



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

LEASE

between

CITY AND COUNTY OF SAN FRANCISCO, Landlord

and

GGP TENNIS PARTNERS, LLC, Lessee

For the Lease and Management of

Portions of the

Golden Gate Park Tennis Complex

at

**Golden Gate Park,
San Francisco, California**

February 19, 2012

CITY AND COUNTY OF SAN FRANCISCO

Edwin M. Lee, Mayor

SAN FRANCISCO RECREATION and PARK COMMISSION

Mark Buell, President

Tom Harrison, Vice President

Gloria Bonilla, Commissioner

David E. Lee, Commissioner

Meagan Levitan, Commissioner

Lawrence Martin, Commissioner

Philip A. Ginsburg, General Manager



**RECREATION AND PARK DEPARTMENT
LEASE
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RECREATION AND PARK DEPARTMENT

LEASE

THIS LEASE (this "Lease") dated for reference purposes only as of February 19, 2012, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), acting by and through its Recreation and Park Commission (the "Commission"), and GGP TENNIS PARTNERS, a California limited liability company ("Lessee").

City and Lessee hereby agree as follows:

1. BASIC LEASE INFORMATION

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

Lease Reference Date: February 19, 2012

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

Lessee: GGP TENNIS PARTNERS,
a California limited liability company

Golden Gate Park Tennis Complex and Clubhouse: The Golden Gate Park Tennis Complex (the "Complex") is a tennis facility located in Golden Gate Park in San Francisco, California, owned by the City and under the jurisdiction of its Recreation and Park Department (the "Department"), comprised of 21 tennis courts and the William M. Johnston Memorial Clubhouse (the "Clubhouse") and the grounds adjacent to the tennis courts and Clubhouse.

Premises (Section 3.1): The Premises are comprised of the following portions of the Complex, all as described in **Section 3.1** and generally depicted on **Exhibit A**:

- (i) those tennis courts known as courts 5, 18, 19 and 20 (the "Leased Courts");
- (ii) the area within the Clubhouse shown outlined and labeled "Pro-Shop" on **Exhibit A** (the "Pro-Shop");
- (iii) the area within the Clubhouse shown outlined and labeled "Storage Room" on **Exhibit A** (the "Storage Room");
- (iv) space for one 20 foot storage container located behind court 18 shown outlined and labeled "Outdoor Storage

Site" on **Exhibit A**(the "Outdoor Storage Site"); and

- (v) during Lessee's hours of operations only, space for the for tables and chairs and a mobile food cart as described in **Section 7.1 (d) and (e)** below in the area outlined and labeled "Outdoor Seating Area" and "Mobile Café Site" on **Exhibit A** (respectively, the "Outdoor Seating Area" and the "Mobile Café Site").

The Leased Courts, Pro-Shop, Storage Room, Outdoor Storage Site, Outdoor Seating Area and Mobile Café Site are sometimes referred to collectively as the "Premises."

Term (Section 4):

The initial term of this Lease shall be two (2) years, as described in **Section 4**, subject to Lessee's right to terminate this Lease early under the terms and conditions described in **Section 7.4(b)(ii)**, and the options to extend the Term described in **Section 4.5**.

Estimated commencement date: February 19, 2012

Estimated expiration date: February 15, 2014

Options to Extend (Section 4.5):

Lessee shall have the option to extend the term of this Lease for one additional one (1) year extension period, commencing on the date immediately following the Expiration Date, on the terms and conditions set forth in **Section 4.5**. Lessee shall have the option to further extend the term of this Lease for two additional one (1) year extension periods following the expiration of the initial extension period, subject to City's right to void such option or terminate either such extension period early if the Department commences or anticipates it will commence the rebuilding of the Complex during the applicable extension period, on the terms and conditions set forth in **Section 4.5**.

Early Termination Right (Section 7.4(b)(ii)):

Lessee shall have the right to terminate this Lease early on the terms and conditions set forth in **Section 7.4(b)(ii)**.

Rent (Article 5):

Lessee shall pay the greater of Base Rent or Percentage Rent, as defined below.

Base Rent; Annual Base Rent and Monthly Base Rent (Section 5.1); Reduction in Base Rent During Reduction Period:

Annual Base Rent:

First Lease Year: \$25,000 per annum, payable in monthly installments as follows: \$ 1,000 per month for first six (6) months of the First Lease Year, and \$3,167 per month for last six (6) months of the First Lease Year. Notwithstanding the foregoing, during the period commencing on the Commencement Date and continuing until the earlier of August 31, 2012 or the date immediately preceding the effective date of an approved tennis lesson rate increase (as

described in **Section 7.4(b)(ii)** (the "Rent Reduction Period") the monthly Base Rent shall be reduced to \$500.00 per month and the annual Base Rent payable for the First Lease Year shall be correspondingly reduced to reflect such reduction.

Subsequent Lease Years: the greater of (i) \$35,000 (as adjusted as provided in **Section 5.2**) or (ii) 80% of the total Base Rent and Percentage Rent payable during the prior Lease Year, payable in equal monthly installments.

Lease Year Defined:

The "First Lease Year" shall be the period commencing on the Commencement Date and ending on the last day of the twelfth (12th) full calendar month thereafter. Each twelve (12) calendar month period thereafter shall constitute a "Lease Year,"

Adjustments to Base Rent (Section 5.2):

Beginning on the first day of the Second Lease Year and continuing on the first day of each subsequent Lease Year (each, an "Adjustment Date"), the annual and monthly Base Rent payable hereunder shall be computed according to **Section 5.2**.

Percentage Rent (Section 5.3):

In addition to the monthly Base Rent specified above, Lessee shall pay monthly Percentage Rent for each month in which the Percentage Rent exceeds the Base Rent for such calendar month. See **Section 5.1** and **Section 5.4**.

Percentage Rent shall be the aggregate of the following percentages of the respective categories of Gross Receipts:

<u>Type of Sale</u>	<u>Percentage</u>
Tennis Lessons	15%*
Mobile Café Sales	10%
Pro-Shop Sales	10%
Tournaments and Events	25%

*Notwithstanding the foregoing, during the Rent Reduction Period the percentage of Gross Receipts for Tennis Lessons payable as Percentage Rent shall be reduced to 7-1/2%.

Rent Credits (Section 8.5):

Tenant shall receive credit against the monthly Base Rent and the Percentage Rent payable under this Lease in the amount of the Sliding Window Repair Credit and the Improvement Credit subject to and in accordance with the provisions of **Section 8.5**.

Use (Section 7.1):

Provision of paid, professional tennis lessons and other tennis programs such as tennis clinics on the Leased Courts, operation of a Pro Shop, and the operation of a mobile coffee cart, as more particularly described in **Section 7.1**.

Security Deposit (Section 23):

\$4,000

Notice Address of City (Section 27.1):

Recreation and Park Department
Property Management
McLaren Lodge Annex

Re: Golden Gate Park Tennis Complex

with a copy to:

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

Key Contact for City:

Cassandra Costello

Telephone No.:

415-831-2791

Email address:

Cassandra.Costello@sfgov.org

Address for Lessee
(Section 27.1):

Robert Stang
GGP Tennis Partners LLC
2600 18th Street, Suite 25
San Francisco, CA 94110

Key Contact for Lessee:

Robert Stang

Telephone No.:

415-615-2238

Email Address:

robertstang@gmail.com

Brokers (Section 27.8):

None

Other Noteworthy Provisions:

Lessee's Improvements and
Alterations (Section 7.1(e)):

Not later than the date that is sixty (60) days after the Commencement Date, Lessee will perform the alterations described in **Section 8.4** and **Exhibit D**, and will identify and seek City's approval of an appropriate power source for the Mobile Café as provided in **Section 7.1(e)**.

Condition of Premises
(Section 3.4):

City shall repaint the interior walls of the Pro-Shop and resurface courts 18, 19 and 20 in accordance with the provisions of **Section 3.4**.

Waste Reduction and Sustainable
Foods (Section 26.42 and
Section 30):

Without limiting the other provisions of this Lease, Lessee's food and beverage operations on the Premises shall comply with the provisions of the City's Food Service Waste Reduction Ordinance, as described in **Section 23.42**, and the provisions of **Section 30** requiring Lessee to attempt to incorporate sustainable food concepts into Lessee's everyday operations.

2. DEFINITIONS

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

"Additional Charges" means any and all real and personal property taxes, possessory interest taxes, insurance premiums and other costs, impositions and expenses described in hereof or otherwise payable by Lessee under this Lease.

"Adjustment Date" means the annual date for adjusting the Base Rent as specified in Basic Lease Information and **Section 5.2** hereof.

"Adjustment Index" means the Index which is published most immediately preceding a particular Adjustment Date.

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

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

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

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

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

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

"Base Index" means the Index published most immediately preceding the Commencement Date.

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

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

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

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

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

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

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

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

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

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

"Encumbrancer" means a mortgagee, beneficiary of a deed of trust or other holder of an Encumbrance.

"Environmental Laws" means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including any permitted Improvements) and any other property, including, without limitation, soil, air and groundwater conditions.

"Event of Default" means any one of the events of default described in **Section 16.1** hereof.

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

"Facility Coordinator" means the Recreation and Park Department's facility coordinator at the Golden Gate Park Tennis Complex.

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

"Gross Receipts" means all amounts received and receivable from all sales and business conducted in, from or attributable to the Premises by Lessee, or by any other person, firm, partnership or corporation conducting sales or performing services of any sort in, upon, or from any part of the Premises as a sublessee, licensee, concessionaire, contractor or subcontractor of Lessee, including amounts received from orders or bookings for rental or sales of merchandise made by telephone, mail or online or through tour operators or third parties. The following items shall be excluded from Gross Receipts for purposes of calculating the Percentage Rent: (a) returns and refunds and (b) the amount of any sales tax, parking tax, or similar tax or imposition, imposed on all sales or charges where such sales tax, similar tax or imposition is billed to the purchaser as a special item.

"Hazardous Material" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 *et seq.*) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Lessee, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids.

"Hazardous Material Claims" means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, together with any and all Losses made or threatened by any third party against City, the Department, their Agents, or the Premises or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.

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

"Indemnify" means indemnify, protect, defend and hold harmless forever.

"Indemnified Parties" means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, the Department, and all of its and their respective Agents, and their respective heirs, legal representatives, successors and assigns, and each of them.

"Index" means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

"Investigation" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion thereof or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

"Invitees" when used with respect to Lessee means the clients, customers, invitees, guests, members and licensees, assignees and sublessees of Lessee.

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

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

"Lease" means this Lease as it may be amended in accordance with its terms.

"Lease Year" shall be determined as follows: the first "Lease Year" shall be the period commencing on the Commencement Date and ending on the last day of the twelfth (12th) full calendar month thereafter, and each twelve (12) calendar month period thereafter shall also constitute a "Lease Year," provided that the final Lease Year shall end on the expiration or termination date of this Lease.

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

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

"Losses" means any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs.

"Minimum Base Rent" has the meaning given in **Section 5.2** hereof.

"Official Records" means the official records of the county(ies) in which the Premises are located.

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

"Percentage Rent" means a sum equal to the stated percentage of Lessee's Gross Receipts for the stated categories made from or upon the Premises during each calendar month of the Term in the respective percentage amount set forth in the Basic Lease Information.

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

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

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

"**Remediation**" when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material located in, on, under or about the Premises or Department Facilities or which have been, are being, or threaten to be Released into the environment. Remediate includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

"**Rent**" means the Base Rent, as adjusted pursuant to the provisions of **Section 5.2**, together with any and all Percentage Rent and Additional Charges, whether or not any such amounts are specifically characterized as rent.

"**Rent Reduction Period**" has the meaning given in **Section 1** hereof.

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

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

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

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

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

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

3. PREMISES

3.1. Leased Premises. Subject to the terms, covenants and conditions of this Lease, City leases to Lessee and Lessee leases from City, the Leased Courts, Pro-Shop, Storage Room, Mobile Café Site and Outdoor Storage Site, all as shown delineated on **Exhibit A**, attached hereto, located in the City and County of San Francisco, State of California, together with the Improvements thereon (the "Premises").

3.2. Rights Reserved to City. Notwithstanding anything to the contrary in this Lease, City reserves and retains all of the following rights relating to the Premises at all times:

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

(b) Any and all timber and timber rights, including, without limitation, all standing trees and downed timber;

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

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

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

(f) Without limiting the generality of **Section 3.2(e)** above, the right to grant future easements, rights of way, permits and/or licenses over, across, under, in and upon the Premises for the installation, operation, maintenance, repair and removal of (i) equipment for furnishing cellular telephone, radio or other telecommunications services, including, without limitation, antennas, radio, devices, cables and other equipment associated with a telecommunications cell site, and (ii) commercial billboards, signs and/or advertising kiosks, provided that any such easement or right-of-way shall not materially interfere with Lessee's use of the Premises hereunder, and provided further that the grant of any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Lessee for damage to its property that Lessee may sustain hereunder as a result of the grantee's use of such easement or right of way; and

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

3.3. Subject to Public and Municipal Uses and Rules. Lessee acknowledges that the property of which the Premises are a part constitutes a portion of City's public park system, which City holds for public and municipal use. Lessee's rights under this Lease shall be subject and subordinate to City's use of the Premises for such purposes. However, so long as there is no Event of Default or Unmatured Event of Default on the part of Lessee outstanding hereunder and subject to the terms and conditions of this Lease, City shall use its best efforts to avoid interfering with Lessee's quiet use and enjoyment of the Premises. Lessee shall comply with the Department's rules and regulations relating to its park property, as the same may change from time to time (the "Rules and Regulations"). A copy of the current Rules and Regulations can be downloaded from the web address provided in the attached **Exhibit B**.

3.4. As Is Condition of Premises.

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

(b) As Is; Disclaimer of Representations. Lessee acknowledges and agrees that the Premises are being leased and accepted in their "**AS IS, WITH ALL FAULTS**" condition, without representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy, management, operation and possession of the Premises, and City shall have no obligation to make any improvements or alterations to the Premises except as set forth in **Section 3.4(c)** below. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Lessee acknowledges and agrees that neither City, the Department, nor any of their Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning: (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the present or future suitability of the Premises for Lessee's business and intended uses, (v) the feasibility, cost or legality of constructing any Improvements on the Premises if required for Lessee's use and permitted under this Lease, or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(c) Initial Improvements. City shall deliver the Storage Room and the Pro-Shop to Lessee vacant of City's personal property and equipment and broom clean, and shall perform the following improvements to the Premises:

- (i) Repaint the interior walls of the Pro-Shop; and
- (ii) Resurface courts¹⁹ and 20. Courts 19 and 20 are presently scheduled to be resurfaced between June 4, 2012 and July 4, 2012. During the period in which such resurfacing work is being performed on any courts, City will provide Lessee with alternate courts at the Complex designated by the Facility Coordinator. In the event of any delay in the performance of the resurfacing work, this Lease shall not be void or

voidable and City shall not be liable to Lessee for any claims on account of such delay. The Facility Coordinator will use good faith efforts to keep Lessee informed about any changes in the resurfacing schedule.

4. TERM

4.1. Term of Lease; Commencement Date and Expiration Date. The Premises are leased for a term (the "Term") commencing on the date specified in the Basic Lease Information as the commencement date (the "Commencement Date"), subject to this Lease becoming effective pursuant to **Section 4.4** below. The Term of this Lease shall end on the expiration date specified in the Basic Lease Information, unless sooner terminated pursuant to the provisions of this Lease. The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date."

4.2. Delay in Delivery of Possession. If City is unable to deliver possession of the Premises to Lessee in the condition required by **Section 3.1(c)(i)** on or before the scheduled Commencement Date, then the validity of this Lease shall not be affected thereby and City shall not be liable to Lessee for any Losses resulting therefrom. Lessee waives all provisions of any Laws to the contrary. In the event of any such delay in delivery of possession, the Term and regular payments of Base Rent and Additional Charges shall not commence until City delivers possession of the Premises. If the Term commences later or earlier than the Commencement Date in accordance with the terms hereof, this Lease shall nevertheless expire on the Expiration Date, unless sooner terminated pursuant to the provisions of this Lease.

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

4.4. Effective Date. This Lease shall become effective on the date (the "Effective Date") upon which (i) the Commission passes a resolution approving this Lease, and (ii) the Parties hereto have duly executed and delivered this Lease.

4.5. Options to Extend.

(a) Initial Extension Option. City grants to Lessee a one-time option (the "Initial Extension Option") to extend the Term of this Lease for an additional one (1) year (the "Initial Extension Term"), commencing upon the date immediately following the Expiration Date, upon the following terms and conditions. Lessee may exercise the Initial Extension Option at any time during the Term but if it determines to do so it must give written notice to City thereof not less than ninety (90) days prior to the Expiration Date. Any such exercise notice by Lessee shall be irrevocable by Lessee.

(b) Additional Extension Options. City grants to Lessee two (2) further options (the "Additional Extension Options"), each to extend the Term of this Lease for an additional one (1) year term (each, an "Additional Extension Term"), commencing upon the date immediately following the expiration of the Initial Extension Term or the first Additional Extension Term, as applicable, upon the following terms and conditions, including the City's termination right set forth in **Section 4.5(c)** below. Lessee may

exercise the Additional Extension Options at any time during the Term but if it determines to do so it must give written notice to City thereof not less than ninety (90) days prior to the expiration date of the then-current term. Any such exercise notice by Lessee shall be irrevocable by Lessee.

(c) City's Right to Terminate Early. Notwithstanding Lessee's rights under **Section 4.5(b)** above, City shall have the right upon the following terms and conditions to terminate this Lease early if City plans to begin rebuilding the Complex prior to or during the first or second Additional Extension Term. City shall notify Lessee in writing (the "Termination Notice") of City's planned rebuilding of the Complex and the date on which City reasonably anticipates City will require Lessee to surrender the Premises for commencement of City's rebuilding (the "Required Termination Date") at least one hundred eighty (180) prior to the Required Termination Date, provided such Required Termination Date shall in no event be prior to the last day of the Initial Extension Term. If City delivers the Termination Notice, then notwithstanding Lessee's exercise of an Additional Extension Option, the applicable Additional Extension Term shall expire on the Required Termination Date and Lessee shall surrender the Premises on such date. Notwithstanding the foregoing, if City determines that Lessee may operate the Premises beyond the termination date stated in the Termination Notice, City may at the sole election of the General Manager notify Lessee of the later date on which City will require Lessee to cease operation of the Premises, and City and Lessee may agree in writing to terminate this Lease on or prior to such later date stated in such notice, rather than the date stated in the original Termination Notice, and in such event such mutually agreed upon date shall be the Required Termination Date for the purposes of this Lease.

(d) Effect of Default or Transfer of Lease. If any event of default by Lessee is outstanding hereunder either at the time of Lessee's exercise of the Initial Extension Option or an Additional Extension Option (each, an "Extension Option:") or at any time prior to the first day of an Extension Term (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then City may elect by notice to Lessee to reject Lessee's exercise of the applicable Extension Option, whereupon such Extension Option shall be null and void. City shall also have the right to void Lessee's remaining Extension Options if Lessee has assigned its interest hereunder of sublet more than fifty percent (50%) of the Premises. If Lessee elects to exercise an Extension Option, then the lease for the applicable Extension Term shall be upon all of the terms, covenants and conditions of this Lease.

5. RENT

5.1. Base Rent; Percentage Rent. Lessee shall pay to City monthly during the Term of this Lease, beginning on the Commencement Date, the *greater of* (A) the monthly Base Rent, or (B) Percentage Rent calculated using the applicable percentages of Gross Receipts specified in the Basic Lease Information for the various sources Gross Receipts. Base Rent or Percentage Rent shall be payable monthly on or before the tenth (10th) day of each month, for the previous month's business operations, without prior demand and without any deduction, setoff or counterclaim whatsoever, other than the reductions in Base Rent and Percentage Rent specifically set forth in the Basic Lease Information in **Section 1** and the Sliding Window Repair Credit and the Improvement Credit calculated and applicable pursuant to **Section 8.5**.

5.2. Adjustments in Base Rent. On each Adjustment Date, the Base Rent payable by Lessee shall be adjusted in the manner described in this Section 5.2.

- (a) On the first Adjustment Date, the Index published most immediately preceding the Adjustment Date ("Adjustment Index"), shall be compared with the Index published most immediately preceding the Commencement Date ("Base Index"). If the Adjustment Index has increased over the Base Index, then the annual "Minimum Base Rent" shall be computed by multiplying \$35,000 by the greater of (i) 105% or (ii) a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Base Index.
- (b) On each subsequent Adjustment Date, if applicable, the Index published most immediately preceding such Adjustment Date ("Adjustment Index"), shall be compared with the Index published most immediately preceding the prior Adjustment Date ("Base Index"). If the Adjustment Index has increased over the Base Index, then the annual "Minimum Base Rent" shall be computed by multiplying annual Base Rent payable during the prior Lease Year by the greater of (i) 105% or (ii) a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Base Index.
- (c) In no event shall the Minimum Base Rent on or after the Adjustment Date be less than the Minimum Base Rent in effect immediately prior to the Adjustment Date.
- (d) The annual Base Rent payable with respect to each Lease Year shall be the greater of (i) the Minimum Base Rent, calculated as provided above, or (ii) 80% of the total Base Rent and Percentage Rent payable during the prior Lease Year.
- (e) Commencing with the first rental payment payable with respect to the Second Lease Year, annual Base Rent shall be payable in equal monthly installments.

5.3. Payment; Generally. Rent shall be paid in lawful money of the United States, at Revenue Unit, Recreation and Park Department, McLaren Lodge Annex, 501 Stanyan Street, San Francisco, California 94117, or such other place as City may designate in writing. If Lessee pays by check and such check is not honored, then City may require Lessee to make all future payments in cash or by cashier's check. If the Commencement Date occurs on a day other than the first day of a calendar month, or if the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30) day month. City reserves the right to direct Lessee, upon 30 days written notice, to deposit all payments required under this Lease from Lessee's account into the City designated revenue account by bank or wire transfer.

5.4. Monthly Gross Receipts Statements; Determination of Percentage Rent Payable. On or before the tenth (10th) day of each full calendar month of the Lease Term and the of the calendar month immediately following the expiration or termination of this Lease, Lessee shall deliver to City a statement certified as correct by an officer or owner of Lessee and otherwise in form satisfactory to City, showing taxes paid and the Gross Receipts during the last preceding calendar month broken down by the categories listed in the Basic Lease Information (if applicable), as required to determine the Percentage Rent payable for such calendar month (a "Monthly Gross Receipts Statement"). Percentage Rent (as shown in the Basic Lease Information) shall be calculated for such calendar month based on the Monthly Gross Receipts Statement and, if the amount so calculated exceeds the monthly

Base Rent, such Percentage Rent shall be payable in accordance with **Section 5.1** above. In the event this Lease terminates during a month at no fault of Lessee, payment of City's share of Admission Revenue and the Percentage Rent for that portion of the month during which sales are made on the Premises shall be determined and reported by Lessee to City within ten (10) days after Lessee ceases to make sales on the Premises, but in the event this Lease terminates as a result of Lessee's default, including insolvency thereof, any amounts due hereunder shall be payable immediately.

5.5. Cash Register Requirements.

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

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

(c) Each sale or other transaction on the Premises must be recorded at the time of each sale or other transaction, in the presence of the customer, and Lessee shall present a receipt from such sale or other transaction to the customer. Each customer must be issued a receipt or sales slip for each transaction, which transaction must be recorded either on serially numbered sales slips or cash register types. All cash receipts must include Lessee's identification thereon. All transactions, other than sales from the Mobile Café, must be made at Pro-Shop and recorded in the Pro-Shop's point of sale system, provided that payment for tennis lessons may be made on the Leased Courts by check (but no other form of payment) provided that Lessee provides the customer with a hand written carbon copy receipt issued from a serially numbered receipt pad upon acceptance of payment. Prior to commencing a lesson, tournament, special event or any other activity, Lessee's Pro-Shop attendant or certified tennis professional must issue the customer a receipt through the Pro-Shop point of sale system or from such receipt pad. No cash or other form of transaction other than checks (as provided above) shall be made on the Leased Courts and other than such permitted receipt of payments for tennis lessons on the Leased Courts, no cash or other form of transaction shall be made from any place other than the Pro-Shop or, with respect to Mobile Café sales, the Mobile Café. Each cash register (including computerized cash registers or other similar electronic devices) shall be serviced by an established contractor approved by General Manager. At General Manager's request, Lessee must

furnish to City a statement from an established contractor that the transaction number, the cumulative total and the overrun counter have been sealed in a manner approved by General Manager. If Lessee is found non compliant with any of the provisions in this section it shall be considered a breach of Lease. The General Manager may from time to time establish additional controls on the transactions made on the Leased Courts in accordance with sound business practices, and Lessee shall comply with such controls upon receipt of written notice of such controls.

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

5.6. Reporting; Books and Records; Audits

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

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

(c) Annual Gross Receipts Report; Annual Income and Operations Report; Annual Payroll Statements. On or before the date which is ninety (90) days following the close of each Lease Year during the Term and ninety (90) days following the end of the Term, Lessee shall deliver to City a statement (the "Annual Gross Receipts Statement"), certified as correct by an officer or owner of Lessee, certified or audited by an independent certified public accountant, and otherwise in form satisfactory to City. The Annual Gross Receipts Statement shall set forth the Gross Receipts, as defined above and shown on Lessee's books, for the Lease Year just concluded broken down by category. Further, on or before the date which is ninety (90) days following the close of each fiscal year during the Term and ninety (90) days following the end of the Term, Lessee shall deliver to City an itemized income statement for such year, certified as correct by an officer

or owner of Lessee, with (i) supporting tables that include Gross Receipts by department, distributed departmental expenses and undistributed expenses, and (ii) a cash flow table that itemizes expenditures on capital improvements and personal property and indicates which of the improvements and acquisitions represent replacements. In addition, on or before the date which is ninety (90) days following the close of each Lease Year during the Term and ninety (90) days following the end of the Term, Lessee shall submit to City payroll statements from all tennis professionals providing lessons or other services on the Premises, showing all payments received on account of services at the Premises during the prior Lease Year. Lessee shall provide City all payroll statements for Lessee and its employees promptly on City's' written request made at any time and from time to time throughout the term of this Lease.

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

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

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

5.8. Default Interest. If any Rent is not paid on the due date, such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under Law. However, interest shall not be payable on late charges incurred by Lessee nor on any amounts on which late charges are paid by Lessee to the extent this

interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Lessee.

5.9. Net Lease. This Lease is a "net lease." Accordingly, Lessee shall pay to City all Rent (including the Base Rent, Percentage Rent, Additional Charges and any other payments hereunder) free of any charges, assessments or deductions of any kind, without prior demand and without abatement, counterclaim or setoff. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall City be expected or required to make any payment of any kind whatsoever with respect to Lessee's use or occupancy of the Premises and any permitted Improvements or this Lease, except as may otherwise be expressly set forth herein. Without limiting the foregoing, Lessee shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which City would otherwise be or become liable by reason of its estate or interests in the Premises and any Improvements, any rights or interests of City in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any permitted Improvements, or any portion thereof. Except as may be specifically and expressly provided otherwise in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Lessee from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Lessee from any of its obligations under this Lease, or shall give Lessee any right to terminate this Lease in whole or in part. Lessee waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation.

6. TAXES, ASSESSMENTS AND OTHER EXPENSES

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

(a) Payment Responsibility. Lessee shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Improvements, Lessee's Personal Property, the leasehold estate or any subleasehold estate, or Lessee's use of the Premises or any Improvements. Lessee shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency, subject to Lessee's right to contest the validity of such charge pursuant to **Section 6.1(c)**. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which City receives the tax bill directly from the taxing authority, Lessee shall reimburse City for payment of such sums immediately upon demand.

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

(c) No Liens. Lessee shall not allow or suffer a lien for any taxes payable by Lessee hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without promptly discharging the same. Lessee may have a

reasonable opportunity to contest the validity of any such taxes provided Lessee, before commencement of any proceeding or contest, furnishes to City a surety bond issued by a surety company qualified to do business in California and acceptable to City's Controller. The amount of such bond shall be equal to one hundred twenty five percent (125%) of the amount of taxes in dispute and shall be in such form as approved by the City Attorney of City. The bond shall insure payment of any judgment that may be rendered should Lessee be unsuccessful in any such contest. Lessee shall Indemnify City, the other Indemnified Parties, and the Premises from and against any Losses arising out of any proceeding or contest provided for hereunder. The foregoing Indemnity shall not be limited by the amount of the bond.

(d) Reporting Requirement. Lessee agrees to provide such information as City may request to enable City to comply with any tax reporting requirements applicable to this Lease.

6.2. Other Expenses. Lessee shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Improvements permitted thereon, including, without limitation, the cost of any utilities or services necessary for Lessee's use.

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

7. USE; COVENANTS TO PROTECT PREMISES AND DEPARTMENT FACILITIES

7.1. Lessee's Permitted Use. Lessee shall continuously use the Premises and Improvements for the following uses (collectively the "Permitted Uses"), and for no other use or purpose.

(a) Tennis Lessons on Leased Courts. Lessee shall use the Leased Courts to provide quality and affordable tennis lessons to the public. Lessee shall, at minimum, offer the types of instruction at the rates shown in **Section 7.4**. Any change to instructional offerings shall be subject to approval by the General Manager. Lessee shall hire only USPTA certified tennis pros to teach tennis lessons at on the Leased Courts. All pros must provide evidence of their experience and certification to the Department in writing prior to the commencement of their employment with Lessee at the Premises. No payments shall be received on the Leased Courts by Lessee, the pros, or any other party. All payments for lessons and other activities on the Leased Courts shall be made in the Pro-Shop, except to the extent specifically provided in **Section 5.5** above.

(b) Special Event and Tournament Play; Leased Courts and Use of Additional Rented Courts.

(i) Leased Courts. In addition to general tennis instruction, Lessee shall be permitted to offer additional programming on the Leased Courts from time to time, including, but not limited to special events and tournaments. The table in **Section 7.4** details the types of events and approved prices for each event. If Lessee desires to change the types of events or the cost to participate, Lessee must obtain the prior written approval of the General Manager.

(ii) Additional Rented Courts. If Lessee desires to use additional courts at the Complex beyond the Leased Courts for instruction, special events, tournaments, or any other purpose, Lessee must obtain prior written consent from the Facility Coordinator. With the written consent of the Facility Coordinator, Lessee may from time to time rent up to an additional four (4) courts to provide special event programming or tournament play. Lessee must abide by standard reservation policy and fees for additional rented courts. Any additional courts requested by Lessee beyond the four initial additional requested courts are subject to the approval by the Facility Coordinator and the General Manager. Lessee must first program their Leased Courts for special events and tournament play before providing such programming on any additional approved courts. Lessee shall not be permitted to offer or provide tennis lessons on the Leased Courts, additional rented courts or any court at the Complex during any such special event or tournament. Standard fees for any and all additional courts shall be charged to Lessee.

(c) Acknowledgement Regarding City Use of Complex. Lessee acknowledges that City shall be permitted to offer tennis lessons, tournaments, special events, clinics, youth and adult camps, Quickstart, and any other programs City desires to offer at the Complex on courts other than the Leased Courts, and on the Leased Courts to the extent (if at all) that Lessee makes one or more of the Leased Courts available to City from time to time for such purpose. During the period in which the Leased Courts are not being used by Lessee, Lessee shall allow the Department, with Lessee's prior consent, to provide instruction on unused Leased Courts from time to time for an agreed upon period of time.

(d) Pro-Shop. Lessee shall manage, operate and maintain the Pro-Shop. The Pro-Shop shall be open to the public for the days and hours set forth in **Section 7.3**, and shall offer tennis-related goods and services and light food and beverage service, including, at minimum, the goods and services and menu items described in **Section 7.4**. Any additional products or change of price for any goods or services must be approved in advance by the General Manager. Without limiting the generality of the foregoing, Lessee shall not sell alcoholic beverages, tobacco products, lottery tickets or souvenirs or similar trinkets intended for sale to tourists. Lessee will carry on its business diligently and continuously at the Pro-Shop throughout the Lease term during the required hours of operation. During hours of operation of the Pro-Shop, Lessee shall keep the sales window open to the front of the Pro-Shop. Lessee shall carefully supervise and control the operation of its business in the Pro-Shop, and shall employ a competent and adequate staff therefor, all of whom shall be Lessee's employees and none of whom shall be deemed for any purpose whatsoever to be City's employees. All displays in the Pro-Shop which are visible to the public, including advertising matter, signs, merchandise and fixtures, shall be attractive, dignified and uncluttered and shall be maintained in a first-class manner in keeping with the character and standards of the Complex. Cooking and baking are not permitted in the Pro-Shop, although warming of prepared foods shall be permitted on site, and Lessee may use microwave ovens. City is not responsible for the security of the Pro-Shop or the inventory inside the Pro-Shop.

(e) Management and Operation of a Mobile Coffee Concession. Lessee shall operate, maintain and manage a mobile coffee concession (the "Mobile Café") at the location shown on **Exhibit A** during the minimum days and hours set forth in **Section 7.3**. The vehicle to be used for the Mobile Café is shown in **Exhibit E**. Lessee shall operate the Mobile Café in compliance with all applicable rules, regulations and codes including, without limitation, San Francisco Department of Public Health and San Francisco Planning Department regulations. Lessee operate the Mobile Café in a manner which

offers quality food and beverage to the public, serving the menu items set forth in **Section 7.4(e)** at the prices set forth in **Section 7.4(e)**. Any changes to the minimum hours of operation or the menu or pricing of the Mobile Café must be approved in advance by the General Manager. The sale of alcohol is prohibited. Lessee, at Lessee's sole cost and expense, shall remove the Mobile Café from the Mobile Café Site at the close of business each day and shall store the Mobile Café in the Storage Room located in the Clubhouse. City is not responsible for security or any damage to the Mobile Café or the equipment, accessories, or inventory. Lessee shall carefully supervise and control the operation of its business in the Mobile Café, and shall employ a competent and adequate staff therefor, all of whom shall be Lessee's employees and none of whom shall be deemed for any purpose whatsoever to be City's employees. The Mobile Café shall be operated by two employees at all times. Sales made from the Mobile Café shall be subject to the provisions of **Section 5.5** above. Lessee, at Lessee's sole cost, may, with approval of the General Manager, provide planter boxes to enhance the ambiance of the Mobile Café and the Outdoor Seating Area, provided such planter boxes shall be stored in a manner approved by the Facility Manager at the close of business each day. Lessee shall keep the Mobile Café Site free of, food and debris and in a neat, clean, orderly and attractive condition at all times and shall, as necessary, provide and empty garbage, compost and recycling receptacles serving such area. The power source for providing power to the Mobile Café during Lessee's hours of operation shall be subject to the prior written approval of the General Manager. Prior to the Commencement Date, Lessee shall provide City with a copy of the specifications (including design, make and model) for Lessee's proposed power source for providing power to the Mobile Café during Lessee's hours of operation. The General Manager shall review such submittal and shall promptly notify Lessee in writing of the General Manager's approval or disapproval of the proposed power source. If such power source is disapproved, Lessee shall use diligent efforts to identify an acceptable power source at the earliest possible date. Lessee shall not provide power to Mobile Café by means of a generator. Lessee shall operate any power source in accordance with any required health and safety permits and shall comply with any safety warnings published by the manufacturer or supplier of the power source.

(f) Outdoor Seating Area.

(i) Outdoor Seating Area Furniture. During Lessee's hours of operations of the Mobile Café Lessee may provide tables and chairs in the area generally depicted on **Exhibit A** (the "Outdoor Seating Area"), for use of its customers and the general public. The furniture used in the Outdoor Seating Area shall be good quality, attractive and in keeping with the image and operation of the Mobile Café and the Complex. Lessee acknowledges, in particular, that the Complex is in a highly visible area in Golden Gate Park, accordingly, the furniture, equipment and fixtures used at the Complex must maintain and complement the park surroundings and will require City's prior written approval for any furniture, garbage receptacles, fixtures and equipment used in the Outdoor Seating Area and the placement thereof, and such approval shall be at City's sole discretion. Lessee shall repair or replace the furniture used in the Outdoor Seating Area from time to time as required to maintain such furniture in a first class condition. The tables and chairs in the Outdoor Seating Area shall be configured so that there are walkways and sufficient area for pedestrian and ADA ingress and egress on either side of the tables and to minimize any potential tripping or other hazards. Lessee, at Lessee's sole cost and expense, shall remove the tables and chairs and other equipment from the Outdoor Seating Area each day at close of business and shall store such items in the Storage Room or the Storage Unit.

(ii) General Use and Operation of Outdoor Seating Area.

Lessee shall not do anything in the Outdoor Seating Area which will conflict with any law,

and shall not use the Outdoor Seating Area in a manner which has been identified in writing as being unsafe by Lessee's or City's insurance carrier. During Lessee's hours of operation of the Mobile Café, Lessee shall keep the Outdoor Seating Area and the furniture free of dishes, utensils, food, debris and spills and in a neat, clean, orderly and attractive condition at all times and shall, as necessary, provide and empty garbage, compost and recycling receptacles serving such area. If Lessee fails to maintain the Outdoor Seating Area in the condition required hereunder, the City may provide written or oral notice to the manager or senior employee then on duty, describing such deficiency (the "Cleaning Default"), and Lessee shall promptly correct the deficiency. Failure to comply with this Section shall constitute a breach of this Lease which may result in termination under the provisions of **Section 9** below.

(iii) Limitations on Use of Seating Area. Lessee acknowledges that the Outdoor Seating Area is open to the public, and Lessee cannot limit use of the Outdoor Seating Area to Lessee's customers, and cannot prohibit the consumption of outside food and beverages in the Outdoor Seating Area.

(g) Storage Unit. Lessee shall have the right to install, maintain, and secure, at Lessee's sole cost and expense, a storage container (the "Storage Unit") behind court #18 in the Outdoor Storage Site depicted in **Exhibit A**, subject to the terms of this Section. The Storage Unit shall be no larger than eight (8) feet in width, eight (8) feet in height and twenty (20) feet in length. The Storage Unit shall be used solely for the storage of Lessee's personal property used in connection with Lessee's operations at the Complex. Lessee shall maintain the storage container in excellent condition and shall abate any graffiti or other damage within 24 hours of any damage or other vandalism that may be inflicted on the Storage Unit. Prior to or at the time of installation of the Storage Unit in the Outdoor Storage Site, Lessee, at Lessee's sole cost and expense, shall cause the Storage Unit to be painted the same color green as the tennis courts and shall erect green windscreens in a manner acceptable to the Facility Coordinator so that the storage container is less visible to the public. Upon the expiration or earlier termination of this Lease Lessee shall remove Storage Unit, at Lessee's sole cost and expense, and shall repair any damage to City property from the placement, use or removal of the Storage Unit. City shall have no liability for the condition of the Storage Unit and shall have no liability if Lessee's personal property stored in the Storage Unit is damaged or stolen.

(h) Limitations on Use of Clubhouse. Lessee shall use the Clubhouse for access to the Pro-Shop and the Storage Room and for no other use or purpose except as provided in this Section. The Facility Coordinator shall provide Lessee with keys to the Clubhouse and the alarm code for the Clubhouse at the commencement of Lessee's operations on the Premises, and such keys and alarm code shall be used solely for access to the Pro-Shop and Storage Space. Lessee shall not duplicate the keys or distribute the keys or share the alarm code with persons other than Lessee's personnel. If Lessee desires to use portions of the Clubhouse other than the Pro-Shop and the Storage Room for any tennis related event sponsored by Lessee, Lessee shall apply for such use with the Facility Coordinator and Department's Permits and Reservations Division at least ten (10) days in advance of the proposed event, and such use shall be permitted only upon written approval of the Facility Coordinator and the Department's Permits and Reservations Division and such use of the Clubhouse, including the kitchen, shall be subject to Lessee's payment of the Department usage fee and compliance with the Department's rules and regulations governing use of the Clubhouse, including, without limitation, the requirement that if any event in the Clubhouse goes beyond the hour of 6 pm, Lessee will be required to pay for the

Park Patrol to monitor the event at standard Department rates. Lessee's use of the Clubhouse shall be limited to tennis related events sponsored by Lessee, and Lessee shall in no event allow other groups or individuals to use the Clubhouse for any purpose.

(i) Storage Room. Lessee may use the Storage Room solely for the purpose of storing fixtures, equipment, furnishings and merchandise used in the operation of the Pro-Shop and the Mobile Café, and for no other use or purpose. Lessee shall not store perishable merchandise in the Storage Room, and any foodstuffs shall be properly wrapped and stored in a manner calculated to discourage pests and rodents. City shall have no liability if Lessee's personal property stored in the Storage Room is damaged or stolen.

(j) General Provisions. The Permitted Uses shall be generally conducted in accordance with the description of such Permitted Uses set forth in Lessee's Management Plan attached to this Lease as **Exhibit C**. In the event of a conflict between the provisions of Lessee's Management Plan and the provisions of this Lease, the provisions of this Lease shall control. If Lessee desires to engage in an additional use not enumerated above, or desires to materially change the manner in which Lessee conducts a Permitted Use from the manner described in the Management Plan, Lessee shall request such additional use or modification in writing, and such addition or modification shall be subject to the approval of the General Manager, which may be withheld in his or her sole discretion. Without limiting the other provisions of this Lease, Lessee's food and beverage operations on the Premises shall comply with the provisions of **Section 30** of this Lease regarding Sustainable Foods and the provisions of **Section 7.6(xiv)** and **Section 26.42** regarding food service waste reduction.

7.2. Appropriate Operations, Goods, and Services. Lessee has developed the Management Plan attached to this Lease as **Exhibit C**, as Lessee's proposed manner to market, promote and manage the concessions at the Premises, and the Department approves the Management Plan for such purpose, except to the extent inconsistent with the Permitted Uses or other provisions of this Lease. Upon written notice from the Department that the operations, goods or services provided at the concessions at the Premises are not in keeping with the approved Management Plan and the Department's vision outlined in the Request for Proposals, Lessee shall attempt in good faith to correct such deficiency within thirty (30) calendar days of such notice. If the deficiency cannot be corrected within the 30-day period, Lessee shall submit a written proposal for the correction along with a specific timeline for such cure no later than thirty (30) days after the date of the original notice from City. Lessee's proposal shall be subject to approval by the Department at Department's sole and absolute discretion. If the deficiency is not corrected by the end of the 30-day period, or if the Department has not accepted Lessee's plan for cure by such date, the Lessee shall be in default of this Lease.

7.3. Days and Hours of Operation. Lessee shall actively operate the Premises and use its best business efforts to further the operations thereof and maximize its potential revenue and to serve the public. Lessee acknowledges that Lessee's agreement to operate Lessee's business during the hours and for the purposes contemplated hereunder is a material consideration for City's agreement to enter into this Lease, in order to make sure that the facilities, goods and services are available to the community and visitors. The hours of operation shall be as follows:

Tennis Lessons and Special Events or Tournament Play: Lessee shall provide lessons every day of the week, weather permitting, beginning at the later of 7:00 AM or sunrise. Tennis instruction must cease by dusk.

Pro Shop: Lessee shall operate the Pro-Shop during the following hours:

Pro Shop Hours-May through October (peak season)

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Morning	9am-11am	9am-11am	9am-11am	9am-11am	9am-11am	8:30am-5pm	8:30am-5pm
Afternoon	3pm-6pm	3pm-6pm	3pm-6pm	3pm-6pm	3pm-6pm		

Pro Shop Hours-November, March and April (off peak season)

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Morning	Closed	Closed	Closed	Closed	Closed	8:30am-5pm	8:30am-5pm
Afternoon	3pm-5pm	3pm-5pm	3pm-5pm	3pm-5pm	3pm-5pm		

Pro Shop Hours-December, January and February (holiday season)

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Morning						8:30am-2:30pm	8:30am-2:30pm
Afternoon				3pm-5pm	3pm-5pm		

Mobile Café:

Café hours and days of operation:

Saturday	8:30am - 4:00 pm
Sunday	8:30am - 4:00 pm

The minimum schedules set forth above have been approved by the Commission and may not be altered in any manner without the prior written approval of the General Manager.

7.4. Rates and Charges; Required and Permitted Offerings.

(a) Generally. The rates and charges for goods sold and services offered at the Premises shall be reasonable and competitively priced with similar businesses in San Francisco. All increases in rates and charges for rentals and food and beverage items shall be subject to Department approval. Prices for the Pro-Shop and Mobile Café offerings are set by the Commission and may not be altered in any manner without prior written approval by the General Manager. Prices for Tennis lessons at the Complex are set by the Commission and the Board of Supervisors and may not be altered in any manner without approval by the Commission and the Board of Supervisors.

(b) Tennis Lessons.

(i) Current Rates. As of the date of this Lease, the approved rates for tennis lessons are as follows:

Type of Instruction	Number of Students	Price per Person Per Hour
½ Hour Private	1	\$30
1 Hour Private	1	\$50
1 Hour Semi-Private	2	\$30
1 Hour Group	3 (minimum)	\$20
1 Hour Youth Group	3 (minimum)	\$16

(ii) Desired Increase In Tennis Lesson Rates; Lessee Early Termination Right. Lessee acknowledges that changes to rates are subject to approval by the Board of Supervisors, in its sole discretion, prior to implementation. The General Manager shall cause Department staff to use diligent, good faith efforts to introduce an increase in tennis lesson rates to the City's Board of Supervisors in sufficient time that such changes, if approved, would be effective September 1, 2012. If such approved increased tennis lesson rates are not effective on or before September 1, 2012, then Lessee and Department staff shall negotiate in good faith regarding the Base Rent, Percentage Rent rates, or modification to this Lease necessary to make the operation of Lessee's business under this Lease economically feasible. Such negotiations shall commence promptly and continue for so long as the parties agree to continue negotiating, but not more than sixty (60) days. If the parties reach agreement with respect to such proposed Lease modifications, Department staff shall seek approval of the Commission for such proposed changes, and if approved City and Lessee shall promptly prepare and execute an amendment to this Lease memorializing such agreement. If the parties have not reached agreement, or if the proposed Lease modifications are not approved by the Commission by October 31, 2012, then Lessee may terminate this Lease on written notice to City given by November 30, 2012, and this Lease shall terminate sixty (60) days after City's receipt of such termination notice.

(c) **Special Events and Tournaments.** The table below details the types of events and prices for each event as of the date of this Lease. Any change or addition to the types of events or cost to participate shall be subject to the prior written approval by the General Manager.

Event Type	Cost Per Participant
Quick Start Tournament	\$25
Round Robins	\$25
Youth Tournaments	\$40
Adult Tournaments	\$40

(d) **Pro-Shop Goods and Services.** The tables below details the types of goods and services and food and beverage offerings for Lessee's operations at the Pro-Shop and prices for each as of the date of this Lease. Any change or addition to the types of goods and services or food and beverage offerings or the prices for such items shall be subject to the prior written approval by the General Manager.

Pro-Shop General Goods and Services			
Equipment or Sundry	Price	Service	Price
Tennis Balls	\$3.00	Racket Re-Stringing	\$16.00- \$35.00
Over Grips	\$5.50	Ball Machine Rental	\$12.00
Sunscreen	\$9.00	Re-Gripping	\$10.00
Cloths, Hats, Socks, T-Shirts	\$10.00	Racket Rental	\$7.00
Rackets	\$80.00- \$200		
Synthetic Gut	\$25.00		

Pro Shop Food and Beverage Offerings	
Item	Cost
Organic Fruits	\$.75
Bottled Water	\$1.50
Sparkling Water	\$2.00
Organic Sports Drinks	\$2.50
Organic Fruit Juice	\$2.00
Organic Granola Bars	\$2.25
Organic Yogurt	\$1.50
Coffee-premium single origin pour over	\$2.50
Tea	\$2.00
Sandwiches and Salads	\$6.00-\$9.00

(e) Mobile Café Menu and Pricing. The table below details the types of food and beverage offerings for Lessee's operations at the Mobile Café and prices for each as of the date of this Lease. Any change or addition to the types of food and beverage offerings or the prices for such items shall be subject to the prior written approval by the General Manager.

Food or Beverage Item	Cost
Premium single origin pour over coffee	\$2.50
Espresso (double)	\$2.25
Macchiato	\$2.75
Cappuccino	\$3.00
Latte	\$3.50
Hot Chocolate	\$3.00
Mocha	\$3.50
Chai Tea Latte	\$3.50
Cookies and Pastries (assorted)	\$1.50- \$3.00

7.5. Branded Products.

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

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

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

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

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

(i) **No Unlawful Uses or Nuisances.** Lessee shall not use or occupy any of the Premises or any Improvements, or permit the use or occupancy thereof, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy or hazardous use or any use in violation of the conditions of any certificate of occupancy. Lessee shall take all precautions to eliminate immediately any nuisances or hazards relating to its activities on or about the Premises or any Improvements permitted hereunder.

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

(iii) **Covenant to Protect Premises and Department Facilities.** At all times during the Term of this Lease, Lessee shall protect the Premises and the Department Facilities, if any, from any damage, injury or disturbance. If Lessee or any of its Agents or Invitees damages, injures or disturbs any of the Premises or the Department Facilities, or any portion thereof, Lessee shall immediately notify City of that occurrence. Without limiting any of its other rights hereunder, City may immediately take all actions it deems proper to repair the Department Facilities at Lessee's sole expense, and, following notice and a reasonable opportunity to cure (except in the event of an emergency in which case no notice or cure period is required), City may take all actions it deems proper to repair the Premises at Lessee's sole expense. Lessee shall promptly, upon City's request, remove or

alter to City's satisfaction and at Lessee's sole cost, any Improvements, Alterations or Lessee's Personal Property placed on the Premises by or on behalf of Lessee as necessary to avoid interference with City's use of the Premises for municipal purposes; provided, such removal shall be at City's sole cost if the applicable Improvements or Alterations were approved by City in writing pursuant to the terms of this Lease. City may adopt from time to time such rules and regulations with regard to Lessee's facilities and operations hereunder as City may determine are necessary or appropriate to safeguard the Department Facilities and City's interests in the Premises. Lessee shall comply with all such rules and regulations upon receipt of a copy thereof.

(iv) Covenant Against Dumping; Waste Disposal. Lessee shall not cause or permit the dumping or other disposal on, under or about the Premises of landfill, refuse, Hazardous Material or other materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment. Organic wastes from the Premises shall be composted on-site to the extent reasonably possible. Lessee shall use its best efforts to reduce the amount of trash and waste generated from the Premises, to acquire products for use on the Premises which reuse or recycle packaging, and to recycle all materials used on the Premises to the extent reasonably possible.

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

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

(vii) Covenant Against Hunting. Lessee shall not engage in or permit any hunting or, trapping on or about the Premises, except for hunting or trapping for the purpose of controlling predators or problem animals by the appropriate use of selective control techniques approved in advance by the General Manager in writing, provided such hunting and trapping is done in strict accordance with all applicable Laws. Whenever possible, all measures used for such control shall be limited in their application to the specific problem animals. Lessee shall not use poison bait, cyanide guns, traps or other similar non-selective control techniques. In no event may Lessee use any prophylactic predator control measures. The restrictions of this Section applicable to the identification and control of predators and problem animals shall not apply to commensal rodents.

(viii) Pesticides Prohibition. Lessee shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Lessee to submit to the Department an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Lessee may need to apply to the Premises during the terms of this Lease, (b) describes the steps Lessee will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Lessee's primary IPM contact person with the City. In addition, Lessee shall comply with the requirements of Sections 39.4(a) and 39.4(b) of the Pesticide Ordinance as of January 1, 1999 and January 1, 2000, respectively.

(ix) Weed Control. Lessee shall not introduce any noxious weeds on or about the Premises. Lessee shall control noxious weeds, provided that Lessee may use

chemical herbicides only if such use complies with the requirements of **Section 7.2(i)** above.

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

(xi) Sewerage System. Lessee shall maintain and its sole cost and expense, and in accordance with **the** direction and to the satisfaction of the General Managers of the Recreation and Park Department and the SFPUC, the sewerage system now installed on the Premises and shall not permit any sewage or fouled waste water to be disposed of on the Premises, except as provided for and as customary per such sewage system.

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

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

(xiv) Recycling and Resource Conservation. The City of San Francisco has set ambitious recycling and composting goals for City Departments including 75% landfill diversion by 2010 and maximum participation the City's municipal composting program at all City Department locations where there is food service. In addition, the City has recently passed the Food Service Waste Reduction Ordinance (see **Section 26.42**) which, in part, "Prohibits the use of polystyrene foam dispensable food service ware and requires the use of recyclable or compostable food service ware by restaurants, retail food vendors, City Departments and the City's contractors and lessee." City contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities and while performing under a City contract or lease. City contractors and lessees using any Disposable Food Service Ware shall use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware in City Facilities and while performing under a City contract or lease unless there is no suitable Affordable Biodegradable/Compostable or recyclable product available as determined by the City Administrator in accordance with Subsection 1604(a). Lessee shall develop a program to work toward a zero waste goal, including the implementation of a composting system for food waste, packaging and 100% biodegradable supplies whenever practical. Lessee shall submit a recycling and composting plan at Commencement of Lease, and provide an annual report on each anniversary date of this Lease outlining their progress toward meeting the recycling and composting goals described above and their success toward a zero waste goal.

(xv) Americans with Disabilities Act. Lessee acknowledges that the Americans with Disabilities Act (the "ADA") requires that programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Lessee further acknowledges its obligation to comply with the ADA and any other federal, state or local disability rights legislation. Without limiting

the provisions of **Section 8.1** and **Article 11** below, Lessee warrants that it will fulfill that obligation, and that it will not discriminate against disabled persons in the provision of services, benefits or activities pursuant to this Lease. City shall bear all responsibility and cost for mandated physical changes to the Property resulting from disability access laws.

8. ALTERATIONS AND IMPROVEMENTS

8.1. Construction of Alterations and Improvements. Lessee shall not construct, install or otherwise place any Improvements or make or permit any Alterations in, to or about the Premises, without the General Manager's prior written consent in each instance, which the General Manager may give or withhold in its sole and absolute discretion. Subject to the General Manager's consent as provided above, any permitted Improvements or Alterations shall be done at Lessee's sole expense (i) in strict accordance with designs, plans and specifications approved in advance by the General Manger in writing, (ii) by duly licensed and bonded contractors or mechanics approved by the General Manager, (iii) in a good and professional manner, (iv) in strict compliance with all Laws (including, without limitation, all health, disabled access and building codes and ordinances), and (v) subject to all other conditions that the General Manager or the Commission may reasonably impose, including, without limitation, provision of such completion security as is acceptable to City. In no event shall the construction or installation of any such Improvements or the making of any Alterations impair the use or operation of Department Facilities (if any), or any portion thereof, or the Department's access thereto. Prior to the commencement of any work on the Premises to construct any permitted Improvements or make any permitted Alterations, Lessee, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to City. No material change from the plans and specifications approved by City may be made without City's prior written consent. City and its Agents shall have the right to inspect the course of such construction at all times. Upon completion of such Improvements or Alterations, Lessee shall furnish City with a complete set of final as-built plans and specifications. If the cost of any proposed Improvements or Alterations is in excess of Five Thousand Dollars (\$5,000), Lessee shall pay City an administrative fee equal to ten percent (10%) of the total cost of the work. Lessee shall require from each contractor and subcontractor performing any work on or about the Premises a policy of commercial general liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars (\$1,000,000) combined single limit. Such insurance shall also be in compliance with the requirements set forth in **Section 19.2**.

8.2. Ownership of Improvements. Any Improvements or Alterations constructed on or affixed to the Premises by or on behalf of Lessee above shall be and remain Lessee's property during the Term. Upon the Expiration Date or any earlier termination hereof, Lessee shall, upon City's request, remove all such Improvements and Alterations from the Premises in accordance with the provisions of **Section 22.1** hereof, unless City, at its sole option and without limiting any of the provisions of **Section 8.1** above, specifies at the time of City's approval of any such Improvements or Alterations that such Alterations or Improvements may remain on the Premises following the expiration or termination of this Lease. The Proposed Improvements described in Section 8.4 shall remain on the Premises.

8.3. Lessee's Personal Property. All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Lessee that can be removed without structural or other material damage to the Premises

(all of which are herein called "Lessee's Personal Property") shall be and remain the property of Lessee and may be removed by it subject to the provisions of **Section 22.1** hereof. At least ten (10) days prior to delinquency, Lessee shall pay all taxes levied or assessed upon Lessee's Personal Property and shall deliver satisfactory evidence of such payment to City.

8.4. Proposed Improvements; Failure to Make Proposed Improvements.

Upon the Effective Date of this Lease, Lessee shall promptly commence and diligently pursue to completion the specific Improvements, Alterations and repairs detailed in **Exhibit D** (the "Proposed Improvements"), subject to the provisions of **Section 12.2** below and in accordance with the provisions of **Section 8.1** above. The Proposed Improvements, first anticipated by Lessee in the Request for Proposals, are the final result of negotiations between Lessee and City. City and Lessee understand, acknowledge and agree that prior to commencing the Proposed Improvements, Lessee shall be required to obtain the approval of the Commission and any other regulatory agency that may have jurisdiction. Lessee and City agree that any such work shall be subject to receipt of approval of all applicable regulatory agencies, and shall be completed within 60 days after the Commencement Date. If Lessee does not complete each and every Proposed Improvement within 60 days of the Commencement Date and in the manner provided herein, such failure shall constitute a breach of the Lease. The provisions of **Section 18**, **Section 19** and **Section 23** below shall apply in full during the period of Lessee's entry onto the Premises to perform such work prior to the Commencement Date, as shall any other provision of this Lease required to enforce City's rights under such Sections, and Lessee shall (i) provide certificates of insurance evidencing the existence and amounts of liability insurance carried by Lessee and its agents and contractors, reasonably satisfactory to City, prior to such early entry, and (ii) comply with all applicable laws, regulations, permits and other approvals applicable to such early entry work in the Premises.

8.5. Rent Credits for Portion of Cost of Proposed Improvements. If the General Manager determines that Sliding Window Repairs are required in accordance with the provisions of **Exhibit D**, provided that the Reimbursement Conditions set forth below are satisfied, Lessee shall receive a credit against future Base Rent and Percentage Rent in the amount equal to the lesser of (A) \$1,200.00 or (B) the cost of the Sliding Window Repairs (the "Sliding Window Repair Credit"). Further, provided that the Reimbursement Conditions are satisfied, Lessee shall receive an additional credit against future Base Rent and Percentage Rent in an amount equal to the lesser of (i) \$3,400 or (ii) 50% of cost of performing the Proposed Improvements other than the Sliding Window Repairs (the "Improvement Credit"). As used in this Lease the "Reimbursement Conditions" are as follows:

- (1) Lessee shall solicit bids from not less than three (3) contractors for each element of the Proposed Improvements.
- (2) Lessee shall engage the low bidder to perform the work, except as otherwise approved in writing by City.
- (3) Lessee will provide City with copies of the actual contractor responses and the contract(s) for the Proposed Improvements.
- (4) Lessee shall keep accurate books and records of all costs incurred in connection with the Proposed Improvements in accordance with accounting principles generally accepted in the construction industry.

(5) Not later than sixty (60) days after completion of the Proposed Improvements, Lessee shall deliver to City an itemized statement of the actual costs expended by Lessee on the Proposed Improvements, accompanied by documentation substantiating such expenditures.

City shall have the right on written notice to Lessee to audit Lessee's books and records with respect to the Proposed Improvements. Provided that the Reimbursement Conditions are satisfied, City shall credit the Sliding Window Rent Credit and the Improvement Credit to the Rent first payable hereunder following the satisfaction of such Reimbursement Conditions.

8.6. Notice to Proceed with Improvements. Lessee agrees that the alterations, improvements and repairs to be made by Lessee pursuant to the terms and conditions of this Lease shall not commence until this Lease has been approved by the Recreation and Park Commission and the Lessee obtains from City written approval to proceed.

9. REPAIRS AND MAINTENANCE

9.1. Lessee Responsible for Maintenance and Repair.

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

(b) Lessee shall maintain the Premises and any existing and permitted Improvements at all times in clean, safe, attractive and sanitary condition and in good order and repair, to City's reasonable satisfaction. If any portion of the Premises or any of City's property located on or about the Premises is damaged by any of the activities conducted by Lessee or its Agents or Invitees hereunder, Lessee shall immediately, at its sole cost, repair any and all such damage and restore the Premises or City's property to its previous condition.

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

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

(e) [Intentionally omitted.]

9.2. City's Maintenance and Repair Obligations. Notwithstanding **Section 9.1**, City shall maintain, repair and keep in good condition any adjoining property under the jurisdiction of the Commission (other than the Premises), including gardening and landscaping services, and bathrooms. Lessee shall provide City with prompt written notice of any required repair or maintenance item. City shall maintain, repair and replace if necessary all structural elements of the Premises. City shall be responsible for the structural integrity of the roof and its structural members.

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

10. UTILITIES

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

10.2. Interruption of Services. City's obligation to provide utilities and services for the Premises are subject to applicable Laws (including the rules or actions of the public utility company furnishing the utility or service), and shutdowns for maintenance and repairs, for security purposes, or due to strikes, lockouts, labor disputes, fire or other casualty, acts of God, or other causes beyond the control of City. In the event of an interruption in, or failure or inability to provide any service or utility for the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Lessee, constructive or otherwise, or impose upon City any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Lessee. Lessee hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future Law permitting the termination of this Lease due to such interruption, failure or inability.

10.3. Water and Energy Conservation; Mandatory or Voluntary Restrictions. In the event any law, ordinance, code or governmental or regulatory guideline imposes mandatory or voluntary controls on City or the Property or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Lease, or in the event City is required or elects to make alterations to any part of the Improvements on the Premises in order to comply with such mandatory or voluntary

controls or guidelines, such compliance and the making of such alterations shall in no event entitle Lessee to any damages, relieve Lessee of the obligation to pay the full Base Rent and Additional Charges reserved hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Lessee. City shall have the right at any time to install a water meter in the Premises or otherwise to measure the amount of water consumed on the Premises, and the cost of such meter or other corrective measures and the installation and maintenance thereof shall be paid for by Lessee.

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

11. LIENS

Lessee shall keep the Premises and all of City's property free from any liens arising out of any work performed, material furnished or obligations incurred by or for Lessee. In the event Lessee does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have in addition to all other remedies provided herein and by Law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by Lessee upon demand. City shall have the right at all times to post and keep posted on the Premises any notices permitted or required by Law or that City deems proper for its protection and protection of the Premises and City's property, from mechanics' and materialmen's liens. Lessee shall give City at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises. Notwithstanding the foregoing, Lessee shall have the right, upon posting of an adequate bond or other security acceptable to City, to contest any such lien, and in such case City shall not seek to satisfy or discharge such lien unless Lessee has failed to do so within ten (10) days after final determination of the validity thereof. Lessee shall Indemnify City, the other Indemnified Parties and the Premises against any and all Losses arising out of any such contest.

12. COMPLIANCE WITH LAWS

12.1. Compliance with Laws. Lessee shall promptly, at its sole expense, maintain the Premises, any Improvements permitted hereunder and Lessee's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Lease below), and all present and future life safety, fire sprinkler, seismic retrofit and other building code requirements. The Parties acknowledge and agree that Lessee's obligation to comply with all laws as provided herein is a material part of the bargained-for consideration under this Lease. Lessee's obligation under this Section shall include, without limitation, the responsibility of Lessee to make substantial or structural

repairs and alterations to the Premises (including any Improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Lessee or City, the degree to which the curative action may interfere with Lessee's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Law involved, and whether the Law involved is related to Lessee's particular use of the Premises. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Lessee from its obligations hereunder, or shall give Lessee any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Lessee waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

12.2. Regulatory Approvals

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

(b) City Acting as Owner of Real Property. Lessee further understands and agrees that City, acting by and through the Commission, is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Lessee's obligation to obtain any required approvals from City departments, boards or commissions having jurisdiction over the Premises. By entering into this Lease, City is in no way modifying or limiting Lessee's obligation to cause the Premises or any permitted Improvements to be used and occupied in accordance with all applicable Laws, as provided further above.

12.3. Compliance with City's Risk Management Requirements. Lessee shall not do anything, or permit anything to be done, in or about the Premises or any Improvements permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect City from any potential premises liability. Lessee shall faithfully observe, at its expense, any and all reasonable requirements of City's Risk Manager with respect thereto and with the requirements of any policies of public liability, fire or other policies of insurance at any time in force with respect to the Premises and any Improvements as required hereunder.

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

13. FINANCING; ENCUMBRANCES; SUBORDINATION

13.1. Encumbrance of City's Fee Interest. The following provisions shall apply notwithstanding anything to the contrary contained in this Lease.

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

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

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

14. DAMAGE OR DESTRUCTION

14.1. Damage or Destruction to the Improvements. If the Premises or the Improvements are damaged by fire or other casualty, then City shall repair the same (subject to the provisions of Section 14.2 below) provided that funds for such repairs are appropriated by City's Board of Supervisors, in its sole discretion, for such purpose and provided further that such repairs can be made within two hundred ten (210) days after the date of such damage (the "Repair Period"). In the event such conditions are satisfied, this Lease shall remain in full force and effect except that Lessee shall be entitled to a proportionate reduction of Base Rent and Additional Charges during the period of such repairs based upon the extent to which such damage and the making of such repairs materially interferes with Lessee's use or occupancy of the Premises (except to the extent that the damage or destruction was caused by the negligence or intentional misconduct of Lessee or its Agents). City shall use good faith efforts to notify Lessee within ninety (90) days after the date of such damage whether or not such repairs can be made within the Repair Period, and City's determination thereof shall be binding on Lessee. If City determines that such repairs cannot be made within the Repair Period, City shall have the option to notify Lessee of: (a) City's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period after the Repair Period, subject to the Board of Supervisor's appropriation of all necessary funds, in which event this Lease shall continue in full force and effect and the Base Rent and Additional Charges shall be reduced as provided herein; or (b) City's election to terminate this Lease as of a date

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

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

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

15. EMINENT DOMAIN

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

15.2. Total Taking; Automatic Termination. If a total Taking of the Premises occurs, then this Lease shall terminate as of the Date of Taking.

15.3. Partial Taking; Election to Terminate.

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

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

(c) Either Party electing to terminate under the provisions of this **Article 15** shall do so by giving written notice to the other Party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth day after such written notice is given or the Date of Taking.

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

15.5. Partial Taking; Continuation of Lease. If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under **Section 15.3** above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the Parties shall be as follows: (i) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease). Lessee shall have no claim against City for the value of any unexpired Term of this Lease, provided that Lessee may make a separate claim for compensation. Lessee shall retain any Award made specifically to Lessee for Lessee's relocation expenses or the interruption of or damage to Lessee's business or damage to Lessee's Personal Property.

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

during the Term up to the total Rent owing by Lessee for the period of the Taking, and City shall be entitled to receive the balance of any Award.

16. ASSIGNMENT AND SUBLETTING

16.1. Restriction on Assignment and Subletting. Lessee shall not directly or indirectly (including, without limitation, by merger, acquisition, sale or other transfer of any controlling interest in Lessee), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Improvements or its leasehold estate hereunder (collectively, "Assignment"), or permit any portion of the Premises or any Improvements to be occupied by anyone other than itself, or sublet any portion of the Premises or any permitted Improvements thereon. (collectively, "Sublease"). Any Assignment or Sublease shall be voidable at the option of the City in its sole and absolute discretion; and the City shall have the right to terminate immediately this Lease by sending written notice to Lessee.

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

16.3. Indemnity for Relocation Benefits. Without limiting Section 16.2, Lessee shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Lessee shall Indemnify City and the other Indemnified Parties for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

17. DEFAULT; REMEDIES

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

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

(b) Covenants, Conditions and Representations. Any failure to perform or comply with any other covenant, condition or representation made under this Lease, provided Lessee shall have a period of fifteen (15) days from the date of written notice from City of such failure within which to cure such default under this Lease, or, if such default is not capable of cure within such 15-day period, Lessee shall have a reasonable period to complete such cure if Lessee promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to

completion and Lessee uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from City; provided, however, that upon the occurrence during the Term of two (2) defaults of the same obligation City shall not be required to provide any notice regarding Lessee's failure to perform such obligation, and any subsequent failure by Lessee after Lessee has received two such notices shall constitute a default by Lessee hereunder without any requirement on the part of City to give Lessee notice of such failure or an opportunity to cure;

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

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

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

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

(b) Continue Lease and Enforce Rights. The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as City does not terminate Lessee's right to possession, if Lessee has the right to sublet or assign, subject only to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of Lessee's right to possession: acts of maintenance or preservation; efforts to relet the Premises or the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment or Sublease, or terminating an Assignment or Sublease, if the withholding or termination does not violate the rights of Lessee specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Lessee shall be immediately liable for payment to City of, in addition to Base Rent and Additional Charges due hereunder, the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Base Rent and Additional Charges owing hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount to be

paid as Base Rent and Additional Charges for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this **Section 17.2(b)** shall be deemed a waiver of any default by Lessee and, notwithstanding any such subletting without termination, City may at any time thereafter elect to terminate this Lease for such previous default.

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

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

18. WAIVER OF CLAIMS; INDEMNIFICATION

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

(a) Lessee expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to the Improvements or Lessee's uses hereunder. City would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Lessee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Lessee or other waivers contained in this Lease and as a material part of the consideration for this Lease, Lessee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against City for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this Lease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Lessee pursuant to this Lease regardless of the cause, and whether or not due to the negligence or gross negligence of City or its Agents.

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

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

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

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

19. INSURANCE

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

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

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

(iii) Business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, as applicable, if Lessee uses automobiles in connection with its use of the Premises.

(iv) Business Interruption Insurance insuring that the Rent will be paid to City for a period of at least one (1) year if Lessee is unable to operate its business at the Premises. Such insurance shall also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion. To calculate Rent during any such interruption of business, the Rent for the 12-month period immediately preceding the incident causing the business interruption shall be used.

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

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

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

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

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

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

That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

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

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

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

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

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

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

19.7. Lessee's Personal Property and Alterations and Improvements. Lessee shall be responsible, at its expense, for separately insuring Lessee's Personal Property, Alterations, and Improvements made by or on behalf of Lessee.

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

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

20. ACCESS BY CITY

20.1. Access to Premises by City.

(a) General Access. City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than forty-eight (48) hours oral or written notice to Lessee (except in the event of an emergency) for any of the following purposes:

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

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

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

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

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

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

(c) No Liability. City shall not be liable in any manner, and Lessee hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of City's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of City or its Agents and not contributed to by the acts, omissions or negligence of Lessee, its Agents or Invitees.

(d) No Abatement. Lessee shall not be entitled to any abatement in Rent if City exercises any rights reserved in this Section.

(e) Minimize Disruption. City shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Lessee's use hereunder.

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

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

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

21. ESTOPPEL CERTIFICATES

Either Party hereto shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other Party, execute, acknowledge and deliver to the other Party, or such persons or entities designated by such other Party, a statement in writing certifying: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), (d) the dates, if any, to which the Rent has been paid, and (e) any other information that may be reasonably required by any such persons or entities. Any such certificate delivered pursuant to the provisions hereof may be relied upon by the other Party or any prospective purchaser or Encumbrancer of its estate. The General Manager shall be authorized to execute, acknowledge and deliver any such certificates of the City.

22. SURRENDER

22.1. Surrender of the Premises. Upon the Expiration Date or any earlier termination of this Lease pursuant hereto, Lessee shall surrender to City the Premises, in good condition, order and repair, free from debris and hazards, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Lessee. On or before the Expiration Date or any earlier termination hereof, or later upon City's

request, Lessee shall, at its sole cost, remove any and all of Lessee's Personal Property from the Premises and demolish and remove any and all Improvements and Alterations from the Premises requested by City to be removed (except for any Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2** above). In addition, Lessee shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Improvements or Alterations. In connection therewith, Lessee shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Lessee's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Lessee's Personal Property remaining on or about the Premises after the Expiration Date of this Lease may, at City's option, be deemed abandoned and in such case City may dispose of such property in accordance with Section 1980 *etseq.* of the California Civil Code or in any other manner allowed by Law. If Lessee fails to surrender the Premises to City on the Expiration Date or earlier termination of the Term as required by this Section, Lessee shall Indemnify City against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Lessee resulting from Lessee's failure to surrender the Premises.

22.2. Automatic Reversion. Upon the Expiration Date or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Lessee or City, become the property of City, free and clear of all liens and Encumbrances and without payment therefor by City and shall be surrendered to City upon such date. Upon or at any time after the date of termination of this Lease, if requested by City, Lessee shall promptly deliver to City, without charge, a quitclaim deed to the Premises suitable for recordation and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Lessee's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises or any permitted Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2** above.

23. HAZARDOUS MATERIALS

23.1. No Hazardous Materials. Lessee covenants and agrees that neither Lessee nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or any Improvements or transported to or from the Premises or any Improvements. Lessee shall immediately notify City if and when Lessee learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises or any Improvements. City may from time to time request Lessee to provide adequate information for City to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and Lessee shall promptly provide all such information. Without limiting **Article 20** hereof, City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Lessee (except in the event of an emergency).

23.2. Lessee's Environmental Indemnity. If Lessee breaches any of its obligations contained in **Section 23.1** above, or, if any act or omission or negligence of Lessee or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Premises (including any Improvements thereon) or any other City

property, without limiting Lessee's general Indemnity contained in **Section 18.2** above, Lessee, on behalf of itself and its successors and assigns, shall Indemnify City and the Indemnified Parties, and each of them, from and against all Hazardous Materials Claims arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or any other City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other City property. Without limiting the foregoing, if Lessee or any of Lessee's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or any other City property, Lessee shall, immediately, at no expense to City, take any and all appropriate actions to return the Premises or other City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Lessee shall provide City with written notice of and afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

24. SECURITY DEPOSIT

Lessee shall pay to City upon execution of this Lease the sum specified for the security deposit in the Basic Lease Information as security for the faithful performance of all terms, covenants and conditions of this Lease. Lessee agrees that City may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises, the Improvements, or the Department Facilities (if any) caused by Lessee, its Agents or Invitees, or any failure of Lessee to perform any other terms, covenants or conditions contained in this Lease, without waiving any of City's other rights and remedies hereunder or at Law or in equity. Should City use any portion of the security deposit to cure any Event of Default by Lessee hereunder, Lessee shall immediately replenish the security deposit to the original amount, and Lessee's failure to do so within five (5) days of City's notice shall constitute a material Event of Default under this Lease. If the Base Rent is increased pursuant to any of the provisions of this Lease, Lessee shall increase the amount of the security deposit accordingly. City's obligations with respect to the security deposit are solely that of debtor and not trustee. City shall not be required to keep the security deposit separate from its general funds, and Lessee shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Lessee's liability for the performance of any of its obligations under this Lease.

25. HOLDING OVER

Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis at a monthly Base Rent equal to one hundred ten percent (110%) of the amount set forth in **Sections 5.1 and 5.2** hereof, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term). Any holding over without City's consent shall constitute a default by Lessee and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term of this Lease. Any holding over after the expiration of the Term without the City's consent shall be at a monthly rental rate

equal to one hundred fifty percent (150%) of the rate in effect at the end of the Term of this Lease.

26. GENERAL PROVISIONS

26.1. Notices. Except as otherwise expressly provided in this Lease, any notice given hereunder shall be effective only if in writing and given by delivering the notice in person, or by sending it first-class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to: (a) Lessee (i) at Lessee's address set forth in the Basic Lease Information, if sent prior to Lessee's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to Lessee's taking possession of the Premises, or (iii) at any place where Lessee or any Agent of Lessee may be found if sent subsequent to Lessee's vacating, abandoning or surrendering the Premises; or (b) City at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Lessee may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first-class or certified mail, one day after the date it is made if sent by commercial overnight courier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this **Section 26.1** and applicable Laws, shall be deemed receipt of such notice. For convenience of the Parties, copies of notices may also be given by telefacsimile to the telefacsimile number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

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

26.3. Amendments. Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto. Whenever this Lease requires or permits the giving by City of its consent or approval, the General Manager of the Department shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Lessee, and City's agreement may be made upon the sole approval of the General Manager of the Department provided such amendment or modification does not

(i) decrease the amount of rental income payable by Lessee to City, (ii) materially increase City's liabilities or financial obligations under this Lease, (iii) materially increase the size of the Premises, (iv) change the Term of this Lease, or (v) materially change the permitted uses of the Premises. Any proposed amendment which falls into the above specified categories shall require the approval of the Commission, and, if required under the City's Charter or Administrative Code, the Mayor, and the Board of Supervisors.

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

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

26.6. Interpretation of Lease. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of City is required to be obtained by Lessee hereunder, City may give or withhold such consent in its sole and absolute discretion. All such consents may be made by the General Manager acting alone, unless stated to the contrary herein.

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

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

separate written agreement between such broker and the party through which such broker contracted. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

26.9. Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by Law.

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

26.11. Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Lease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Lease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Lessee hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Lessee by implication or otherwise unless expressly set forth herein.

26.12. Attorneys' Fees. In the event that either City or Lessee fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

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

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

26.15. Survival of Indemnities. Termination of this Lease shall not affect the right of either party to enforce any and all indemnities, waivers and representations and

warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof. Lessee specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, Lessee has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Lessee by City and continues at all times thereafter.

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

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

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

26.19. Non-Liability of City Officials, Employees and Agents. No elective or appointive board, commission, member, officer, employee or other Agent of City shall be personally liable to Lessee, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Lessee, its successors and assigns, or for any obligation of City under this Lease or otherwise.

26.20. Wages and Working Conditions. With respect to the construction of any Improvements or Alterations, any employee performing services for Lessee shall be paid not less than the highest prevailing rate of wages, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in the City and County of San Francisco. Lessee shall require any contractor to provide, and shall deliver to City every calendar month during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Improvements or Alterations on the Premises.

26.21. Prevailing Wages for Theatrical Workers. Pursuant to San Francisco Administrative Code Section 21.25-3, unless excepted, Contracts, Leases, Franchises, Permits, and Agreements awarded, let, issued or granted by the City and County of San Francisco for the use of property owned by the City and County of San Francisco shall require any Employee engaged in theatrical or technical services related to the presentation of a Show to be paid not less than the Prevailing Rate of Wages. Employees engaged in

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

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

26.23. Supervision of Minors.

(a) Records Request. If any person applies for employment or for a volunteer position with Lessee, or any sublessee or subcontractor, in which such applicant would have supervisory or disciplinary power over a minor or any person under such applicant's care, then Lessee, and any sublessee or subcontractors providing services at the Premises, shall request from the California Department of Justice records of all convictions or any arrest pending adjudication of such applicant involving the offenses listed in Welfare and Institution Code Section 15660(a), in accordance with the procedures established in California Penal Code Section 11105.3.

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

(c) Notice Required for Sites Other Than Recreational Sites. If Lessee, or any of its sublessees or subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code Section 11105.3(c),

then Lessee shall comply, and cause its sublessees and subcontractors to comply, with Penal Code Section 11105.3(c) and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Lessee shall provide, or cause its sublessees or subcontractors to provide, City with a copy of any such notice at the same time that it provides notice to any parent or guardian, to the extent permitted by law.

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

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

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

(a) Covenant Not to Discriminate. In the performance of this Lease, Lessee covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Lessee, in any of Lessee's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Lessee.

(b) Subleases and Other Subcontracts. Lessee shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Sublessee or other subcontractor in substantially the form of subsection (a) above. In addition, Lessee shall incorporate by reference in all subleases and other subcontracts the

provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all sublessees and other subcontractors to comply with such provisions. Lessee's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

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

(d) Condition to Lease. As a condition to this Lease, Lessee shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

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

26.26. No Relocation Assistance; Waiver of Claims. Lessee acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Lessee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action (including, without limitation, consequential and incidental damages) against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any Laws, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 *et seq.*), except as otherwise specifically provided in this Lease with respect to a Taking.

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

the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

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

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

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

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

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

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

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

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

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

26.36. City's Inability to Perform. If City is unable to perform or is delayed in performing any of City's obligations under this Lease, by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials or by any other reason beyond City's reasonable control, no such inability or delay shall constitute an eviction under this Lease, or impose any liability upon City or its Agents by reason of inconvenience, annoyance, interruption, injury or loss to or interference with Lessee's business or use and occupancy or quiet enjoyment of the Premises or any loss or damage occasioned thereby.

26.37. Notification of Limitations on Contributions. Through its execution of this Lease, Lessee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Lessee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Lessee further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Lessee's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Lessee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Lessee. Additionally, Lessee acknowledges that Lessee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Lessee further agrees to provide to City the name of the each person, entity or committee described above.

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

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

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

26.40. Preservative-Treated Wood Containing Arsenic. As of July 1, 2003, Lessee may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Lessee may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Lessee from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

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

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

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

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

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

27. QUALITY OF SERVICES AND PRODUCTS OFFERED.

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

28. PARTICIPATION IN CITY CUSTOMER SATISFACTION PROGRAM.

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

29. SIGNS AND ADVERTISING.

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

30. SUSTAINABLE FOODS.

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

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

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

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

[No further text this page.]

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

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

LESSEE:

GGP TENNIS PARTNERS,
a California limited liability company

By: _____

Its: _____

By: _____

Its: _____

CITY:

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

By: _____

PHILIP A. GINSBURG, General Manager
Recreation and Park Department

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

Margaret McArthur, Commission Liaison

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By _____

Deputy City Attorney

EXHIBIT A- PREMISES MAP
Golden Gate Park Tennis Complex

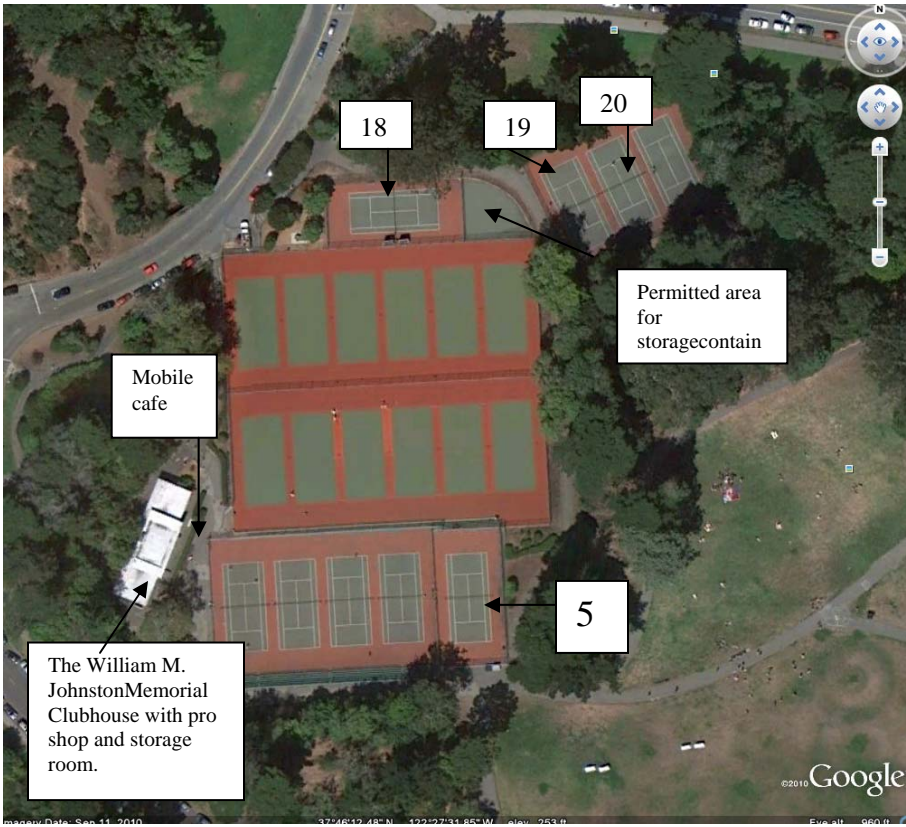


EXHIBIT B- DEPARTMENT RULES AND REGULATIONS

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

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

Please see the following link for the special rules and regulations applicable to the Complex:

EXHIBIT C- APPROVED MANAGEMENT PLAN



GGP tennis partners LLC will be operating three distinct, yet wholly integrated businesses at Golden Gate Park;

1. Tennis instructional programs & related events
2. Pro-Shop concession providing tennis related supplies & other sundries
3. Café service providing artisanal coffee, espresso and food offerings

Before discussing the operations of each, it is important to note these operations will be coordinated and professionally supported by an over-arching corporate structure at **GGP tennis partners LLC**. Robert Stang will be the Director of Business Operations and will; coordinate all administrative efforts to ensure **GGP tennis partners LLC** operates efficiently and successfully; coordinate outside vendors/services in areas of payroll, tax remittance, insurance etc.; be the primary contact with SF Park & Recreation providing monthly reports and accounting, answer inquiries from staff, and remedy any matters brought to our attention. Robert will also continually review operations against our contract with SF Park & Rec. to ensure compliance at all times. This is a role Mr. Stang has successfully played with San Francisco in contracts at SFO and with SFMTA.

GGP tennis partners LLC recognizes that our success at Golden Gate Park will depend on a collaborative group effort, with focused professionals contributing expertise in key areas. The following entities are integral partners to our efforts of providing first-rate concessions at Golden Gate Park:



Mr. Steven Kay, of Law Firm Kay &Merkle in San Francisco will provide all necessary legal counsel regarding **GGP tennis partners LLC** matters in its contract with SF Park & Rec. Over the past 40 years Mr. Kay has represented a wide variety of clients that have contracted with San Francisco, successfully nurturing public/private partnerships such as the opportunity at Golden Gate Park. A



prominent member of the San Francisco business community with clients such as San Francisco 49ers. Mr. Kay will mentor **GGP tennis partners LLC** in its relationship with SF Park & Recreation. An accounting firm specializing in small business, Firm Partner Charanjit Dhillon will personally work with **GGP tennis partners LLC** to provide reviewed financial statements to SF Park & Recreation.



A firm specializing in helping small business in areas of human resource management and marketing. Sprout SF is a Women Business Enterprise (WBE) certified by San Francisco Human Rights Commission; Cornelia Stang founder will personally be involved with **GGP tennis partners LLC**.



Coffee Bar, through Mr. Stang's leadership in both entities, will partner with **GGP tennis partners LLC** to open a café at Golden Gate Park just in front of the William Johnston Clubhouse. A moveable coffee/espresso cart will reside on the terrace with a full complement of bistro style seating and tables. Offerings at the Café will include artisan coffees and teas, espresso drinks, pastries, breakfast items, and artisanal grab and go sandwiches and salads. Organic, local, and sustainable ingredients/supplies will be used throughout our offerings.

Human Resources - Sprout
SF will provide functional

support, a Women Business Enterprise (WBE) based in San Francisco and certified by the San Francisco Human Rights Commission. Ms. Cornelia Stang, President, will provide HR support in areas of:

- Hiring process to include drug-testing, criminal background & reference checks
- Maintenance of employee files and associated legal requirements
- Federal & State required employee trainings; safety, sex harassment etc.
- HR checklist to ensure governing laws adhered to re: breaks etc.
- Immediate handling, evaluation, resolution of employee matters

ABOUT SPROUT SF – OUR HUMAN RESOURCES PARTNER

Cornelia Stang founded Sprout SF in 2005. Sprout SF is certified by San Francisco Human Rights Commission as a Women Business Enterprise (WBE). Sprout has helped small companies in San Francisco in all areas of human resource requirements and support, customer service training, mystery shop programs, and marketing initiatives. Prior to founding Sprout SF, Cornelia had a varied professional background. After graduating UCLA, she worked for Ernst & Young as an accountant where she earned her Certified Professional Accounting (CPA) credential. She then worked as a recruiting/human resources staff specialist at Robert Half International. Cornelia then became a credentialed elementary school teacher working in school systems in San Francisco, CA, Boston, MA and Hayward, CA.

OPERATIONS: Tennis Programs & Related Events

Scott Howard, Director of Tennis, will have full responsibility for all tennis instruction and related events at Golden Gate Park. All certified instructors providing tennis instruction shall do so under the direction and program philosophy developed by Mr. Howard. Through his leadership roles with the USPTA and USTA, Scott will create and continually calibrate programs specific to the needs of varying students. For example, QuickStart, as noted in

other sections of this RFP, is revolutionizing the way tennis is taught to 10 and under students. Scott will ensure all staff understand the new equipment being used, implement drills to teach basic through advanced skills, and monitor the progress of students over time.

Our program offerings will cover a broad spectrum of students, from beginner to advanced tournament player, from young children's first introduction to tennis through seasoned players. Instruction will use progressive methods matched appropriately to students learning styles and ability levels, and available in numerous instruction formats as follows:

Private Lessons – students will be matched one on one with a certified professional and receive focused attention to their instructional needs.

Value Package – patrons that sign up for instruction packages will receive access to additional benefits that enhance their overall development. These benefits will include monthly video analysis, free membership in Ball Machine Club and competitive ladder play. Staff professionals will coordinate student participation in all of these benefits ensuring developmental goals are attained.

Price: integrated with lesson packages

Semi-Private & Group Lessons (Adult) – instruction with 2 – 6 adults will match students similar in ability. Progressive drills to ensure essential activity and repetition of learned skills will supplement instructional focus.

Group Lessons (Elite Youth) – younger players demonstrating ability and enthusiasm to train for competitive tournament play, and with potential to compete at collegiate and professional levels, will be guided by Scott Howard & Robert Stang. Training will be physically and mentally rigorous to include methods used at world-renowned tennis academies to prepare the elite athlete. Off court consultation will be provided in areas of fitness training, nutrition, mental toughness and other activity planning.

Group Lessons (Instructional Youth & Adult) – these group lessons will focus more acquisition of basic skills, and reinforcement through repetitive drills. Fun and exposure to new skills will be the focus of these groups.

Clinics – on occasion, instructional clinics focused on 1 or 2 topics, and lasting 90 minutes will be conducted on site. For example, a clinic may be held focusing on spin serves. Students will gather to watch 2 or more staff professionals demonstrate various spin serves such as slice, kick and American Twist. Staff will engage students in discussion about how these shots are executed, how to return these serves, and when to use each strategically. Students will then have opportunity to experiment in hitting these serves and returning the pro's serves. Refreshments will be served and the atmosphere will be collaborative and social.

Tennis Socials/Mixers – Regular socials will be scheduled where no advance sign-up is required. A standing day and time will serve as opportunity for players to join round robin singles and doubles. A Staff Professional will ensure everyone is included, and Staff will join in the fun. After 90 minutes of play, players will meet at our café on the terrace, or in the clubhouse to mingle.

QuickStart Tennis – children age 10 and under will participate in-group lessons with up to six students per court. Our current teaching courts will contain markings indicating the new court dimensions, and softer, slower balls will be used. We will follow USTA guidelines regarding drills and match play for these students to encourage success and continued play. Sessions will be 90 minutes and include fun, non-tennis group activity for the younger students (ages 4-6) to ensure fun is had by all.

Ladders – competitive ladders will be maintained where participants can challenge players either three spots ahead or behind them. The goal is to challenge students to use skills acquired in other parts of our programs during competitive play situations. Gold, Silver and Bronze ladders will group participants by ability level, regardless of age. Opponents will mutually schedule the matches, with results reported to our pro-shop staff.
Price: \$10 per month

Tournament Play – competitive tournaments, sanctioned by the USTA, will be hosted at our facility. We will encourage participation by all members to foster a higher level of tennis at Golden Gate Park, and to provide initial and ongoing competitive playing opportunities for all.

USTA League Play – our tennis staff will field a competitive team that will play against other league teams fielded by Olympic Club, San Francisco Tennis Club and others. This team will play home matches right at Golden Gate Park and create spectator opportunities for all students of our programs. It will be our goal to allow our highest level of students to train with our team and compete, with access to all including our Elite Youth players. We also intend to organize other teams at various playing ability levels under direction of our tennis staff.

Price: \$50 per season (10 matches + playoffs)

Ball Machine Club – members of our Value Package, and those paying a monthly subscription fee shall have unlimited use of a ball machine to reinforce skills.

Price: \$25 per month unlimited or hourly rate specified in the Lease.

OPERATIONS: Pro-Shop

Scott Howard will oversee Pro-Shop operations. Scott will maintain a small desk/computer on the backside of the pro-shop and will be present there often while conducting administrative business. Scott will have opportunity to service customers and market our services and programs from the Pro-Shop.

Hours of Operation - As required, the Pro-Shop will be staffed according to the hours specified in the Lease

Pro-Shop Staff - The Pro-Shop staff will include people knowledgeable about our tennis programs, products and service offerings. To this end, staff will include a mix of professional teaching staff and cashier/service representatives. In hiring cashier/service reps, we will target competitive collegiate players to ensure our Pro-Shop team is knowledgeable and enthusiastic about our products and programs. It is also our intention that these competitive collegiate players will assist our Tennis Director with larger clinics and children's group lessons. The cross-training of professional staff and Pro-Shop operations will improve both offerings.

Equipment - a Point of Sale (POS) system will be the financial "backbone" of our operations at Golden Gate Park for this concession. All transactions for our contract will be entered through this system to include tennis lessons, pro-shop sales items and our café. We have chosen the First Data POS system from Wells Fargo that has robust reporting capabilities and will seamlessly integrate with our Accountant. This system will allow for stringent financial controls and excellent reporting to SF Park & Recreation as part of our monthly report package.

The Pro-Shop will also have a commercial grade refrigerator to store items for sale. A commercial refrigerator will meet all requirements of the San Francisco Health Code regarding food storage and preparation.

Clubhouse Room Activities – Development of a community amongst our students and staff is an essential element in our growth plans. As such, we intend to use the Clubhouse in a variety of ways; Clinics may meet in the clubhouse to watch video presentations; social events will be hosted; and outside guests to include vendors will be invited to make presentations in the clubhouse. Our Pro-Shop staff will work with the Department to rent the clubhouse for these events. Usage of the clubhouse will provide the Department with additional income from our events.

Products & Services Menu (non-food/beverage) – our pro-shop will be stocked with items as requested in the RFP. Additionally, we will consider product offerings that are practical for our customer population at Golden Gate Park. Our initial product/service offering will include the following:

Products & Services Menu (food & beverage) – our food and beverage options will be selected and sourced by our partner Coffee Bar.

Offerings will be chosen that most closely meet as many of the following criteria as possible:

- Organic
- Natural Ingredients – avoid high fructose corn syrup, food coloring, preservatives etc.
- Locally Sourced – better for the environment, supports local community, fresher products.
- Environmental Packaging – compostable, made of recycled materials etc.
- Sustainable – practices that are economically and socially viable long-term.

-Fair Trade – paying prices to third world suppliers that support economic independence.

The following offerings will be available at all times during Pro-Shop hours:

Organic Fruits (local farmers markets)	\$0.75
Bottled Water - Calistoga	\$1.50
Sparkling Water – Calistoga	\$2.00
Organic Sports Drink (Purity- Organic Functional Line)	\$2.50
Organic Fruit Juice (Purity - Apple, Lemonade, Strawberry Paradise)	\$2.00
Organic Granola Bars (18 Rabbits – variety)	\$2.25
Organic Yogurt (variety, Clover Farms)	\$1.50
Coffee – premium single origin pour over (Organic & Fair Trade)	\$2.50
Five Mountains Tea (Organic) premium loose leaf	\$2.00
Artisan sandwiches and salads- pre-packaged	\$6-\$9

Suppliers: products listed above are sourced from partners that are local, organic, and support sustainable practices. Coffee Bar, Five Mountains Tea, Purity and 18 Rabbits are all San Francisco based companies. Clover Organic Farms is in Point Reyes Station and Petaluma, while Calistoga water is from Calistoga in nearby wine country.

OPERATIONS: Café Service

A Café/Espresso Bar will be operated on the terrace in front of the William Johnston Clubhouse. An Espresso Cart will provide popular espresso drinks such as lattes and cappuccinos, premium coffees and teas. Bistro style tables and chairs will be situated on the terrace on front of the clubhouse. Planter boxes will further add to an elegant and enjoyable atmosphere.

Two employees will staff the Café, and will act independently/augment staff in the Pro-Shop. The Espresso Cart and Bistro furniture will be kept in the secured storage area in the clubhouse. On days when the Café operates, employees will roll the Espresso cart (on casters) out to the terrace, and set up furniture. A remote Point of Sale (POS) register that integrates wirelessly with the base POS in the Pro-Shop will be used for transactions at the Café.

In addition to items available in the Pro-Shop, the following menu will be available at the Café:

Premium single origin pour over coffee	\$2.50
Espresso (double)	\$2.25
Macchiato	\$2.75
Cappuccino	\$3.00
Latte	\$3.50
Hot Chocolate	\$3.00
Mocha	\$3.50
Chai Tea Latte	\$3.50
Cookies & Pastries (assorted)	\$1.50 - \$3.00

Suppliers: All coffees supplied by Coffee Bar are organic & fair trade certified. Milk used is from Clover Organic Farms in Point Reyes Station. Cookies & Pastries are from Tell Tale and Sandbox, two San Francisco bakeries that use organic ingredients and support sustainable practices.

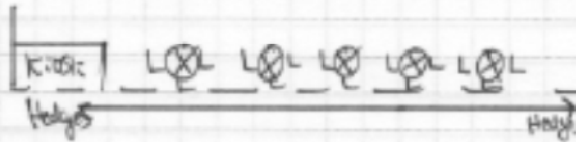
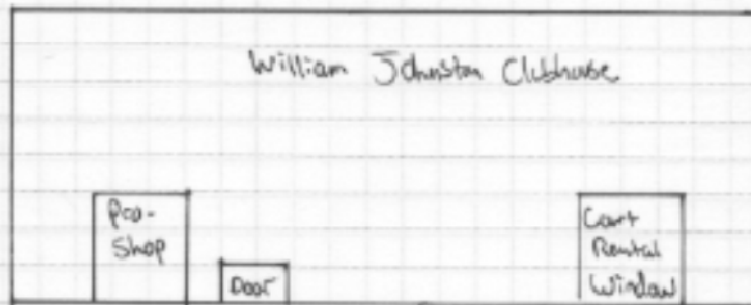
EXHIBIT D- PROPOSED IMPROVEMENTS

1. Security Gate and Alarm. Lessee shall remove the current fixed security window from the Pro-Shop and install a new metal security bar window that can be opened during business hours and closed and securely locked after business hours. Additionally, the Lessee shall install an alarm system in the Pro-Shop to protect Lessee's merchandise and fixtures, and shall perform any additional improvements or repairs to the Pro-Shop necessary to ensure that the Pro-Shop is reasonably secure from break-in or theft. All aspects of such security gate window and alarm are subject to the prior written approval of the General Manager. The security gate window must be aesthetically pleasing and must compliment the historical nature of the Clubhouse.
2. Pro Shop Signage. Lessee shall remove the existing Pro-Shop sign and purchase and install Department designed, professionally-made signage which shall inform the public of the location, hours of operation, and products and services offered at the ProShop. Such signage shall be affixed to the Clubhouse and displayed in the window of the Pro Shop, subject to approval by the General Manager.
3. Storage Room. Lessee shall, at Lessee's sole cost and expense, install secure doors to the Storage Room so that the space can be securely closed and locked. Any improvements shall be performed subject to the approval by the General Manager.
4. Sliding Window Repair. Department staff shall inspect the sliding service window presently installed on the Pro-Shop and determine whether repair is required. If Department staff determines that repairs are required, Lessee shall perform such repairs (the "Sliding Window Repairs") as part of the Proposed Improvements. The manner of such repair shall be subject to the approval of the General Manager..
5. Repair and Restoration. If Lessee damages any City property during the performance of any work described in this Exhibit, Lessee shall, at Lessee's sole cost, repair and restore any damaged property to previous state.

EXHIBIT E-MOBILE CAFÉ

date	
project	Golden Gate Park - Coffee kiosk
page	GGP Tennis Pastimes LLC

Location of Coffee kiosk



⊗ = Table L = Seating

Hours: Sat & Sunday 8:30 - 4pm and special events

Storage: when not in use, stored in clubhouse storage per lease

Kiosk dimensions: approximate 8ft wide x 3ft deep x 7.5ft tall

Tables: Four - ● tables approximately 4 feet Diameter

Chairs: Standard Chairs 21 inches wide x 26 inches tall

Space: Distance between each set of Tables & Chairs = 3 feet



Photo of Mobile Cafe