



To: Mayor and City Council

Agenda Item #: IV. O.

From: Ann Kattreh, Parks & Recreation Director;
Bill Neuendorf, Economic Development Manager

Action
Discussion
Information

Date: November 18, 2014

Subject: Restaurant Lease Agreement, SNP Enterprises LLC, (Tin Fish) Braemar Golf Course

Action Requested:

Approve lease and authorize Mayor and City Manager to execute and implement the agreement.

Information / Background:

Earlier this year, the City decided to outsource the Grill operations at Braemar Golf Course to a private vendor with expertise in delivering higher quality products in a public recreation facility.

City staff approached the operators of a popular and established fast-casual restaurant that thrives in a seasonal recreational location to gauge interest in operating a restaurant of similar quality at Braemar Golf Course. The owners and operators of Tin Fish restaurant on Lake Calhoun believe that they can deliver superior food and beverage service to the patrons of the Braemar Golf Facility.

A lease has been negotiated to bring a new Tin Fish restaurant to Braemar in 2015. This was a challenging lease to prepare since the Clubhouse was not originally designed to accommodate multiple business operations and the market demand for a year-round restaurant at the site is untested. Key members of the Parks and Recreation Department, Economic Development Department and the City Attorney negotiated terms of the lease with the two core objectives: (1) providing first class food and beverage service to the Braemar patrons and (2) maximizing revenue to the Braemar Enterprise Fund.

The key terms of the lease are summarized below.

Payments to City

- Five year term with two similar renewal periods
- Rent based on 12% of gross sales (food and beverage)
 - Based on past sales of \$300,000 annually, this equates to \$3,000 monthly rent
 - Sales are anticipated to be higher due to caliber of food service and potential for year-round sales
- Additional payments include:
 - \$1,200 monthly CAM for utilities
 - shared cost of waste disposal services
- Reduced or increased rent also possible to reimburse for improvements to shared facilities
 - amount approved via Addendum after costs of shared improvements are refined
- Tenant is responsible for taxes on Premises

Scope of Services

- Tenant has exclusive rights to kitchen facility
- Tenant patrons share the existing seating areas with general public
- City to retain scheduling of special events
- City to retain first rights to use Valliere Room and outdoor decks for special events
- Tenant has non-exclusive rights to cater special events at Braemar and non-exclusive use of catering kitchen
- Tenant anticipated to have opportunity to provide alcoholic beverage service;
- In the future, successful liquor operations anticipated to expand to an exclusive opportunity to provide alcoholic beverages on site (update of Liquor Ordinance anticipated in spring 2015)

Future Service Expansion

Three additional services are anticipated to be turned over to the Tenant after the restaurant is fully operational. Lease addendums will be prepared in 2015/2016 to finalize these services:

- Operation of on-course food & beverage carts (including alcoholic beverages)
- Operation of food and beverage machines located throughout the Golf Course
- Operation of updated food and beverage services in the remodeled Executive Clubhouse

Construction

- City turns over raw space January 1, 2015
- Tenant rebuilds kitchen; City updates public spaces (January to April 2015)
- Opening date targeted for April 1, 2015, likely to coincide with golf course opening
- City pays for demolition and improvements to building shell
- Tenant pays for interior build-out of kitchen with partial reimbursement by City for permanent improvements to the Clubhouse
- City also pays for updates to public areas of the Clubhouse with partial reimbursement by Tenant

Maintenance and Operations

- Tenant will strive to compost, reuse and recycle as much as realistically possible
- Tenant is responsible for maintaining the Tenant Space
- City is responsible for maintaining the common areas and exterior shell of the Clubhouse

Staff recommends approval of this Lease as it will bring a popular and high quality food establishment to the Braemar Facility, contribute to revitalization of the aging facility, and holds strong potential to enhance the revenue at the golf course.

Attachments:

Proposed Lease (35 pages)

LEASE AGREEMENT

By and Between

CITY OF EDINA
(“CITY”)

And

SNP ENTERPRISES, LLC
(“TENANT”)

BRAEMAR GOLF COURSE
RESTAURANT

LEASE REFERENCE PAGES

(Page 1 of 2)

FACILITY: Braemar Golf Course,
6364 John Harris Drive
Edina, MN 55439

CITY/LANDLORD: City of Edina

CITY'S ADDRESS: 4801 West 50th St, Edina. MN 55424

LEASE REFERENCE DATE: November _____, 2014

TENANT: SNP Enterprises, LLC,
a Minnesota limited liability company

TENANT'S ADDRESS: 4837 West 40th Street
Minneapolis, MN 55416

PREMISES IDENTIFICATION: Braemar Golf Course Clubhouse Restaurant
(identified as "Restaurant" on Exhibit B)

TOTAL CLUBHOUSE SQUARE
FOOTAGE: Approximately 24,298 square feet

LEASED PREMISES AREA: Approximately 2,068 sq. ft.

TENANT'S PROPORTIONATE SHARE: 9%

USE (AUTHORIZED BUSINESS): Tin Fish Restaurant

TENANT'S TRADE NAME: Tin Fish

POSSESSION DATE: January 15, 2015

COMMENCEMENT DATE: April 1, 2015

SCHEDULED RENT
COMMENCEMENT DATE: April 1, 2015

TERMINATION DATE: March 31, 2020

LEASE REFERENCE PAGES

(Page 2 of 2)

TERM OF LEASE: Five (5) years beginning on the Commencement Date and ending on the Termination Date (unless sooner terminated pursuant to this Lease) with options for two (2) additional 5-year terms

BASE RENT: 12% of gross sales; See Article 3 for Rent and Additional Rent

CAM \$1,200.00/month

SECURITY DEPOSIT: \$5,000.00 due at signing of this Lease

The Reference Page information is incorporated into and made a part of the Lease between Tenant and the City dated as of _____, 2014 (“Lease”). In the event of any conflict between any Reference Page information and the Lease, the Lease shall control. The Lease includes Exhibits A, B, C, and D which are all made a part of this Lease.

LANDLORD/CITY:
CITY OF EDINA

TENANT:
SNP ENTERPRISES, LLC

By: _____
James Hovland, Mayor

By: _____
Sheffield Priest

Its: _____

And: _____
Scott Neal, City Manager

And: _____
Athena Priest

Its: _____

Date: _____, 2014

Date: _____, 2014

THIS LEASE AGREEMENT made and entered into this ____ day of _____ 2014, by and between the **CITY OF EDINA**, a Minnesota municipal corporation, (“City”) and **SNP ENTERPRISES, LLC**, a Minnesota limited liability company, doing business as Tin Fish (“Tenant”).

RECITALS

- A. The City owns and operates the Braemar Golf Course located at 6364 John Harris Drive, Edina, Minnesota, 55439 (“Golf Course”), as legally described in Exhibit A attached hereto;
- B. The Golf Course facility is currently configured with 27-regulation holes of golf, driving range, putting green, clubhouse, executive clubhouse and miscellaneous outbuildings (“Facility”);
- C. The clubhouse located within the Facility is a two-level structure (“Clubhouse”) that includes the following:
 - Upper Level: a pro shop (“Pro Shop”), special event area (“Valliere Room”), full service kitchen area, catering kitchen area, public seating/dining area (“Club Room”), restrooms and circulation space, approximately 12,774 square feet; and
 - Lower Level: golf cart storage, men’s and women’s locker rooms, restrooms, three lounge/meeting rooms and miscellaneous storage and mechanical space, approximately 11,524 square feet in area;
- D. The City intends to renovate portions of the Clubhouse to improve conditions for facility users and the general public;
- E. The City desires to lease the restaurant area of the Clubhouse to the Tenant for restaurant service to the public consistent with the quality of the Golf Course, together with the possible future on-course food and beverage cart service and Executive Clubhouse service;
- F. The Tenant desires to operate the restaurant and on-course food and beverage services and related services at the Facility;
- G. The City and the Tenant desire to coordinate the Tenant operations with the Golf Course to provide a seamless first class experience for those interested in utilizing the Clubhouse;

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

ARTICLE 1 – LEASED PREMISES

Subject to the terms, covenants and conditions of this Lease, the City does hereby lease and let unto Tenant, and Tenant does hereby hire, lease and take from the City, approximately 2,068 square feet of upper level space in the Clubhouse containing the commercial kitchen and customer service counters and specifically marked on said Exhibit B (the “Premises”). The Premises consists of approximately nine (9%) percent of the total Clubhouse area, excluding outdoor deck and patio areas.

ARTICLE 2 - USE

A. The Premises will be used by the Tenant only for the Authorized Business purpose, and related activities, including on-site food and beverage services, catering services, and potentially operation of food and beverage carts for the Golf Course. The Tenant operation will be commensurate with a first class golf operation and banquet facility. Tenant shall have the non-exclusive right to serve food in indoor and outdoor common areas of the facilities designated by the City and specifically marked on Exhibit C (the “Common Areas”) from time to time for such purpose. Tenant shall also have the non-exclusive right to serve food in indoor and outdoor areas of the facilities designated by the City and specifically marked on Exhibit C (the “Special Event Areas”) with the permission of the Facility Manager.

B. Tenant shall apply for all such licenses, permits and approvals necessary for it to conduct the Authorized Business within the Premises and on the Facility, and shall diligently pursue such applications, and take all reasonable actions within its control to obtain such licenses, permits and approvals. The obtaining and retaining of such licenses shall be Tenant’s sole responsibility, the failure of which shall be deemed a Default hereunder.

C. The Tenant is permitted to use and store two (2) food trucks at the Facility, subject to the prior approval of the Facility Manager concerning storage, location, operation, days and hours of Tenant’s food trucks.

D. Tenant shall always conduct its operations in the Premises and at the Facility under its present trade name, unless the City shall otherwise consent in writing to a different name, which consent shall not be unreasonably withheld by the City

E. Tenant is permitted to prepare food in the Premises for off-site consumption.

F. Tenant, its employees, agents, guests and invitees shall have the reasonable non-exclusive right to use the Common Areas (as hereinafter defined) of the Facility, including, but not limited to, upper level circulation corridors, lower and upper level restrooms; Club Room seating area, outdoor patio near front entrance of Clubhouse, Valliere Room, upper level of Executive Clubhouse, two outdoor decks, parking facilities, sidewalks, driveways, access ways, and common hallways as shown on Exhibit “C” (“Common Areas”) as further detailed under Article 7 and the City shall have the full control, management and direction of the Common Areas. The Club Room will be the primary restaurant patron seating area.

G. Except as otherwise provided herein, Tenant shall keep the Premises (including all windows and doors leading to the Premises clean and in an orderly and presentable manner.

H. Tenant further agrees not to commit or permit any act to be performed on the Premises or any omission to occur which shall be in violation of any statute, regulation or ordinance of any governmental body or which will increase the insurance rates on the Facility or which will be in violation of any insurance policy carried on the Facility by the City. Tenant, at its expense, shall comply with all governmental laws, ordinances, rules and regulations applicable to the use of the Premises and its occupancy and shall promptly comply with all governmental orders, rulings and directives for the correction, prevention and abatement of any violation upon, or in connection with, the Premises or Tenant's use or occupancy of the Premises, including the making of any alterations or improvements to the Premises, all at Tenant's sole cost and expense.

I. Tenant shall comply with the non-smoking requirements for the Facility and Clubhouse.

ARTICLE 3 – TERM OF LEASE

A. The term of this lease shall be five (5) years as set forth in the Reference Page (hereafter referred to as the “Initial Term”) upon the rentals and subject to the conditions set forth in this Lease, and the Exhibits attached hereto. The Commencement Date and the Termination Date are specifically subject to the provisions of Article 6 hereof.

B. Tenant shall, provided this Lease is in full force and effect and Tenant is not in Default under any of the other terms and conditions of this Lease at the time of notification, have the option to renew (“Renewal Option”) this Lease for two 5 year terms (“Renewal Terms”) on the same terms and conditions set forth in this Lease, except as modified by the terms, covenants and conditions as set forth below:

1. If Tenant elects to exercise the Renewal Options, then Tenant shall provide the City with written notice no earlier than a date which is one year prior to the Termination Date of the this Lease but no later than a date which is one hundred eighty (180) days prior to the Termination Date. If Tenant fails to provide such notice, Tenant shall have no further or additional right to extend or renew the Lease. The notice shall be given in the manner provided in this Lease for the giving of notices to the City.

2. The Renewal Options are not transferable and the parties acknowledge and agree that they intend that the aforesaid Renewal Options of this Lease shall be “personal” to Tenant as set forth above and that in no event will any assignee or sublessee have any rights to exercise the aforesaid options to renew.

3. If both Renewal Options provided for above are exercised, Tenant shall have no further right to extend the Term of the Lease.

4. If the Renewal Options are exercised, the parties will review and renegotiate Rent, CAM and other fees, such as waste removal, under the Renewal Term to better

reflect taxes and actual costs and usage at the time the renewal is exercised. If the parties cannot agree on these terms, no renewal will take effect.

ARTICLE 4 - RENT

A. Rent. Tenant agrees to pay to the City as rent (hereinafter called "Rent") for the Premises, without notice, setoff, or demand, except as specifically set forth herein, monthly rent equal to twelve (12%) percent of Tenant's gross sales derived from all of Tenant's operations on the Facility, including sales conducted on publicly owned and operated property located within the City of Edina, subject to the adjustments, as hereinafter set forth. For each month during the Lease Term, said monthly installments to be due and payable by Tenant on or before the fifth day after every month for the prior month. Each payment shall be accompanied by a statement showing the gross sales during the payment period itemized by total daily receipts.

B. Additional Rent. In addition to other costs and fees identified under the terms of this Lease, Tenant agrees to pay the following as Additional Rent:

1. The City will provide waste removal services to the Clubhouse and Premises. Tenant agrees to pay sixty-five (65%) percent of the waste removal services cost for the Clubhouse, excluding yard and construction waste as Additional Rent.

C. Adjustments to Rent. Notwithstanding any other terms, covenants or conditions herein, the Rent may be adjusted by written addendum to this Lease as follows:

1. Move-in Period Rent: From the Possession Date to the Commencement of the Lease, Tenant shall pay no Rent, but shall be responsible for fifty (50%) percent of the monthly CAM fee.

2. Reduced Rent:

(i) Tenant Work Provided Under Exhibit D. The base rent shall be temporarily reduced to reflect the Tenant's direct out of pocket costs for reimbursable Tenant work identified in Exhibit D to the extent the Tenant's reimbursable work exceeds the cost of City reimbursable work. Base rent shall be reduced by not more than seven (7%) percent of the gross sales derived from Tenant's operations until the amount is repaid, upon completion of all Tenant and City Work and following Tenant's submission of receipts for the reimbursable work and approval of receipts by the City. No separate addendum shall be required for this rent reduction.

(ii) Future Tenant Work. The base rent may be temporarily reduced to reflect Tenant's direct out of pocket costs for future capital improvements to the Clubhouse or related public areas provided that the costs and term of reduced rent are mutually agreed upon in advance by the City and the Tenant. The addendum shall detail the cost of Tenant's reimbursable capital improvements. At no time will the reduced rent be less than five (5%) percent of the gross sales derived from the Tenant's operations.

3. Increased Rent.

(i) City Work Provided Under Exhibit D. The base rent shall be temporarily increased to reflect the City's direct out of pocket costs for reimbursable City work identified in Exhibit D to the extent the City's reimbursable work exceeds the cost of Tenant's reimbursable work. Base rent shall be increased by not more than five (5%) percent of the gross sales derived from Tenant's operations until the amount is repaid, upon completion of all Tenant and City Work and following City's submission of receipts for the reimbursable work and approval of receipts by the Tenant. No separate addendum shall be required for this rent increase.

(ii) Future City Work. Base Rent may be increased by no more than five (5%) percent of the gross sales derived from Tenant's operations for capital improvements paid by City approved for reimbursement by Tenant. The increase shall reflect the City's costs associated with capital improvements to the Facility, including the Clubhouse, or related public areas that are mutually agreed to be beneficial to the Tenant. The term of the increased rent shall be mutually agreed upon by the City and Tenant. The addendum shall detail the cost of the City's reimbursable capital improvements;

D. Records. Tenant shall maintain complete and accurate financial books and records of its operations at the Facility in accordance with generally accepted accounting principles. The City or its representatives shall be entitled to inspect the books and records of Tenant's operations at the Facility identified in Article 2, during regular business hours at least once per month. In the event that such audit by the City or its representatives determines that the City has been underpaid or overpaid: the amount of any such underpayment shall be remitted to the City within ten (10) days of written notice to Tenant; and any such overpayment may be subtracted from future payments by Tenant.

E. Late Rent. Tenant recognizes that late payment of Rent or any other sum due under this Lease will result in administrative expense to the City, the extent of which additional expense is extremely difficult and economically impractical to ascertain. Tenant therefore agrees that if rent or any other sum is not paid when due and payable pursuant to this Lease, a late charge shall be imposed in an amount equal to: Two Hundred Fifty Dollars (\$250.00), plus interest equal to five percent (5%) per annum for the unpaid rent or other payment. Any rent payment which is made late shall be accompanied by Tenant payment of the late payment fees. In addition, Tenant may be assessed a customary service fee for any check which is returned as NSF non-sufficient funds. The provisions of this Section do not relieve Tenant of the obligation to pay Rent, Additional Rent or other payments on or before the date on which they are due, nor do the terms of this Section in any way affect the City's remedies pursuant to Article 21 of this Lease in the event Rent or other payment is unpaid after date due.

F. Security Deposit. Tenant shall deposit the Security Deposit, Five Thousand Dollars (\$5,000.00), with the City upon the execution of this Lease. Said sum shall be held by the City as security for the faithful performance by Tenant of all the terms, covenants and conditions of this Lease to be kept and performed by Tenant and not as an advance rental deposit or as a

measure of the City's damage in case of Tenant's Default. If Tenant Defaults with respect to any provision of this Lease, the City may use any part of the Security Deposit for the payment of any Rent or any other sum in default, or for the payment of any amount which the City may spend or become obligated to spend by reason of Tenant's default, or to compensate the City for any other loss or damage which the City may suffer by reason of Tenant's Default. If any portion is so used, Tenant shall within five (5) days after written demand therefor, deposit with the City an amount sufficient to restore the Security Deposit to its original amount, and Tenant's failure to do so shall be a material breach of this Lease. Except to such extent, if any, as shall be required by law, the City shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on such deposit. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant upon the second anniversary of the Commencement Date of this Lease.

ARTICLE 5 - CONSTRUCTION

Tenant agrees to take and shall take the Premises in its "as is" condition; except for those alterations, if any, set forth specifically as the City's responsibilities on Exhibit "D" ("City's Work"). The City's Work (if any) may be performed during the "Move-in-Period" (as defined in Article 6 below) or such later date as is necessary and Tenant hereby grants to the City the right and license to enter the Premises for purposes of doing any of City's Work. Any improvements to the Premises other than the City's Work shall be made by Tenant ("Tenant's Work"), as defined in Exhibit "D", at the sole cost and expense of Tenant, subject to all other provisions of this Lease, including compliance with all applicable governmental laws, ordinances and regulations.

ARTICLE 6 – POSSESSION AND MOVE-IN PERIOD

A. Except as otherwise provided, the City shall deliver possession of the Leased Premises on the Possession Date set forth on the Reference Page to allow Tenant to install trade fixtures and equipment and to construct Tenant's Improvements (subject to the terms and conditions of this Lease), as hereinafter defined ("Move-in Period"). Failure of the City to deliver possession of the Premises by the Possession Date, shall automatically postpone the Commencement Date of this Lease and shall extend the Termination Date by periods equal to those which shall have elapsed between and including the date specified for commencement of the Move-in Period and the date on which possession of the Premises is delivered to the Tenant. Tenant's occupancy during the Move-in Period shall in all respects be the same as that of the Tenant under this Lease, with the exception of the payment of Rent. The Rent herein reserved shall commence on the Scheduled Rent Commencement. During the Move-In Period, the Tenant shall pay an amount equal to fifty (50%) percent of the CAM fee charged under this Lease Agreement. During the Move-in Period, the City shall have no responsibility or liability for loss or damage to fixtures, facilities or equipment installed or left within the Leased Premises.

B. City agrees to perform and complete the City Work, subject to events and delays due to causes beyond its reasonable control. Tenant shall have the right and privilege of going onto the Premises to complete interior work and to prepare the Premises for its intended use under this Lease; provided, however, that its schedule in so doing shall be communicated to City and the approval of City secured so as not to interfere with other work of City being carried on at

the time for City; and provided further that City shall have no responsibility or liability whatsoever for any loss or damage to any of Tenant's leasehold improvements, fixtures, equipment or any other materials installed or left in the Premises prior to the Commencement Date.

ARTICLE 7 – USE OF COMMON AREAS

A. Except as otherwise provided herein, Tenant, and its licensees, concessionaires, employees and customers (for purposes of this Article, collectively "Tenant") shall have the non-exclusive right to use the Common Areas in common with the City, other users and tenants of the Facility and other persons entitled to use the same. The City may require that automobiles operated by Tenant or its employees be parked in specific portions of the Common Areas or other parking areas outside the Facility which are in reasonable proximity thereto. Tenant shall not interfere with the rights of other persons to use the Common Areas. The City may temporarily close parts of the Common Areas for such periods of time as may be necessary for (i) temporary use as a work area in connection with the construction of buildings or other improvements within the Facility or contiguous property, (ii) repairs or alterations in or to the Common Areas or to any utility type facilities, (iii) security reasons, or (iv) doing and performing such other acts as in the use of good business judgment the City shall determine to be appropriate for the Facility (v) private rentals of areas of the Facility for catered events; provided however, that the City shall use reasonable efforts not to unduly interfere with or disrupt Tenant's business. The City shall have the right at any time to change the dimensions and location of any buildings in the Clubhouse and the arrangement and/or locations of entrances, parking areas, sidewalks, landscaped areas, passageways or other parts of the Common Areas and to change the name, number or designation by which the Clubhouse is commonly known. Tenant's use of the Common Areas shall be subject to such rules and regulations as may from time to time be made by the City or Facility Manager for the safety, comfort and convenience of the owners, occupants, tenants and invitees of said Facility.

B. Tenant's use of the of the Valliere meeting room, upper level restrooms, southern outdoor deck and/or western outdoor deck shall be prohibited when scheduled by the City for a private meeting, party or other special event.

C. The City and Tenant agree that the City will not be responsible for any loss, theft or damage to vehicles, or the contents thereof, parked or left in the Common Areas. The parking areas shall include those areas designated by the City, in its sole discretion, as either restricted or unrestricted parking areas. Tenant further agrees not to use or permit its employees, visitors or invitees to use the parking areas for overnight storage of vehicles, other than food trucks complying with Article 2, without the prior permission of the City.

D. The control, general cleanliness, operation, repair and maintenance of the Common Areas and any changes thereto shall be subject to the City's sole management and control and the expenditures therefore shall be at the sole discretion of the City. The City shall maintain the Clubhouse in a first-class condition.

E. The City shall take reasonable provisions to secure access to the Club Room from other Common Areas of the Clubhouse during non-business hours of the Tenant.

ARTICLE 8 – COMMON AREA MAINTENANCE AND UTILITIES

A. For its share of Common Area Maintenance ("CAM"), Tenant shall pay as Additional Rent One Thousand Two Hundred (\$1,200.00) Dollars per month. This amount is based on an estimate of costs for the Facility and the Tenant's expected use of utilities that will not be separately metered. Tenant's CAM charge shall increase each year of this Lease by two (2%) percent. The CAM may change from time to time, if e.g., the Premises area changes due to a lease amendment, Clubhouse is expanded, etc. Tenant's initial CAM Charge is set forth on the Reference Page. CAM payments pursuant to this Article shall be paid in monthly installments as provided in paragraph A of Article 4.

1. "CAM" shall be defined as: all direct costs of operation, maintenance, repair and management of the Clubhouse, as determined in accordance with generally accepted accounting principles, including the following costs by way of illustration, but not limitation: insurance charges relating to all insurance policies and endorsements deemed by City to be reasonably necessary or desirable for the protection, preservation or operation of all or any part of the Clubhouse; utility costs for all parts of the Clubhouse shared in common by tenants of the Clubhouse and tenants' utility costs to the extent not separately metered such as natural gas, electricity, water and sewer; the cost of security and alarm services (including any central station signaling system); the cost of maintaining, repairing and replacing any heating, ventilating and air conditioning systems not otherwise being paid for by tenants; the cost of landscaping and seasonal decorations; the cost of maintaining and repairing any exterior stairway, truck way, loading dock, package pick-up station, pedestrian sidewalk; the cost of maintaining, repairing, operating and policing the buildings and improvements in the Clubhouse, and its appurtenances and equipment, including, without limitation, the roof, common signage, the parking lot and any driveway areas, including the construction and maintenance of lighting facilities therefor, comfort stations and first aid stations, exterior window cleaning costs; labor costs; all management costs including: management fees, if any; employee benefits and payroll taxes; accounting and legal fees; material costs; equipment costs, including the cost of service agreements on equipment; tool costs; the costs of licenses, permits and inspection fees, and any sales, use or service taxes incurred in connection therewith. Excluded are amounts chargeable to specific tenants of the Clubhouse and amounts resulting from structural replacements to the exterior of any individual store buildings of the Clubhouse which are normally chargeable to capital account under sound accounting principles. CAM shall not include depreciation or amortization of the Clubhouse or equipment in the Clubhouse except as provided herein, loan principal payments, costs of alterations of tenants' premises, leasing commissions, interest expenses on long-term borrowings, advertising costs or management salaries for executive personnel other than personnel located at the Clubhouse. In addition, City shall be entitled to amortize and include as an additional rental adjustment: (i) an allocable portion of the cost of capital improvement items which are reasonably

calculated to reduce operating expenses; (ii) fire sprinklers and suppression systems and other life safety systems; and (iii) other capital expenses which are required under any governmental laws, regulations or ordinances which were not applicable to the Clubhouse at the time it was constructed. All such capital costs shall be amortized over the reasonable life of such improvements in accordance with such reasonable life and amortization schedules as shall be determined by the City in accordance with generally accepted accounting principles, with interest on the unamortized amount at one (1%) percent in excess of the prime lending rate announced from time to time as such by U.S. Bank National Association.

ARTICLE 9 - UTILITIES AND SERVICE

A. Commencing with the date on which the City delivers the Premises to Tenant, Tenant shall be responsible for the payment of all separately metered utilities required for the proper operation of Tenant's business, together with all taxes levied or other charges on such utilities and governmental charges based on utility consumption. Tenant shall allow the City any access to the Premises necessary to meter, submeter and/or monitor usage of gas, water, sewer and electricity. Tenant agrees to maintain and clean Premises and keep the same in a sanitary and orderly manner. Tenant shall remove its own organics, recycling and trash and deposit in dumpsters provided by the City adjacent to the Clubhouse. . Should Tenant fail to clean and maintain the Premises and remove waste therefrom as required herein, the City shall have the right to complete such services and charge Tenant such costs as additional rent. Tenant agrees not to waste any utilities and will adopt affirmative practices and policies so as to maximize a conservative use of all utilities.

B. The City agrees to provide the heating, ventilating and air conditioning units ("HVAC") currently servicing the Premises, which shall be maintained by the City, the costs and expenses of which shall be part of CAM. The City will also bear the full cost of any sanitary sewer access charges (SAC) assessed to the Facility as a result of the Tenant's Work and use of the Premises as a restaurant.

C. No temporary interruption or failure of such services incidental to the making of repairs, alterations or improvements, or due to accidents or strike or conditions or events not under the City's control shall be deemed as an eviction of the Tenant or relieve the Tenant from any of the Tenant's obligations hereunder.

D. The Tenant shall pay for all other services it needs to operate on the Premises including telephone and other telecommunications services used in or charged against the Premises during the term of the lease. The Tenant agrees to coordinate these services with the City where reasonably available to promote communication between the City and the Tenant operations and shall allow for maintenance and repair of all apparatus providing such utilities and services provided by the City to the Premises. The Tenant shall be responsible for all maintenance and repair of utilities and other services supplied or ordered solely by the Tenant.

E. Prior to installing any equipment in the Premises that generates more than a minimum amount of heat, or places a substantial demand for electrical power on the Clubhouse electrical system, or a substantial demand for utility consumption or transmission of any kind on any system, the Tenant shall obtain the written permission of the City. The City may refuse to grant such permission if the City determines the installation would place an undue burden on the Clubhouse HVAC systems or the amount of power required would place an undue burden on the Clubhouse electrical system.

F. Tenant shall employ the services of a pest control company to reasonably ensure that the Premises and waste dumpster area for the Clubhouse are free from pests. Tenant shall be responsible for all costs associated with the pest control services.

ARTICLE 10 – TAXES

A. Tenant is responsible for and shall pay any sales taxes, personal property taxes, real estate taxes or special assessments incurred by the City or Tenant as a result of this Lease or Tenant's activities under the Lease, including use of the Executive Clubhouse.

B. The Tenant shall be responsible for payment of personal property taxes in the event that they are assessed against Tenant by reason of Tenant's operations conducted on public property under this Agreement. Tenant shall give written notice of such assessment to the City.

C. Failure to pay such taxes when due shall constitute a breach of this Agreement entitling City to terminate this Agreement or the Tenant's right to possession of the Premises or both, but only after the City has given the Tenant ten days' notice in writing ordering the Tenant to make said tax payment.

D. City and Tenant agree that the Property is currently exempt from taxes pursuant to Minn. Stat. § 272.02. In the event taxes are assessed against either the City or Tenant as a result of this Lease and pursuant to Minn. Stat. § 272.01, Tenant shall pay such taxes. The City agrees to cooperate with Tenant to reduce taxes if Tenant contests, protests, petitions for review, or otherwise seeks a reduction of Taxes. During the second through fifth year of the Initial Term of this Lease, if Tenant's gross sales are Three Hundred Thousand (\$300,000.00) Dollars or less for the previous year, then the Tenant shall have the right to request a rent reduction if taxes assessed against the City or Tenant as a result of this Lease and pursuant to Minn. Stat. § 272.01 exceeds Twelve Thousand (\$12,000.00) Dollars per annum. The City will not unreasonably withhold consent in granting such reduction.

ARTICLE 11 - NON-LIABILITY OF CITY

Except in the event of negligence of the City, its agents, employees or contractors, the City shall not be liable for any loss or damage for failure to furnish heat, air conditioning, electricity, water, sprinkler system, sewer or gas service. The City shall not be liable for personal injury, death, unauthorized access or any damage from any cause about the Premises or the Facility except if caused by City's gross negligence.

ARTICLE 12 - CARE OF FACILITY

A. Tenant agrees:

1. To keep the Premises in as good condition and repair as they were in at the time of completion of the City's and Tenant's Work, reasonable wear and tear and damage from fire and other casualty for which insurance is normally procured excepted;

2. To keep the Premises in a safe, clean and sanitary condition and in compliance with all applicable laws, ordinances, rules and regulations of governmental authority, or of any company or companies insuring against losses resulting from damage or destruction to the Clubhouse or from personal injuries, deaths or property damage occurring in, on or about the Clubhouse;

3. Not to commit any nuisance or waste on the Premises, overload the Premises or the electrical, water and/or plumbing facilities in the Premises or Facility, throw foreign substances in plumbing facilities, or wastefully use any of the utilities furnished by the City; and

4. To abide by such rules and regulations as may from time to time be reasonably promulgated by the City or Facility Manager;

5. To maintain a controlled access to the Premises. Tenant shall provide to the Facility Manager a key to access the Premises.

B. If Tenant shall fail to keep and preserve the Premises in the state of condition required by the provisions of this Lease Agreement, the City may at its option put or cause the same to be put into the condition and state of repair agreed upon, and in such case the Tenant, on demand, shall pay the cost thereof, as additional rent.

C. The Tenant shall coordinate with the City for the routine maintenance and repair of the nonstructural and interior components of the Premises, including glass doors and windows, and the Tenant shall pay the City for the costs of all such maintenance and repair services provided by the City.

D. The Tenant shall be responsible for maintenance, repair and replacement of all specialty equipment fixtures and furniture used or supplied by the Tenant in the operation of its business on the Premises, including all utility systems within the Premises.

E. The City shall maintain and repair, at its cost, the roof, structural components of exterior walls (including doors and windows), HVAC equipment, structural parts of the floors, and the exterior components of the Clubhouse. The Tenant shall immediately notify the City, in writing, of the need for repair of items which the City is obligated to maintain and repair, after which time, the City shall have a reasonable opportunity and time to repair same. The City liability with respect to any repairs or maintenance for which the City is responsible shall be limited to the City cost of such repair or maintenance.

F. Notwithstanding the foregoing allocation of responsibility for repair and maintenance, the Tenant shall bear the expense of any damage to the Premises, whether caused to roof structure, walls or any other portion of the Premises and Common Areas caused by the Tenant, its officers, employees, agents, or invitees, or their guests. The City shall repair at its expense any damage to the Premises or Common Areas caused by the City, its officers, employees, agents, or attendees of City events. For the purposes of this paragraph, golfers shall be considered City invitees when they enter the Premises for the purpose of purchasing food or beverages.

ARTICLE 13 - INSPECTION

The City or its employees or agents shall have the right without any diminution of rent or other charges payable hereunder by Tenant to enter the Premises at all reasonable times, upon 24 hours advance notice to Tenant, for the purpose of exhibiting the Premises to prospective tenants or purchasers and/or inspection, cleaning, repairing, testing, altering or improving the same or said Clubhouse, but nothing contained in this Article shall be construed so as to impose any obligation on the City to make any repairs, alterations or improvements. No notice shall be required under this Article in the event of an emergency.

ARTICLE 14 - ALTERATIONS

A. Except as otherwise provided under Article 4 of this Lease, Tenant will not make any alterations, repairs, additions or improvements in or to the Clubhouse or Premises or add, disturb or in any way change any locks, plumbing or wiring therein without the prior written consent of the City as to the character of the alterations, additions or improvements to be made, the manner of doing the work, and the contractor doing the work. Such consent shall not be unreasonably withheld or delayed, if such alterations, repairs, additions or improvements are required of Tenant or are the obligation of Tenant pursuant to this Lease Agreement. All such work shall comply with all applicable governmental laws, ordinances, rules and regulations. The City as a condition to said consent may require a surety performance and/or payment bond from the Tenant for said actions. Tenant agrees to indemnify and hold the City free and harmless from any liability, loss, cost, damage or expense (including attorneys' fees) by reason of any said alteration, repairs, additions or improvements.

B. By written addendum to this Lease Agreement, the Tenant may make additional improvements to the Clubhouse and adjacent public areas and the costs of such improvements shall be paid in accordance with Article 4 and as provided in the applicable addendum.

ARTICLE 15 – SIGNS AND ADVERTISING

A. The Tenant shall not cause or permit the display of any sign notice or advertising in or about the Premises or Facility without the prior written consent of the City as to the number, size and location of all Tenant signs at the Facility. The City shall have sole discretion whether to approve or disapprove such signage. The Tenant shall remove, at its sole expense, all

of its signs or other advertising on or about the Facility prior to vacating the Premises, and shall repair any damage to the Facility caused by such removal.

B. The City will, as part of the renovation of the Clubhouse, construct a new monument or pillar sign at the entrance to the Golf Course. The City and the Tenant will work together to ensure that any signage on the Clubhouse is consistent with the architectural theme of the Premises. The Tenant and the City will work to design and construct the entrance signs to meet the needs of both parties. Tenant will also be allowed two exterior sign to be attached to the Clubhouse, subject to review and approval by the City. Tenant will pay for its share of the cost for all signs.

C. The Tenant shall maintain its signage in at least as good a condition as the City maintains the rest of the signage for the Clubhouse.

D. Tenant's use of the City or Golf Course logo or reference to the City or Golf Course in its advertising shall be permitted, subject to the review and approval by City prior to use. City's use of Tenant name or logo shall be permitted, subject to review and approval by Tenant prior to use. Approval under this section shall not be unreasonably denied by either party.

E. The City shall work cooperatively (but not exclusively) to promote the Tenant to users at other nearby City recreation facilities including the Braemar Golf Dome and the Braemar Ice Arena and Braemar Soccer Dome.

ARTICLE 16 OPERATION, HOURS OF BUSINESS AND MENU

A. Tenant shall open for business in the Premises on the Commencement Date and shall operate its business continuously during the term of this lease. Tenant agrees to open the Premises for business and provide food and beverage service each day during the golfing season from at least 6:30 a.m. to 9:00 p.m., unless otherwise agreed upon by the City and Tenant in writing. During the non-golfing season the Premises shall be open and Tenant shall provide food and beverage service at hours agreed to by the City in writing based on Facility usage. Service outside of the hours identified herein is subject to advance notification of and approval by the Facility Manager or the Facility Manager's designee, not to be unreasonably withheld.

B. Tenant shall provide restaurant menu items of a consistent quality as offered by Tenant at its Lake Calhoun location, which shall include non-fish entrees and children's menu items. Tenant agrees that any beverages to be purchased and sold by Tenant with regard to the Clubhouse shall be subject to any beverage policy or contract maintained by the City, including the October 2011 Agreement with Pepsi Beverage Company.

C. Tenant shall not provide food, beverages or merchandise to City employees at a discount or without charge, except as otherwise offered to the public generally.

D. Tenant shall maximize composting, re-usability and recycling in its restaurant operations, including the kitchen area and customer service areas.

E. For the purposes of any on-sale liquor license issued to the Tenant, the licensed area shall include the Premises and be consistent with the license for a golf course. The Tenant shall comply with all laws federal, state and local laws relative to the sale and distribution of alcoholic beverages. Tenant agrees that nothing contained herein shall absolve it from responsibility for full compliance with all laws relative to the sale and distribution of alcoholic beverages. The Tenant shall maintain a liquor license continuously during possession of the Premises under this lease. Failing to maintain a liquor license will be considered a material default of the lease conditions.

F. The Tenant shall obtain and maintain during the existence of this Lease all licenses permits or certifications as may be required by law to operate its business in the Premises or on the Golf Course.

G. The Tenant will be allowed to cater events at the Clubhouse and use the banquet kitchen on the same terms as other entities allowed to cater at the Clubhouse.

H. The City and the Tenant agree that the City golf operations and the Tenant restaurant and associated operations are synergistic and that coordination between the two operations is vital to success of both. To that end, the City and the Tenant agree that at least two (2) times per year, the Tenant will meet with the City Park and Recreation Director or their designee to discuss overall operations. In addition, the Tenant marketing promotions staff will meet with the City golf operations staff at least once every month to coordinate golf events, cross marketing and promotions and coordination of operational activities.

I. The Tenant agrees to observe the City rules and policies for the Facility, Clubhouse, and Premises. The City may amend these rules and policies and such amended rules and policies shall be binding on the Tenant, provided such changes do not contradict the terms and conditions of this Lease. The rules and policies will not unreasonably interfere with the operations of the Tenant as contemplated at the time of the execution of this Lease.

J. The City shall furnish the Club Room with tables and chairs. The number, style, form and color of tables and chairs shall be subject to the mutual approval of the City and Tenant. Tenant shall reimburse the City for one-half the cost of the tables and chairs.

K. Tenant desires to operate the City's golf course beverage cart service in the future. Tenant's operation of the golf course beverage service shall require execution of an addendum to this Agreement specifying the terms of such service and operation.

L. Tenant desires to provide food and beverage service at the Executive Clubhouse located at the Facility. Tenant's operation of food and beverage service at the Executive Clubhouse shall require execution of an addendum to this Agreement specifying the terms of such service and operation.

M. Tenant desires to provide vending services within the Clubhouse in the future. Tenant's operation of vending service within the Clubhouse shall require execution of an addendum to this Agreement specifying the terms of such service and operation.

ARTICLE 17 - LOSS BY CASUALTY

If more than thirty-three (33%) percent of the Facility or more than twenty-five (25%) percent of the Clubhouse is damaged or destroyed by fire or other casualty, the City shall have the right to terminate this Lease Agreement, provided it gives written notice thereof to Tenant within ninety (90) days after such damage or destruction. If a portion of the Premises is damaged by fire or other casualty, and City does not elect to terminate this Lease Agreement, the City shall, at its expense, restore the Premises to as near the condition which existed immediately prior to such damage or destruction, as reasonably possible, and the rentals shall abate during such period of time as the Premises are untenable, in the proportion that the untenable portion of the Premises bears to the entire Premises.

ARTICLE 18 - WAIVER OF SUBROGATION

The City and Tenant hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire or any of the extended coverage or supplementary contract casualties, even if such fire or other casualty shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible; provided however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such times as the releasing party's policies shall contain a clause or endorsement to the effect that any such release would not adversely affect or impair said policies or prejudice the right of the releasing party to recover thereunder. The City and Tenant agree that they will request their insurance carriers to include in their policies such a clause or endorsement. If extra cost shall be charged therefor, each party shall advise the other of the amount of the extra cost, and the other party, at its election, may pay the same, but shall not be obligated to do so.

ARTICLE 19 - EMINENT DOMAIN

If the entire Facility is taken by eminent domain, this Lease Agreement shall automatically terminate as of the date of taking. If a portion of the Facility is taken by eminent domain, the City shall have the right to terminate this Lease Agreement, provided it gives written notice thereof to the Tenant within ninety (90) days after the date of taking. If a portion of the Premises is taken by eminent domain and this Lease Agreement is not terminated by the City, the City shall, at its expense, restore the Premises to as near the condition which existed immediately prior to the date of taking as reasonably possible, and the rentals shall abate during such period of time as the Premises are untenable, in the proportion that the untenable portion of the Premises bears to the entire Premises. All damages awarded for such taking under the power of eminent domain shall belong to and be the sole property of the City, irrespective of the basis upon which they are awarded; provided, however, that nothing contained herein shall prevent Tenant from making a separate claim to the condemning authority for its moving expenses and trade fixtures. For purposes of this Article, a taking by eminent domain shall include the City's giving of a deed under threat of condemnation.

ARTICLE 20 - SURRENDER

On the last day of the Term of this Lease Agreement or on the sooner termination thereof in accordance with the terms hereof, Tenant shall peaceably surrender the Premises in good condition and repair consistent with Tenant's duty to make repairs as provided in Article 12 hereof. On or before said last day, Tenant shall, at its expense, remove all of its portable and detached equipment from the Premises, except as otherwise provided herein, repairing any damage caused thereby, and any property not removed shall be deemed abandoned. All alterations, additions, coolers, freezers, custom-installed appliances, exhaust hoods and fixtures other than Tenant's trade fixtures, which have been made or installed by either the City or Tenant upon the Premises shall remain as the City's property and shall be surrendered with the Premises as a part thereof, or shall be removed by Tenant, at the option of the City, in which event Tenant shall at its expense repair any damage caused thereby. It is specifically agreed that any and all telephonic, coaxial, ethernet, or other computer, word processing, facsimile, or electronic wiring installed by Tenant within the Premises (hereafter "Wiring") shall be removed at Tenant's cost at the expiration of the Term, unless the City has specifically requested in writing that said Wiring shall remain, whereupon said Wiring shall be surrendered with the Premises as the City's property. If the Premises are not surrendered at the end of the Term or the sooner termination thereof, Tenant shall indemnify the City against loss or liability resulting from delay by Tenant in so surrendering the Premises, including, without limitation, claims made by any succeeding tenant founded on such delay. Tenant shall promptly surrender all keys for the Premises to the City at the place then fixed for payment of rent and shall inform the City of combinations on any locks and safes on the Premises.

ARTICLE 21 - NONPAYMENT OF RENT, DEFAULTS

A. If any one or more of the following occurs: (1) a rent payment or any other payment due from Tenant to the City shall be and remain unpaid in whole or in part for more than ten (10) days after same is due and payable; (2) Tenant shall violate or default on any of the other covenants, agreements, stipulations or conditions herein, or in any parking agreement(s) or other agreements between the City and Tenant relating to the Premises, and such violation or default shall continue for a period of ten (10) days after written notice from the City of such violation or default; or (3) if Tenant shall commence or have commenced against Tenant proceedings under a bankruptcy, receivership, insolvency or similar type of action, then it shall be optional for the City, without further notice or demand, to cure such default or to declare this Lease Agreement forfeited and the said Term ended, the liability of Tenant for the rent and all other sums provided herein shall not be relinquished or extinguished for the balance of the Term of this Lease Agreement, and the City shall be entitled to periodically sue Tenant for all sums due under this Lease Agreement or which become due prior to judgment, but such suit shall not bar subsequent suits for any further sums coming due thereafter. Tenant shall be responsible for, in addition to the rentals and other sums agreed to be paid hereunder, the cost of any necessary maintenance, repair, restoration, reletting (including related cost of removal or modification of tenant improvements) or cure, as well as reasonable attorneys' fees incurred or awarded in any suit or action instituted by the City to enforce the provisions of this Lease Agreement, regain possession of the Premises, or the collection of the rentals due the City hereunder. Tenant agrees to pay interest at the highest permissible rate of interest allowed under the usury statutes of the State of Minnesota, or in case no such maximum rate of interest is

provided, at the rate of fifteen (15%) percent per annum, on all rentals and other sums due the City hereunder not paid within ten (10) days from the date same become due and payable. Each right or remedy of the City provided for in this Lease Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease Agreement now or hereafter existing at law or in equity or by statute or otherwise.

B. If the Tenant defaults three (3) times within any twelve (12) month period and receives a notice of default from the City, then regardless of whether such defaults are, or have been, timely cured, the City may, at its sole option, be entitled to terminate this lease by giving sixty (60) days written notice to the Tenant.

ARTICLE 22 - CITY'S DEFAULT

The City shall not be deemed to be in default under this Lease Agreement until Tenant has given the City written notice specifying the nature of the default and the City does not cure such default within fifteen (15) business days after receipt of such notice or within such reasonable time thereafter as may be necessary to cure such default where such default is of such a character as to reasonably require more than fifteen (15) business days to cure.

ARTICLE 23 - HOLDING OVER

Tenant will, at the expiration of this Lease Agreement, whether by lapse of time or termination, give up immediate possession to the City. If Tenant fails to give up possession the City may, at its option, serve written notice upon Tenant that such holdover constitutes any one of (i) renewal of this Lease Agreement for one year, and from year to year thereafter, or (ii) creation of a month-to-month tenancy, or (iii) creation of a tenancy at sufferance. If the City does not give said notice, Tenant's holdover shall create a tenancy at sufferance. In any such event the tenancy shall be upon the terms and conditions of this Lease Agreement, except that the Minimum Rental shall be double the Minimum Rental Tenant was obligated to pay the City under this Lease Agreement immediately prior to termination (in the case of tenancy at sufferance such Minimum Rental shall be prorated on the basis of a 365 day year for each day Tenant remains in possession); excepting further that in the case of a tenancy at sufferance, no notices shall be required prior to commencement of any legal action to gain repossession of the Premises. In the case of a tenancy at sufferance, Tenant shall also pay to the City all damages sustained by the City resulting from retention of possession by Tenant. The provisions of this paragraph shall not constitute a waiver by the City of any right of reentry as otherwise available to the City; nor shall receipt of any rent or any other act consistent with continued tenancy operate as a waiver of the right to terminate this Lease Agreement for a breach by Tenant hereof.

ARTICLE 24 - SUBORDINATION

Tenant agrees that this Lease Agreement shall be subordinate to any mortgage(s) that may now or hereafter be placed upon the Facility or any part thereof, and to any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements, and extensions thereof, provided the mortgagee named in such mortgage(s) shall agree to recognize this Lease Agreement or Tenant in the event of foreclosure provided the Tenant is not in default. In confirmation of such subordination, Tenant shall promptly execute and deliver any instrument, in recordable form, as required by a landlord mortgagee. In the event of any mortgagee electing to

have the Lease Agreement a prior encumbrance to its mortgage, then and in such event upon such mortgagee notifying Tenant to that effect, this Lease Agreement shall be deemed prior in encumbrance to the said mortgage, whether this Lease Agreement is dated prior to or subsequent to the date of said mortgage.

ARTICLE 25 - INDEMNITY, INSURANCE AND SECURITY

A. Tenant will keep in force at its own expense for so long as this Lease Agreement remains in effect public liability insurance with respect to the Premises in which the City shall be named as an additional insured, in companies and in form acceptable to the City with a minimum combined limit of liability of Two Million Dollars (\$2,000,000.00). This limit shall apply per location. Said insurance shall also provide for contractual liability coverage by endorsement. Tenant shall further provide for business interruption insurance to cover a period of not less than six (6) months. Tenant will further deposit with the City the policy or policies of such insurance or certificates thereof, or other acceptable evidence that such insurance is in effect, which evidence shall provide that the City shall be notified in writing thirty (30) days prior to cancellation, material change, or failure to renew the insurance. Tenant further covenants and agrees to indemnify and hold the City, its officers, employees and agents harmless for any claim, loss or damage, including reasonable attorney's fees, suffered by the City, the City's employees or the City's other tenants caused by: i) any act or omission by Tenant, Tenant's employees or anyone claiming through or by Tenant in, at, or around the Premises or the Facility; ii) the conduct or management of any work or thing whatsoever done by Tenant in or about the Premises or from transactions of the Tenant concerning the Premises; or iii) Tenant's failure to comply with any and all governmental laws, rules, ordinances or regulations applicable to the use of the Premises and its occupancy. Tenant shall also comply with all applicable state and local laws, statutes, ordinances and regulations, including applicable provisions of Minn. Stat. §340A.408 et. seq. regarding dispensing or selling of alcohol in the event Tenant should ever obtain license to sell beer and/or wine; and Tenant shall at all times maintain such "dram shop insurance" having limits in compliance with the provisions of Minn. Stat. §340A.409. If Tenant shall not comply with its covenants made in this Article 25, the City may, at its option, cause insurance as aforesaid to be issued and in such event Tenant agrees to pay the premium for such insurance promptly upon the City's demand. Notwithstanding the foregoing, Tenant shall not sell or dispense beer, wine, liquor or any other alcoholic beverages from the Premises without the prior consent of the City, which consent the City may grant or withhold for any or no reason.

B. Tenant shall be responsible for the security and safeguarding of the Premises and all property kept, stored or maintained in the Premises. The City will make available to Tenant, at Tenant's request, the plans and specifications for construction of the Premises. Tenant represents that it is satisfied that the construction of the Premises, including the floors, walls, windows, doors and means of access thereto are suitable for the particular needs of Tenant's business. Tenant further represents that it is satisfied with the security of the Clubhouse and Premises for the protection of any property which may be owned, held, stored or otherwise caused or permitted by Tenant to be present upon the Premises, including the City's method of securing the Club Room to restrict access from other common areas of the Clubhouse during non-business hours of the Tenant. The placement and sufficiency of all safes, vaults, cash or security drawers, cabinets or the like placed upon the Premises by Tenant shall be at the sole

responsibility and risk of Tenant. Tenant shall maintain in force throughout the Term, insurance upon all contents of the Premises, including that owned by others and Tenant's equipment and any alterations, additions, fixtures, or improvements in the Premises acknowledged by the City to be the Tenant's.

C. The City shall carry and cause to be in full force and effect a fire and extended coverage insurance policy on the Facility, but not Tenant's merchandise, trade fixtures, furnishings, operating equipment, wall, floor and window coverings, nor any other contents owned, leased or otherwise in possession of Tenant. The cost of such insurance shall be a CAM expense.

ARTICLE 26 - NOTICES

All notices from Tenant to the City required or permitted by any provisions of this Lease Agreement shall be directed to the City postage prepaid, certified or registered mail, at the address provided for the City in the preamble to this Lease Agreement or at such other address as Tenant shall be advised to use by the City. All notices from the City to Tenant required or permitted by any provision of this Lease Agreement shall be directed to Tenant, postage prepaid, certified or registered mail, at the Premises and at the address, if any, set forth on the signature page of this Lease Agreement. The City and Tenant shall each have the right at any time and from time to time to designate one (1) additional party to whom copies of any notice shall be sent.

ARTICLE 27 - APPLICABLE LAW

This Lease Agreement shall be construed under the laws of the State of Minnesota.

ARTICLE 28 - MECHANICS' LIEN

In the event any mechanic's lien shall at any time be filed against the Premises or any part of the Facility by reason of work, labor, services or materials performed or furnished to Tenant or to anyone holding the Premises through or under Tenant, Tenant shall forthwith cause the same to be discharged of record. If Tenant shall fail to cause such lien forthwith to be discharged within five (5) days after being notified of the filing thereof, then, in addition to any other right or remedy of the City, City may, but shall not be obligated to, discharge the same by paying the amount claimed to be due, or by bonding, and the amount so paid by the City and all costs and expenses, including reasonable attorneys' fees incurred by the City in procuring the discharge of such lien, shall be due and payable in full by Tenant to the City on demand.

ARTICLE 29 - SECURITY INTEREST

Tenant hereby grants to the City a security interest in all goods, chattels, fixtures and personal property belonging to Tenant, except for food trucks, which now is or may hereafter be placed in the Premises, to secure all rents due hereunder and all other covenants and obligations of Tenant hereunder. In the event there exists any security interest in said property which security interest is paramount and superior to the security interest herein created, the City may satisfy said paramount security interest, and all sums paid in satisfying said security interest will be considered additional sums owed the City by Tenant hereunder. Tenant hereby

acknowledges receipt of a true, full and complete copy of this Lease Agreement. The City, in the event of a default by Tenant of any covenant or condition herein contained, may exercise, in addition to any rights and remedies herein granted, all the rights and remedies of a secured party under the Uniform Commercial Code or any other applicable law. Tenant agrees upon request of the City to execute and deliver to the City a financing statement evidencing such security interest. A copy of this Lease Agreement may be filed as a financing statement.

ARTICLE 30 - BROKERAGE

Each of the parties represents and warrants that there are no claims for brokerage commissions or finder's fees in connection with this Lease Agreement, and agrees to indemnify the other against, and hold it harmless from all liabilities arising from any such claim, including without limitation, the cost of attorney's fees in connection therewith.

ARTICLE 31 - ESTOPPEL CERTIFICATES

Each party hereto agrees that at any time, and from time to time during the Term of this Lease Agreement (but not more often than twice in each calendar year), within ten (10) days after request by the other party hereto, it will execute, acknowledge and deliver to such other party or to any prospective purchaser, assignee or mortgagee designated by such other party, an estoppel certificate in a form acceptable to the City. Tenant agrees to provide the City (but not more often than twice in any calendar year), within fifteen (15) days of request, the then most current financial statements of Tenant and any guarantors of this Lease Agreement, which shall be certified by Tenant, and if available, shall be audited and certified by a certified public accountant. The City shall keep such financial statements confidential, except the City shall, in confidence, be entitled to disclose such financial statements to existing or prospective mortgagees or purchasers of the Facility.

ARTICLE 32 - GENERAL

This Lease Agreement does not create the relationship of principal and agent or of partnership or of joint venture or of any association between the City and Tenant, the sole relationship between the City and Tenant being that of the City and tenant. No waiver of any default of Tenant hereunder shall be implied from any omission by the City to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. The covenants of Tenant to pay Rent and the Additional Rental are each independent of any other covenant, condition, or provision contained in this Lease Agreement. The marginal or topical headings of the several Articles, paragraphs and clauses are for convenience only and do not define, limit or construe the contents of such Articles, paragraphs or clauses. All preliminary negotiations are merged into and incorporated in this Lease Agreement. This Lease Agreement can only be modified or amended by an agreement in writing signed by the parties hereto. All provisions hereof shall be binding upon the heirs, successors and assigns of each party hereto. If any term or provision of this Lease Agreement shall to any extent be held invalid or unenforceable, the remainder shall not be affected thereby, and each other term and provision of this Lease Agreement shall be valid and be enforced to the fullest extent permitted by law. If Tenant is a corporation, each individual executing this Lease Agreement on behalf of said corporation represents and warrants that he or she is duly authorized to execute and deliver this

Lease Agreement on behalf of said corporation in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the Bylaws of said corporation, and that this Lease Agreement is binding upon said corporation in accordance with its terms. No receipt or acceptance by the City from Tenant of less than the monthly rent herein stipulated shall be deemed to be other than a partial payment on account for any due and unpaid stipulated rent; no endorsement or statement of any check or any letter or other writing accompanying any check or payment of rent to the City shall be deemed an accord and satisfaction, and the City may accept and negotiate such check or payment without prejudice to the City's rights to (i) recover the remaining balance of such unpaid rent or (ii) pursue any other remedy provided in this Lease Agreement. (Neither party shall record this Lease Agreement nor any memorandum thereof, and any such recordation shall be a breach of this Lease Agreement void, and without effect.) Time is of the essence with respect to the due performance of the terms, covenants and conditions herein contained. Submission of this instrument for examination does not constitute a reservation of or option for the Premises and this Lease Agreement shall become effective only upon execution and delivery thereof by the City and Tenant.

ARTICLE 33 - EXCULPATION

Tenant agrees to look solely to the City's interest in the Facility for the recovery of any judgment from the City, it being agreed that the City and the City's officials, employees, and agents shall never be personally liable for any such judgment.

ARTICLE 34 - CONTINGENCIES

The City's obligations under this Lease Agreement are expressly contingent upon the following items: (a) the City securing all required approvals to entitle the project; (b) approval of the Edina City Council of the project; and (c) approval of the Edina City Council of this Lease Agreement.

ARTICLE 35 – DISPUTE RESOLUTION

In the event that a dispute arises under this Lease that is not deemed a default and that the parties cannot resolve, they shall allow the dispute to be decided by a Dispute Panel in the following manner: each party to this Lease shall appoint one person who is not involved in the dispute to the Dispute Panel and the members so appointed shall jointly appoint an additional member to the Dispute Panel. The Dispute Panel shall review the facts. Lease terms and applicable statutes, rules and policies, and make a determination of the dispute. The determination of the Dispute Panel shall be final and binding on the parties hereto.

ARTICLE 36 – SUBLETTING AND ASSIGNMENT

The Tenant shall not have the right to transfer, assign, sublease, or license the Premises or any portion thereof without the prior written consent of the City which consent may not be unreasonably denied. A transfer under this Article shall not prohibit Tenant's transfer of all of Tenant's stock or assets to an entity in which Tenant owns greater than a fifty (50%) percent interest.

ARTICLE 37 – MISCELLANEOUS

A. Time is of the Essence. The Tenant’s performance of its obligations under this Lease is a condition as well as a covenant. Time is of the essence in the performance of all conditions and covenants.

B. Non-discrimination. The Tenant agrees that while using the Premises as allowed by this Lease the Tenant will not discriminate against any person upon the basis of race, creed, color, religion, gender, sexual orientation, national origin, age, marital status, status with regard to public assistance, veteran status, or physical or mental disability.

C. Data Practices. As a tenant of the City, the Tenant will comply with the Minnesota Data Practices Act (“Act”) as it may apply to the Tenant rights under this Lease. The City will cooperate with the Tenant in complying with the Act. If the Tenant receives a data request under the Act, the Tenant shall immediately notify the City compliance official who will work with the Tenant in responding to the request in a reasonable manner and time frame.

D. Authority to Execute. The individual executing this Lease on behalf of the Tenant hereby represents that he or she is duly authorized to execute and deliver this Lease on behalf of the Tenant and that this Lease shall be binding upon said entity in accord with its terms.

E. Entire Agreement. This Agreement restates the entire understandings and agreements between the parties, whether oral or written, and supersedes all prior agreements and amendments thereto. This Agreement may be amended only in writing, signed by the parties hereto. This Agreement is binding on the parties hereto their assigns and successors.

F. Severability. If any portion of this Agreement is found invalid by a court of competent jurisdiction all other provisions remain in full force and effect.

G. Counterparts. This Lease may be executed in counterparts and each counterpart constitutes an original document.

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

[The remainder of this page has been intentionally left blank. Signature pages follow.]

CITY OF EDINA

By: _____
James Hovland, Mayor

By: _____
Scott Neal, City Manager

STATE OF MINNESOTA)
 (ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by James Hovland and Scott Neal, respectively the Mayor and City Manager of the City of Edina, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

Notary Public

EXHIBIT A

Legal Description of Golf Course Property

The following described land situated in the County of Hennepin and State of Minnesota:

The South 1/2 of the Northeast Quarter;

The South 10 acres of the Northeast Quarter of the Northeast Quarter, except that part thereof lying Northerly of a line described as follows: Beginning at a point on the North line of said South 10 acres, distant 790 feet East of the Northwest corner thereof; thence Southwesterly at an angle of 34 degrees with said North line a distance of 273 feet; thence Northwesterly to a point on the West line of said South 10 acres, distant 64 feet South of the Northwest corner thereof and there terminating;

The West 1/2 of the Southwest Quarter excepting the West 550 feet thereof; and except that part thereof lying West of the Easterly line of a strip of land lying within a distance of 112.5 feet on each side of a center line described as follows: Beginning at a point on the North line of Section 18, Township 116, Range 21, distant 852.5 feet East of the Northwest corner of said Section; thence Southeasterly at an angle of 73 degrees and 42 minutes (as measured from East to South) a distance of 200 feet; thence deflect to the right at an angle of 180 degrees a distance of 100 feet to actual point of beginning of line to be described; thence continue on said course a distance of 894.4 feet; thence deflect to the right along a 1 degree 30 minute curve (delta angle 17 degrees 27 minutes, tangent distance 586.2 feet) a distance of 1163.3 feet and there terminating;

The East 1/2 of the Southwest Quarter;

All of the Southeast Quarter;

The South 1/2 of the Northwest Quarter except that part thereof lying between the North line of said South 1/2 of the Northwest Quarter and the center line of County Road Number 39 and except the West 950 feet thereof,

all in Section 7, Township 116, Range 21.

Subject to a power line easement in favor of Northern States Power Company over the South 20 feet of Section 7, Township 116, Range 21, as granted and set forth in paragraph II of that certain stipulation dated October 18, 1951, filed November 8, 1951 executed by and between Samuel G. Smilow as attorney for F.J. Hays and W.S. Hooper attorney for Northern States Power Company as set forth in deed of record in Book 1051 of Deeds, page 639.

Together with 3 public road easements in a width of at least 60 feet over and across the following described property to-wit: The West 550 feet of the Southwest 1/4 and the West 950 feet of the South 1/2 of the Northwest 1/4 lying South of the center line of County Road No. 39, all in Section 7, Township 116, Range 21 as shown in deed Doc No 528524. See instrument as to termination of said easements.

Tenant Premises

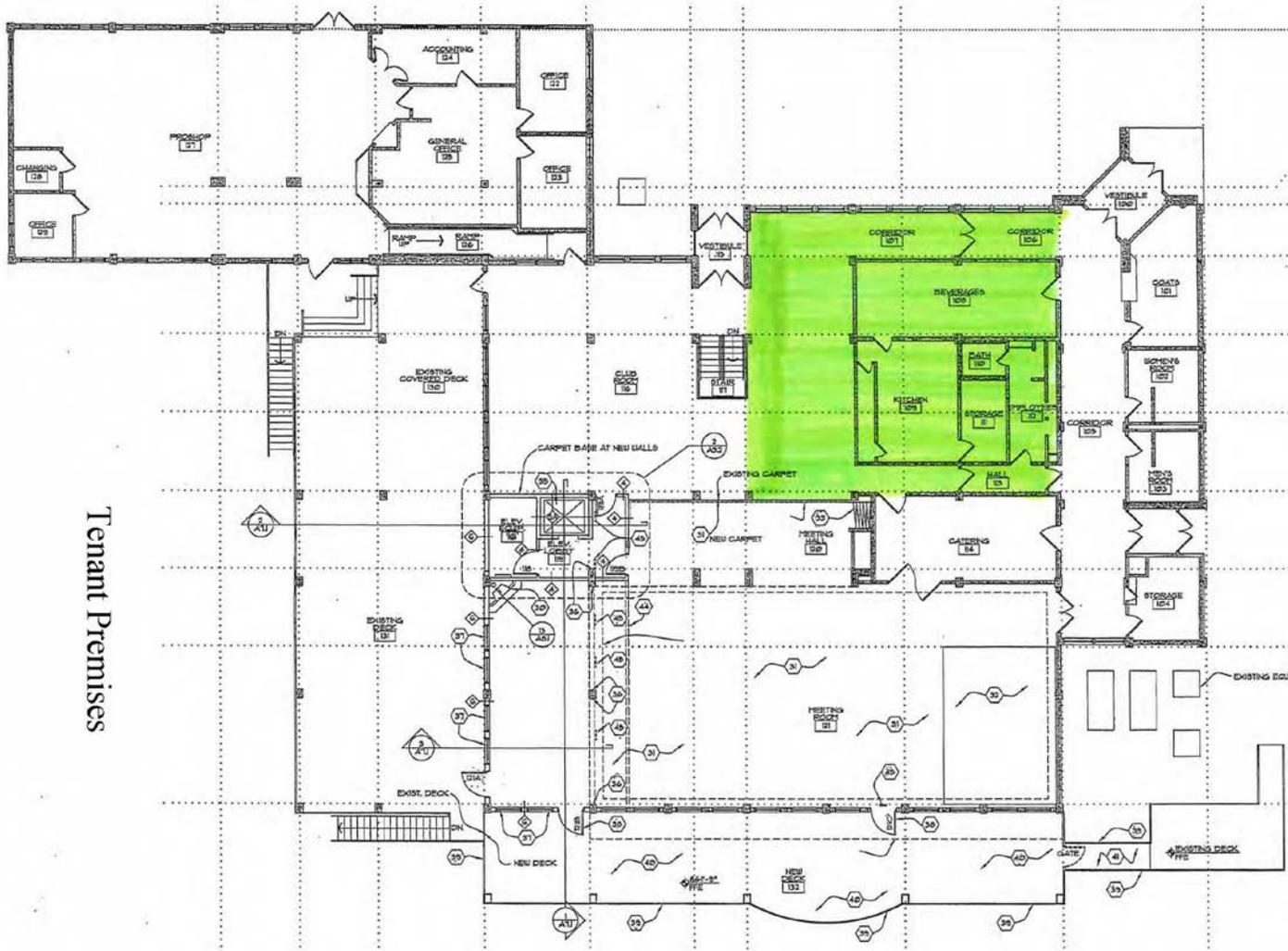


Exhibit B

Exhibit C



Special Event Areas of the Clubhouse - may be available to Tenant unless reserved for a special event

EXHIBIT D

CITY’S WORK AND TENANT’S WORK

The City shall deliver the Premises in “AS IS” condition, except as hereinafter set forth, and Tenant shall take the Premises in its current “AS IS” condition without any other modification or alterations to be performed by City.

Plans and Specifications and/or a description of improvements and/or modifications to the Premises and/or the Property to be made by City (if any) and/or the Tenant are attached as Exhibit “D-1” and by this reference incorporated herein (hereafter called the “Plans”) (if for any reason the Plans are not so attached hereto as Exhibit “D-1” for Tenant’s Work, then Tenant must secure City’s written approval, prior to the doing of any “Tenant’s Work”, as defined below). The Plans, if so attached, have been approved by each of City and Tenant. The parties acknowledge that the Plans are to modify the Premises and/or the Property to accommodate Tenant’s intended use. Tenant shall be responsible for constructing and paying for the cost of the improvements as shown on the Plans (hereafter referred to as the “Tenant Improvements”).

A. City’s Work. City agrees to perform the following work:

Summary of City Improvements (non-reimbursable)

Description	Timing
Demolition of grill area (Tenant space)	December 2014 - January 2015
Leveling floor of tenant space and Club Room, as needed and installation of floor drains in Premises floor, per architectural plans	December 2014 - January 2015
Updated wall, ceiling and floor finishes in Club Room seating area	Spring 2015
Updated catering kitchen & scullery	Spring 2015
Interior finishes of Valliere Room	Spring 2015
Interior finishes of upper level toilet rooms and adjacent circulation corridor	Spring 2015
Updated furnishings and interior decorations for circulation corridor/lobby	Spring 2015
Operable partition or gate between main entrance and Club Room	Spring 2015
Replacement of or improvements to operable panels between Club Room and Valliere Room	Spring 2015

Summary of City Work Reimbursable through Increased Rent

Description	Timing	Portion Reimbursable to Tenant	Maximum Reimbursement through Increased Rent
Outdoor patio by main Clubhouse entrance	Spring 2015	50% of actual costs	\$6,000
Tables and chairs in the Club Room	Spring 2015	50% of actual costs	\$10,000
		Total	\$16,000

B. Tenant's Work.

Tenant shall not commence construction of the Tenant Improvements (the "Tenant's Work") until Tenant has complied with the terms, covenants and conditions of this Lease including the conditions set forth herein, pursuant to paragraph 1(iv) below. Tenant's Work shall be coordinated with City's Work (if any) and/or other tenants of City to such a degree that such Tenant's Work will not interfere with nor delay the completion of City's Work and/or other tenants of City in the Building. Tenant's Work shall be performed in a first-class workmanlike manner and shall be in good and usable condition at the date of completion thereof. Unless specifically set forth in the Plans to the contrary, Tenant's Work shall be as follows:

1. General Requirements.

- i. Tenant shall deliver to City the Plans for Tenant's Work within the Leased Premises. Said submittal shall be made no later than within forty five (45) days from the date of execution of this Lease.
- ii. Tenant shall obtain written approval, from City, of all work, materials, equipment, fixtures, furnishings, etc., which become a permanent part of the structures and shall conform to all design criteria and construction guidelines established by the City.
- iii. Tenant shall be responsible for obtaining all required construction document reviews with all governing authorities to obtain all required building permits, inspections, occupancy permits, operating licenses, etc., pertaining to the Tenant's construction work and nature of Tenant's business.
- iv. Tenant shall not begin construction activities until approval has been granted by City.
- v. All work undertaken by the Tenant shall be at Tenant's sole cost and expense, except as otherwise specifically provided herein.
- vi. Tenant's construction activities shall not damage or compromise the structural integrity of the Clubhouse and all work shall be done in accordance with the applicable building codes, laws and ordinances. The Tenant shall be held liable

for any damage caused by the Tenant or Tenant's employees and/or Contractors.

vii. All work undertaken by the Tenant shall be coordinated with the City so as not to interfere with City's construction schedule (if any) or interfere with any other tenant of the Clubhouse. All contractors employed by Tenant shall allow other contractors, even of the same trade, to work on the Premises without interference.

viii. Tenant shall be responsible for the cost of receipt of all deliveries and unloading of all materials pertaining to Tenant's construction activities. All deliveries shall be made through the service door (where provided). Storage of equipment and materials shall be confined to the Premises unless consented to by City, which consent shall not be reasonably withheld.

ix. Tenant shall keep the Clubhouse and the Premises free from accumulations of debris caused by the Tenant's contractors and/or employees. Tenant shall arrange for services to be provided for the removal of debris during the period of Tenant's construction activity.

x. Tenant shall clean HVAC filters clogged by dust or other debris resulting from Tenant's construction activities.

2. Exterior Work.

Tenant shall perform no work, other than installation of two new exterior doors to the patio area, which would in any way alter or modify the appearance or structural integrity of the Clubhouse without prior written approval from the City.

3. Interior Work.

Tenant shall provide all necessary work according to the Plans and all local and state code requirements. The work shall include, but not necessarily be limited to, the following:

Summary of Tenant Improvements (non-Reimbursable)

Description	Timing
Build out of kitchen, food prep, cooking and serving areas, within Tenant Space including: finishes, utility connections (including any relocation from current stubs), relocation of sprinkler piping, electric lines and HVAC ducts and interior walls and counters	Spring 2015
New exterior doors to patio area, includes any expense to relocate utilities	Spring 2015
Signage (interior and exterior) and menu boards	Spring 2015
All portable and removable cooking, food prep and serving equipment	Spring 2015
Customer seating and waiting area adjacent to service counter; including fixtures and furnishings	Spring 2015

Summary of Tenant Work Reimbursable through Reduced Rent

Description	Timing	Portion Reimbursable to Tenant	Maximum Reimbursement through Reduced Rent
Walk-in (permanent) freezer, cooler and beverage cooler	Spring 2015	50% of actual cost	\$15,000
Kitchen exhaust hood with fire suppression	Spring 2015	50% of actual cost	\$13,000
		Total	\$ 28,000

4. City's Approval.

City's approval of the Plans shall not constitute an acknowledgment that Tenant's Work, done in conformity therewith, will conform thereto, and Tenant shall be solely responsible for corrections in Tenant's Work if it does not conform to the Plans or the requirements of any governmental agency. Tenant shall secure its own building and occupancy permits. City shall have the right to inspect the construction of Tenant's Improvements and/or supervise, to the extent City deems reasonably advisable to ensure that the construction of Tenant Improvements conform to the Plans. City shall not by reason of any such inspection or supervision assume or have any responsibility to Tenant or any entity for either the quality of any Tenant's Work or any loss, injury or damage suffered by anyone by reason of the quality or performance of any Tenant's Work. City reserves the right to require changes in Tenant's Work when necessary by reason of code requirements or directives of governmental authorities having jurisdiction over the Premises.

5. Indemnification.

Tenant shall save, protect, indemnify and hold harmless City, the Premises and the Clubhouse and land of which the Premises are a part, from and against all claims in the nature of mechanics' liens arising out of either any contracts entered into, or any services, labor or materials rendered, with respect to the Tenant's Work or the Tenant Improvements.