

**CONCESSION LICENSE AGREEMENT**

An exclusive and revocable Concession License Agreement (“License”) is hereby granted by CITY OF SUNNYVALE, a municipal corporation of the State of California, to Gold Rush Eatery, Inc., a California corporation, as Licensee, to manage, operate and supervise sales of food, beverages and related services associated with Sunken Gardens Golf Course including the restaurant building at Sunnyvale Golf Course (attached hereto as Exhibit “A”) and all related services for a term beginning on the date this agreement is signed in August, 2015, by all listed parties and ending at 11:59 p.m. on August, 2025, unless sooner terminated subject to the conditions contained in this License. At City’s and Licensee’s mutual discretion, this License may be extended for three additional five year terms on mutually agreed upon terms and conditions beyond the term described above. If the parties reach agreement, a written amendment to the License shall be executed by both parties.

**I. DEFINITIONS**

As used in this License, the following words and phrases, unless provided otherwise, shall have the following meanings:

- A. “City” shall mean City of Sunnyvale.
- B. “City Council” shall mean the City Council of the City of Sunnyvale.
- C. “Clubhouse” shall mean the pro shop/restaurant building, and adjacent patios, walkways and planters located at the course.
- D. “Employee” shall mean any person employed by and paid solely by Licensee for any purpose.
- E. “License Year” shall mean a 12 month period of time between September 1 of one calendar year and August 31 of the following calendar year during which this License is in effect. The initial License Year shall be deemed to be September 1, 2015, through August 31, 2016.
- F. “Licensee” shall mean Gold Rush Eatery, Inc., a California corporation.

- G. "Pro shop" shall mean those portions of the Clubhouse dedicated to sale of golf merchandise and green fees including the entire East portion of the Sunken Gardens Golf Course Clubhouse.
- H. "Restaurant" shall mean those portions of the Clubhouses and associated areas dedicated to provision of food and/or beverage services including the West portion of the Clubhouse and adjacent patios and pathways at Sunken Gardens Golf Course (See Exhibit "A")
- I. "Manager" shall mean a particular employee designated by the Licensee to act on the behalf of the Licensee in any license-related matter.
- J. "Shall", when used herein, is mandatory.
- K. "Sunken Gardens Golf Course" shall mean that particular golf course owned by or leased to City, located at 1010 S. Wolfe Rd., Sunnyvale, CA.

## **II. EXCLUSIVE USE**

- A. In order to enable Licensee to exercise the privileges and rights herein licensed and to perform the duties and obligations herein imposed, City grants to Licensee:
  - 1. The exclusive use of the Restaurant at Sunken Gardens Golf Course for the sale of food, beverages and related services including banquets, catering and other related events.
  - 2. Exclusive right for the sale of food, beverages (including alcoholic beverages, no outside alcohol allowed) and related services including banquets, catering and other related events at Sunken Gardens Golf Course.
  - 3. Such other locations within the golf course grounds and facilities outside of the Restaurants as may be established, subject to written approval of City as to each particular location and any improvements.
  - 4. Licensee shall occupy the Restaurant and any other locations as may be approved for sale of food, beverages and related services including banquets, catering and other related events, and for no other purpose.
- B. Licensee shall occupy and operate Restaurant as a licensee and not as a lessee.

### **III. PRIVILEGES AND DUTIES OF LICENSEE**

#### **A. Licensee shall do the following:**

1. Exercise each privilege and right hereby licensed and perform each duty imposed herein in full compliance with the Sunnyvale Municipal Code and other ordinances of the City; all rules, regulations, and policies of the City, and all applicable laws of the State of California and the United States of America.
2. Enforce all rules and regulations.
3. Establish, operate, manage, and supervise sales of food, beverages and related services at the Golf Course.
4. Present proposals to City for its approval of food and beverage services and related events outside of designated restaurant buildings as shown in Exhibit "A" provided, however, that each additional location and any improvements are to be provided and maintained by Licensee.
5. Maintain for sale, or for use in connection with the services of meals, and at all times, a reasonable stock of food, alcoholic and non-alcoholic beverages, confections, and other articles in amounts sufficient to meet customer demands and which are of industry standard quality and are of such purity and content so as to comply with applicable federal, state, and local food, health and sanitation laws and regulations. City in no way warrants that Licensee shall be able to obtain license(s) to engage in the sale of liquor. The acquisition of such license(s), however, is required within 90 days of September 1, 2015.
6. Police the Restaurant, preserve order, and provide for security, including the exclusion of trespassers and prevention of injury to the Restaurant by customers and others.
7. Keep the Restaurant open to the public between the hours of 6:30 a.m. and sunset on each day the Course is open for play, except during such times when closure is necessary due to construction of structural additions or

other physical improvements to the Clubhouse. Nothing herein shall preclude Licensee from remaining open additional hours subject to any and all City ordinances, or County or State laws or regulations as related to food and beverage service businesses.

8. Restaurant may be closed temporarily during inclement weather that significantly reduces the amount of play on the golf courses. Licensee shall notify the Golf Operations Manager in advance of closing and shall reopen the facilities as soon as weather conditions have improved.
9. Retain for a minimum of 40 hours per week in the Restaurant at least one “manager” who is experienced in the operation of restaurants and food and beverage services, authorized to represent and act for Licensee in matters pertaining to the exercise of the privileges and duties hereby licensed. Licensee shall keep City informed in writing of the identity of such person(s) and conduct all general business through the manager(s).
10. Employ at its sole cost and responsibility such employees as it deems necessary provided that within ten (10) days following receipt of written notice from City that a particular employee of Licensee is not satisfactory to City for good cause, Licensee shall dismiss that employee forthwith.
11. No employee of Licensee shall be deemed to be an employee, agent or representative of City at any time or for any purpose whatsoever.
12. Licensee shall require all employees to be neatly dressed and courteous at all times, and to refrain from boisterous or objectionable conduct when at work on City property.
13. Furnish, maintain, and operate the Restaurant and provide all other services and facilities offered in connection therewith in a high quality manner, and furnish and maintain a standard of service at least equal to the better class of similar businesses in the City and in adjacent communities during the entire term of this License at prices comparable to those prevailing for similar services and facilities without discrimination. Licensee shall provide prompt, clean, courteous and efficient service.

14. Provide full breakfast, lunch, bar and banquet menus and promote sale of banquet and meeting services for the Restaurant.
15. Provide prompt, courteous and efficient customer service.
16. Provide the Director of Public Works on September 1 of each year with an annual operations and marketing plan including a list of all activities including, but not limited to, food and beverage sales, banquets, facility rentals, special events, promotions and advertising.
17. Provide City with reasonable access to and the right to inspect all menus, lists and schedules of prices for services or products provided.
18. Covenant and agree to discontinue and remedy all objectionable practices upon demand of City if and when the City raises objections to the conditions of those portions of the Golf Course and buildings occupied by Licensee, the quality of the food, articles sold, or character of the service.
19. Meet not less than once per month with the Golf Operations Manager at a regularly scheduled time and date to discuss and review the operation of the Restaurant by Licensee.
20. Follow the procedure for handling complaints established by standard operating procedures of City. In this regard, the parties recognize that the Golf Operations Manager of City is designated to represent the Department of Public Works in resolving all such complaints.
21. Authorize the Director of Public Works of City or his designee to inspect the premises occupied by Licensee not less than twice per year to determine whether Licensee is complying with the requirements of the License.
22. Provide City's recognized Golf Clubs with limited use of space within the Restaurant for club activities at low or no cost. Licensee will be solely responsible for determining frequency, type of use, and cost, and will determine a method of scheduling that will best serve that purpose. Use of Restaurant space by retail customers will take priority over Golf Club use, when insufficient space exists for both user groups.

23. Keep all fixtures and equipment within those areas occupied by Licensee clean, neat, safe, sanitary and in good order at all times.
24. Store all waste matter, garbage and refuse in a manner satisfactory to City and arrange for the daily disposal thereof at the expense of Licensee.
25. Promptly remove and dispose of any waste and/or refuse resulting from food and beverage operations which has been blown by wind or otherwise transported from the areas occupied by Licensee into adjacent areas of the Golf Course properties.
26. Comply with all requirements of City, or State Department of Health Services, or measures in health or sanitary regulation adopted by any legal authority, and grant access for inspection purposes to any duly authorized representative of the State Department of Health Services or City.
27. Refrain from selling beer, wine and liquor for consumption off the Golf Course premises. Restrict sale of beer, wine and liquor to consumption within Restaurant and Golf Course premises.
28. Refrain from selling any food or beverage item supplied in a breakable glass container, for consumption on Golf Course premises, outside the Restaurant.
29. Refrain from installing or permitting the installation or use of any vending machine, pinball machine, video game machine, or similar equipment without first having obtained the written consent of the Superintendent of Parks and Golf of City.
30. Refrain from attaching, hanging, or otherwise affixing any sign or advertising matter on the exterior of the Clubhouses, or anywhere on the Course properties without first having obtained the written consent of the Superintendent of Parks and Golf of City.
31. Refrain from installing any newspaper rack or other object to be placed and maintained outside the Clubhouses, whether attached thereto or free-standing, or anywhere on the Courses, without first having obtained the written consent of the Superintendent of Parks and Golf of City.

32. Not permit other businesses, vendors, customers, or any other person or entity to directly provide services or entertainment to customers; or, display or sell goods, wares or merchandise either within the interior or exterior of the Clubhouse, or anywhere on the Course, without first having obtained written consent of the Superintendent of Parks and Golf of City.
33. Not conduct any business activity at the Course and Restaurant for any other purpose except sale and service of food and beverages, and related events, or except such activities for which written consent of the Superintendent of Parks and Golf of City has first been given.
34. Not make any alterations, changes or additions to the Restaurant or to any fixtures or equipment owned by City without first having obtained written consent of the Superintendent of Parks and Golf of City.
35. Provide a sufficient quantity of expendable equipment, including but not limited to tables, chairs, linen, glassware, dishes, cutlery and kitchen utensils.
36. On or before September 1, 2015, and every September 1 thereafter, file with City a signed inventory of any furnishings, equipment, fixtures and amenities owned by Licensee and used in operation of the Restaurant.
37. Promptly pay all moneys required to be paid to the City, and all expenses incurred in operating the restaurant and other facilities on the Course where food and beverages are sold;
38. Obtain and pay for any permit or license required by the Sunnyvale Municipal Code (as it currently provides or may hereafter be amended) or any other ordinance, or law of the State of California or the United States of America;
39. Pay any and all taxes, levies, charges, or assessments, including but not limited to personal property taxes, sales and use taxes, assessed against Licensee, or its possessory interest in the property of the Clubhouse occupied by Licensee, or its property, including inventories used in performing its duties and obligations or exercising its privileges under this

License, for whatever purposes in connection with the operation of the Restaurant; and,

40. Keep Restaurant occupied by Licensee free from any liens arising out of the work performed, materials furnished, or obligations incurred by Licensee. Licensee shall have no power to establish or permit the creation of any such lien.
41. Furnish and pay all charges for gas, electricity, water, garbage, sewer and grease trap service to the Restaurant.
42. Furnish and pay all charges for telephone, internet and cable television or satellite television service to the Restaurant.
43. Furnish and pay all costs in connection with janitorial and maintenance services within the Restaurant occupied by Licensee. The janitorial and maintenance services shall include but not be limited to:
  - a) Clean entire areas licensed by the Licensee regularly and as-needed including but not limited to interior furnishings, equipment, fixtures, windows (inside and outside), flooring, ceilings and walls as needed.
  - b) Inspect and maintain facilities regularly during operating hours.
  - c) Check (no less than every 2 hours the facilities are open) and maintain restrooms and related equipment in proper working order. Thoroughly clean related equipment, fixtures, and surfaces, and provide adequate stock of paper and soap products.
  - d) Maintain exterior of the facilities and windows including cleaning and painting.
  - e) Replace electric lights/bulbs as necessary.
  - f) Provide and maintain appropriate and high quality floor coverings throughout the Restaurant.
  - g) Keep areas occupied by Licensee in a clean and sanitary condition, reasonably free from garbage, refuse, and waste at all times to the

satisfaction of City and to a level of quality to that of similar facilities in the community.

- h) Repair and replace anything broken or damaged as a result of any act or neglect by Licensee in all areas of the Clubhouse building.

#### IV. **DUTIES OF CITY.**

- A. City shall, in conjunction with Licensee's service, do the following:
  - 1. Publicize the Restaurant in the Library and Community Services Department's "Activities Guide" as long as the City publishes and distributes it during the length of this agreement; one-half of a full page will be provided in each edition.
  - 2. Publicize the Restaurant on the City's web site and provide a link to the Licensee's web site.
  - 3. Approve, by the Director of Public Works or his designee, the annual operations and marketing plan including a list of all activities, including but not limited to, menus, programs, banquets, services, promotions, advertising and special events and their associated fees. All new services, programs and activities instituted after the annual approval of the operations plan shall be submitted in writing to the Director of Public Works for approval.
  - 4. Determine, as established by the Director of Public Works or his designee, when fees may be waived or adjusted excluding promotions and discounts offered temporarily by the Licensee
- B. City shall be responsible for providing and maintaining only the following, within the Restaurant:
  - 1. Restaurant facility, complete with supporting structural members, smoke/fire detection system, fire suppression system, kitchen hood vent system and required gas/electrical/plumbing services, roofs, ceilings and walls.

2. Infrastructure of the patio and portions of the perimeters of the buildings, including existing entrances and seating areas and excluding patio surface coverings.
  3. The existing interior lavatories, with all required plumbing and fixtures.
  4. The existing air conditioning and heating systems.
  5. The existing light fixtures.
  6. Certain miscellaneous furnishings, equipment, fixtures are provided in an “as-is” condition and shall not be maintained by the City. These items currently located in the restaurant include, but are not limited to: ovens, sinks, refrigeration equipment, fryers, beverage dispensers, food preparation counters and dishwasher stations. Licensee may use these items or notify the City in writing of any items they do not want and dispose of them in a mutually agreeable manner. Licensee is solely responsible for all costs associated with use, maintenance, and disposal.
  7. Within the kitchens and bar areas, roughed in plumbing only.
  8. Locks and fasteners on doors and windows.
  9. Graffiti removal on all exterior building surfaces.
  10. Windows not broken as a result of any act or neglect of Licensee.
- C. City shall provide the existing off-street parking and parking lots, including lighting system at the Course. Licensee shall share the use of these facilities with customers and visitors of the Course. Designated parking for a mobile food truck and the use of existing utility connections.

**V. CAPITAL INVESTMENT**

- A. Licensee shall make a minimum capital investment of Sixty Thousand Dollars (\$60,000) within two years of the starting date of the License Agreement. Capital investments shall consist of two categories and a minimum of Thirty Thousand Dollars (\$30,000) shall be spent on each one. “Start-up” capital investments shall include but not be limited to: technology (computers, point of sale system, event software, website development, etc.); marketing (pre-paid advertising, signage and

local public relations campaign etc.); transition personnel (corporate payroll for human resources, accounting, operations, culinary etc.); liquor license and equipment (office, kitchen, banquet, tables, chairs etc.). All items that are equipment used in the operation of the restaurant shall be inventoried as set forth in section III.A.36 of this agreement and remain the property of the Licensee. “Infrastructure” capital investments are defined as modifications or enhancements of the existing, permanent infrastructure that shall become the property of the City upon installation. Capital investments shall include but not be limited to renovation of restaurant interior and exterior and renovation of restaurant patio. All of these improvements become the property of the City upon installation.

1. Licensee shall prepare plans and specifications in consultation with City.
  2. Licensee shall receive approval of all plans and specifications by the Director of Public Works and/or his designee(s) prior to filing of final plans and specifications. City shall be provided with two complete sets of final plans and specifications before construction begins and two complete sets of “as-built” plans and specifications at the completion of construction.
  3. Prior to construction, Licensee shall have obtained all necessary permits authorizing construction of the Project from City and other public agencies having jurisdiction over the Project, in compliance with all applicable laws, regulations, codes and the permitting process.
  4. Licensee shall provide City with written financial documentation showing related costs, upon the completion of all infrastructure capital investments.
- B. Additional remodel of the Clubhouse or Restaurant, construction of additions to the Clubhouse or Restaurant, and/or remodel or construction of concession building may be proposed at any time by the Licensee, or the City. City shall review all such projects and their associated costs on a case-by-case basis, and Licensee shall not undertake any such project without the prior express written consent of the City.

- C. City shall not award a contract for construction of remodel and/or additions or authorize construction thereof within the Licensee areas of use unless Licensee shall have been given a reasonable opportunity to review the associated plans and specifications.
- D. Capital investments are at the sole expense of the Licensee and City shall not be required to reimburse Licensee for any expenses incurred, regardless of whether or not the License is terminated by mutual agreement of the parties or by City's sole option.

**VI. PAYMENTS TO CITY, RECORDS, AND ACCOUNTS**

- A. Licensee, in consideration of the privileges and rights allowed by this License, shall pay to the City the following sums:
  - 1. There is no license fee for the first six months of the agreement including September, 2015 through February, 2016. This reduction shall have no impact on the calculation of future year payments.
  - 2. An amount equal to eight thousand dollars (\$8,000) in the first license year, eighteen thousand dollars (\$18,000) in the second year and increasing by two thousand dollars (\$2,000) each subsequent license year, per the table shown below.
  - 3. For each month of each license year, Licensee shall submit a payment to City for one-twelfth (1/12) of the amount due for that year, which shall be due and payable on the 1st of each month. The first payment shall be made on March 1, 2016, and additional payments shall be made on the 1<sup>st</sup> day of each subsequent month for the term of the agreement. The annual amount due will increase by two thousand dollars (\$2,000) on September 1 of each year. The first increase will commence on September 1, 2016.
- B. All payments due to the city that are late or not submitted on the first day of each month shall incur a 10% penalty fee that will be due with the payment.

<b>Year of Agreement</b>	<b>Amount of annual and monthly fee</b>
1 (commencing September 1, 2015)	\$8,000.00 (No fee for six months, \$1,333.33 monthly for six months)
2 (commencing September 1, 2016)	\$18,000.00 (\$1,500.00 monthly)
3 (commencing September 1, 2017)	\$20,000.00 (\$1,666.66 monthly)
4 (commencing September 1, 2018)	\$22,000.00 (\$1,833.33 monthly)
5 (commencing September 1, 2019)	\$24,000.00 (\$2,000.00 monthly)
6 (commencing September 1, 2020)	\$26,000.00 (\$2,166.66 monthly)
7 (commencing September 1, 2021)	\$28,000.00 (\$2,333.33 monthly)
8 (commencing September 1, 2022)	\$30,000.00 (\$2,500.00 monthly)
9 (commencing September 1, 2023)	\$32,000.00 (\$2,666.66 monthly)
10 (commencing September 1, 2024)	\$34,000.00 (\$2,833.33 monthly)

## **VII. COMPENSATION OF LICENSEE**

Licensee shall be entitled to keep and retain fees and revenues collected from all operations of the Restaurant less all operating and other expenses for which Licensee is made responsible pursuant to this agreement, and those amounts described in SECTION VI, above.

## **VIII. INDEMNIFICATION, INSURANCE**

- A. Licensee shall indemnify and hold harmless the City of Sunnyvale, its officers, employees and agents, from and against any and all claims, demands, orders, decrees or judgments for injury or death or damage to person or property, loss, damage and liability (including all costs and attorneys' fees incurred in defending any claim, demand or cause of action), occasioned by, arising out of, or resulting from any act or omission on the part of Licensee, or its agents or employees, from the performance of any services required to be performed by Licensee or arising from the use of the Restaurant, or its agents, employees, or arising out of the operation or maintenance of dangerous or defective condition of the Restaurant, or any other structure, facility or thing erected or placed in the Restaurant and under the control or supervision of the Licensee.

- B. Licensee shall procure and maintain for the duration of the contract general liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Licensee's activities or because of this License subject to the following minimum scope and limits:

Minimum Scope and Limits of Insurance Licensee shall maintain limits no less than:

1. **Commercial General Liability**: \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 or equivalent is required.
2. **Automobile Liability**: \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 is required.
3. **Workers' Compensation: Statutory Limits** and **Employer's Liability**: \$1,000,000 per accident for bodily injury or disease.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City. The licensee shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

Other Insurance Provisions

The **general liability** policy shall be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insured with respects to liability arising out of activities performed by or on behalf of the Licensee; products and completed operations of the Licensee; premises owned, occupied or used by the Licensee; or automobiles owned, leased, hired or borrowed by the Licensee. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.
2. For any claims related to this project, the Licensee's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Licensee's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.

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

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

#### Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

#### Verification of Coverage

Licensee shall furnish the City with original Certificates of Insurance, naming the City as additional insured, and endorsements affecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. City shall be provided with updated Certificates prior to any expiration date of coverage.

- C. Licensee shall fill out and forward to the City an accident report for any injury that takes place in and around the Restaurant within twenty-four (24) hours.
- D. Licensee, before exercising any of the privileges and rights hereby licensed, and at its own costs and expense, shall deposit and maintain with City a minimum of Ten Thousand Dollars (\$10,000.00), in cash or bond, to guarantee full and faithful performance of all the duties, obligations, covenants and agreements contained in this License to be performed by Licensee or any employee of Licensee, including, but not limited to, payment of all fees, or any other monies required to be paid to City at the times and in the manner specified in this License. City may make withdrawals from this guarantee fund to cover the cost of failure to fully and faithfully perform as stated above, or to reimburse City whatever fees, or any other monies required to be paid to City which are not so paid. Licensee shall deposit additional monies to replenish the guarantee fund upon being billed by City for withdrawals from the fund. Any balance remaining shall be returned to Licensee upon the termination of this License provided that Licensee or any employee of Licensee is not in default in the payment of any fees, portion of gross revenue or any other monies required to be paid to City, or in the performance of any duty,

obligation, covenant or agreement contained herein. This requirement will be terminated and the bond released to the Licensee upon completion of their capital investment for infrastructure of Thirty thousand dollars (\$30,000.00) required by the third year of this agreement. Licensee shall have the sole responsibility of insuring (if it so desires and at its own cost and expense) any furnishings, fixtures, equipment, merchandise and supplies which it is required to provide under the terms of this License against loss or damage from fire, theft or any other cause.

**IX. TERMINATION, REMOVAL, DEFAULT, BANKRUPTCY**

- A. Upon expiration of the term of this License, or upon the sooner termination of such term from whatever cause, Licensee:
1. May remove any and all furnishings, equipment, merchandise and supplies purchased by Licensee and noted in their annual inventory list provided in writing to the City; provided, however, that:
    - a) Licensee is not then in default in the payment of any fees, portion of gross revenue or any other monies required to be paid to City, or in the performance of any duty, obligation, covenant or agreement contained herein;
    - b) Licensee shall leave the Restaurant in good order, condition and state of repair, reasonable wear and tear and damage by the elements excepted, together with any alterations, changes, additions or improvements thereto; and,
    - c) Licensee shall be responsible for any damage to the Restaurant occasioned by the removal of any furnishings, or equipment; and for such damage, if any, City shall have lien on said items of personal property until such damages be paid. The City lien is additional security for performance of the License obligations and supercedes any other creditor lien.
  2. Shall peaceably and quietly leave, surrender and yield up to City the Restaurant.

3. If Licensee is entitled to remove any item of personal property described in Section 1, and such item is not so removed within thirty (30) days of termination of the agreement, then such property shall be deemed abandoned by Licensee and absolute title thereto shall immediately vest in City and may be disposed of by City as it sees fit.

B. City reserves the right to terminate this License:

1. If at any time Licensee is in default in the payment of any fees, or any other monies required to be paid to City, or in the performance of any duty, obligation, covenant or agreement contained herein (time expressly declared to be of the essence), upon fifteen (15) days written notice to Licensee and Licensee fails to correct such default within said fifteen (15) day period; provided, however, that:
  - a) Licensee shall not be entitled to and expressly waives any other form of demand or notice (written or oral);
  - b) City shall have the full right, at its election, to enter the Restaurant and take immediate and sole possession thereof;
  - c) City shall have the right to bring suit for and collect all fees and any other monies required to be paid to City and which shall have accrued up to the time of entry described above;
  - d) Upon such termination, this License and all rights and privileges herein licensed shall become void to all intents and purposes whatsoever; or,
2. If Licensee fails to keep in full force and effect at any time the policies of insurance or faithful performance deposit required above upon five (5) days written notice to Licensee and Licensee fails to correct such default within said five (5) day period.

C. This License and all rights and privileges herein licensed shall immediately (and without any demand or notice written or oral) cease, determine, come to an end, and become void, and the City immediately may enter the Restaurant and take immediate and sole possession thereof, without prejudice to the right of City to

recover from License all unpaid fees or any other monies required to be paid to City and which shall have accrued up to the time of the entry described above, if:

1. Licensee at any time during the term of this License become insolvent, or if proceedings in bankruptcy shall be instituted by or against Licensee, or if Licensee shall be adjudged bankrupt or insolvent by any court, or if a receiver or trustee in bankruptcy or a receiver of any property of Licensee shall be appointed in any suit or proceeding brought by or against Licensee, or if Licensee shall make an assignment for the benefit of creditors, or if any action is taken against or suffered by Licensee under any insolvency or bankruptcy act.
- D. In the event of termination of the License, because of the default of Licensee upon any of the grounds set forth above or in the event of the automatic termination of this License, City reserves the right to remove any personal property belonging to Licensee from the Restaurant and to store such personal property at the sole cost and expense of Licensee, and City shall have a lien on such personal property for and until all and any storage charges are paid.
- E. Upon mutual written agreement of the parties, the License may be terminated without cause prior to the end of the agreement term.

## **X. PROHIBITIONS**

- A. Licensee shall not do any of the following acts, except as herein otherwise provided:
1. Assign or transfer this License or any of the rights or privileges herein licensed, or any part thereof. The License is personal to Licensee and any attempt to transfer or assign this License shall terminate it.
  2. This License cannot be assigned involuntarily or by operation or process of law.
  3. Make any alterations, changes, or additions to the Restaurant occupied by Licensee, or to any fixtures or equipment owned by City without first having obtained written consent of City thereto, provided that any

alterations, changes or additions consented to shall be at the sole cost of Licensee and shall become the property of City upon termination of this License, for whatever cause.

4. Let, sublet, sublicense or assign any or all portions of the Restaurant occupied by Licensee.
5. Commit, permit or allow any nuisance or waste in, or injury to, any of the portions of the Restaurant, or to permit the use of any of such portions of the Restaurant for any illegal purpose.
6. Bind or attempt to bind City to any contracts or obligations of any nature.

## **XI. NOTICES**

- A. Any action, notice, or request required to be taken, given or made by City hereunder may be taken, given, or made by the City Manager of City or such other person or persons as s/he may authorize for the purpose. All notices, requests, or other papers required to be given or delivered to Licensee shall be deemed to be duly and properly given or made if mailed to Licensee, postage prepaid, addressed to:

Kris Zankich, Owner  
Golf Rush Eatery Inc.  
1664 Hyde Court  
Los Gatos, CA 95032

Or, personally delivered to Licensee at such address, or at such other address as Licensee may designate in writing to City. All notices, requests, or other papers required to be given or delivered to City shall be deemed to be duly and properly given or made if mailed to City, postage prepaid, addressed to:

Director of Public Works  
City of Sunnyvale  
Post Office Box Number 3707  
Sunnyvale, California 94088-3707

Or, personally delivered to Director of Public Works at City Hall, 456 West Olive Avenue, Sunnyvale, California, or at such other address as City may designate in writing to Licensee.

- C. Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone, e-mail or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of an e-mail or facsimile transmission must be sent by first class mail, by commercial carrier, or hand-delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

## **XII. NATURE OF LICENSE; MODIFICATIONS**

- A. This License does not constitute a contract of employment and the relation of master and servant, employer and employee, does not and shall not exist between City and Licensee, or any of its employees. Licensee is, and at all times shall be, deemed to be an independent contractor.
- B. This License does not constitute a deed or grant of any easement by the City of Sunnyvale and does not constitute a lease or convey any rights associated with a leasehold interest.
- C. No assurances or inducements of any kind, not specifically set forth in the License, have been made to Licensee by anyone authorized by City to cause Licensee to execute these presents.
- D. Failure of City to insist upon a strict performance of any of the duties, obligations, conditions, covenants or agreements contained in this License shall not be deemed a waiver of any subsequent breach or default in the duties, obligations, conditions, covenants or agreements herein contained.
- E. Rights of City or Licensee hereunder shall be cumulative and not alternative and shall be in addition to any and all rights which City shall have as a matter of law.
- F. No agent, officer or employee of City has any authority to vary or extend the term of this License or any duty, obligation, covenant or agreement contained herein, or

to make any statements or representations concerning this License, or the rights and privileges set forth herein, except such as are set forth in any written addendum to this License which has been approved by the Council.

- G. This License shall not become effective until receipt by the City of Sunnyvale of an original copy of this License with properly signed endorsement accepting the License subject to the conditions, duties, obligations, covenants or agreements contained herein. This License may be executed in duplicate counterparts.
- H. The City of Sunnyvale does not warrant or represent that the Restaurant, Clubhouse, golf course or other public places to which this License relates are safe, healthful or suitable for the purpose for which they are permitted to be used under this License.
- I. Licensee warrants that the undersigned is authorized by the corporation to execute this Agreement and bind the corporation and shall provide City proof upon request including, but not limited to, Articles of Incorporation or a corporate resolution.
- J. The language of this License shall be construed according to its fair meaning and not strictly for or against the City or Licensee.
- K. This License shall be enforced and interpreted under the laws of the State of California and the venue of any action brought under this License shall be in Santa Clara County.
- L. The provisions of this License shall contain the entire agreement between the parties hereto and said License shall not be modified except by a written amendment fully executed by both parties.
- M. If any provision of this License is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of the License and all such other provisions shall remain in full force and effect.

Licensee accepts the License set forth above and covenants and agrees (1) to be bound by and to comply with and perform each duty, obligation, covenant or agreement contained in the

License in the manner and at the times set forth therein; and (2) to pay all fees at the times set forth herein, respectively, this \_\_\_\_\_ day of August, 2015.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

\_\_\_\_\_

City Clerk

By

\_\_\_\_\_

City Manager

APPROVED AS TO FORM:

LICENSEE  
Gold Rush Eatery Inc.

\_\_\_\_\_

City Attorney

By

\_\_\_\_\_

Kris Zankich, Owner