lease or adversely affect CITY's interest in and to the land and structures covered by this Lease. Hypothecation of the leasehold interest created by this Lease is expressly prohibited and any attempted hypothecation shall be null and void.

XXV. DEFAULT IN TERMS OF THE LEASE BY TENANT

A. Act of Default Defined. The following events constitute acts of default under this Lease:

1. Should TENANT fail to pay all or any portion of rental or any other payment due CITY at the times and in the manner provided in this Lease;

2. Should TENANT: a) abandon or vacate the PREMISES (absence from the PREMISES for ten (10) days or more shall conclusively be deemed an abandonment of the PREMISES), b) violate the provisions of Clause XXIV (ASSIGNING, SUBLETTING, and ENCUMBERING), or c) fail to provide evidence of insurance coverage throughout the term of this Lease in accordance with Clause XXII (INSURANCE); and

3. Should TENANT violate any other provision of this Lease, and such violation shall not be cured within thirty (30) days after written notice of such violation by CITY to TENANT. However, in the event of a violation which cannot reasonably be cured within thirty (30) days, TENANT shall have a reasonable period of time (As determined by the City Manager) to cure such violation.

4. Should TENANT:

   a. file a voluntary petition or have an involuntary petition filed against it in bankruptcy or under any insolvency act or law;

   b. be adjudicated a bankrupt; or

   c. attempt to make a general assignment for the benefit of its creditors.

B. Rights and Remedies of CITY. In the event TENANT commits an act of default, as defined in Subparagraph A of this clause, the following rights and remedies shall be available to CITY which rights and remedies shall not be exclusive, but which shall be cumulative and in addition to any and all rights and remedies now or hereafter allowed by law or otherwise specifically provided in other clauses in this Lease:

   1. CITY may, at its election, continue this Lease in full force and effect and not terminate TENANT's right to possession of the PREMISES, in which event CITY shall have the right to collect rental and other payments when due;

   2. CITY shall also have the right to terminate this Lease and TENANT's right to possession of the PREMISES at any time after the occurrence of an act of default by TENANT upon written notice to TENANT together with the right to recover damages for such act of default;

   3. CITY shall also have the right to have a receiver appointed to collect rentals and conduct TENANT's business;

   4. CITY may, at its election, at any time after TENANT commits an act of default and without notice, cure the act of default for the account and at the expense of TENANT. If CITY, by reason of an act of default by TENANT, is compelled to pay, or elect to pay, any sum of money or do any act that will require the payment of any sum of money, the sum or sums paid by CITY, together with an administrative charge equal to fifteen percent (15%) of said sum or sums, shall be

deemed to be additional rental due CITY under this Lease and shall be due from TENANT within ten (10) days of CITY's mailing an invoice therefore by certified mail;

5. CITY shall also have the right to seek an action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of CITY;

6. CITY shall also have the right to seek a mandamus or other suit, action of proceeding at law or in equity to enforce its right against TENANT and any of its officers, agents, employees, assigns or subtenants, and to compel it to perform and carry out its duties and obligations under the law, the covenants and agreements as provided in this Lease.

C. Termination and Damages

1. CITY and TENANT specifically agree that acts of maintenance or preservation or efforts to relet the PREMISES (including the making of alterations and/or improvements to the PREMISES in connection with any reletting), and/or the appointment of a receiver upon initiative of CITY to protect CITY's interests under this Lease will not constitute a termination of TENANT's right to possession.

2. Upon a termination of TENANT's right to possession, CITY shall have the right to recover from TENANT:

   a. The worth at the time of award of the unpaid rental which had been earned at the time of termination of the Lease; and

   b. The worth at the time of award of the amount by which the unpaid rental which would have been earned after the date of termination of this Lease until the time of award exceeds the amount of such rental loss that TENANT proved could have been reasonably avoided; and

   c. The worth at the time of award of the amount by which the unpaid rental for the balance of the term after the time of award exceeds the amount of such rental loss that TENANT proves could be reasonably avoided; and

   d. Any other amount necessary to compensate CITY for all detriment approximately caused by TENANT's act of default or which in the ordinary course of things would be likely to result therefrom, including, without limitation, all costs incurred by CITY in

connection with reletting the PREMISES, court costs and reasonable attorney's fees.

The phrase "the worth at the time of the award" as contained herein is to be computed by allowing interest at the rate equal to CITY's average rate of return on invested funds plus two percent (2%), or the maximum allowed by law, whichever is greater.

CITY's efforts to mitigate the damages caused by TENANT's act of default shall not constitute a waiver of CITY's right to recover damages under the provisions of this clause. Upon termination of this Lease, pursuant to Subparagraph B of this clause, CITY may immediately re-enter the PREMISES without due process of law, take possession of all buildings, improvements, additions, alterations, equipment, eject all parties in possession thereof therefrom, using such force for that purpose as may be necessary, without being liable to any prosecution for the re-entry or the use of such force. Any such re-entry by CITY shall be allowed by TENANT without hindrance, and CITY shall not be liable in damages or guilty of trespass because of any such re-entry. In the event of any re-entry or taking of possession of the PREMISES, CITY shall have the right, but not be obligated, to remove therefrom all of any part of the personal property located therein, and CITY may place the same in storage at a public warehouse at the expense and risk of owner or owners thereof.

Nothing in this clause shall affect CITY's right to indemnification for liability arising prior to termination of this Lease for personal injury or property damage pursuant to other provisions of this Lease.

D. Appointment of Receiver. If a receiver is appointed at the request of CITY in any action against TENANT to take possession of the PREMISES and/or to collect the rents or profits derived therefrom, the receiver may, if it is necessary or convenient in order to collect such rents from profits, conduct the business of TENANT then being carried on in the PREMISES, and may take possession of any personal property belonging to TENANT and used in the conduct of such business and may be used by the appointed receiver in conducting such business on behalf of CITY and TENANT. Neither the application for the appointment of such receiver nor the appointment of such receiver shall be construed as an election on CITY's part to terminate this Lease unless a notice of such intention is given to TENANT. TENANT agrees to indemnify and hold CITY harmless from any liability arising out of the entry by any such receiver and the taking of possession of the PREMISES and/or use of personal property.

XXVI. BANKRUPTCY BY TENANT

Neither TENANT's interest in this Lease, nor any lesser interest of TENANT in this Lease, nor any estate of TENANT created by this Lease,

shall pass to any trustee, receiver, assignee for the benefit of creditors, TENANT as a Debtor-In-Possession or any other person or entity (hereinafter collectively referred to as "TRUSTEE") by operation of law under the laws of any state having jurisdiction of the person or property of TENANT under any bankruptcy proceeding unless CITY shall specifically consent to such transfer (hereinafter referred to as "TRANSFER") or assignment in writing. Acceptance by CITY of rent or any other payments due CITY from any such TRUSTEE shall not be deemed to be a waiver of the need to obtain CITY's consent to any such TRANSFER. CITY's consent to any such TRANSFER and CITY's right to terminate this Lease under any bankruptcy proceedings shall be governed by the following paragraphs of this Lease.

A. CITY's Consent to Transfer. CITY shall consent to TRANSFER only if the following terms and conditions have been satisfied:

1. TRUSTEE has, in writing, elected to assume and has agreed to abide by all of the terms and conditions, specifically including the use restriction of this Lease within sixty (60) days from the date of the order for relief;

2. TENANT or TRUSTEE has cured, or provided adequate assurance that any monetary default under this Lease will be cured within thirty (30) days of such TRANSFER;

3. TENANT or TRUSTEE has compensated CITY or has provided CITY adequate assurance that within ten (10) days of such TRANSFER, CITY will be compensated for any pecuniary loss incurred by CITY arising from the default of TENANT or TRUSTEE;

4. TENANT or TRUSTEE has provided CITY with adequate assurance of the future performance of each and every obligation of TENANT or TRUSTEE under this Lease;

5. TENANT or TRUSTEE has deposited with CITY, as security for timely payment of rent, an amount equal to three (3) months rent and any other monetary charges which may accrue or come due within the three (3) months following such TRANSFER. Should rent be based on percentage rent, the rent shall be estimated by using the monthly average total rent paid by TENANT over the preceding three (3) years;

6. The TRANSFER shall not breach any provision relating to the leased PREMISES in any other lease, mortgage, financing agreement or other agreement by which CITY is bound.

7. TENANT or TRUSTEE has provided CITY with sufficient information regarding TRUSTEE, or any known proposed subsequent assignee, to enable CITY to determine that the TRUSTEE, or any known proposed subsequent assignee, has the

skills, experience and financial standing to successfully provide the uses and services required by this Lease, which determination shall be within the discretion of the City Manager.

For the purposes of this subparagraph A, CITY and TENANT acknowledge that, in the context of the bankruptcy proceeding of TENANT, "adequate assurance" shall, as a minimum, mean:

1. TRUSTEE or TENANT has and shall continue to have sufficient unencumbered assets after the payment of all secured obligations and administrative expenses to assure CITY that TENANT or TRUSTEE will have sufficient funds to fulfill the obligations of TENANT or TRUSTEE under this Lease, and to keep the PREMISES stocked with sufficient merchandise and/or supplies and properly staffed to conduct a fully operational actively promoted business on the PREMISES; and

2. The Bankruptcy Court shall have entered an order segregating sufficient cash payable to CITY and/or TRUSTEE shall have granted a valid and perfected first lien and security interest and/or mortgage in property of TENANT or TRUSTEE, acceptable in value and kind to CITY securing TENANT's or TRUSTEE's obligation to cure the monetary defaults under this Lease within the time limits set forth above, or TRUSTEE shall have obtained guarantees satisfactory in form and substance to CITY from one or more persons or entities who satisfy CITY's standards of credit worthiness; and

3. CITY has obtained all consents or waivers from any third party required under any lease, mortgage, financing arrangement or other agreement by which CITY is bound to permit CITY to consent to such TRANSFERS.

B. Termination of Lease. This Lease shall, at CITY's option, terminate if any of the following conditions exist:

1. If TENANT or TRUSTEE fails to assume this Lease in accordance with the requirements of subparagraph A.1 above;

2. If a TRANSFER meeting each and every condition set forth in subparagraph A above has not been completed within 120 days of TENANT's becoming a Debtor under Chapter 7 of the Bankruptcy Code, or within one hundred twenty (120) days of the date of filing of a Petition for reorganization or adjustment of debts under Chapter 11 or 13 of the Bankruptcy Code; or

3. If this Lease is assumed by a Trustee appointed for TENANT or by TENANT As Debtor-In-Possession under the provision of subparagraph A above and TENANT is thereafter liquidated or

files a subsequent Petition for reorganization or adjustment of debts under Chapter 11 or 13 of the Bankruptcy Code.

CITY's election to terminate this Lease shall be delivered to TENANT in writing no later than thirty (30) days after the occurrence of any of the above events. CITY shall thereupon be immediately entitled to possession of the PREMISES without further obligation to TENANT or TRUSTEE, and this Lease shall be canceled, but CITY's right to be compensated for damages in such liquidation proceeding shall survive.

XXVII. RESERVATION OF NAVIGATIONAL EASEMENT

CITY hereby reserves for the use and benefits of the public, a right of navigation, flight and resulting noise for the passage of aircraft landing at, taking off or operating from the adjacent airport operated by the County of Santa Clara.

XXVIII. LIMITATION OF THE LEASEHOLD

This Lease and the rights and privileges granted TENANT in and to the PREMISES are subject to all covenants, conditions, restrictions, and physical or legal encumbrances, including those which are set out in The Golf Course Master Plan approved by City Council on May 15, 1995. Nothing contained in this Lease or in any document related hereto shall be construed to imply the conveyance to TENANT of rights in the PREMISES which exceed those owned by CITY.

XXIX. NOTICES

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder given by either party to the other, shall be in writing and shall be sufficiently given and served upon the other party if (1) personally served, (2) sent by United States Certified mail, postage, prepaid, (3) sent by express delivery service, or (4) in the case of a facsimile, if sent to the telephone number(s) set forth below during normal business hours of the receiving party and followed within 48 hours by delivery of hard copy of the material sent by facsimile, in accordance with (1), (2) or (3) above. Personal service shall include, without limitation, service by delivery service and service by facsimile transmission. Delivery of notices properly addressed shall be deemed complete when the notice is physically delivered to the Real Property Manager or the President of R&T Restaurant Corporation.

All notices pursuant to this Lease shall be addressed as set forth below or as either party may subsequently designate by written notice.

TO: CITY

Real Property Manager
City of Palo Alto
P.O. Box 10250
250 Hamilton Avenue
Palo Alto, CA 94303
FAX: (415) 323-1741

TO: TENANT

Tom Talai, President
R & T Restaurant Corp.
23950 Mission Blvd.
Hayward, CA 94544
Fax (510) 582-4921

with a copy to:

City Clerk, City of Palo Alto
P.O. Box 10250
250 Hamilton Avenue
Palo Alto, CA 94303
FAX: (415) 328-3631

and

City Attorney, City of Palo Alto
P.O. Box 10250
250 Hamilton Avenue
Palo Alto CA 94303
FAX: (415) 329-2646

XXX. ATTACHMENT TO LEASE

This Lease includes the following exhibits, which are attached hereto and by this reference incorporated into this Lease:

Exhibit A - General Conditions
Exhibit B - Description of Leased Premises
Exhibit C - Golf Course Restaurant Policy Statement
Exhibit D - Inventory of Golf Course Restaurant Furnishings
Exhibit E - Monthly Statement of Gross Receipts and Rent Due

The inclusion of clauses in Exhibit A (GENERAL CONDITIONS) is not in any way intended to lessen the importance of these clauses, but is merely done to enhance the organization of various clauses and this Lease.

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

CITY:

CITY OF PALO ALTO (LESSOR)

BY: _____
City Manager

APPROVED AS TO FORM

By: _____
City Attorney

TENANT:

R&T Restaurant Corporation

BY: Tom Tabai
943099856
Taxpayer Identification No.

APPROVED AS TO CONTENT

By: _____
Director, Community Services

By: _____
Director of Public Works

By: _____
Director of Parks & Golf Div.

By: _____
Director, Administrative Services, ACTING

By: _____
Manager, Real Property

EXHIBIT A

GENERAL CONDITIONS

1. DEFINITIONS

CITY shall mean the City Council of the City of Palo Alto, a municipal corporation.

The City Manager is hereby authorized to take any actions under this Lease on behalf of CITY except for termination of this Lease.

Clauses in this Lease refer to specific officers or employees of CITY. Should these positions be eliminated or the title changes, it is understood and agreed that such references shall be considered to be to the new title for renamed positions or to the replacement official designated with the responsibilities of any eliminated position. Any reference to a City officer or employee includes a reference to the officer's or employee's designated representative.

2. PARTNERSHIP/CORPORATE AUTHORITY & LIABILITY

If TENANT is a partnership, each general partner:

A. represents and warrants that the partnership is a duly qualified partnership authorized to do business in Santa Clara County; and

B. shall be jointly and severally liable for performance of the terms and provisions of this Lease.

If TENANT is a corporation, each individual signing this Lease on behalf of TENANT represents and warrants that;

A. he is duly authorized to do so in accordance with an adopted Resolution of TENANT's Board of Directors or in accordance with the Bylaws of the corporation; and

B. TENANT is a duly qualified corporation authorized to do business in State of California.

As used in this Lease, the term "TENANT" shall include TENANT, its agents, sublessees, concessionaires, or licensees, or any person acting under contract with TENANT; however, the definition of TENANT used herein, shall not be construed to authorize or permit any sublease or licenses not authorized or permitted elsewhere in this Lease.

3. TIME

Time is of the essence of this Lease.

4. SIGNS

TENANT agrees not to construct, maintain, or allow any sign to be placed upon the PREMISES except as may be approved by CITY. Unapproved signs, banners, etc., may be removed by CITY.

5. PERMITS AND LICENSES

TENANT shall be required to obtain any and all permits and/or licenses which may be required in connection with the operation of, and any approved TENANT construction upon, the PREMISES as set forth in this Lease.

6. MECHANICS LIENS

TENANT shall at all times indemnify and save CITY harmless from all claims for labor or materials supplied in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the PREMISES, and from the cost of defending against such claims, including attorney fees. TENANT shall provide CITY with at least ten (10) days written notice prior to commencement of any work which could give rise to a mechanics lien or stop notice. CITY reserves the right to enter upon PREMISES for the purposes of posting Notices of Non-Responsibility.

In the event a lien is imposed upon the PREMISES as a result of such construction, repair, alteration, or installation, TENANT shall either:

A. Record a valid Release of Lien; or

B. Deposit sufficient cash with CITY to cover the amount of the claim on the lien in question and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to lienholder claim; or

C. Procure and record a bond in accordance with Section 3143 of the Civil Code, which releases the PREMISES from the claim of the lien from any action brought to foreclose the lien.

Should TENANT fail to accomplish one of the three optional actions within fifteen (15) days after the filing of such a lien, the Lease shall be in default and may be subject to immediate termination.

7. LEASE ORGANIZATION AND RULES OF CONSTRUCTION

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.

The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this agreement, refer to this agreement.

All the terms and provisions hereof shall be construed to effectuate the purposes set forth herein, and to sustain the validity hereof.

The titles and headings of the sections of this agreement have been inserted for convenience of reference only, are not to be considered a part hereof and shall not in any way modify or restrict any of the terms of provisions hereof or be considered or given any effect in construing this agreement or any provision hereof in ascertaining intent, if any question of intent shall arise.

8. AMENDMENTS

This Lease sets forth all of the agreements and understandings of the parties and any modifications must be written and properly executed by both parties.

9. UNLAWFUL USE

TENANT agrees that no improvements shall be erected, placed upon, operated, nor maintained within the PREMISES, nor any business conducted or carried on therein or therefrom, in violation of the terms of this Lease, or of any regulation, order of law, statute, or ordinance of a governmental agency having jurisdiction over TENANT's use of the PREMISES.

10. NONDISCRIMINATION

TENANT and its employees shall not discriminate against any person because of race, color, religion, ancestry, age, sex, national origin, disability or sexual preference. TENANT shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, national origin, disability or sexual preference. TENANT covenants to meet all requirements of the Palo Alto Municipal Code pertaining to nondiscrimination in employment. If TENANT is found in violation of the nondiscrimination provision of the State of California Fair Employment Practices Act or similar provisions of federal law or executive order in the conduct of its activities under this Lease by the State of California Fair Employment Practices Commission or the

equivalent federal agency or officer, it shall thereby be found in default under this Lease, and such default shall constitute a material breach of this Lease. CITY shall then have the power to cancel or suspend this Lease in whole or in part.

11. INSPECTION

CITY's employees and agents shall have the right at all reasonable times to inspect the PREMISES to determine if the provisions of this Lease are being complied with.

12. HOLD HARMLESS

TENANT hereby waives all claims, liability and recourse against CITY including the right of contribution for loss or damage of or to persons or property arising from, growing out of or in any way connected with or related to this Lease. TENANT hereby agrees to indemnify, hold harmless and defend CITY, its officers, agents, and employees against any and all claims, liability, demands, damages, cost, expenses or attorneys' fees arising out of the operation or maintenance of the property described herein or TENANT's performance or non performance of the terms of this Lease. In the event CITY is named as co-defendant, TENANT shall notify CITY of such fact and shall represent CITY in such legal action unless CITY undertakes to represent itself as co-defendant in such legal action, in which event TENANT shall pay to CITY its litigation costs, expenses and attorneys' fees.

13. TAXES AND ASSESSMENTS

This Lease may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to the possessory interest tax) which become due and payable upon the PREMISES or upon fixtures, equipment, or other property installed or constructed thereon, shall be the full responsibility of TENANT and TENANT shall pay the taxes and assessments prior to delinquency.

14. SUCCESSORS IN INTEREST

Unless otherwise provided in this Lease, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

15. CIRCUMSTANCES WHICH EXCUSE PERFORMANCE (FORCE MAJEURE)

If either party hereto shall be delayed or prevented from the

performance of any act required hereunder by reason of acts of God, restrictive governmental laws or regulations, or other cause without fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

16. PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this Lease is determined to be invalid, void, or unenforceable, by a court of competent jurisdiction, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

17. WAIVER OF RIGHTS

The failure of CITY or TENANT to insist upon strict performance of any of the terms, covenants, or conditions of this Lease shall not be deemed a waiver of any right or remedy that CITY or TENANT may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of the Lease thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the Lease.

18. COSTS OF SUSTAINING AN ACTION FOR BREACH OR DEFAULT

In the event either CITY or TENANT commences legal action against the other claiming a breach or default of this Lease, the prevailing party in such litigation shall be entitled to recover from the other cost of sustaining such action, including reasonable attorney fees, as may be fixed by the Court.

19. RESERVATIONS TO CITY

The PREMISES are accepted "as is" and "where is" by TENANT subject to any and all existing easements, and encumbrances. CITY reserves the right to install, lay, construct, maintain, repair, and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil, and gas pipelines; telephone and telegraph power lines; and the applications and appurtenances necessary or convenient for connection therewith, in, over, upon, through, across and along the PREMISES or any part thereof, and to enter the PREMISES for any and all such purposes. CITY also reserves the right to grant franchises, easements, rights of way, and permits, in, over, upon, through, across, and along any and all portions of the PREMISES. No right reserved by CITY in this clause shall be so exercised as to interfere unreasonably with TENANT's operation hereunder.

CITY agrees that rights granted to third parties by reason of this clause shall contain provisions that the surface of the land shall be restored as nearly as practicable to the original condition upon the completion of any construction.

20. HOLDING OVER

In the event TENANT shall continue in possession of the PREMISES after the term of the Lease, such possession shall not be considered a renewal of this Lease but a tenancy from month to month and shall be governed by the conditions, and covenants contained in this Lease.

21. CONDITION OF PREMISES UPON TERMINATION

Upon termination of this Lease, except as otherwise agreed to herein, TENANT shall redeliver possession of the PREMISES to CITY in substantially the same condition that existed immediately prior to TENANT's occupancy, reasonable wear and tear, flood, earthquake, war, and any act of war excepted.

22. DISPOSITION OF ABANDONED PERSONAL PROPERTY

If TENANT abandons the PREMISES or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to TENANT and left on the PREMISES forty-five (45) days after such abandonment or dispossession shall be deemed to have been transferred to CITY. CITY shall have the right to remove and to dispose of such property without liability therefor to TENANT or to any person claiming under TENANT, and shall have no need to account therefor.

23. QUITCLAIM OF TENANT's INTEREST UPON TERMINATION

Upon termination of this Lease for any reason, including but not limited to termination because of default by TENANT, TENANT shall, at CITY's request execute, acknowledge and deliver to CITY within five (5) days after receipt of written demand thereof, a good and sufficient deed whereby all rights, title, and interest of TENANT in the PREMISES, is quitclaimed to CITY. Should TENANT fail or refuse to deliver the required deed to CITY, CITY may prepare and record a notice reciting the failure of TENANT to execute, acknowledge and deliver such deed and the notice shall be conclusive evidence of the termination of this Lease, and of all rights of TENANT or those claiming under TENANT in and to the PREMISES.

24. CITY's RIGHT TO RE-ENTER

TENANT agrees to yield and peaceably deliver possession of the PREMISES to CITY on the date of termination of this Lease, whatsoever the reason for such termination.

Upon giving written notice of termination to TENANT, CITY shall have

the right to re-enter and take possession of the PREMISES on the date such termination becomes effective without further notice of any kind and without institution of regular legal proceedings. Termination of the Lease and re-entry of the PREMISES by CITY shall in no way alter or diminish any obligation of TENANT under the Lease terms and shall constitute an acceptance or surrender.

TENANT waives any and all rights of redemption under any existing or future law or statute in the event of eviction from or dispossession of the PREMISES for any reason or in the event CITY re-enters and lawfully re-takes possession of the PREMISES.

25. CONFLICT OF INTEREST

TENANT warrants and covenants that no official or employee of CITY nor any business entity in which any official or employee of CITY is interested: (1) has been employed or retained to solicit or aid in the procuring of this agreement; or (2) will be employed in the performance of this agreement without the divulgence of such fact to CITY. In the event that CITY determines that the employment of any such official, employee or business entity is not compatible with such official's or employee's duties as an official or employee of CITY, TENANT upon request of CITY shall immediately terminate such employment. Violation of this provision constitutes a serious breach of this Lease and CITY may terminate this Lease as a result of such violation.

26. EMINENT DOMAIN

In the event the whole or any part of the PREMISES are condemned by a public entity in the lawful exercise of its power of eminent domain, this Lease shall cease as to the part condemned. The date of such termination shall be the effective date of possession of the whole or part of the PREMISES by the condemning public entity.

If only a part is condemned and the condemnation of that part does not substantially impair the capacity of the remainder to be used for the purposes required by this Lease, TENANT shall continue to be bound by the terms, covenants and conditions of this Lease. However, the then current minimum annual rent shall be reduced in proportion to the relationship that the compensation paid by the condemning public entity for the portion condemned bears to the value of the entire PREMISES as of the date of possession of the part condemned. If the condemnation of a part of the PREMISES substantially impairs the capacity of the remainder to be used for the purposes required by this Lease, TENANT may:

A. Terminate this Lease and thereby be absolved of obligations under this Lease which have not accrued as of the date of possession by the condemning public entity; or

B. Continue to occupy the remaining PREMISES and thereby continue to be bound by the terms, covenants and conditions of this Lease. If TENANT elects to continue in possession of the remainder of the PREMISES, the then current annual minimum rental shall be reduced in proportion to the relationship that the compensation paid by the condemning public entity for the part condemned bears to the value of the entire leased PREMISES as of the date of possession by the condemning public entity.

TENANT shall provide CITY with written notice advising CITY of TENANT's choice within thirty (30) days of possession of the part condemned by the condemning public entity.

CITY shall be entitled to and shall receive all compensation related to the condemnation of all or part of the PREMISES by the exercise of eminent domain except that TENANT shall be entitled to that portion of the compensation which represents the value of the TENANT-constructed improvements for the remainder of the Lease term. The amount to which TENANT shall be entitled shall not exceed the actual cost of improvements constructed by TENANT reduced in proportion to the relationship of the remaining Lease term to the original Lease term, using a straight line approach.

27. HAZARDOUS SUBSTANCES

A. Definition. As used herein, the term "Hazardous Materials" means any substance or material which has been determined by any state, federal or local governmental authority to be capable of posing risk of injury to health, safety, and property, including petroleum and petroleum products and all of those materials and substances designated as hazardous or toxic by the U.S. Environmental Protection Agency, the California Water Quality Control Board, the U.S. Department of Labor, the California Department of Industrial Relations, the California Department of Health Services, the California Health and Welfare Agency in connection with the Safe Water and Toxic Enforcement Act of 1986, the U.S. Department of Transportation, the U.S. Department of Agriculture, the U.S. Consumer Product Safety Commission, the U.S. Department of Health and Human Services, the U.S. Food and Drug Administration or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment. Without limiting the generality of the foregoing, the term "Hazardous Materials" shall include all of those materials and substances defined as "toxic materials" in Sections 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 20, as the same may be amended from time to time.

B. TENANT's Use of PREMISES. During the term of this Lease, TENANT shall abide and be bound by all of the following requirements:

I. TENANT shall comply with all laws now or hereafter in effect relating to the use of Hazardous Materials on, under or about the PREMISES, and TENANT shall not contaminate the PREMISES, or its subsurfaces, with any Hazardous Materials.

ii. TENANT shall restrict its use of Hazardous Materials at the PREMISES to those kinds of materials that are normally used in constructing the Project. Disposal of any Hazardous Materials at the PREMISES are strictly prohibited. Storage of such permissible Hazardous Materials is allowed only in accordance with all applicable laws now or hereafter in effect. All safety and monitoring features of any storage facilities shall be approved by CITY's Fire Chief in accordance with all laws.

iii. TENANT shall be solely and fully responsible for the reporting of all Hazardous Materials releases to the appropriate public agencies, when such releases are caused by or result from TENANT's activities on the PREMISES. TENANT shall immediately inform CITY of any release of Hazardous Materials, whether or not the release is in quantities that would otherwise be reportable to a public agency.

iv. TENANT shall be solely and fully responsible and liable for such releases at the PREMISES, or into CITY's sewage or storm drainage systems. TENANT shall take all necessary precautions to prevent any of its Hazardous Materials from entering into any storm or sewage drain system or from being released on the PREMISES. TENANT shall remove releases of its Hazardous Materials in accordance with all laws. In addition to all other rights and remedies of CITY hereunder, if the release of Hazardous Materials caused by TENANT is not removed by TENANT within ninety (90) days after discovery by TENANT, CITY or any other third party, CITY may pay to have the same removed and TENANT shall reimburse CITY for such costs within five (5) days of CITY's demand for payment.

v. TENANT shall protect, defend, indemnify and hold harmless CITY from and against all loss, damage, or liability (including all foreseeable and unforeseeable consequential damages) and expenses (including, without limitation, the cost of any cleanup and remediation of Hazardous Materials) which CITY may sustain as a result of the presence or cleanup of Hazardous Materials on the PREMISES.

vi. TENANT's obligation under this Clause shall survive the expiration or earlier termination of this Lease.

28. ALL COVENANTS ARE CONDITIONS

All provisions of the Lease are expressly made conditions.

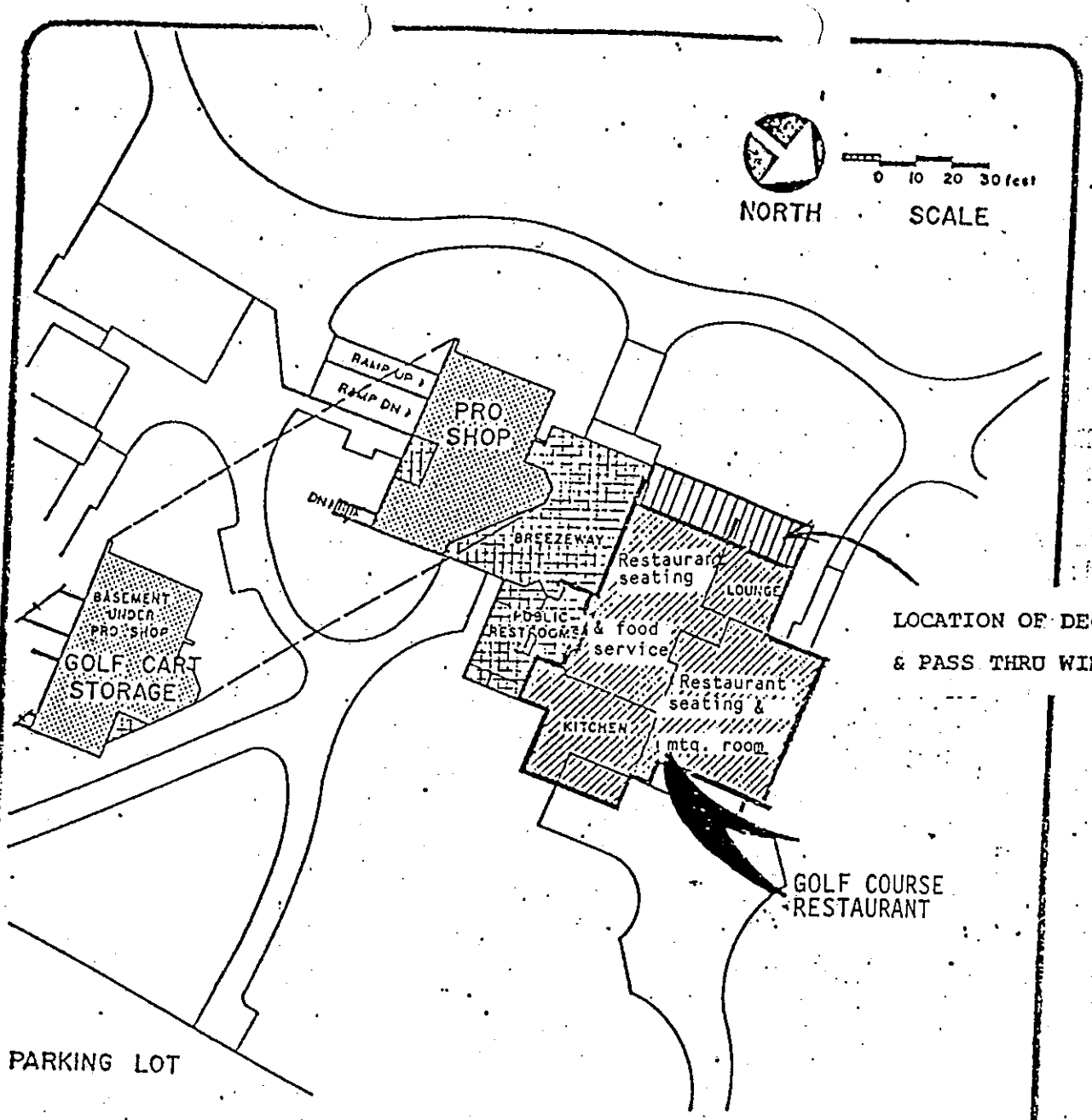
29. PARTIES OF INTEREST

Nothing in this agreement, expressed or implied, is intended to, or shall be construed to, confer upon or to give to any person or party other than CITY and TENANT the covenants, condition or stipulations hereof. All covenants, stipulations, promises and agreements in this Lease shall be for the sole and exclusive benefit of CITY and TENANT.

Project: Golf Course Restaurant
Project #: CL 27/25-95/15

LEASE DESCRIPTION

All the Demised Premises shown cross-hatched on a plot plan labeled "Exhibit B (2 of 2)" attached hereto and made a part hereof, being the restaurant, kitchen, lounge and meeting room portions of the Palo Alto Municipal Golf Course Clubhouse facility located at 1875 Embarcadero Road, Palo Alto, California, also including the fixtures and equipment listed on "Exhibit C" attached hereto and made apart hereof.



LEGEND

area		net area sq. ft.
	PRO SHOP & GOLF CART STORAGE	3,165
	CITY MAINTENANCE Including BREEZEWAY	2,185
	RESTAURANT/LOUNGE/MEETING ROOMS	4,480
	TOTAL	9,830

PALO ALTO MUNICIPAL GOLF COURSE CLUBHOUSE COMPLEX

1875 EMBARCADERO ROAD

EXHIBIT B (2 of 2)

GOLF CLUBHOUSE
COFFEE SHOP FURNITURE
( ) Denotes original 1980 inventory

MEETING ROOMS:

	QUANTITY	DESCRIPTION
	12 each (14)	36" square tables, w/oak tops and metal pedestal bases
	7 each (10)	24" x 48" tables w/oak plank table tops and metal bases
	2 each (18)	chairs, stacking, armless, natural oak and leather
	5 each (5)	window blinds
1984	96 each (73)	solid oak arm chairs (Walsh & Simins #0529-2)

SNACK LOUNGE:

10 each (10)	36" round tables with oak plant tops and metal pedestal bases
15 each (20)	chairs, oak with arms
24 each (20)	chairs, oak without arms

COCKTAIL LOUNGE:

3 each (6)	18" round tables, with oak plank tops and metal pedestal bases
13 each (16)	chairs, leather/chrome
8 each (8)	bar stools, leather/chrome, 30" high with foot rests

SNACK BAR:

? each	24" round tables, oak plank and metal pedestal bases
1 each (1)	36" table, oak plank and metal pedestal base
8 each (8)	chairs, oak, without arms
9 each (9)	chairs, oak, with arms
1 each (1)	12-hour electric wall clock
6 each (6)	lockers,double tier with locks

Hoflist

Revised: October 3, 1995

FOOD SERVICE EQUIPMENT:

	7 each (7)	cantilever stool base
	1 each (1)	undercounter water station - Delfield #243
	1 each (1)	coffee shop and pick-up counter assembly
	1 each (1)	drought beer station - Perlick C5063 schpl w/compressor
	1 each (1)	display case - Delfield V15248-28 (refrigerated)
	1 each (1)	pass-through shelf w/food warmer - Antco GRH24
	1 each (1)	utility unit - Delfield V16354-28 (w/sliding doors)
	1 each (1)	ice cream cabinet - Delfield V13556-28 V12 (w/sink & dipper well)
	1 each (1)	display case (wall mounted) - Delfield V11260 (non-refrigerated)
	2 each (1)	paper cup dispenser - Shellymatic CD
	1 each (1)	cabinet - Delfield custom
	1 each (1)	utility cabinet - Delfield V16136 (w/doors)
	1 each (1)	freezer - Traulsen RLT-2-32 WUT
	1 each (1)	microwave oven - Litton 20/20 B
	1 each (1)	cold food table - Delfield V18466-28
	1 each (1)	sink - Delfield V22014-28
	1 each (1)	hot food table - Delfield V14148-28
	1 each (1)	shelf
1995	1 each (1)	spreader plate
	1 each (1)	griddle, gas-fired (Montague URLC 36R charbroiler)
	2 each (1)	double deck high shelf
	1 each (1)	refrigerator - Traulsen RUL-3-32WSC (w/drawers)
1995	1 each (1)	cook top w/oven - Montague 136-5A
	1 each (1)	hood - Aquamatic EX-MC
1995	1 each (1)	walk-in refrigerator - Lech
	1 each (1)	shelving - Metro
	1 each (1)	work table - Computer Sinls WT8554030
1995	1 each (1)	grill - Montague 4' saytor
1995	1 each (1)	utility ovens - Montague 236 doublestock
	1 each (1)	hood - Aquamatic EX-MC
	1 each (1)	scrapping table assembly - fabricated
	1 each (1)	garbage disposer - Bus Boy 1500 BB450 (1 ½ hp)
	1 each (1)	dishwasher - Steno SC 20-1W/K 55 KIT
	1 each (1)	clean dish table assembly - fabricated
	1 each (1)	work table - Computer Stain WT857230
1995	1 each (1)	freezer - Traulsen RLT3-32 WUT
	1 each (1)	pre-rinse unit (wall-mounted) T&S B133 w/B109 br'kt
	1 each (1)	toaster - Toastmaster #103
	1 each (1)	rack shelf - fabricated
	1 each (1)	shelving
	1 each (1)	draft beer tap and drainer assembly - Perlick

1 each (1)	2-sect. backbar refrig. s/c w/ drought beer system - Perlick C5063E
1 each (1)	glass chiller - Perlick 832455 Hoflist.doc

FOOD SERVICE EQUIPMENT (CONT.):

1 each (1)	back bar assembly
1 each (1)	bar top and die assembly
1 each (1)	1'2" wide bar blender station - Perlick TS-BD
1 each (1)	2'0" lg. ice chest w/cond. shelf unit - Perlick TS24CH
1 each (1)	sink and drainboard assembly w/speedrail, 5' long - Perlick T553C
1 each (1)	shelving
1 each (1)	fire system - Ansul
1 each (1)	refrigeration system - Bally
1 each (1)	shelf - Perlick 705310
1 each (1)	display case - Delfield V15248 (refrigerated)

WE WILL ALSO ADD WINDOW BLINDS & STEAM TABLE
~~DISPOSAL DISHWASHER~~
MENU MARQUE & ICE MACHINE

Furniture

86 ea.	Large chairs with arms, natural oak
20 ea.	Chairs without arms, natural oak
19 ea.	Small chairs with arms, natural oak
11 ea.	36 inch round tables, oak plank top and metal pedestal base
12 ea.	36 inch square tables, oak plant top and metal pedestal base
9 ea.	24 x 48 rectangular tables, " "
2 ea.	18 inch round tables, " "
13 ea.	Lounge chairs
6 ea.	Bar stools, 30" high, leather chrome with foot rests
5 ea.	Window blinds (north windows) - OWNERS
3 ea.	High bar tables "
12 ea.	High bar chairs "

Notes:

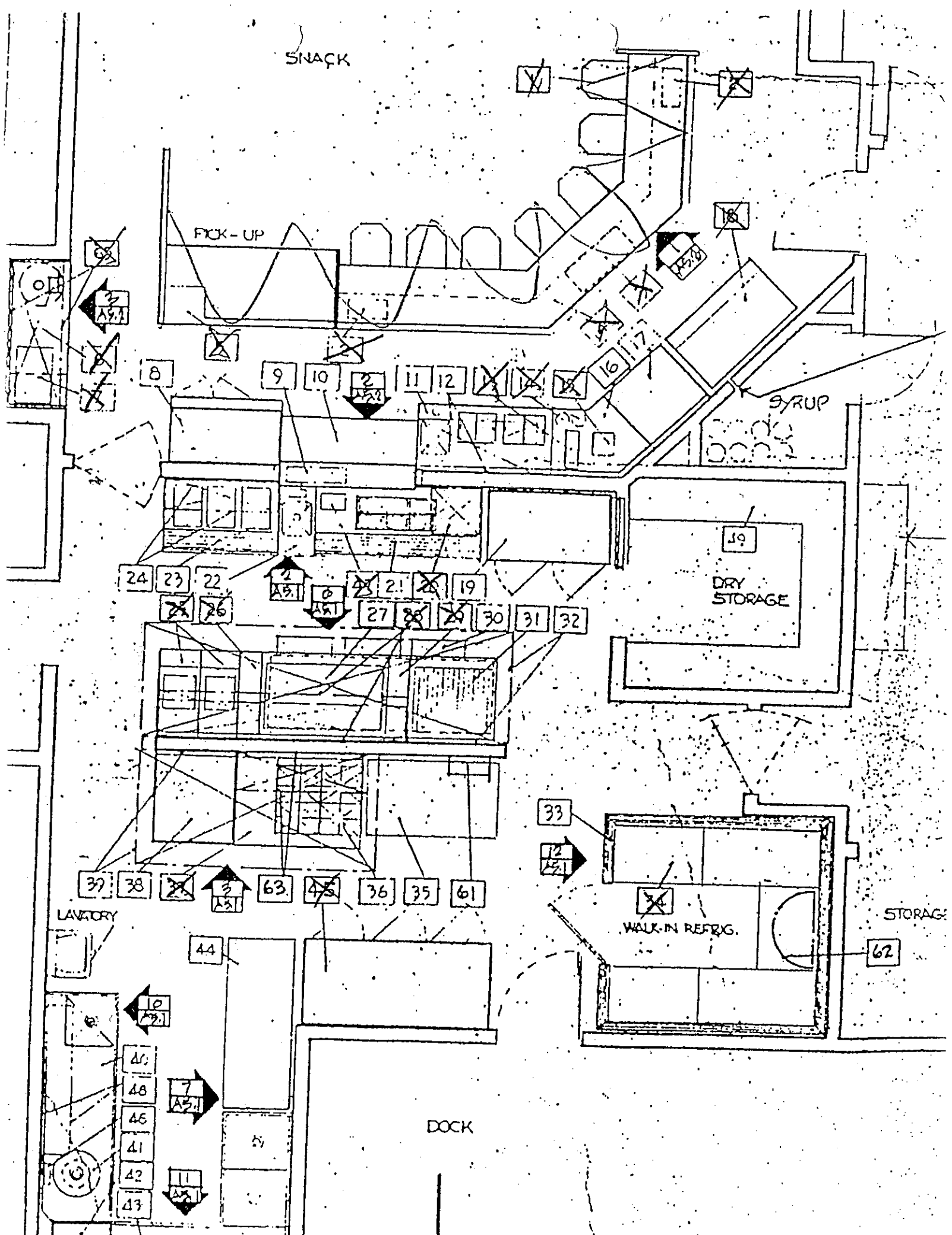
1. Owners refers to current tenant
2. Reference numbers relate to building specifications inventory sheet as shown on as built plans.
3. Surplus - equipment reached end of useful life and or worn out and not replaced.

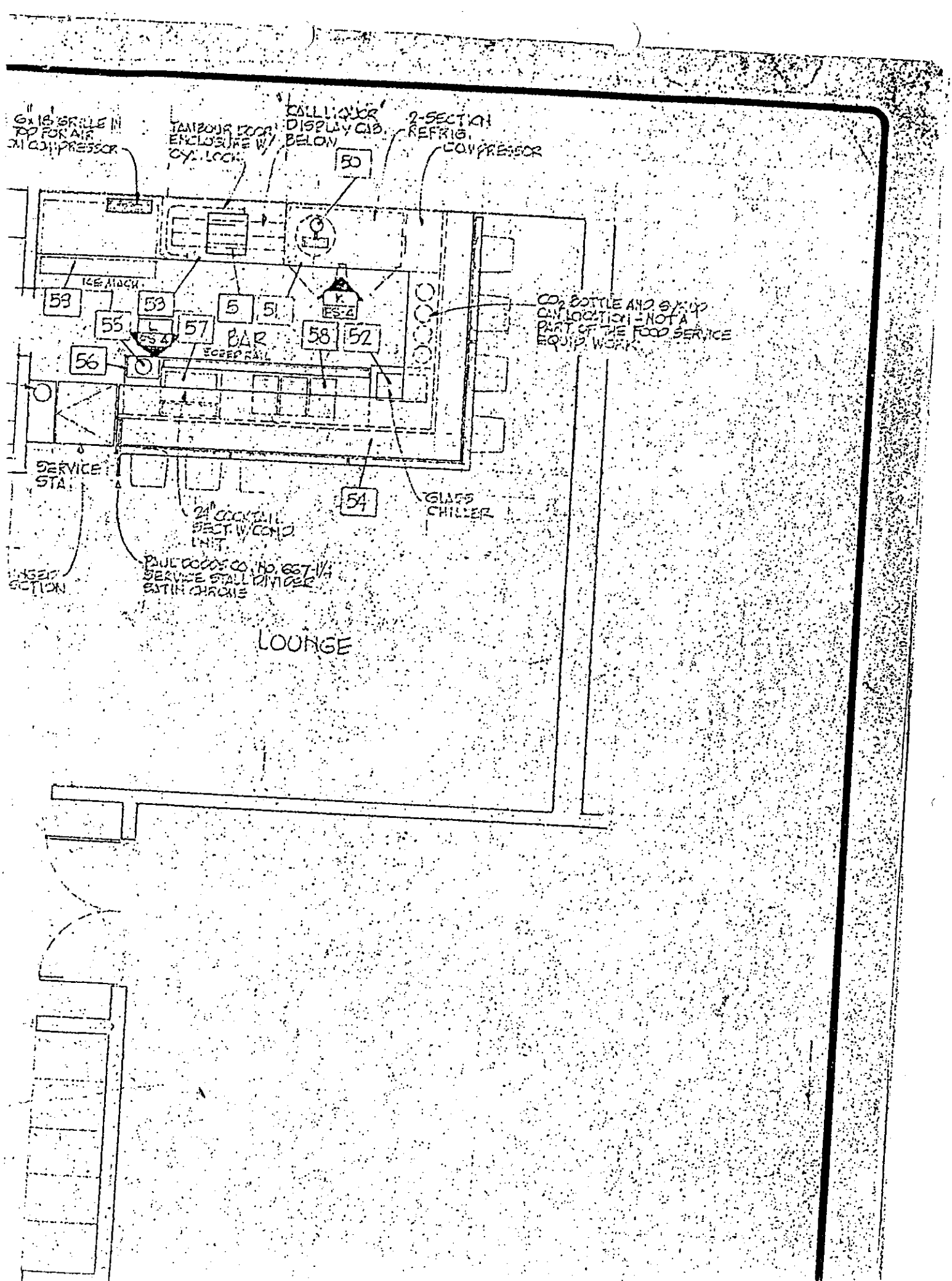
PALO ALTO GOLF COURSE - SCHEDULE OF FOOD AND BEVERAGE EQUIPMENT

Quantity	ITEM #	DESCRIPTION	BRAND/MODEL	REMARKS
1	8	Display Case	Delfield/V15248-28 Refrigerated	
1	9	Pass-through shelf ~~w/food warmer~~	Fabricated	WARMER SURPLUSED
1	10	Utility Unit	Delfield/V16354-28 W/sliding doors	
1	11	Ice Cream Cabinet	Delfield V13556-28 v12 w/sink & dipper well	
1	12	Display case (Wall mounted-Pie case)	Delfield/V11148 Non-Refrigerated	
1	16	Cabinet	Delfield/Customer	
1	17	Utility Cabinet	Delfield/V-16136 w/doors	
1	19	Freezer	Traulsen/RLT-2-32WUT	Self Contained refer unit
1	21	Cold Food Table	Delfield/V18468-28	
1	22	Sink	Delfield/V22014-28	
1	23	Hot Food Table	Delfield/V14118-28	
1	24	Shelf	Fabricated	See Dwgs
1	27	Griddle-Fry Top, Gas fiered	Montague C36-8 & C36-4/4 open burners w/4" legs	NEW/1995
1	30	Refrigerator	Traulsen Rul-3-32WSC w/drawers	
1	31	Char Broiler, Gas fired	Montague UFLC 36	NEW/1995
1	32	Hood	Aquamatic EX-MC	
1	33	Walk In Refrigerator	XXXBally/LEER	NEW/1995
1	35	Work Table	Computer/WT-855430	
1	36	Range, Gas fired	Montague Cook top with oven #C136-5A	NEW/1995
1	38	Utility Oven - Gas Fired	Montague /236 Double Stack	NEW/1995
1	39	Hood	Aquamatic/Ex-Mc	
1	40	Scrapping Table Assembly	Fabricated	See Dwgs

PALO ALTO GOLF COURSE - SCHEDULE OF FOOD AND BEVERAGE EQUIPMENT

Quantity	ITEM #	DESCRIPTION	BRAND/MODEL	REMARKS
1	41	Garbage Disposer	Bus Boy/1500 BB450 1 ½ H.P. - 18' cone	
1	42	Dishwasher	Stero/SC-20-1 W/K-55 Kit	
1	43	Clean Dish Table Assembly	Fabricated	See Dwgs
1	44	Work Table	Computer Stain/ WT 857230	"
1	46	Pre-Rinse Unit (Wall Mounted)	T & S/ B-133 W/B-109 BR KT	
1	48	Rack Shelf	Fabricated	See Dwgs
1	49	Shelving (office)		
1	50	Draft Beer Tap and Drainer Assembly	Perlick	
1	51	2-Sect. Backbar Refrig./w/Draught Beer System	Perlick C5063ESCHP	
1	52	Glass Chiller	Perlick #8324SS	
1	53	Back Bar Assembly		
1	54	Bar Top and Die Assembly		
1	55	Bar Blender		OWNERS
1	56	1'2" wide Bar Blender Station	Perlick TSBD	
1	57	2' large ice chest w/cond. Shelf Unit	Perlick TS24CH	
1	58	Sink and Drainboard Ass'y w/speed rail, 5' long	Perlick TS53C	
1	59	Ice Machine Cuber		OWNERS
1	61	Dry Chemical Fire Protection System	Ansul	
1	62	Refrigeration System #1	Bally	
1	63	Double Deck High Shelf	Vulcan 7884 DD	
1	64	Shelf	Perlick 7053-10	


SNACK
PICK-UP
SYRUP
DRY STORAGE
WALK-IN REFRIG.
STORAGE
LAVATORY
DOCK


GRILLE IN TOP FOR AIR TO COMPRESSOR
TAMBOUR DOOR ENCLOSURE W/ CYL. LOCK
CALL LIQUOR DISPLAY CAB. BELOW
2-SECTION REFRIG. COMPRESSOR
50
ICE BLOCK
53
53
5
51
K ES-4
55
L ES-4
57
BAR
58
52
56
SCREEN RAIL
CO2 BOTTLE AND SYRUP CAN LOCATION - NOT A PART OF THE FOOD SERVICE EQUIP. WORK
SERVICE STA.
54
GLASS CHILLER
24" COCKTAIL BEST. W/ COND. UNIT
PAUL DOOGS CO. NO. 667-11/4 SERVICE STALL DIVIDER SATIN CHROME
LOUNGE

GOLF COURSE RESTAURANT POLICY STATEMENT

It is the policy of the City of Palo Alto to provide a golf course and related facilities of the highest quality for the use of its golfing community.

Inherent in this policy is the concept that the City collect revenue from golf course users sufficient to pay costs of administration, management, maintenance, and future capital improvement for operation of the golf facilities.

The restaurant and meeting rooms have been constructed to primarily serve golfing interests as an integral adjunct of golf play.

It is the function and purpose of the concessionaire - lessee to provide food and related services primarily for the benefit of golf course users, to accommodate and support the overall enjoyment of golf play.

It is essential that the concessionaire understand the underlying attraction of the game of golf to its players and has an inner desire to be involved in the golf community.

It is desired that the concessionaire's business will be profitable and that profit will be directly proportionate to customer satisfaction.

Golfer's food purchasing habits and needs are extremely varied. However, to have a successful restaurant operation, these needs must be met. The following examples reflect the type of food purchases or services that concessionaire must be able to provide:

1. Hot or cold drink.
2. A quick snack between nines.
3. A more leisurely snack or meal following play.
4. A buffet following a tournament.
5. An evening banquet or dinner.
6. Light food service for periodic meetings of organized golf groups.

Advantages and opportunities available to the concessionaire:

Approximately 80,000 - 100,000 rounds are played annually which equates to approximately 500,000 people hours attracted to the golf course. The concessionaire has a food-bar service monopoly at this location.

Additionally, the golf pro will be scheduling special events (tournaments). The men's club, several women's clubs, the Seniors, and others not only have periodic tournaments, but also hold prescheduled meetings. Coordination with these groups on the part of the Concessionaire can increase business volume not previously obtained.

Meeting Room Use: The Concessionaire shall retain the right to schedule luncheon activities (banquets or overflow lunch) in the large meeting room. The following priorities shall apply to the small meeting room:

1. Organized golf related activities involving service of a meal (breakfast, lunch or dinner)

2. Organized golf group without service of a meal

3. Non-golf related banquet involving service of a meal

4. Scheduled non-golf related meeting without service of a meal

5. Open access to room for non-organized golf-related activities (scoring etc.)

MONTHLY STATEMENT OF GROSS RECEIPTS AND RENT DUE

TENANT NAME:_____ DATE:_____

Gross Receipts This Month	**Applicable Percentage Rent**		**Indicated Percentage Rent Due City This Month**
Bar $_____			
Food $_____			
Total $_____ X	6%*	=	(1) $_____
Indicated Minimum Rent Due $4,000/month*			(2) $_____
Indicated Rent Due City [Greater of (1) or (2) above]			(3) $_____
Monthly Utility Reimbursement Due City $1,500/month			(4) $_____
TOTAL MONTHLY PAYMENT TO CITY [(3) + (4)]			(5) $_____

*Adjusted in accordance with Clause VI of the Lease
**Adjusted in accordance with rates charged by Utilities (City of Palo Alto Utilities Department)

EXHIBIT E

S:\ASD\REAL\GOLFEXHE

Attachment I

Authorize the City Manager to enter into an agreement to purchase the FF&E and operating liquor license from Hee King Bistro in an amount not to exceed $48,311 and absolve Hee King Bistro of past due lease and utilities payments in an amount not to exceed $45,633. (Attachments H and I).

This attachment is not ready and will be submitted in the late Council packet going out on April 12, 2018.

Baylands Golf Links Construction Summary

Pre-project golf course condition



The reconfiguration of the Palo Alto Municipal Golf Course began in August 2013 with the import of nearly 366,000 cubic yards of soil. The material import was completed within a two year period. The soil was stockpiled and used to shape the fairways creating new mounds, greens, tees, natural areas and hazards associated with the 18-hole golf course within a 156 acre site.



The first phase of construction which included clearing, grubbing, and demolition of particular features, along with the protection of utilities, wetlands, and trees began in August 2016. The contractor, Wadsworth Golf Construction Company, worked with the golf course architect, Forrest Richardson and Associates, to implement the design per the approved plans and make field adjustments as needed.

Wadsworth was instructed by ICF, an environmental consultant, regarding the wetlands. The photo below shows the yellow flag stakes where the protection fence was installed.



After the first phase was completed, the mass excavation and rough grading began, as shown on the photo below (taken in September 2016). Note the driving range in the background, and the orange tree protection fences around the existing trees. What appears as construction roads in the same photo would later become cart paths.



Between September 2016 and December 2016, the mass excavation was complete and each of the 18 holes was beginning to be shaped. The contractors were installing and connecting new drainage systems to the existing infrastructure and started receiving and assembling the irrigation system.







As anticipated, the grading encountered the groundwater table during the winter months, but the contractor continued to work where possible between storms by installing drain lines to dry up the soil.





Areas outside of the project site or restricted due to environmental concerns were hydroseeded and protected for the rainy season.

In addition to the on-site coordination, the golf course project team also became very involved with the off-site work that was occuring as close as 15-feet away from the project boundary. The photo below shows the mobilization of the PG&E contractors. The black fence delineates the golf course boundary. PG&E started the 1st phase of their project in November 2016 and installed over 2,000 linear feet of welded steel pipe along the project boundary. Their work was necessary as a result of the San Francisquito Creek Joint Powers Authority creek widening project that was occuring just upstream of the golf course.





While the PG&E utility work was underway, Wadsworth continued to shape the holes, place top soil, install irrigation and drainage, and add planting plugs (landscaping) within the native and wetland areas. There were significant rain events in the months of January and February 2017, but the work was delayed by only a week.



In the winter months, discussions were had about the conditions of the paspalum sod and sprigs that would eventually be brought in from a field grow site near Fresno. The first rolls of sod were installed at the end of April near the putting green. Ultimately, 10 acres of sod would be placed by 4th of July weekend. Sprigs were spread around the course and used to grow turf adjacent to the newly poured 4-foot wide concrete cart paths.





As the project was progressing without any major issues or impacts to schedule or budget, the project team, with Council's approval, amended the project scope to include the removal of the existing dilapidated on-course restroom and install a new pre-fabricated restroom in a more convenient and accessible location. Based on this direction, a new building permit was required, and the new water and sewer pump lines needed to be installed. The new two stall, gender neutral restroom facility with an outdoor fountain was delivered on October 24, 2017. Several logistical issues had to be addressed in anticipation of this work. Since the majority of the golf course work was completed by this time, driving the lowboy truck with a 4 ton facility through the course was not an option. Instead, the facility had to be delivered and set by a crane from the adjacent levee area. To avoid conflicts, the levee contractor agreed not to haul soil that day, PG&E agreed to work around the golf course restroom delivery, and they inspected the weight of the facility as it crossed over their gas line. Due to the proximity of the crane operation to the nearby Palo Alto Airport, a permit from the Federal Aviation Administration (FAA) was required to allow the crane to extend 80-feet above existing ground to place the restroom.







Note that the PG&E project team was back for the 2nd (and final) phase of the work to drill approximately 200 linear feet of pipe below the San Francisquito Creek. Their blue dewatering tanks, which were necessary to complete the work, are shown in the background.

Overall the project ran relatively smoothly, and any issues encountered in the field were addressed quickly by the contractor. City staff were kept informed as needed. This included the Airport staff due to crane delivery, Facilities staff due to restroom maintenance, Planning staff due to Architectural Review Board requirements, Building and Inspection staff due to permits, Real Estate staff, and Utilities staff. The project was deemed substantially complete ahead of schedule on September 1, almost 2 weeks before the original contract completion date. The items that were delayed as a result of additional work and conflicts with the adjacent utility projects were done by December 11, 2017. The items delayed by PG&E's work were the area near hole 13 and the landscape area adjacent to the restroom. Below is a photo taken on December 6 when the last roll of sod was installed.



Pre-Construction:



Post Construction:





Golf Convergence

April 2, 2018

City Council
City of Palo Alto
250 Hamilton Ave
Palo Alto, CA 94301

Re Baylands Golf Links Financial Projections

Dear Ladies and Gentlemen:

Scope

We have been requested to render an opinion as to the probability the five-year financial projections prepared by the staff in March 2018 are reasonable and likely to be achieved for the year 2019.

Conclusion

If one assumes that rational and sound management policies and procedures will be implemented creating value for golfers and the foundation from which fees assessed are consistent with the experience offered, the financial projections we reviewed are obtainable.

This conclusion is reached based on consideration of the following factors: golfer local market analysis, playable golf days, technology available, key financial benchmarks, agronomic and architectural practices, and customer service operations.

Our review of those factors is presented in Appendix A.

Caveat

Please note that the achievement of any financial projection is speculative. The operation of a golf course is subject to numerous inherent risks comprising of uncontrollable and controllable factors. The speed and execution of the strategic plan will ultimately determine the result.

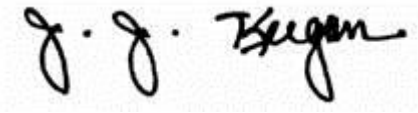
4406 Orofino Place
Castle Rock, CO 80108
303.596.4015

Final Thoughts

Many factors determine the financial success of a golf course. While we have raised cautions, our fundamental belief is with dynamic pricing, high disposable income in the region, bountiful playable days, a links style course, good course maintenance, and excellent customer service the course financials are attainable provided there is monitoring of cost constraints.

Thank you for the opportunity to submit our opinion regarding the financial projections prepared by the staff for the Baylands Golf Links.

Sincerely,



James J. Keegan
Strategist

Appendix A
The Analysis

The **uncontrollable** factors comprise the course's location and the number of playable golf days and reflect very positively on the potential of the Baylands Golf Links to achieve the financial results projected.

Golfer Local Market Analysis:

We analyzed 44 variables for the 15,204 golf courses in the United States and rank ordered the profit potential of each facility. Baylands is ranked 111 out of 15,204. Annual spending by residents for green fees/membership dues and carts within 10 miles of the golf course is $6,803,110 per 18 holes. Further, annual spending by residents for merchandise, food and beverage, range and other related golf activities is $1,762,100.

As importantly, the "attitudinal behavior" towards golf as measured by the Experian's MOSAIC profile is very positive as reflected below:

	Radial Trade Area, 10 miles		MOSAIC Profile Index for Baylands Golf Links
	Number	Percent	34.72%
Sophisticated Singles	73,794	8.57%	5.87%
Bourgeois Prosperity	293,950	34.15%	18.45%
Career and Family	267,269	31.05%	17.65%
Comfortable Retirement	8,131	0.94%	-7.26%
Routine Service Workers	86,032	9.99%	-7.21%
Hard Working Blue Collar	54,729	6.36%	-4.04%
Metropolitan Strugglers	66,691	7.75%	-9.35%
Low Income Elders	9,248	1.07%	-1.63%
Post Industrial Survivors	936	0.11%	-6.49%
Rural Inheritance	10	0.00%	-5.90%
Total	860,790	100.00%	

Note: The Experian MOSAIC Profile is a customer lifestyle segmentation. The profile index displayed reflects the concentration of the various groups within the Palo Alto 10 mile radius vs. the US. As golfers are principally found amongst the segments sophisticated singles, bourgeois prosperity, career and family, and comfortable retirement; those four categories are added together to produce the composite index.

The overwhelming majority of golfers fall within the Top 4 categories: sophisticated singles, bourgeois prosperity, career and family, and comfortable retirement. A rating of 34.72% is very strong and suggests that a golf course with a slope rating of 128 – 134 from the back tees would

appeal to the residents. The slope rating for the Baylands Golf Links as determined by the Northern California Golf Association is 132 from the blue tees (back).

Our more in-depth examination of the demographics reflects that the median household income within 10 miles of the Baylands Golf Links is 85% greater than the United States as shown below.

	Palo Alto	100 CBSA	U.S.	Data Source
Age (Median)	37.50	37.30	36.90	*Demographic Trend Report*
Age (Median)	102	101	100	Calculated
Income (Med Household)	$99,255	$57,264	$53,657	*Demographic Trend Report*
Income (Median)	185	107	100	Calculated
Likely Golfer Household Income	$180,214	$95,058	$97,423	*JJ Keegan+ Estimate*
Income (Index)	185	98	100	Calculated
Income (Average Household)	$141,339	$80,080	$73,343	*Demographic Trend Report*
Income (Median)	193	109	100	Calculated
Ethnicity (% Caucasian.)	47.69%	66.50%	71.10%	*Demographic Trend Report*
Ethnicity Index	67	94	100	Calculated
Hispanic	20.57%	20.10%	17.00%	*Demographic Trend Report*
Hispanic Index	121	118	100	Calculated
African American	3.30%	15.00%	13.30%	*Demographic Trend Report*
Black Index	25	113	100	Calculated
Asian American	33.11%	7.10%	5.40%	*Demographic Trend Report*

Source: Tactician, "*Demographic Trend Report*," March 2016
Note 1: 100 CBSA represents top 100 Core Based Statistical Areas in the US., i.e., the large metroplexes
Note 2: "Palo Alto" is defined to represent a 10-mile radius from the Baylands Golf Links

The National Golf Foundation 2017 Report, "*Golf Participation in the US*" state that nationally golfers nationally average 43.3 years of age and are 75.6% male. Demand for golf is reflected below:

Demand	Palo Alto	100 CBSA	U.S.	Data Source
Avid Golfers	16,213	4,420,367	6,543,657	Calculated by 26.8% of Golfers
Total Golfers	60,497	16,493,905	24,416,632	Calculated by 1.415 Golfers/HH
Golfers (Reported)	61,678	16,636,590	24,435,110	***NGF Demand Report***
Rounds Played	1,001,207	288,126,400	451,577,900	***NGF Demand Report***
Estimated Market Supply	654,406	236,397,100	450,778,300	***NGF Demand Report***
Rounds Per Course	77,016	39,968	30,065	Calculated
Golf Participation	12.60%	14.50%	14.20%	***NGF Demand Report***
Golfers per 18 Holes	5,363	2,283	1,733	Calculated
Green Fee Carts	6,803,110	N/A	1,416,063	***Predictive Index Data***
Merchandise and F&B	1,762,100	N/A	376,938	***Predictive Index Data***
Likely Course Revenue -	5,139,126	N/A	1,075,801	***JJ Keegan+ Estimate***
Annual Spending per Golfer	2,298	N/A	1,034	Calculated
Cost Per Round	139	N/A	56	Calculated
Avid per 18 holes	1,410	607	464	Calculated

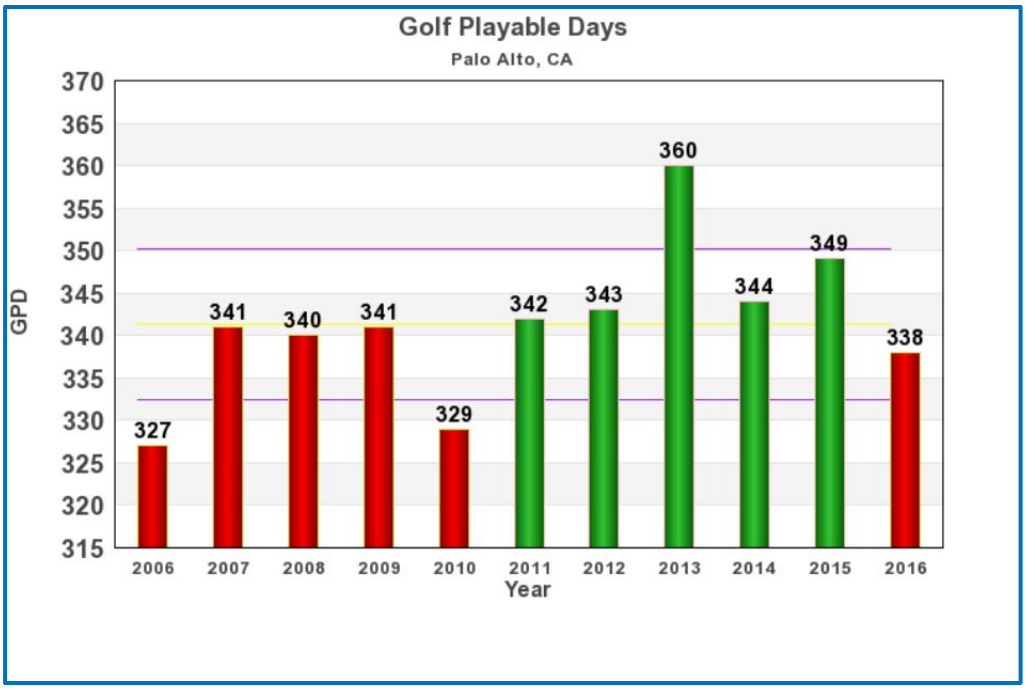
Source: National Golf Foundation, "*Demand/Supply Database*", March 2016

These numbers, which include private clubs, tell an interesting story. The average cost per round is $139. The average golfer spends $2,298 on golf annually. Despite a decade downward trend in golf throughout the world, demand vastly exceeds supply within the Palo Alto market as statistics indicate that there are 5,313 golfers per 18 holes contrasted to a national index of 1,733.

The many indicators analyzed above consistently reflect the potential of Baylands Golf Links to achieve the revenue targets as outlined in the internal staff prepared projections.

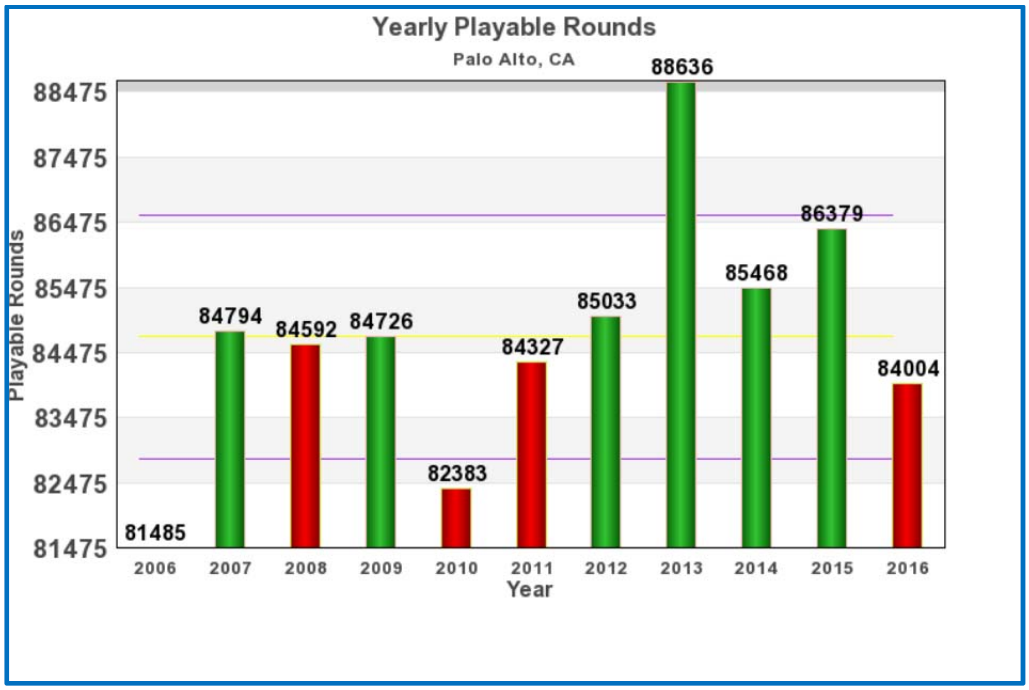
Weather Playable Days:

Weather Trends International reports that there are 341 playable golf days per year in Palo Alto, far higher than the national average of 260. The number of playable days provides ample opportunity to generate the revenue forecast.



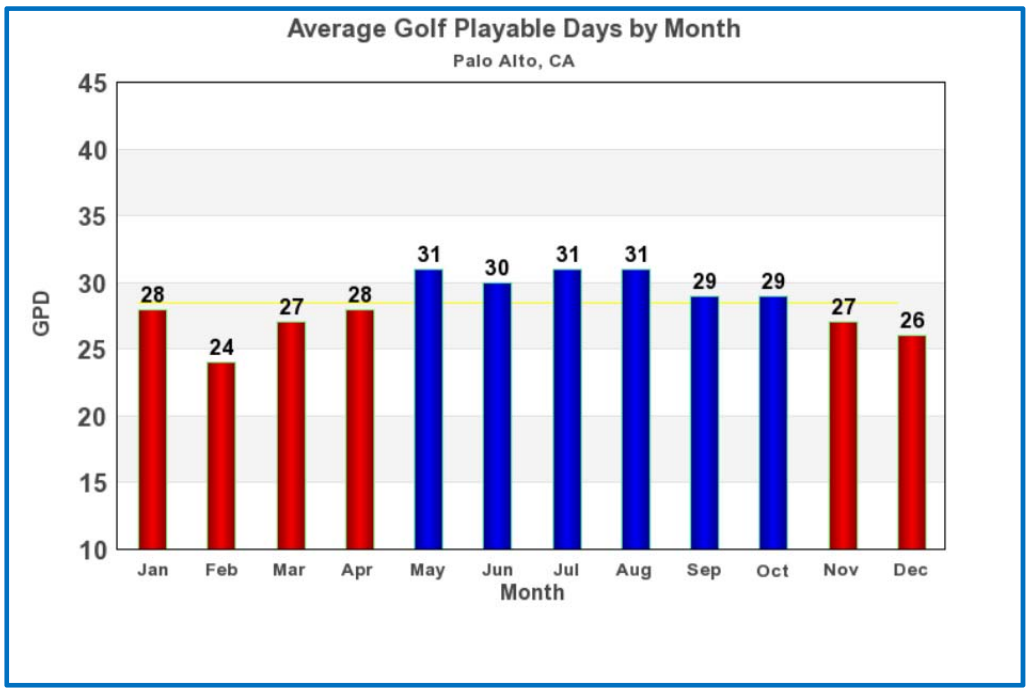
Note: A Golf Playable Day is defined as a day where the temperature range is above 48 degrees Fahrenheit and below 95 degrees Fahrenheit, precipitation is less than 0.2 inches of rainfall, and wind speed is less than 19 miles per hour. These numbers can be used to compare "good" years with "not good" years. Monthly values can help the owner determine when to have the most staff and plan for the most rounds. The purple lines represent what to expect in a typical year if the value is above or below these lines it shows it is an abnormal year.

These playable days create the following theoretical course capacity:



Note: This metric is calculated by weighting temperature and precipitation values by the number of rounds possible in a given day. This metric assumes 8 minutes between foursomes and rounds start being played 1 hour after sunrise and stop being played 3 hours before sunset.

The staff projections forecast 68,450 paid rounds in 2019, approximately an 80% course utilization. Currently, the golf course industry utilization nationally is estimated at 52%.



Ironically, there is a downside to golf being available twelve months per year. A greater percentage of the course staff is likely to be full-time thus increasing labor rates from the fringe benefits that will be required to attract and retain qualified employees as the chart above reflects the playing season for golf in the Bay Area.

Of greater concern that mitigates the upside potential expressed based on the golfer, local market analysis and the playable weather days are the controllable factors detailed below.

Technology:

Since being selected as the preferred vendor, OB Sports has entered into an exclusive contract with GolfNow, a subsidiary of the Golf Channel. Typically, the financial arrangement with GolfNow is that two tee times per day are provided to GolfNow in exchange for the use of software and marketing services. The impact we have observed is that barter creates downward pressure on pricing.

What may mitigate this downward pressure on pricing at Baylands is that OB Sports is a strong proponent of ORCA, a software that measures effective yield supportive of dynamic pricing. It will have the ability to control and monitor discounts efficiently.

Note that City Council's authorization to implement demand-based, dynamic pricing is a critical component to achieving the revenue projections.

Financial Benchmarks:

In reviewing the financial benchmarks, we have multiple concerns.

It is our opinion that three tranches of rates should be implemented: residents, Bay area citizens, and visiting tourists. This rate structure would be comparable to that utilized by Harding Park Golf Course in San Francisco.

The projected revenue per round sold is $33.33. That would suggest the rack rate for prime time would be $55.55. It is our opinion that a more appropriate peak resident walking rate would be $70, a Bay Area resident $90 and a tourist $110. It is important that weekend play is not dominated by resident play or leagues, i.e., Men's or Women's Clubs, to achieve the revenue projections.

Another benchmark for determining an appropriate green fee is maintenance expenses. With maintenance expenses projected at $1.1 million, that would suggest a prime-time green fee of $110 (0.0001) would be appropriate.

Another indicator of a fair green fee is the golf course renovation investment. An $11.9 million renovation would suggest that the prime-time green fee would be $119.00 (0.00001) times the investment).

What is the source for these benchmarks? Where the exhaustive search is impractical, heuristic methods are used to speed up the process of finding a satisfactory solution via mental shortcuts to ease the cognitive load of making a decision.

From twenty-nine years in the golf industry we have developed a set of experience-based techniques for problem solving, learning, and discovery that will find a solution which is not guaranteed to be optimal, but good enough for a given set of goals. It is our learned experience that the ratio of greens fees to the rack rate (60% * starts), maintenance expenses to green fees (0.0001), and investment costs to appropriate green fees (0.00001) provide valuable initial insight to support further research into local market conditions.

We also participated in a Golf Advisory Board meeting in November 2017. The golfers stated that their golfing colleagues were "house rich and cash poor." However, in equity, 7 of 8 Palo Alto residents don't play golf. Thus, the subsidy of resident golfers through low rates or allocating exclusive prime time access will jeopardize the ability to achieve the financial projections reviewed. Further, it is essential that unlimited season play passes not be sold. We recommend instead opting for a loyalty card program that OB Sports excels in implementing. Thus, it is hoped that Bay Area residents and tourists, through higher fees, can subsidize a portion of the play by Palo Alto residents to achieve the financial results desired.

Our reservation with rates can be summarized as follows: It is far easier to implement interim discounts based on the demand than it is to raise the rates subsequently across the board. Rate increases always provoke hostile golfer reaction. Setting the bar high initially is key to the financial success of Baylands Golf Links.

The larger question is whether the revenue targets can be achieved.

Five firms submitted responses to the Request for Proposal. The five- year revenue projections these firms submitted ranged from $2,559,601 to $5,662,250 exclusive of the food and beverage operation. The average of those five proposals prepared by eminently qualified firms along with our estimate and that of the National Golf Foundation projects the following 2019 averages:

Category	Staff Projections	Five Management Companies	JJ Keegan 11 1 2017	National Golf Foundation 2016
Revenue		3,797,131	3,300,376	
Cost of Goods Sold		390,156	190,583	
Gross Profit	$3,655,024	3,406,975	3,109,793	3,685,513
Expenses	2,604,388	2,226,498	2,093,956	2,505,800
Earnings Before Interest Taxes, Depreciation and Amortization	1,050,636	1,180,477	1,015,837	1,179,713
Capital, Debt Service, Common Service, etc.	1,004,009	1,165,104	976,733	880,321
Net Income	$46,627	15,373	39,104	299,392

Note 1: Management companies included Food and Beverage revenues and expenses, most hoping to break-even.
Note 2: JJ Keegan projections prepared at the commencement of RFP review based on national benchmarks for the operation of a municipal golf course adjusted for the regional market.

Thus, eight independent entities prepared cash flow projections in which the net income is comparable in all significant and material respects.

However, there are two wildcards. Water expenses estimated at $237,000. A golf course water's expenses should not exceed $80,000. When water costs are starting to exceed $0.80 per 1,000 gallons or $260.68 per acre foot, the financial prospects for a public golf course dim as reflected in the chart below:

Cost Per 1000 Gallons	Cost Per Acre Foot	Projected Water Cost
0.25	81.46	32,585
0.50	162.93	65,170
0.75	244.39	97,755
0.80	260.68	104,272
1.00	325.85	130,340
1.25	407.31	162,926
1.50	488.78	195,511
1.75	570.24	228,096
2.00	651.70	260,681
2.25	733.16	293,266
2.50	814.63	325,851
2.75	896.09	358,436
3.00	977.55	391,021

The projected water costs for Baylands Golf Links is more than double the recommend level.

The Cost Plan Charges are forecast to start at $130,000 in the Fiscal Year 2019 accelerating to $150,306 in Fiscal Year 2024. Typical cost plan charges assessed by a general fund for a golf course is $50,000. Those fees are justified through accounting service, human relations, legal and procurement provided.

Agronomic, Architecture and Maintenance:

Course conditioning is usually the number one criteria golfers cite in surveys we have conducted for the past decade. Prices and pace of play are also ranked high.

We have deep reservations regarding the current conditioning of the course.

The environmentally sensitive areas (ESA's) when the course opens will appear unsightly with abundant weeds negatively impacting the player experience. They are so pervasive throughout the course that a golf ball entering will be lost for two reasons: the prohibition on players entering ESAs and if one enters the area inappropriately, they are unlikely to find their ball in the dense underbrush. We speculate that the typical golfer will lose three golf balls increasing their cost per round by $10. This negative impression will be hard to reverse for several years impacting short-term revenue. The course's appearance in the environmentally sensitive areas is not consistent with other nearby golf venues. However, the course's links style and quality of greens are anticipated to attract players.

Also, of concern is the slope rating (difficulty) of the golf course considering the number of forced carries and multiple tiered green complexes which may limit the market to avid golfers who are accomplished players. It will be essential that the greens are maintained at a stimpmeter rating (the speed at which the balls rolls) of 10 or less.

Finally, a rye collar was installed three feet around each bent grass green. The turf quality just beyond the rye collar was challenged when examined by us in November 2017.

If the golf course is not well-conditioned, all bets are off on the ability to achieve the financial forecasts.

Operations:

Concerning operations and the customer experience, OB Sports excels at delivering a valued customer experience in which through adroit marketing, customer loyalty is created. We are confident as to OB Sports' management and operational abilities.

Of equal importance will be the establishment of a database comprising a name, email address, phone number (for texting), age and gender. These components are necessary for effective target marketing to programming, i.e., PGA Junior League, Get Golf Ready, Leagues. Currently, a golfer database does not exist. The first-year goal would be to accumulate >4,000 customer names.

Our only concern with operations is the dated clubhouse creating an emphasis on course play experience, practice areas, and customer service to primarily support positive impressions of the Baylands Golf Links. It is recommended that capital is invested in remodeling and freshening the clubhouse which serves as the entry point for the golfer's experience.