



Agenda Item No: 8A
Council Meeting Date: August 4, 2014

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Approved By: Marjie Pettus
Marjie Pettus, City Manager

REQUEST FOR CITY COUNCIL ACTION

SUBJECT: LEASE AGREEMENT WITH TAYMAN PARK GOLF GROUP INC. (TPGG)
TO OPERATE THE VILLA CHANTICLEER

RECOMMENDED ACTION(S):

Adopt Resolution authorizing the City Manager to take all necessary steps to terminate the Lease Agreement dated June 30, 2008 and the Operating Agreement dated June 30, 2008 with the American Legion Sotoyome Post No. 111 and to enter into a Lease Agreement with the Tayman Park Golf Group, Inc. for the operation of the Villa Chanticleer and take other and further necessary actions related thereto

BACKGROUND:

Upon request from the Healdsburg City Council, the Healdsburg Parks and Recreation Commission formed a Villa Chanticleer Operations Review Subcommittee at their July 13, 2011 regular meeting. The purpose of the Subcommittee was to evaluate Villa Chanticleer operational efficiencies, revenue opportunities and marketing strategies. Chairperson Jay Tripathi and Commissioners Kent Mitchell and Joe Lickey (former Parks and Recreation Commissioner), and former City staff Matthew Thompson, Parks Manager and Elizabeth Haskell, Recreation Supervisor, were appointed to serve on the Subcommittee. Former Councilmember Steve Babb was appointed to serve on the Subcommittee at the October 3, 2011 City Council meeting. American Legion representatives Bob Taylor and Frank Teuschler also participated in the Subcommittee meetings.

The Subcommittee met twice a month from August 2011 through April 2012. The primary focus of the Subcommittee was to: identify and prioritize needed facility improvements; analyze the past performance of the Villa rental experience and the complexity of providing a one stop rental experience to meet the public's needs by reviewing Villa evaluations; brainstorm strategies to increase revenue potential; identify and discuss the challenges of a City-run event venue; and, preserve contractual obligations for local non-profit groups if the Villa is leased to another entity. At the first meeting, staff distributed copies of two previous Villa reports: 1) the 1997 Villa Chanticleer Report by MJT Associates; and 2) the 2007 Villa Chanticleer Business and Development Plan Summary Report by Pros Consulting. American Legion representative, Bob Taylor, distributed a packet on the History of American Legion Involvement in the Villa Chanticleer. It was noted that the Villa is currently being run as a hybrid model whereby priority consideration is given to local non-profits and residents for use as a community center, while also marketing to and serving high-end Wine Country destination events.

As part of the Subcommittee's research, it conducted interviews with key community stakeholders. In the interviews, stakeholders discussed their experiences at the Villa and proposed innovative ideas for generating revenue. A local business owner suggested a private operator could host multiple, concurrent facility rentals, run a catering business out of the Villa Kitchen, offer on-site food and beverage service and sales and rent or lease out the cabins. Based on this information, the Subcommittee realized that a private entity has much greater flexibility than the City to operate multiple profit centers at the Villa to generate revenue which could be set aside for needed capital improvements and deferred maintenance. The community input solidified the Subcommittee's view that having a private entity operate the Villa was the best course of action to take to fulfill the City's obligation to operate the Villa efficiently and maintain it as a treasured community asset.

Per the City Council's instructions, the Subcommittee prepared a report which was presented by Jay Tripathi and Kent Mitchell to the Healdsburg Parks and Recreation Commission at its June 13, 2012 regular meeting. The report and recommendations were discussed and members of the public were invited to speak at the Commission's July 11, 2012 meeting. There were no comments from the public regarding the Subcommittee's recommendation to contract out the operations of the Villa Chanticleer by soliciting proposals from a private entity to operate the Villa. The Commission voted unanimously to recommend the City solicits proposals to operate the Villa Chanticleer. Following the Parks and Recreation Commission meeting, the Villa item was taken to Council on November 19, 2012. Staff received direction to send out a Request for Proposal (RFP) to prospective service providers. The City received two proposals. They were from United Camps, Conferences, and Retreats (UCCR) and TPGG. After interviewing both applicants it was determined that TPGG's proposal was the best fit for the City of Healdsburg.

The following timeline provides an overview of the steps taken by staff following the interviews:

- December 3, 2013 – Staff met with the American Legion Executive Board and provided an overview of the selection process;
- January 14, 2014 – Initial meeting with Tayman Park Golf Group to discuss details of operating the Villa Chanticleer and revenue sharing;
- January 15, 2014 – Tayman Park Golf Group submits a written statement indicating its interest in entering into long term contract negotiations with the City to operate the Villa Chanticleer;
- January 29, 2014 – Continued discussions between staff and TPGG representatives;
- February 11, 2014 - Continued discussions between staff and TPGG representatives;
- February 20, 2014 – 1st Draft of Operating Agreement;
- March 4, 2014 – Staff met with American Legion representatives to inform them of the negotiations with TPGG and answer questions;
- March 10, 2014 – Continued discussions between staff and TPGG representatives;
- April 15, 2014 Meeting with ABC representatives, TPGG and American Legion representatives to discuss the requirements Type 47 licenses;
- April 28, 2014 – City and TPGG representatives met with Villa user groups: Kiwanis Club, Eagles, Rotary Club and American Legion to discuss TPGG's proposed operation of the Villa and answer questions.

DISCUSSION/ANALYSIS:

In 2008 the City entered into two agreements with the American Legion that enabled them to operate the Bar. These agreements included an Operating Agreement and Lease. These agreements allowed the Legion to obtain a Type 47 License from Alcoholic Beverage Control (ABC) to serve alcohol at the Villa and adjoining sites. A Type 47 License is required by the ABC in order to serve spirits as well as beer and wine. The lease agreement encompassed

the entire upper Villa site which included the BBQ area, Wedding Garden Area, Villa Chanticleer, and Villa Annex. In order for TPGG to serve alcohol, the Operating Agreement and Lease Agreement for the Villa Chanticleer must be terminated. The Legion has a third agreement with the City for use of the Villa Annex. Staff is not requesting any change to this agreement which runs through 2027. This existing lease will allow the Legion to maintain its Type 47 license at the Villa Annex. In order for TPGG to be able to serve alcohol at the Villa and the American Legion to continue to be able to serve alcohol at the Annex, the following steps will be taken to comply with the licensing requirements of ABC:

- The City will assign new addresses for the Villa and Annex. (900 and 860 Chanticleer Way);
- The American Legion will submit a request to ABC to reduce its premises to the Annex only;
- Tayman Park Golf Group will submit an application for a Type 47 License (convention center) on public property.

The City is committed to maintaining a positive relationship with the Legion throughout the transition and going forward. The following points have been discussed and agreed to with the American Legion:

- The American Legion has a Lease Agreement with the City for use of the Annex through September 2027;
- The Legion will continue to host events for its members, guests and local non-profit groups in the Annex;
- Tayman Park Golf Group will work with the Legion to coordinate facility usage of the Annex;
- The American Legion's Lease Agreement for the Villa Chanticleer will be terminated along with the Villa Operating Agreement;
- The Annex will be assigned a new street address: 860 Chanticleer Way;
- The American Legion will keep its current Type 47 Liquor License and reduce its premises to just the Annex. The 47 License will allow the American Legion to serve its members, guests and non-profits in the Annex;
- The City's annual golf tournament will be transferred to the Legion to be used as a fundraiser to help offset the cost of the July 4th fireworks.

Key points in the Lease agreement with TPGG are as follows:

Term – The initial term is for five (5) years. TPGG has the option to extend the term for three successive periods of five (5) years each. In essence the Lessee has the option to extend the lease up to 15 additional years from the initial term. As part of the agreement, the Lessee is required to spend an average of \$150,000 per year.

Fees and Prices – Lessee shall set all fees and prices for use of the Villa Property. The Lessee shall provide a resident discount within the range of 10% - 30% off the regular facility rental rate. The Resident Nonprofit Discount shall be in the range of 50% - 70% off the regular facility rental fee based on the date of the event.

Existing Non- Profit and other Established Uses – Lessee must honor the existing Legion uses, School District Uses and City Uses. These uses are stipulated in section 2.03 of the attached Lease agreement.

Revenues and use of Revenues – The lessee shall keep all collected annual revenues up to \$300,000. All revenues from \$300,000 to \$530,000 the City shall receive 70% of those revenues with the Lessee retaining 30% of said revenues. All revenues over \$530,000 the City shall receive 30% with the Lessee keeping 70% of those revenues.

Maintenance – The Lessee is responsible for all maintenance of the Villa Chanticleer, Villa Annex, Villa outbuildings, Villa Garden, and Villa BBQ area. The intent is for the City to utilize revenues received through the agreement for Capital Improvements, repairs, and replacement of equipment.

Access to Records – As part of the Lease the City shall have access to financial records that include Gross Receipts and expense records for operations of the Villa Property. This is clarified in section 2.16 of the Lease Agreement

The proposed timeline for transitioning the management of the Villa to TPGG:

1. September 1, 2014 (or sooner) - TPGG to take over management and operations of the Villa Chanticleer.
2. September – October, 2014 – City staff to work closely with TPGG management to ensure a smooth transition.

ENVIRONMENTAL ANALYSIS:

The issuance of the lease is a “project” pursuant to California Environmental Quality Act Guidelines Section 15378(a)(3) since the activity involves issuance of a lease by a public agency. In this case, the issuance of a lease to continue operations at the Villa Chanticleer that does not involve expansion of existing activities is therefore categorically exempt from environmental review pursuant to California Environmental Quality Act Guidelines Section 15301. Existing Facilities Class 1.

ALTERNATIVES:

Council may direct staff to further negotiate specific deal points with the Tayman Group. There are no guarantees the Tayman Group would accept any additional point to the agreement. Council may also direct staff to terminate negotiations with the Tayman Group and re-issue a Request for Proposal for Concession Services.

FISCAL IMPACT:

The City will incur some expenses during the transition. These expenses include purchasing existing bar equipment that is permanently affixed in the Villa Chanticleer at fair market value based on an independent appraisal; purchasing a new dishwasher and ice machine to replace failing equipment; and some other miscellaneous expenses. Once the transition expenses are completed, staff foresees limited fiscal impacts related to the Villa Chanticleer and Annex operations.

ATTACHMENT(S):

- 1) Resolution
- 2) Lease Agreement with TPGG
- 3) Legion Villa Annex Agreement
- 4) School District Agreement
- 5) Depiction of Villa Property

CITY OF HEALDSBURG

RESOLUTION NO. -2014

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEALDSBURG AUTHORIZING THE CITY MANAGER TO TAKE ALL NECESSARY STEPS TO TERMINATE THE LEASE AGREEMENT DATED JUNE 30, 2008 AND THE OPERATING AGREEMENT DATED JUNE 30, 2008 WITH THE AMERICAN LEGION SOTOYOME POST NO. 111, AND TO ENTER INTO A LEASE AGREEMENT WITH THE TAYMAN PARK GOLF GROUP, INC. FOR THE OPERATION OF THE VILLA CHANTICLEER AND TAKE OTHER AND FURTHER NECESSARY ACTIONS RELATED THERETO

WHEREAS, as required by the State of California Alcohol Beverage and Control (ABC) the City and American Legion Sotoyome Post No. 111 (Legion), entered into a Lease Agreement and Operating Agreement with the Legion in order for the Legion to serve alcohol at the Villa Chanticleer; and

WHEREAS, based on an exhaustive review process that included Council members, Parks and Recreation Commissioners, Staff, users of the Villa Chanticleer and representative of the Legion, it was determined the most effective and efficient means of maximizing the use and revenues of the Villa Chanticleer was to privatize its operation; and

WHEREAS, a Request for Proposal (RFP) was distributed soliciting proposals to operate the Villa Chanticleer; and

WHEREAS, the City received two proposals, one from United Camps Conferences and Retreats (UCCR) and one from Tayman Park Golf Group, Inc. (TPGG); and

WHEREAS, based on interviews with staff and members of the Parks and Recreation Commission it was determined that TPGG is the best suited to operate the Villa Chanticleer and surrounding grounds; and

WHEREAS, City Staff has negotiated a Lease Agreement with TPGG; and

WHEREAS, in order to allow TPGG to maximize all revenue potential at the Villa Chanticleer and surrounding area it is required that the Lease Agreement dated June 30, 2008 and Villa Operating Agreement dated June 30, 2008 with the Legion be terminated; and

WHEREAS, the Legion will still be allowed to provide alcohol service at the Villa Annex based on a reduced area Type 47 license; and

WHEREAS, the issuance of the lease is a “project” pursuant to California Environmental Quality Act Guidelines Section 15378(a)(3) since the activity involves issuance of a lease by a public agency, and

WHEREAS, the issuance of a lease to continue operations at the Villa Chanticleer that does not involve expansion of existing activities is therefore categorically exempt from environmental review pursuant to California Environmental Quality Act Guidelines Section 15301. Existing Facilities Class 1; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Healdsburg hereby authorizes the City Manager to take all necessary actions to terminate the Lease Agreement dated June 30, 2008 and the Operating Agreement dated June 30, 2008 with the American Legion Sotoyome Post 111; and

BE IT FURTHER RESOLVED that the City Council of the City of Healdsburg hereby authorizes the City Manager to enter into a Lease Agreement, substantially in the form attached hereto, with the Tayman Park Golf Group Inc. to operate and manage the Villa Chanticleer property on the terms and conditions described therein and to take such other and further actions as necessary or appropriate to carry out the intent of this Resolution, including without limitation the execution and recordation of written instruments.

PASSED, APPROVED, AND ADOPTED this 4th day of August, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINING:

SO ORDERED:

ATTEST:

James D. Wood, Mayor

Maria Curiel, City Clerk

**LEASE BETWEEN THE CITY OF HEALDSBURG
AND TAYMAN PARK GOLF GROUP, INC. FOR THE VILLA PROPERTY**

THIS LEASE (hereinafter “Agreement” or “Lease”) is made and entered into as of this 5th day of August, 2014, by and between the City of Healdsburg, a municipal corporation (“CITY”) as Lessor, and Tayman Park Golf Group, Inc., a California corporation (as “LESSEE”) (each individually a “Party” and collectively, the “Parties”).

WITNESSETH:

WHEREAS, CITY owns the approximately 17 acre Villa Chanticleer special event venue consisting of the main building comprised of a 3,000 square foot ballroom and dining room, bar and commercial kitchen (“Villa”), the annex (“Villa Annex”), the Outbuildings, a picnic area with barbeque (“Picnic Area”), two-tiered garden with gazebo and sound system (“Garden”), a parking area, playground, and dog park (collectively, the “Villa Chanticleer”); and

WHEREAS, CITY operates the Villa Chanticleer for the use and benefit of the public and on September 5, 2013 CITY issued a request for proposals to operate the Villa Property (as defined in Section 1.15, below); and

WHEREAS, LESSEE is engaged in the professional management and food and beverage businesses and submitted a proposal to CITY for operating the Villa Property dated October 10, 2013; and

WHEREAS, CITY reviewed LESSEE’s proposal and determined LESSEE is prepared, equipped and qualified to professionally manage and operate an event center at the Villa Property and undertake such operations, and provide all services, as required by this Agreement; WHEREAS, in order to enable LESSEE to provide such services, CITY desires to lease the Villa Property to LESSEE and permit LESSEE to

jointly use other portions of the Villa Chanticleer pursuant to the terms and conditions of this Agreement;

NOW, THEREFORE, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS

As used herein, the following words and phrases have the meanings set forth below:

1.01 Approval of the CITY

“Approval of the CITY” and terms of like import relating to the approval or consent by CITY or an authorized officer of CITY mean the affirmative act of the City Manager.

1.02 Lease Year

“Lease Year” means a fiscal year, commencing July 1 and ending June 30. Any amounts which are required by this Agreement to be calculated on the basis of a Lease Year shall be prorated on a monthly basis during those partial fiscal years which may occur at the outset and the termination of this Agreement.

1.03 City Manager

“City Manager” means the City Manager of the CITY and his or her authorized representative.

1.04 Gross Receipts

“Gross Receipts” means the total amount of funds actually received by LESSEE in whatever form of payment from business conducted by the LESSEE in, on or at the Villa Property, including, but not limited to, the sale, lease, licensing and delivery of merchandise (less sales tax), rental income (excluding any compensation or value attributed to the use and occupancy of the

Caretaker's Cottage by a caretaker for the Villa Property), food and beverage sales, fees, and commissions. All deposits shall be credited to Gross Sales when earned as a result of the event having taken place. CITY hereby acknowledges that LESSEE leases and/or provides management for other facilities (including another property which is leased from the CITY) and may provide off-site catering using the kitchen facilities at the Villa. If kitchen facilities are used for such purposes, Gross Receipts shall be credited with an amount equal to the kitchen rental fee for such use which is equal to that then payable by a Non Resident for use of the kitchen facilities (the "LESSEE Off-site Catering Fees"). In partial consideration for the rental dates which are required to be provided by LESSEE free of facility rental fees under Section 2.03, below, (including 5 Healdsburg Unified School District, 4 City of Healdsburg and 6 Sotoyome Post 111 events) collectively, the "Rent Free Events", LESSEE shall be entitled to reduce the LESSEE Off-site Catering Fees for each calendar year by an amount which is equal to the then applicable facility rental fee for each Rent Free Event which actually occurs during such calendar year. CITY hereby agrees that all receipts or other funds and compensation received by LESSEE from, or in connection with, LESSEE's such other operations, the lease or management of such other facilities, and (in partial consideration for the Nonprofit Discounts and Specified Events as set forth in Section 2.03, below) such off-site catering from the kitchen at the Villa Property shall be excluded from the definition of Gross Receipts under this Agreement.

"Gross Receipts" shall not include receipts from charges for third-party supplied goods or services which are "passed through" to LESSEE's customer without value-added or markup, provided that LESSEE separately accounts for such pass-through amounts in accordance with the procedures set forth in this Agreement. The following items shall also be excluded or deducted, as the case may be, from Gross Receipts: (1) Discounts on facility rental or other charges given to organizations as required

hereunder; (2) Cash or credit refunds to customers on transactions previously included in Gross Receipts; (3) City, state, county, or federal sales tax actually paid by LESSEE, provided the tax is added to the selling price and separately stated to the customer; (4) Proceeds from the sale of used fixtures and similar items owned by LESSEE not held as stock-in-trade and not sold in the ordinary course of LESSEE's business; (6) Receipts from returns to shippers or manufacturers; (7) Any exchange of merchandise between LESSEE's other facilities and/or places of operation made to facilitate the operation of LESSEE's business at the Villa Property, provided the exchange is not for the purpose of a sale on or from the Villa Property. If LESSEE has previously included any item listed above in Gross Sales on a statement for an accounting period, LESSEE may deduct the previously included amount from the statement for the accounting period in which LESSEE becomes aware of the excludable item and notate the reason for the exclusion on the Gross Receipts Report.

1.05 Legion Villa Annex Lease Agreement

“Legion Villa Annex Lease Agreement” shall mean that agreement between the CITY and Sotoyome Post No. 111 of the American Legion (“Sotoyome Post 111”) dated September 18, 2007 regarding the use of the Villa Annex a copy of which is attached to this Agreement as Exhibit A.

1.06 Legion Villa Operating Agreement

“Legion Villa Operating Agreement” shall mean that agreement between the CITY and Sotoyome Post No. 111 of the American Legion (“Sotoyome Post 111”) dated June 30, 2008 regarding the operation and service of alcoholic beverages at the Villa.

1.07 Legion Villa Lease Agreement

“Legion Villa Lease Agreement” shall mean that agreement between the CITY and Sotoyome Post No. 111 dated June 30, 2008 regarding the use of the Villa.

1.08 Nonprofit

“Nonprofit” shall mean any California nonprofit corporation organized under (i) Part 3 (commencing with Section 7110), or subject to Part 3 under the provisions of subdivision (a) of Section 5003, (ii) Part 2 (commencing with Section 5110) or subject to Part 2 under the provisions of subdivision (a) of Section 5003, or (iii) Part 4 (commencing with Section 9110) or subject to Part 4 pursuant to subdivision (a) of Section 5003, of Title 1, Division 2, of the Corporations Code governing nonprofit corporations (Cal. Corp. Code §§ 5000 – 10841, et seq.).

A “Resident Nonprofit” shall mean any Nonprofit with its principal place of business in the CITY. A “Nonresident Nonprofit” shall mean any Nonprofit that it not a Resident Nonprofit.

1.09 Outbuildings

“Outbuildings” refer to those three stand-alone buildings on the Villa Property generally northwest of the Villa and the Villa Annex. The Villa Caretaker Cottage is one of the Outbuildings.

1.109 Resident

“Resident” shall mean any individual whose domicile is within the boundaries of the CITY as proven by a utility bill and/or such other proof of domicile as is reasonably acceptable to LESSEE.

1.11 School District Agreement

“School District Agreement” shall mean that agreement between the CITY and Healdsburg Unified School District (“School District”) dated January 18, 2012, as may be amended from time to time, regarding the use of the Villa, a copy of which is attached to this Agreement as Exhibit B. CITY agrees no amendment shall be made to the School District Agreement that increases the annual number of days the District is allowed to use the Villa or otherwise makes any increase in the rights of the School District thereunder as to the Villa Property without the prior written consent of LESSEE.

1.12 Villa Caretaker Cottage

“Villa Caretaker Cottage” means that certain 1000 square foot Outbuilding that houses the Villa Caretaker.

1.13 Villa Caretaker Lease Agreement

“Villa Caretaker Lease Agreement” means that certain undated lease agreement entered into between the CITY and Joseph Fred Galvan Flores for the Caretaker Cottage.

1.14 Villa Caretaker Services Contract

“Villa Caretaker Services Contract” means the Villa Chanticleer Caretaker Services Contract entered into between the CITY and Joseph Fred Galvan Flores dated January 19, 2012 and amended February 28, 2013.

1.15 Villa Property

“Villa Property” means the area encompassing the Villa, the Outbuildings, the Picnic Area, and the Garden as depicted in Exhibit C. but does not include the Villa Annex, parking areas, playground and dog park.

ARTICLE II

GENERAL TERMS AND CONDITIONS

2.01 Lease and Joint Use

CITY hereby leases the Villa Property to the LESSEE and grants LESSEE joint use of the Villa Annex and nonexclusive use of all of the Villa Chanticleer parking areas solely for the professional management and operation of an event center and related purposes including, but not limited to, facility rentals (including rental of the Villa Property, its improvements, or any portion of the same), food and beverage (including alcoholic beverage) sales, sale of goods and merchandise such as apparel and gift items, and all services related thereto. LESSEE’s right to the joint use of the Villa Annex shall

be subject to the terms and conditions of the Legion Villa Annex Lease Agreement and CITY hereby grants LESSEE the right to jointly exercise CITY's rights to use the Villa Annex as described in Section 3 of the Legion Villa Annex Lease Agreement.

LESSEE shall have the exclusive right, license, and privilege to operate and maintain an event center at the Villa Chanticleer including food and beverage services to support the operation of the event center including snack bars (including roving carts to provide food and beverage service at the Villa Chanticleer in accordance with the terms and conditions of this Agreement.

LESSEE shall conduct no operations or activities at the Villa Property other than as are set forth herein, and those incidentally or necessarily related thereto, without the prior written consent of the CITY which consent shall be subject to the sole discretion of the CITY.

Upon the commencement date of the initial Lease term as provided in Section 2.02, below, CITY shall deliver to LESSEE an accounting as to all bookings made and which are in the process of being made at the Villa Property, and as to all deposits or other funds received on such bookings, the original contracts signed for all such bookings (and a duly executed assignment of such contracts in a form which is reasonably acceptable to LESSEE), copies of any and all third party service or other agreements obtained as to such bookings or the operation of the Villa Property, in general, along with payment in an amount equal to all such deposits and other funds as so received.

2.02 Term

a. Initial Term: This Agreement shall have an initial term of five (5) years which shall commence effective as of August ____, 2014 and shall expire on August ____, 2019, subject to earlier termination as herein provided.

b. Option to Extend Term: LESSEE is hereby granted and shall have an option to extend the term of this Lease for three (3) successive period(s) of five(5) years, each, commencing on expiration of the initial term specified in Section 2.02(a) of this Agreement, provided that: (1) LESSEE has fully and faithfully performed all the terms, covenants, and conditions of this Lease as of the end of the then expiring term; (2) During the initial term, only, LESSEE has incurred an average of \$150,000.00 per year in expense carrying out its obligations under this Agreement; (3) As to any term other than the initial term, LESSEE's Gross Receipts exceed \$300,000 for three out of five of the Lease Years immediately preceding the renewal date; and (4) written notice of LESSEE's election to extend the term of this Lease is given by LESSEE to CITY at least 6 months prior to expiration of the then expiring term. The extended term of this Lease shall be subject to the same terms and conditions as are contained in this Lease.

2.03 Nonprofit Discounts and Specified Event Schedules and Terms:

LESSEE shall set fees and prices for all rental and other use of the Villa Property, services provided by LESSEE, retail merchandise, restaurant/snack bar services and other goods and services. LESSEE will provide a Resident Discount to be within the range of 10%-30% off the regular facility rental fee (being that portion of LESSEE's charges which are billed for the building itself, exclusive of any other goods or services) based on the date of the event, a Non-Resident Nonprofit Discount to be within the range of 10%-30% off the regular facility rental fee based on the date of the event, and a Resident Nonprofit Discount to be within the range of 50%-70% off the regular facility rental fee based on the date of the event.

LESSEE shall accommodate scheduling for the following organizations to hold their annual events at the Villa Property. The number of annual events allowed for each organization is listed below. These events shall be subject to each organization executing LESSEE's rental agreement,

including provisions providing for indemnification of LESSEE, liability insurance, utilities, cleaning fees and a reasonable damage/security deposit, and unless otherwise provided below, each event shall be subject to LESSEE's rental and other rates in effect at the time of the event for the facilities which are used. Unless otherwise indicated, these events shall be scheduled on dates (unless booked by the organization 2 years in advance, such dates shall be subject to availability as to non-specified dates) other than Thursday through Sunday, May through December of each year ("Prime Rental Dates").

- A. (5) Healdsburg Unified School District; any day other than Saturdays May - September;
- B. (5) Healdsburg Area Science Fair
- C. (4) Sotoyome Post 111 events; the first Saturdays in February and March and two (2) additional dates
- D. (1) Rotary Club of Healdsburg – Crab Feed
- E. (1) Healdsburg Kiwanis Club – Pancake Breakfast
- F. (1) Healdsburg Boys and Girls Club - fundraiser
- G. (1) Steve Hockert Foundation - fundraiser
- H. (1) Alcoholics Anonymous - dinner
- I. (1) Food Pantry - fundraiser
- J. (1) Chamber of Commerce – Trade Show/Garden Show
- K. (12) City of Healdsburg

Five Healdsburg Unified School District events shall be free of facility rental fees as long as the School District Agreement is in effect. The School District shall pay for any other costs and fees associated with their event(s). This may include but not limited to staffing cost, catering cost, cleaning fees, and security that may be required, and any other miscellaneous fees. The School District will also

be required to provide any insurance that LESSEE may require.

Sotoyome Post 111 shall have the exclusive use of the Villa for Legion events on the first Saturday in February and the second Saturday in March. Sotoyome Post 111 shall also have the right to select two (2) additional dates outside of the Prime Rental Dates, for Sotoyome Post 111's District Dinner and Commander's Dinner. No facility rental fees will be due to the LESSEE or for the service and sale of alcohol at these events.

Upon execution of this Agreement, CITY shall terminate the Legion Villa Operating Agreement and Legion Villa Lease Agreement after providing Sotoyome Post 111 any required notice. In consideration of the LESSEE granting Sotoyome Post 111 the above four (4) facility fee exempted events, Sotoyome Post 111 has agreed to work in good faith with LESSEE when scheduling use of the Villa Annex by LESSEE provided it is available based on Sotoyome Post 111's scheduled use. CITY agrees no amendment shall be made to the Legion Villa Annex Lease Agreement that increases the annual number of days Sotoyome Post 111 is allowed to use the Villa Annex or otherwise makes any increase in the rights of Sotoyome Post 111 thereunder as to the Villa Annex or the Villa Property without the prior written consent of LESSEE..

Of the twelve (12) floating dates the City of Healdsburg has allocated, four (4) of those dates shall be free of facility rental fees and based on availability. All other charges except corkage fees for those four (4) events shall be paid by the City. The eight (8) other floating dates that are not free of facility rental fees, the City shall be charged the Resident Nonprofit facility rental fee then in effect and such event shall be scheduled subject to availability. All other charges such as food, beverage, staffing, cleaning, etc. shall be the responsibility of the City.

2.05 Villa Caretaker

Upon execution of this Agreement, the CITY will terminate the Villa Caretaker Services Contract and the Villa Caretaker Lease Agreement and any employment or other contract it may have with Joseph Fred Galvan Flores after giving any required notice. CITY shall pay and shall defend, indemnify and hold LESSEE harmless as to any and all compensation and employee benefits, including accrued vacation time and retirement or other benefits, including relocation assistance, to which Joseph Fred Galvan Flores may be entitled arising from his relationship with the CITY. It is further agreed that LESSEE, at its sole option, may thereafter contract with Joseph Fred Galvan Flores for similar services as a contractor or employee to LESSEE and under such arrangement and terms as LESSEE may determine.

LESSEE shall be responsible for providing a full-time caretaker on the premises at all times and shall comply with the following standards:

- a. The Villa Caretaker Cottage shall be used as a private dwelling of the named caretaker [and immediate family] and for no other purpose without the prior written consent of CITY.
- b. No more than two (2) persons may inhabit the Cottage without the prior written consent of CITY.
- c. LESSEE shall comply with all laws, statutes, ordinances and requirements of the city, county, state and federal authorities now or later in force pertaining to the use of Cottage.

- d. Cottage and surrounding areas must be kept free of litter. The appearance of the Cottage and surrounding areas must be maintained in a clean and orderly manner at all times.
- e. Caretaker may keep a maximum of two vehicles at the Villa Chanticleer. Additional vehicles must be authorized in writing by CITY. Caretaker may not keep recreational vehicles at the Villa Chanticleer.
- f. Caretaker is not allowed to have pets at the Villa Chanticleer.
- g. Caretaker may not use or maintain a waterbed in the Cottage.
- h. Caretaker may not repair any automobiles or any other motor vehicles, heavy machinery, or equipment, anywhere at the Villa Chanticleer without the prior written authorization of CITY.
- i. LESSEE shall be responsible for damages caused by a caretaker's negligence and that of the caretaker's family, invitees and guests. Caretaker shall not paint, paper or otherwise redecorate or make alterations to the Cottage without the prior written consent of CITY. LESSEE shall not commit or allow any person to commit any act resulting in the destruction, defacement, damage, impairment, or removal of any part of the Cottage, including wall, ceiling, and floor coverings, and the furniture, fixtures, and furnishings.
- j. CITY will not provide any relocation assistance or benefits to LESSEE or any caretaker, pursuant to California Government Code Section 7260, et seq., and related regulations,

or 42 United States Code Section 4601, et seq., and related regulations, if a caretaker moves from the Cottage for any reason.

- k. LESSEE shall perform or cause to have performed the following duties:
 - 1. Routinely patrol the Villa Property;
 - 2. Notify the CITY immediately of any emergencies;
 - 3. Notify the CITY within 1 business day of any accident or injury that occurs at the Villa Property; and
 - 4. Reporting any significant repairs or serious safety hazards to CITY within 1 business day.

- l. If LESSEE is unable to have a caretaker at Villa Property for a period of time that would affect the discharge of the caretaking services required under subparagraph 2.05, k, above, LESSEE shall notify the CITY 2 business days prior to caretaker's absence.

- m. Caretaker shall not use tobacco products or be under the influence of alcohol when performing caretaking duties.

2.06 Lease Repair and Maintenance

LESSEE and CITY responsibility for maintenance, repair and replacement is described in Exhibit D, attached hereto and incorporated herein by this reference. All such maintenance, repairs and replacements shall be of quality equal to or better than the original in materials and workmanship.

2.07 Marketing and Promotional Services

In recognition of the discounted facilities rentals which LESSEE is providing to Nonprofits and other organizations at CITY's request, all as provided herein, and the fact that the Rent payable to the CITY is enhanced by the success of LESSEE's operations at the Villa Property, CITY hereby agrees, at no cost to LESSEE, to provide reasonable assistance to LESSEE in promoting events at and other uses of the Villa Property in order to maximize revenues from operations at the same. This effort shall include a link provided by LESSEE with a mutually agreeable photo and text identifying the Villa as the City's event and convention center on the CITY's website to LESSEE's website to enable users to make reservations and obtain information about renting the Villa Property. The Parties may also consider mutually agreeable co-marketing at other events, such as those with the Chamber of Commerce, music in the Plaza, etc., and such other marketing and promotional activities.

2.08 Villa Property

A. Equipment and Improvements

Subject to the Villa Property successfully passing preinspection by the applicable governmental agency for health, fire, ADA and other code compliance upon commencement of the initial Lease term, LESSEE accepts the Villa Property "as is" in the condition existing on the Effective Date, provided, however, that such acceptance does not extend to any latent defect or concealed condition that would, if discovered prior to the date of this Agreement, have been the responsibility of CITY to correct. In addition CITY hereby agrees to complete at its cost and with all due diligence the following improvements to City standards: replace dishwasher and repair bathroom, all of which shall be subject to use by LESSEE under this Agreement.

LESSEE shall have the right during the term of this Agreement to make such interior and minor exterior alterations, changes and improvements to the Villa Property as LESSEE may desire for the conduct of LESSEE's business and for the full beneficial use of the Villa Property.

Except as provided above, LESSEE may not make any major alterations or improvements to the exterior of any buildings, nor any structural modifications to the Villa Property or its improvements, without CITY's prior written approval, which approval shall be at CITY's sole discretion. In the event of an approved major alteration or improvement, or structural modification, LESSEE shall notify CITY in writing at least three days before the date construction for such alteration, improvement, or modification is to commence. All construction shall comply with the requirements of all appropriate government laws. Before making any approved major alterations or improvements, or structural modifications that is estimated to exceed in cost the sum of \$10,000, LESSEE shall submit to and obtain CITY's prior written approval on final construction plans and specifications for the alterations, improvements or modifications. CITY shall not unreasonably withhold, delay or condition approval of such plans and specifications. All alterations, improvements and/or modifications shall be performed and diligently prosecuted to completion in accordance with the approved plans and specifications by a licensed contractor, all at LESSEE's sole cost, with the exception of ADA required modifications. LESSEE shall be responsible for complying with all state and local building codes and shall pay all required fees and charges including, but not limited to, building permit fees, development fees, and connection fees.

LESSEE agrees to keep all of the Villa Property and all improvements free and clear of any and all mechanics', materialmen's, and other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with any operations of LESSEE, any alteration, improvement, or repairs or additions that LESSEE may make or permit or cause to be

made, or any work or construction by, for, or permitted by LESSEE on or about the Villa Property, or any obligations of any kind incurred by LESSEE. LESSEE further agrees to pay promptly and fully and discharge any and all claims on which any such lien may or could be based, and to save and hold CITY and all of the Villa Property and the Building and any other improvements on the Villa Property free and harmless from any and all such liens and claims of liens and suits or other proceedings pertaining thereto.

If LESSEE desires to contest any such lien, it shall notify CITY of its intention so to do within 10 days after the filing of that lien. In such a case, and provided that LESSEE on demand of CITY protects CITY by a good and sufficient surety bond against any such lien and any costs, liability, or damage arising out of that contest, LESSEE shall not be in default hereunder until 5 days after the final determination of the validity thereof, within which time LESSEE shall satisfy and discharge that lien to the extent held valid. The satisfaction and discharge of any such lien shall not, in any case, be delayed until execution is had on any judgment rendered on the lien, and that delay shall be a default of LESSEE under this Lease. In the event of any such contest LESSEE shall protect and indemnify CITY against all loss, cost, expense, and damage resulting from the contest.

CITY shall permit LESSEE to use whatever CITY-owned equipment, that CITY may place at such facility. Any such equipment used by LESSEE shall be taken "as is", inventoried, maintained or repaired (except equipment damaged or destroyed by casualty), if necessary, pursuant to the requirements of Exhibit D and at the sole expense of LESSEE, and returned to CITY upon expiration or earlier termination of this Agreement.

CITY shall pay for replacement, when necessary, of the equipment in the Villa Annex, including by not limited to that listed below, and shall be entitled to reimbursement of that cost from the Capital Improvement Account (as defined in Section 2.09, below) when sufficient funds are available. To the extent that the cost of the Villa Kitchen, Bar and Basement equipment, including but

not limited to that listed below, is not paid for from the Capital Improvement Account, LESSEE shall advance the costs for replacement, when necessary, of that equipment and shall be entitled to reimbursement of that cost from the Capital Improvement Account when sufficient funds are available. In the event there are insufficient funds in the Capital Improvement Account to fund equipment replacement by the CITY and by the LESSEE, equipment replacement by the LESSEE shall have first priority to such funds. To the extent that the costs for the equipment purchased by Lessee have not been repaid from the Capital Improvement Account on the expiration or earlier termination of this Lease, City agrees to repurchase each such item from Lessee on expiration or earlier termination of this Lease under the terms as provided below. The items referred to above include the following:

Villa Kitchen: True 2 door refrigerator, Traulsen 2 door refrigerator, True 48 inch freezer, Montague – grill/oven, Montague 6 burner stove, Montague convection oven, Gaylord Exhaust hood and Ansul system, Stero dishwasher, Ise garbage disposal, Smith water heater, Manitowoc Series 1300 ice machine

Bar: Hobart Sanitizer

Basement: Walk-in refrigerator

Annex Kitchen: Montague 12 burner stove, Hamilton Beach microwave stove, True T-40 refrigerator, Hoshizake AM-150BAF ice machine, Jackson/Alco Series 150 dishwasher, and Ansul fire suppression system

LESSEE may purchase and install additional trade fixtures, furniture, furnishings and equipment at the Villa Property to further the purposes of this Agreement. If LESSEE desires to have CITY purchase such trade fixtures, furniture, furnishings and equipment upon the expiration or earlier termination of this Agreement, CITY must provide prior written approval of such trade fixtures,

furniture, furnishings and/or equipment including the brand, style, model, level of quality, and purchase price and must acknowledge City's agreement for such purchase

All items which are required to be repurchased by City on the expiration or earlier termination of this Lease (the "Repurchase Items") shall be subject to the following procedures to be used to undertake the sale of such trade fixtures, furniture, furnishings and/or equipment to the CITY:

- a. An independent appraisal will be made of all Repurchase Items.
- b. The appraiser will have no affiliation with the CITY or LESSEE.
- c. The purchase price of each of the Repurchase Items shall be the greater of the appraised value or the undepreciated cost to Lessee of such items based on straight line depreciation over the useful life of such item.
- d. Upon payment by the CITY to the LESSEE of the purchase price, all Repurchase Items shall become the exclusive and sole property of the CITY.

Upon termination of this Agreement, CITY may also, at its option, require removal by LESSEE, at LESSEE's sole cost, of any or all LESSEE's trade fixtures, furniture, furnishings and equipment installed by LESSEE which are not Repurchase Items, and LESSEE may have thirty (30) days to remove such fixtures, furniture, furnishings, and equipment. "Trade fixtures" means articles of personal property, fastened to real property, necessary to carry on a trade or business, and include, but are not limited to, display cases and other items which can be removed without material damage to the real property. Should LESSEE fail to remove or dispose of such property, CITY may, at its election, consider such property abandoned and may dispose of same at LESSEE's expense or after sixty (60) days declare the personal property of LESSEE's to be CITY property, all in accordance with the provisions of *California Civil Code Section 1993 et seq.* LESSEE shall be permitted to remove, upon expiration or

earlier termination of this Agreement, all personal property, trade fixtures furnishings and equipment owned by LESSEE. All injury or damage to CITY property caused by such removal shall be repaired at LESSEE's sole cost and expense. All improvements permanently affixed to the Villa Property (for example, ventilation systems, built-in-booths, light fixtures, etc.) shall remain on the property, except LESSEE's satellite and television equipment and other trade fixtures.

LESSEE shall not encumber, mortgage or transfer any property of CITY, and shall not permit any condition to exist which would presently, or upon the passage of time, create any lien or encumbrance on any CITY property, by or through LESSEE.

Upon expiration or earlier termination of this Agreement, LESSEE shall surrender the Villa Property and any appliances and equipment (except the equipment and trade fixtures of LESSEE), to CITY in good state of repair, (but as to such items owned by the CITY, not in a better condition than that in which LESSEE received the same from CITY), reasonable wear and tear excepted.

B. Conditions and Operations

LESSEE shall, at its sole cost and expense, operate the Villa Property in a clean, safe, wholesome, and sanitary condition, free of trash, garbage, or unreasonable obstructions of any kind, and in compliance with any and all applicable present and future laws, general rules and regulations of any governmental authority in force now or at any time during the term of this Agreement relating to sanitation, public health, safety, or welfare. LESSEE agrees that it will at all times keep and maintain the Villa Property with adequate supplies to maintain service for the usual and ordinary requirements of its customers and that it will keep the Villa Property in a neat, clean and orderly condition. LESSEE agrees that all trash and rubbish shall be deposited in receptacles, and that there shall be no trash receptacles permitted to remain outside any building, except as agreed between CITY and LESSEE. LESSEE shall

perform acceptable housekeeping and maintain and repair all improvements, furnishings and equipment on the Concession Area, made by LESSEE or CITY.

LESSEE shall remedy without delay any defective, dangerous, or unsanitary conditions which are its responsibility under this Agreement. LESSEE shall correct such situation within 24 hours, or CITY may, at its option, do so at Lessee's sole cost and expense, payable upon demand, provided that CITY shall have first provided 24 hours' notice of such condition to LESSEE, and LESSEE shall have failed or refused to correct such situation within 24 hours.

The City Manager may, at any time during normal business hours, without notice, enter upon the Concession Area, to determine if repairs, housekeeping and maintenance satisfactory to CITY are being performed. If it is determined that said housekeeping or maintenance is not satisfactory, CITY shall so notify LESSEE in writing. Any conditions which are LESSEE's responsibility that may cause substantial harm to any building, its contents, or persons, shall be performed immediately without need of written notice, or CITY may, upon oral notice to Lessee's manager, perform such maintenance at LESSEE's expense.

LESSEE shall supply its own janitorial service, including window washing and refuse containers, and shall keep the Villa Property used and occupied by it in a neat, clean, and sanitary condition at all times. The Villa Property shall be cleaned of all trash and refuse on a daily basis by LESSEE. Cleaning shall take place at least once per day or more often as needed. The area shall be cleaned so as not to prevent the Villa Property's routine maintenance. If LESSEE fails to clean trash and litter as required herein, CITY will perform such duties, and LESSEE shall reimburse CITY for cost of such maintenance upon demand.

LESSEE shall be responsible for providing restroom supplies, such as soap and paper supplies.

LESSEE reserves the right to hire qualified and licensed contractors to perform specialized repair and maintenance functions of any kind which are required to be done or paid for by LESSEE hereunder, but CITY shall have no obligation to reimburse LESSEE for contract payments, costs and expenses incurred in hiring such contractors.

C. Garbage and Utilities

LESSEE shall, at its sole cost and expense, provide a complete and proper arrangement for the adequate sanitary handling and disposal away from the Villa Property of all trash, dry and wet garbage, and other refuse. LESSEE shall also be responsible for all utility services for the Villa Property. In the event that CITY obtains preferential pricing on any such utilities, garbage or other services, CITY shall extend the same to LESSEE.

LESSEE shall contract directly for all utility services. LESSEE shall timely pay for all electrical power, gas, water, sewer, cable TV, connection charges, refuse and telephone services provided to the Villa Property, as billed by either CITY or by such other entity as may provide such services to the Villa Property. CITY is not liable in damages or otherwise under this Agreement for any failure or interruption of any utility service being furnished to the Villa Property and no such failure or interruption alone shall entitle LESSEE to terminate this Agreement. The foregoing shall not be deemed or construed to eliminate the liability of any CITY-owned utility for failure of service, if it would otherwise be liable for such failure.

2.09 Capital Improvement Account

Each Lease Year, LESSEE shall deposit a sum equal to seventy percent (70%) of the Gross Receipts collected between three hundred thousand (\$300,000) and five hundred thirty thousand dollars (\$530,000) to a separate account (the "Capital Improvement Account") to be established by and in the name of the LESSEE for the purposes of funding capital improvements, repairs and replacements at the Villa Chanticleer (not just the Villa Property), and replacement of equipment at the Villa Property and the Villa Annex as provided in Section 2.08(A), above. At the end of the first Lease Year in which there are Gross Receipts which exceed \$300,000, LESSEE shall provide CITY with proof of the establishment of such account and of the deposit of the required sum to such account. The funds in the Capital Improvement Account shall only be used by the LESSEE to fund replacement of equipment at the Villa Property and the Villa Annex and to make those capital improvements repairs and replacements at the Villa Chanticleer preapproved by the CITY (an "Authorized Expenditure"). Funds in the Capital Improvement Account may also be used to reimburse LESSEE for LESSEE's costs, including loan proceeds, which it has obtained preapproval for from the CITY and paid toward Authorized Expenditures prior to there being sufficient funds in the Capital Improvement Account for payment of such Authorized Expenditures. Funds in the Capital Improvement Account may also be used by the CITY, at its sole discretion, to replace equipment at the Villa Annex and to make capital improvements, repairs and replacements at the Villa Chanticleer and to reimburse CITY for CITY's cost of making capital improvements, repairs and replacements at the Villa Chanticleer which work was effected after commencement of this Lease term but prior to there being sufficient funds in the Capital Improvement Account to pay for such expenditures.

2.11 Rent

LESSEE shall pay CITY Rent in an amount equal to thirty percent (30%) of the Gross Receipts collected above five hundred thirty thousand dollars (\$530,000) during each Lease Year. Such funds will be paid directly to the CITY and have no restrictions on their use.

2.12 Payments and Interest

LESSEE shall pay CITY the Rent required in Section 2.10 payment on an annual basis on or before July 1 for the preceding Lease Year beginning July 1, 2015.

LESSEE shall submit all such payments to the City of Healdsburg Department of Finance. Any payment made by check shall be payable to the order of the City of Healdsburg. In the event LESSEE is in arrears for thirty (30) or more calendar days following the date that any payment herein required of LESSEE is due, CITY may assess LESSEE interest on the amount of such payment, at the rate of five percent (5%) per annum, calculated from the date such amount was due until the date such amount is paid by LESSEE. It is understood and agreed that all Gross Receipts are the property of LESSEE and, except for the Rent payment required to be paid by LESSEE to CITY, shall be retained by LESSEE.

2.12 Reimbursement of Expenses

CITY and LESSEE agree that LESSEE may incur expenses associated with operating the Villa that are the responsibility of CITY. LESSEE may only seek reimbursement of reasonable expenses which have been preapproved in writing by the City Manager. CITY may, at its discretion, refuse to reimburse LESSEE for expenses incurred without preapproval. LESSEE shall submit a copy of the vendor's invoice when seeking reimbursement.

2.13 Records and Reports

LESSEE shall prepare and maintain an adequate set of financial records according to the accounting practices as regularly and consistently applied by LESSEE (“Regular Accounting Practices”), documenting all LESSEE’s Gross Receipts pursuant to this Agreement.

2.14 Miscellaneous Reports

In addition to such other reports as may be required by this Agreement, LESSEE shall submit the following reports to CITY:

A. Gross Receipts and Other Reports

1. On or before September 1 following the last day of each Lease Year hereunder, or at any early termination of this Agreement prior to the end of the term, LESSEE shall submit a report itemizing all Gross Receipts during such Lease Year.

2. Such reports shall be an internal statement, prepared by the LESSEE, in accordance with its Regular Accounting Practices.

3. The annual Gross Receipts reports shall include a calculation of the Rents paid and payable by LESSEE for such period and, if applicable, the amount of any deposit which LESSEE is required to make to the Capital Improvement Account..

B. Confidentiality

To the extent permitted by law, CITY shall keep the financial reports and records referred to above confidential.

2.15 Retention of Records

LESSEE shall retain all its books and records of account for the term hereof for not less than three (3) calendar years following the last day of such term. Such books and records of account shall show all LESSEE's Gross Receipts derived from its operations pursuant to this Agreement, and supporting documents for such Gross Receipts, and all other information required by this Agreement.

LESSEE shall retain such books and records of account, and such reports and records as may be required of it pursuant to this Agreement, at its primary office within the County of Sonoma or at another approved location.

2.16 Audit and Access to LESSEE's Records

Upon thirty (30) days advance written notification by CITY, LESSEE shall make all of its Gross Receipts and expense records for operations at the Villa Property, only, available to CITY at the business office of LESSEE.

LESSEE shall provide such access to its records for CITY's purposes in verifying information submitted by LESSEE in any report required of LESSEE pursuant to this Agreement, and for CITY's purposes in verifying LESSEE's compliance with the terms of this Agreement.

Further, at any time within twenty-four (24) months following the last day of the term hereof, upon written notification to LESSEE, CITY may, if it has not already done so and at its sole cost and expense, inspect, audit, and copy LESSEE's records of Gross Receipts and supporting documentation for the same relating to LESSEE's operations at the Villa Property. CITY, its agents, or auditors may inspect, audit, and copy such records of Gross Receipts and supporting documentation for the same for CITY's purposes in determining the correctness of the computation of the Rents contributions to the Capital Improvement Account, and compliance with this Agreement.

If any such inspection and audit establish that LESSEE is not in compliance with the terms of this Agreement, then CITY and LESSEE shall meet and confer to resolve LESSEE's failure to comply. If the Parties are unable to agree, the matter shall be submitted to binding mediation in accordance with the provisions of Section 3.09 of this Agreement.

In the event of an underpayment of any amounts due from LESSEE, LESSEE shall pay the same within thirty (30) days following determination of such amount with interest from the date such amount was due but not paid, at the rate of five percent (5%) per annum. In the event an underpayment exceeds \$1,000.00 per year for more than 2 years during the term of this Lease, LESSEE shall also pay CITY a penalty equal to twenty percent (20%) of the total amount of the underpayment. In the event of an overpayment of any amounts paid by LESSEE, LESSEE shall be entitled to credit the overpayment, against future Rent or Capital Improvement Account payments, as the case may be.

2.17 Permits and Licenses

LESSEE shall, at its sole cost and expense, obtain and maintain in full force and effect throughout the term of this Agreement any and all applicable permits and business licenses which may be required by any law, including administrative regulations and local ordinances, for the conduct of LESSEE's operations at the Villa Property, including, but not limited to, a business license issued by the CITY and all liquor licenses allowing sale of liquor, beer and wine (as applicable) as required by law.

ARTICLE III ADDITIONAL TERMS

3.01 Standard of Performance

A. LESSEE will conduct its use and operation of the Villa Property in the manner and according to the standards which are equal or superior to that pursuant to which the Villa Property has historically been operated by the CITY.

B. To the extent required by this Lease, LESSEE will comply with all federal, state and local laws and regulations applicable to LESSEE's use of the Villa Property, including, but not limited to, the California Building Code, any copyright, patent or trademark law, and any air pollution control law(s) or regulation(s).

C. LESSEE's activities and operations at the Villa shall be supervised by one or more active, qualified, competent, and experienced employee(s) of LESSEE, not younger than 18 years of age. LESSEE's food and beverage operation shall be supervised by a professional manager or combination of management staff to conduct day-to-day operations. A manager shall be present at all times the food and beverage operation is open for business. LESSEE's personnel shall at all times while on duty at the Villa Property be clean and neatly groomed, courteous, efficient, and suitably attired. LESSEE's personnel shall perform its operations authorized hereunder in a businesslike manner, without rudeness or discourtesy to any person, or use of profanity. LESSEE shall at all times maintain a high standard of services to the public.

3.02 Indemnity

To the maximum extent permitted by law, LESSEE shall, at its own expense, indemnify, defend with counsel acceptable to the CITY, (which acceptance will not be unreasonably withheld), and hold harmless CITY and its officers, officials, employees, agents and volunteers ("Indemnitees") from and against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with the Services

or LESSEE's failure to comply with any of the terms of this Agreement, excepting any claims, etc. which arise solely from the negligence or intentional acts of the Indemnitees.

LESSEE's obligation to indemnify, defend and hold harmless under this provision shall not be excused because of the LESSEE's inability to evaluate Liability, or because the LESSEE evaluates Liability and inaccurately determines that the LESSEE is not or may not be liable to provide such indemnification. The LESSEE must respond within 30 calendar days to any tender for defense and indemnity by the CITY, unless the time for responding is extended by an authorized representative of the CITY in writing. The LESSEE waives any and all rights to express or implied indemnity against the Indemnitees concerning any Liability of the LESSEE arising out of or in connection with LESSEE's use of the Villa Property or LESSEE's failure to comply with any of the terms of this Agreement, excepting any Liability which arises solely from the negligence or intentional acts of the Indemnitees.

LESSEE shall at all times and in all respects and at its own cost comply with all federal, state and local laws ordinances and regulations relating to obtaining permits for and LESSEE's use, storage, containment, disposal and transportation of any hazardous or toxic materials and chemicals. Notwithstanding the foregoing, LESSEE shall not store or place upon the Villa Property any above or below ground storage tanks to be used in the storage of gasoline or other petroleum products or hazardous or toxic substances. LESSEE hereby agrees to assume and be responsible for all costs and expenses of every kind relating to hazardous substances on or beneath the Villa Property, which contamination occurs after LESSEE first begins to move into the Villa Property (the "Move-in Date") and during the term of this Lease or any extension thereof (excepting any contamination caused by the negligent or intentional acts of CITY or CITY's contractors, agents, employees or invitees – including visitors to the dog park, the playground or under any contract, lease or agreement to which this Lease

is subject), or as a result of LESSEE's use of the Villa Property, including but not limited to compliance with all permit and reporting requirements and remediation of all such contamination in accordance with all applicable laws and investigations, claims, lawsuits, proceedings, citations, cease and desist orders, abatement orders or other actions or orders of any kind against the Villa Property and/or CITY and/or LESSEE whether by any private party of any administrative, judicial or quasi-judicial board, court or agency having jurisdiction of the Villa Property, CITY or LESSEE.

LESSEE hereby agrees to defend, indemnify and hold harmless CITY, its officers, employees, attorneys, agents, successors and assigns from and against any and all response costs, losses, claims, demands, causes of action, lawsuits, proceedings, enforcement actions, obligations and liabilities of any kind arising out of the presence of hazardous or toxic substances, which contamination occurs after the Move-in Date and during the term of this Lease or any extension thereof (excepting any contamination caused by the negligent or intentional acts of CITY or CITY's contractors, agents, employees or invitees), or as a result of LESSEE's use of the Villa Property, including without limitation any amounts which CITY is called upon to pay in costs, expenses, and attorney's fees in defending or protecting its interests. The indemnification, hold harmless and covenant to protect and defend set forth in this Article shall survive the termination of this Lease and shall inure to the benefit of and be binding upon the respective successors and assigns of CITY and LESSEE.

Notwithstanding the any other provision of this Lease, LESSEE shall be under no duty to indemnify and hold CITY harmless from any liability, claims, or damages arising because of CITY's failure to make any repairs or replacements required by this Lease to be made by CITY or because of any negligence or willful acts of misconduct by CITY or by any person who is an agent or employee of CITY acting in the course and scope of its agency or employment (collectively, "City Liability Matters").

CITY agrees to indemnify, defend, protect, and hold LESSEE free and harmless from and against any liability, claims, or damages arising from or in connection with any City Liability Matter..

As between CITY and LESSEE, only, CITY hereby agrees to assume and be responsible for all costs and expenses of every kind relating to hazardous substances on or beneath the Villa Property, which contamination occurred prior to LESSEE's Move-in Date (excepting any contamination caused by the negligent or intentional acts of LESSEE or LESSEE's contractors, agents, employees or invitees), including but not limited to compliance with all permit and reporting requirements and remediation of all such contamination in accordance with all applicable laws and investigations, claims, lawsuits, proceedings, citations, cease and desist orders, abatement orders or other actions or orders of any kind against the Villa Property and/or LESSEE and/or CITY whether by any private party of any administrative, judicial or quasi-judicial board, court or agency having jurisdiction of the Villa Property, CITY or CITY

CITY hereby agrees to indemnify and hold harmless LESSEE, its officers, employees, attorneys, agents, successors and assigns from and against any and all response costs, losses, claims, demands, causes of action, lawsuits, proceedings, enforcement actions, obligations and liabilities of any kind arising out of the presence of hazardous or toxic substances, which contamination occurs prior to LESSEE's Move-in Date (excepting any contamination caused by the negligent or intentional acts of LESSEE or LESSEE's agents, employees or invitees), including without limitation any amounts which LESSEE is called upon to pay in costs, expenses, and attorney's fees in defending or protecting its interests. The indemnification, hold harmless and covenant to protect and defend shall survive the termination of this Lease and shall inure to the benefit of and be binding upon the respective successors and assigns of LESSEE and CITY.

In the event that LESSEE or any employee, agent, or subcontractor of LESSEE providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of CITY, LESSEE shall indemnify, defend, and hold harmless CITY for the payment of any employee and/or employer contributions for PERS benefits on behalf of LESSEE or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of CITY.

The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

Each Party's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

3.07 Insurance

- a. All required insurance must be provided in the form of "occurrence"-type policies underwritten by admitted insurers in the State of California with a rating of A or better from the current year Best Rating Guide. All policies must be issued at the expense of the LESSEE and must be maintained at the LESSEE's expense throughout the term of this Agreement. LESSEE shall maintain insurance as required by this Agreement to the fullest amount allowed by law.
- b. The LESSEE must secure payment of workers compensation in accordance with California Labor Code Section 3700 and other applicable law. Prior to execution of this agreement, LESSEE

must submit to the CITY acceptable certificates of insurance, declarations page(s) and endorsements evidencing that the LESSEE has the required insurance in effect .

- c. LESSEE agrees to include with all contractors for a contract in excess for \$10,000 in their contract the same requirements and provisions of this contract including the indemnity and insurance requirements to the extent they apply to the scope of the contractor's work. LESSEE shall require all contractors to provide a valid certificate of insurance and the required endorsements included in the Agreement prior to commencement of any work and LESSEE will provide proof of compliance, upon request, to the CITY.
- d. Contractors hired by the LESSEE shall agree to be bound to the LESSEE and the CITY in the same manner and to the same extent as LESSEE is bound to the CITY under the Agreement. The contractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any subcontractor to the extent they apply to the scope of the subcontractor's work. A copy of the indemnity and insurance provisions will be furnished to the subcontractor upon request
- e. The LESSEE and any contractors must secure payment of workers compensation in accordance with California Labor Code Section 3700 and other applicable law. The LESSEE must verify that all subcontractors comply with this requirement.
- f. Prior to execution of this agreement, LESSEE must submit to the CITY acceptable certificates of insurance, declarations page(s) and endorsements evidencing that the LESSEE has the required insurance in effect and will maintain it throughout the performance of the Work, and beyond as applicable, the following kinds and amounts of insurance:

g. Except as otherwise consented to by the CITY on a case by case basis, which consent will not unreasonably be withheld, the minimum limits of the Commercial General Liability (including bodily injury, personal injury and property damage) insurance shall be:

\$2,000,000 per occurrence

\$2,000,000 aggregate

h. The Automobile insurance limit shall be:

\$2,000,000 per accident for bodily injury and property damage

i. Automobile coverage should be at least as broad as Insurance Services Automobile Liability form CA 0001 Code 1 (“any auto”). No endorsement may be attached limiting the coverage. If coverage provided is anything less than ‘any auto’ additional information, such as schedule of covered autos or proof of personal auto liability coverage, may be required by the CITY.

j. Worker’s Compensation Insurance. Proof of Workers Compensation and Employers Liability insurance as required by any applicable law, regulation or statute, including the provisions of Division IV of the Labor Code of the State of California, and any act or acts amending it. Worker's compensation insurance must be for Statutory Limits and must cover the full liability of the LESSEE. The LESSEE’s Employer’s Liability Insurance must be in an amount no less than \$1,000,000.00 per occurrence. The workers’ compensation policy must be endorsed with a waiver of subrogation. The insurance company, in its endorsement, must agree to waive all rights of subrogation against the CITY, its officers, officials, employees, agents and volunteers for losses paid under the terms of such policy.

k. Umbrella/Excess Policy. The limits of insurance required under this Contract may be satisfied by a combination of primary and umbrella or excess Insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of CITY (if agreed to in a written contract or agreement) before the CITY's own insurance or self-insurance shall be called upon to protect it as a named insured.

I. Additional Requirements

- i. Endorsements must add the CITY, its officials, officers, employees, agents and volunteers as an additional insured ("Additional Insured"). Examples of CITY approved insurance forms are included in this package. If the LESSEE provides policy pages or broad forms of endorsement the insurance carrier will be asked to sign, initial and date all applicable sections of the document which conveys coverage to the CITY.
- ii. It shall be a requirement under this Contract that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the name insured; which ever greater.
- iii. The Additional Insured coverage under the LESSEE's policy shall be "primary and non-contributory" and LESSEE will not seek contribution from the CITY's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

- iv. The LESSEE shall provide the CITY with a 30 day written notice of any reduction or cancellation of such insurance required to be furnished by the LESSEE; and include a severability of interest clause acceptable to the CITY and if requested by the CITY.
- v. If an Umbrella or Excess Policy is used to satisfy the requirements, than an email or language stating such on the certificate must be provided from the insurance carrier/broker and that Umbrella/Excess Policy 'follows form' or is 'continuous' to the General liability and/ Auto liability policy in addition to the required endorsement.
- vi. The CITY has provided examples of approved standard and preferred forms of endorsements. If the LESSEE's insurance carrier chooses to use forms other than the CITY's approved forms, such forms shall be subject to the prior approval of the CITY. If the LESSEE provides policy pages instead of an endorsement the insurance agent/broker will be asked to sign, initial and date all applicable sections of the policy that meet the CITY's insurance requirements.
- vii. All self-insured retentions (SIR) must be disclosed to CITY for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the CITY, The CITY reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right exercise later.

3.08 Non-Discrimination

During the performance of this Agreement, LESSEE will not discriminate against any employee of the LESSEE or applicant for employment because of race, religion, creed, color, national origin, age,

physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation. LESSEE will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, creed, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation.

3.09 Alternative Dispute Resolution

If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, CITY and LESSEE agree to resolve the dispute in accordance with the following:

- A. Each Party shall designate a senior management or executive level representative to negotiate any dispute.
- B. The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- C. If the issue remains unresolved after ten (10) days [commencing with the date of the written request for resolution of a dispute served by one Party upon the other (the "Notice Date")] of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. To the extent that the above process fails to obtain a resolution within fifteen (15) days from the Notice Date, the Parties shall resolve any remaining disputes through binding mediation with a mutually agreeable mediator, or if the Parties are unable to agree on a mediator within twenty (20) days of the Notice Date, with a mediator appointed by Resolution Remedies at their Santa Rosa, CA offices, to expedite the resolution of the dispute.
- D. The binding mediation process with Resolution Remedies shall provide for the selection within 25 days of the Notice Date of a disinterested third person as mediator, shall be

commenced within 30 days of the Notice Date, and shall be concluded within 15 days from the commencement of the binding mediation.

- E. The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- F. The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to, nor shall be construed to, change the time periods for filing claims or action specified by Government Code section 900, et seq.

3.10 Binding Effect and Assignment Prohibition

This Agreement is binding upon CITY, LESSEE, and their successors. Except as otherwise provided in this Section 3.12 or Section 3.26, neither CITY nor LESSEE may assign, sublet or transfer its interest in this Agreement or any part thereof without the prior written consent of the other and any purported assignment without such consent will be void. The Parties agree that the involvement of James Stewart and/or Frank Johnson in the day to day operations of LESSEE is essential to the CITY and a substantive factor in the CITY's decision to award this lease, and the rights granted herein, to LESSEE. Therefore, LESSEE agrees that if neither James Stewart or Frank Johnson are involved in the day to day operations of LESSEE, CITY shall have the sole right to terminate this Agreement upon thirty (30) days written notice to LESSEE.

3.11 Partial Loss or Damage to Facility

In case of partial loss or damage to the Villa Property by fire or otherwise, and if CITY elects to repair, replace or rebuild the damaged or destroyed Villa Property, LESSEE shall be required to vacate

the Villa Property, either in whole or in part, for an extended period of time. In such event, LESSEE may elect to terminate this Agreement by notice to CITY, if, within ninety (90) days following such casualty, CITY has not made **reasonable** efforts to commence and diligently proceed with the repair, replacement or reconstruction of the Villa Property and if such repair, replacement or reconstruction effort will not be completed such that LESSEE can assume full operations within 120 days following such casualty.

3.12 Default; Remedies

A. Defaults

The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by LESSEE.

1. The unexcused vacating or abandonment of the Villa Property by LESSEE for a period of at least thirty (30) consecutive days.

2. The unexcused failure by LESSEE to make any payment required to be made by LESSEE, when due, where such failure shall continue for period of ten (10) days after written notice from CITY of the overdue amount.

3. The failure by LESSEE to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by LESSEE, other than described in subparagraph (2) above, where such failure continues for a period of thirty (30) days after written notice from CITY; provided, however, that, if the nature of the default is such that more than thirty (30) days are reasonably required for its cure, then LESSEE shall not be deemed to be in default if LESSEE commences such cure within the thirty (30) day period and thereafter diligently prosecutes such cure to completion.

4. The making by LESSEE of any general assignments for the benefit of creditors.

5. The institution of any bankruptcy proceedings by or against LESSEE, which is not dismissed within sixty (60) days of filing thereof.

6. The appointment of a trustee or receiver under an applicable insolvency law to take possession of substantially all of LESSEE's assets located at the Villa Property or of LESSEE's interest in this Agreement, where possession is not restored to LESSEE within sixty (60) days.

7. The attachment, execution or other judicial seizure of substantially all of LESSEE's assets located at the Villa or of LESSEE's interest in this Agreement, where such seizure is not discharged within sixty (60) days.

8. The failure of LESSEE to maintain in full force and effect all forms of insurance required hereunder.

9. The failure of LESSEE to maintain in full force and effect any permit, business license, or, for more than ninety (90) days, required hereunder.

10. Any sale, transfer, or assignment by LESSEE of a majority interest in any right, license, privilege, or duty hereunder, if such sale, transfer or assignment does not comply with Section 3.12 of this Agreement.

11. The occurrence of two or more major critical retail food facility violations by LESSEE (as opposed to a renter of the Villa or any portion of the same from LESSEE, or any contractor to such renter), as determined by the County of Sonoma which have proceed to litigation and as finally adjudicated, in any year.

12. The occurrence of two or more significant municipal code violations constituting a public nuisance which have proceed to litigation and as finally adjudicated in any year.

B. Remedies in Default

In the event of any material default or breach of this Agreement by LESSEE under Subsection A, CITY may at any time thereafter, with or without notice or demand, and without limiting CITY in the exercise of any right or remedy which CITY may have by reason of such default or breach:

1. Terminate LESSEE's right to possession of the Villa Property by any lawful means, in which case this Agreement shall terminate and LESSEE shall immediately surrender possession of the property to CITY. In such event, CITY shall be entitled to recover from LESSEE all damages incurred by CITY by reason of LESSEE's default including, but not limited to, the following:

a. The reasonable cost of recovering possession of the Villa Property;

b. The worth at the time of the award by the Court having jurisdiction thereof of the amount by which the unpaid Rent for the balance of the term of the Agreement after the time of such award exceeds the fair market rental value of the Villa Property for the same period, such amount payable by LESSEE in equal monthly installments over the balance of the term of the Agreement as if the Agreement had not been terminated.

2. Maintain LESSEE's right to possession, in which case this Agreement shall continue in effect whether or not LESSEE has abandoned the Villa Property. In such event, CITY is entitled to enforce all of its rights and remedies under this Agreement, including the right to recover the Rent as it becomes due.

3. Pursue any other remedy now or hereafter available to CITY under the laws or judicial decisions of California.

C. Breach by CITY

LESSEE may not terminate this Agreement except for a material breach of the Agreement by CITY.

3.13 Surrender

At the end of the term or upon sooner termination of this Agreement, LESSEE shall surrender the Villa Property and the tenant improvements to CITY in good order, condition and repair, ordinary wear and tear, unavoidable depreciation and obsolescence excepted, provided that the foregoing shall not obligate LESSEE to effect any maintenance, repair or replacement which is not required elsewhere in this Agreement.

3.14 CITY Manager's Inspection

CITY reserves the right to enter the Villa Property to inspect for compliance with this Agreement, to make necessary repairs and improvements which, after due notice and opportunity to cure, LESSEE has failed to make or which are CITY responsibility to make, to supply necessary services, and for other legitimate purposes, at any reasonable time. This right of entry shall, except in an emergency, be exercised only during LESSEE's business hours and after reasonable advance notice to LESSEE in the circumstances.

3.15 Subordination

LESSEE's interest in the Villa Property and this Agreement shall at all times be subordinated to the lien of any mortgage, deed of trust or other encumbrances placed upon the real property by CITY from time to time or by its successors except as provided below.

A. All such mortgages, deeds of trust and/or encumbrances shall provide that as long as LESSEE is not in default hereunder, neither LESSEE's interest nor LESSEE's quiet possession and enjoyment of the Villa Property shall be disturbed or interfered with by any such mortgage, trustee,

beneficiary or encumbrance holder (“Mortgagee”), and Mortgagee shall execute a Non-Disturbance Agreement in favor of LESSEE, in form and substance reasonably acceptable to LESSEE.

B. This provision for subordination is self-operative and no further instrument of subordination is necessary. Nevertheless, in confirmation of such subordination, LESSEE shall execute promptly any instruments that CITY may reasonably request.

3.16 Nuisances Prohibited

LESSEE shall not commit or permit to be committed any waste on or of the Villa Property, and LESSEE shall not do or permit to be done any act in or about the Villa Property which shall be a nuisance or which may endanger the Villa Property, another tenant or adjoining property.

3.17 Authority of the City Manager

With respect to matters hereunder subject to the approval, satisfaction, or discretion of CITY or the CITY Manager, the decision of the CITY Manager in such matters shall be final, shall not be unreasonably withheld, and shall be exercised reasonably and consistently with the implied covenant of good faith and fair dealing.

3.18 Consent

Whenever the consent or approval of either CITY or LESSEE is required or authorized hereunder, except with regard to the consent to assign which is subject to the sole discretion of the non-assigning Party, such consent or approval shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed.

3.19 Time of the Essence

Time is of the essence in the performance of this Agreement.

3.20 Attorney’s Fees and Costs

If either Party commences an action against the other Party to enforce this Agreement, the prevailing Party is entitled to reasonable attorney's fees, costs of suit, investigation costs and discovery costs, including costs of appeal.

3.21 Prevailing Wage and Public Bidding Requirements

LESSEE agrees to comply with the requirements of California Labor Code section 1720, et seq. concerning payment of prevailing wages and California Public Contract Code section 20160, et seq. concerning public bidding, when and to the extent that either or both of such laws are applicable to LESSEE.

3.22 Taxes

LESSEE shall, at its sole cost and expense, pay any and all taxes for which it is responsible, or which may be assessed against it. LESSEE shall pay, when due, all taxes and assessments levied upon the Villa Property and LESSEE's personal property situated at the Villa Property. LESSEE is not required to pay personal property taxes for the property owned by CITY.

Under this Agreement, a possessory interest subject to property taxation may be created. Notice is hereby given pursuant to Revenue and Taxation Code Section 107.6 that such possessory interest may be subject to property taxation if created, and that the Party in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest. Also, the interest created by this Agreement may be subject to special taxation pursuant to the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5, commencing at Section 53311, of Part 1, Division 2, Title 5 of the Government Code) and a Party in whom a possessory interest is vested may be subject to the payment of special taxes levied on such interest pursuant to such Act.

LESSEE shall have the right in its own name, or to the extent necessary, in CITY's name, to contest, in good faith and by all appropriate proceedings the amount, applicability or validity of any tax assessment pertaining to the Villa Property and its operations thereon.

In the event LESSEE initiates such contest, CITY shall reasonably cooperate with LESSEE, provided that such contest will not subject any part of CITY property to forfeiture or loss; and provided, further, that if LESSEE contests any assessment made by the Assessor of CITY, such contest shall not be initiated in the name of CITY, and CITY shall not be obligated to cooperate therewith.

If at any time, payment of any tax or assessment becomes necessary to prevent any such forfeiture or loss, LESSEE shall timely pay such tax or assessment to prevent such forfeiture or loss.

3.23 Signs

LESSEE shall place no permanent sign, emblem, or advertising, of any kind or character, at or on the Villa Properties without the advance written approval of the CITY Manager. Any signs so installed must comply with the CITY's sign regulations.

3.24 Notices

Any notice, demand, request, consent, or approval, which either Party may or is required to give the other, shall be in writing and shall be either personally delivered or sent by prepaid first class mail addressed as follows:

TO LESSEE:

Tayman Park Golf Group, Inc.
927 So. Fitch Mtn. Road
Healdsburg, CA 95448
Attn: Jimmy Stewart/Frank Johnson

TO CITY:

City of Healdsburg
401 Grove Street
Healdsburg, CA 95448
Attn: City Manager

Either Party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a Party or an officer or representative, or to a different address, or both. Notices given before actual receipt of change shall not be invalidated by the change.

3.25 Notice of Claims and Suit

CITY and LESSEE shall each give the other prompt and timely written notice of any personal injury or accident claim in excess of one thousand dollars (\$1,000.00), and of any lawsuit coming to its knowledge, when either such claim or lawsuit arises out of, or is in any way connected with, the Villa Property or the operations of LESSEE hereunder, and which in any way, directly or indirectly, contingently or otherwise, might reasonably affect the Parties' relationship under this Agreement.

Such notice shall be deemed prompt and timely if given within thirty (30) calendar days following the date of receipt of such claim by an officer, agent, or employee of either Party, and, if given within ten (10) calendar days following the date of service of process upon either Party with respect to any such lawsuit.

3.26 Warranty Regarding The Villa

CITY shall have the right to sell the Villa Chanticleer and any part thereof and assign its interest in this Agreement without limitation. CITY shall give LESSEE six (6) months' notice prior to the close of escrow on any such sale. Any such sale shall be made subject to this Agreement and any

purchaser shall agree to perform all of the obligations of CITY under this Agreement. Upon any such conveyance, CITY shall be automatically relieved of any further obligation under this Agreement.

3.27 Entire Agreement

This Agreement, together with all exhibits attached hereto, constitutes the entire Agreement between the Parties hereto as to the subject matter hereof, and all other representations or statements heretofore made, oral or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the Parties hereto. This Agreement supersedes all prior agreements. Each Party has relied on its own examination of this Agreement, the counsel of its own advisors and the warranties, representations and covenants of the Agreement itself. The failure or refusal of either Party to inspect the Villa Property, to read this Agreement or other documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention or claim that might have been based on such reading, inspection or advice.

3.28 Nonwaiver of Rights

No waiver of default by either Party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other Party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions, herein contained, to be performed, kept, and observed by the other Party.

3.29 Force Majeure

Neither CITY nor LESSEE shall be deemed in violation of this Agreement if they are prevented from performing any of their obligations hereunder by reason of strike, boycott, labor dispute, embargo, or shortage of energy or materials. Neither CITY nor LESSEE shall be deemed in

violation of this Agreement if either is prevented from performing any of its obligations hereunder by reason of acts of God, acts of a public enemy, acts of superior governmental authority, weather conditions, riot, rebellion, sabotage, or any other circumstances for which it is not responsible or which are not reasonably within its control.

3.30 Waiver

A term or condition of this Agreement may be waived at any time by the Party entitled to the benefit thereof, but no such waiver shall affect the right of the waiving Party to require observance, performance or satisfaction either of that term or condition as it applies on a subsequent occasion or of any other term or condition.

3.31 Amendment

This Agreement and each provision contained herein may be waived, amended, supplemented or eliminated only by mutual written agreement of the Parties.

3.32 Governing Agreement

In the event of any conflict between this Agreement and its exhibits, the provisions of this Agreement shall govern.

3.33 Severability

In case any one or more of the provisions contained in this Agreement is for any reason held invalid or unenforceable, such holding shall not affect the remaining provisions or the validity and enforceability of the Agreement as a whole.

3.34 Headings

The headings of the articles and sections of this Agreement are inserted only as a matter of convenience and for reference and do not define or limit the scope of intent of any provisions of this

Agreement, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

IN WITNESS WHEREOF, the Parties have executed this Lease on the day and year first above set forth in Healdsburg, CA.

CITY: The City of Healdsburg

By: _____
Margie Pettus, City Manager

Attest: _____
Maria Curiel, City Clerk

LESSEE: Tayman Park Golf Group, Inc.

By: _____
James W. Stewart, President

LIST OF EXHIBITS

- EXHIBIT A Legion Villa Annex Lease Agreement
- EXHIBIT B School District Agreement
- EXHIBIT C Depiction of Villa Property
- EXHIBIT D LESSEE and CITY Responsibilities for Maintenance, Repair, and Replacement

EXHIBIT D

LESSEE and CITY RESPONSIBILITIES FOR MAINTENANCE, REPAIR AND REPLACEMENT

A. DEFINITIONS:

- 1) "Preventive Maintenance" or "PM" means: maintenance and repairs consisting of scheduled tasks that sustain a component's level of service during a prescribed lifetime (i.e. the proposed term of the Agreement) to keep it in good working order. Included in this definition are regularly scheduled adjustments and inspections, maintenance tasks, emergency response and service calls for minor repairs, and the periodic major repair or replacement of building components. These tasks are usually done frequently and require a relatively constant amount of labor and materials. LESSEE shall not be required to maintain such components in a condition which is better than when received by the LESSEE. LESSEE will be responsible for regular adjustments and inspections, preventative maintenance tasks, emergency response and service calls for minor repairs.
2. "Corrective Maintenance" or "CM" means: service calls, emergency response and other tasks that cannot be individually anticipated and which would otherwise be Preventive Maintenance. CM does not include Capital Work which is the responsibility of CITY. Like PM, these tasks tend to consume a steady level of annual facility resources.
3. "Renewal and Replacement" or "RR" means: component overhaul or replacement tasks. These are tasks that extend a component lifetime and reset the schedule of PM and minor repair tasks. These tasks tend to be more costly, infrequent and require specialized expertise and equipment.
4. "Capital Work" or "CW" means: major repair and replacement and building improvements, including remodeling, new construction, or other facility improvements, which increase use, value or useful life. Any such improvement, addition or alteration, that is permanently attached to any part of the Property or Villa Property shall become a part of the Property and Villa Property and shall immediately upon its completion be made part of this Agreement by its addition to the Agreement.

B. LESSEE RESPONSIBILITIES:

LESSEE at its sole cost shall be responsible for the following unless such maintenance or repairs are made necessary by the negligent or intentional conduct of CITY or its employees or contractors, in which case such repair shall be the obligation of CITY:

- 1) Preventive Maintenance to keep CITY owned components in good working order during their expected lifetime, provided that, notwithstanding any other provision of this Lease or this Exhibit, LESSEE shall not be required to maintain such components in a condition which is better than when received by the LESSEE. LESSEE will be responsible for regular adjustments and inspections, preventative maintenance tasks, emergency response and service calls for minor repairs
- 2) Except as otherwise provided herein, Corrective Maintenance on CITY owned components such as service calls, emergency response and other tasks that cannot be individually anticipated

For purposes of paragraphs 1 and 2, above, "Components" shall be deemed to include But Not Be Limited To – Water Heaters, Cooking Equipment (Broilers, Ovens, Ranges/Stoves, Griddles, Fryers, Steamers, Etc.), Hoods, Refrigeration/Freezer Equipment, HVAC, Ice Machines, Sinks, Grease Traps, Plumbing, Nozzles/Levers, Beer/Syrup/CO2 Gas Systems, Lighting/Electrical, Fire Extinguishers, Ansul System, Sprinkler Systems, Kitchen Fans, Fire Alarms, Irrigation, Trucks/Tractors, Generators, locks and closing devices, door and window glass.

- 3) Wood Floor cleaning/refurbishing
- 4) Gutter Cleaning
- 5) Landscape Maintenance, including regular mowing, trimming, weeding, watering and other general maintenance of the landscaping at the Villa Property, and leaf blowing of the parking lot.
- 6) MSDS Binder
- 7) Utilities – Regular Monthly Service/Expenses

C. CITY RESPONSIBILITIES:

CITY at its sole cost shall be responsible for the following:

The CITY shall have no obligation to make repairs under this paragraph until a reasonable time after receipt of written notice of the need for such repairs from LESSEE.

- 1) Renewal and Replacement of CITY owned components including all overhaul and/or replacement tasks. These tasks extend a component lifetime and reset the schedule of Preventative Maintenance and minor repair tasks

For purposes of this paragraph, "Components" shall be deemed to include, But Not Be Limited To – Water Heaters, HVAC, Capital Work on CITY owned buildings including major repair, replacement and building improvements and those items listed in paragraph B,2) above. This includes remodeling, new construction and other facility improvements which increase use, value or useful life

- 2) Except for damage caused by negligent or intentional acts or omissions by LESSEE and LESSEE'S agents or employees, the CITY at its sole cost and expense shall keep in good order, condition and repair CITY owned building shells, including the foundations, exterior walls, exterior roofs, and chimney, along with the dog park and the playground. The CITY shall not be obligated to maintain the windows, doors, interior surfaces of exterior walls, Kitchen equipment, sound system or bar service equipment.
- 3) Trees and all tree maintenance
- 4) Parking lot and road maintenance and repair
- 5) Utilities – Infrastructure and Major Repair

D. MAINTENANCE STANDARDS

Preventative Maintenance Standard:

1. Safety Inspections per Title 8 - once a month and fire extinguishers recharged once a year:

- Inspect lighting and lighting poles/fixtures - indoor and outdoor; replace any light out
- Inspect plumbing
- Inspect fire extinguishers - working conditions
- Inspect first aid & AED unit; maintain the kits & AED as needed
- Ladder inspections

2. HVAC for Villa & Annex - two semi-annual inspections:

- 1 each - roof top evaporated cooler
- 2 each - day and night large split system A/C units
- 2 each - Reznor duct furnaces
- 1 each - roof top heating and cooling unit

For each cooling system, the LESSEE shall provide one (1) comprehensive inspection prior to the beginning of the cooling season to include conversion from heat to air conditioning, on or around April 1, and for each heating system the LESSEE shall provide one (1) comprehensive inspection prior to the beginning of the heating season, to include conversion from air conditioning to heat, on or around October 1. The preventative maintenance inspections should include materials to inspect and perform preventive maintenance on equipment in accordance with manufacturer specifications. The semi-annual inspections will include the cost of labor, supplying and replacing consumables to include high efficiency pleated paper filters Merv 8, belts, and lubricants, replacing contactors, switches, burners, and other durable components of the system on an as needed basis.

The LESSEE shall provide Semi-annual comprehensive maintenance for the Villa Property's HVAC equipment. Scheduled maintenance shall include the following tasks:

- clean and adjust burner assembly - clean ignition assembly
- maintain refrigerant levels - check compressors
- inspect and clean heat exchanger - carbon monoxide test in the workspace
- monitor flue draft - replace air filters
- monitor starting capabilities - measure volts/amps on motors
- test safety controls - check for proper airflows
- clean and adjust blower components - clean evaporator coil (if accessible)
- lubricate moving parts where needed - clean condensate drains
- tighten electrical connections - clean condenser coil annually or as needed
- set thermostat controls

3. Generator - *Annual Preventative Maintenance (PM) Service:* (A CITY responsibility)

Complete all items at the inspection and perform a full service of the generator set engine generally but not limited to; change oil & oil filters, general lubrication, change based on condition and/or service the air filter(s) elements (dry type elements; oil bath and oil wetted filters have the oil changed), change the fuel filters and clean the fuel strainers if any, change and/or adjust (if used) the coolant filters for DCA addition on an automatic basis. Spark ignited engine driven generators (gasoline fuels) may also include changing ignition components such as spark plugs. Transfer testing to available connected loads as described above. Major services may include taking oil, coolant and for; samples for lab analysis. Fuel sampling is restricted to diesel fueled generators only.

Monthly Inspections: The following will be requirements of the inspection to be performed before the last day of each month: visual check for belts, oil & coolant level check (use dipstick if necessary), and air cleaner, battery inspection (visual check of cables and maintenance batteries inspect water level every third month), voltage start and run every month or every other month and observe starting and no load voltage, HOA switch-inspect switch for automatic startup, breaker check for 'on'- 'off', hour meter- log engine hours. Please see the checklist. This form will need to be submitted to the CITY each month. All supplies (oil, coolant, with the exception of fuel etc., should be supplied by the Lessee.

Load Bank Testing: This item may or may not be done with a scheduled service. A load bank is synthetic load imposed on the generator via a resistor bank. Load bank testing is done primarily to insure combustion chamber and exhaust system cleanliness and to minimize carbon build up that results from operation under infrequent loads. This test is done based on filed analysis of the generator set condition or by request, regulator or other requirement of recommendation. Four hour test duration.

General Items: Depending on the particular installation, other items might be included in the service levels, checks and adjustments of multiple transfer switches, bypass switches and

paralleling switchgear are examples. Service logs and checklists should be consulted to determine site specific items. Replacement and consumable items on progressive basis, such as batteries and jacket water heaters may be included generally determined on contract inception.

Emergency Maintenance: The CITY will be available to perform repairs in the event of an unexpected failure of one or more generator sets. Ability to respond quickly is critical.

4. Ansul System/Kitchen fan inspection - semi-annual.

5. Fire alarm monitoring quarterly and annual testing.

6. 5-year and annual sprinkler tests.

7. Kitchen equipment inspection and service - annual, to include: stoves, ovens, hoods, refrigerators, freezers, ice machines, dishwashers, grease trap, booster heaters and sanitizers.

**LEASE AGREEMENT BETWEEN
THE CITY OF HEALDSBURG AND
SOTOYOME POST NO. 111 OF THE AMERICAN LEGION**

RECITALS

WHEREAS, the City of Healdsburg ("City") is desirous of recognizing the continuing contributions of the Veteran's organizations of the City, to provide orderly management of meeting places for all such organizations; and

WHEREAS, City owns that certain real property commonly referred to as the Villa Chanticleer ("the Villa"), including all structures and improvements located thereon; and

WHEREAS, City desires to obtain the continued refurbishing and improvement of that certain "Annex" building at the Villa; and

WHEREAS, the Sotoyome Post No. 111 of the American Legion (variously, "American Legion" or "Lessee") has agreed to represent the interests of the various veterans' organizations, for use of the "Annex" for the benefit of the general public as well as the said veteran's organizations, at no cost to the City;

NOW, THEREFORE, the City agrees to lease to the American Legion, that building commonly referred to as "the Annex" located at Villa under the following terms and conditions:

1. **TERM OF LEASE**

This lease shall be for a period of twenty (20) Years, beginning on the date of signing hereof.

2. **RENTAL FEE**

Lessee shall pay, as rent, One Dollar (\$1.00) per year, (July 1st each year) payable in advance and no later than the beginning of each lease year.

3. **USE OF BUILDING**

Lessee shall make the Annex available for use by all nationally chartered and locally recognized veteran's organizations for their regularly scheduled meetings, in accordance with Exhibit "A" labeled "American Legion Event Schedule" and attached hereto. The American Legion Event Schedule shall be submitted to the City at least one year in advance for usage of the Annex. In addition to the dates listed in Exhibit "A", Lessee shall have the ability to schedule other dates in the Annex as needed, provided there are no previously scheduled rentals, or activities listed on the City's facility schedule for the Annex. Lessee and City are each responsible for the set up, break down and clean up of their own events. Lessee or City may use the Annex when it is set up for the other party, with their permission, but must return the Annex to the same set up and condition Annex was found in immediately after agreed upon usage.

4. **MAINTENANCE AND REPAIRS**

Lessee shall maintain the Annex in good repair and in a clean and orderly manner. Failure to so maintain the building shall be grounds for termination to this lease in the manner provided below.

5. **ALTERATIONS AND IMPROVEMENTS**

No alterations, additions or improvements may be made without the written consent of the City, which consent may not be unreasonably withheld. All such alterations, additions, or improvements shall become part of the building and shall become property of the City upon termination of this lease regardless of the cause of termination.

6. **INSURANCE**

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the subject premises. The costs of such insurance shall be borne by the Lessee.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage ("occurrence" from CG 0001).
2. Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance

Minimum Limits of Insurance

1. Commercial General Liability ("CGL"): \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this lease or the general aggregate limit shall be twice the required occurrence limit.
2. An endorsement to the CGL policy must be included naming the City, its officers, officials, caretakers, employees and volunteers as additional insured by endorsement concerning use of facilities for any functions, meetings and fundraising events, and shall specify that such policy is to provide primary coverage to the City.
3. Employee's Liability: \$1,000,000 per accident for bodily injury or disease. Any policy of Worker's Compensation Insurance shall include a waiver of all rights of subrogation against the City.

7. **INDEMNIFICATION.**

Lessee hereby agrees to indemnify, defend, and hold harmless City, its officers, agents, and employees from and against any and all claims, demands, liabilities, liens, costs, expenses, penalties, damages, and losses, including without limitation, reasonable attorneys' fees and court costs, whether sustained by indemnitee or third parties, that are suffered as a result of Lessee's use of the Annex under this Lease regardless of whether

such liability, cost, or expense arises during the time this Lease is in effect or thereafter, except to the extent such liability, cost or expense is proximately caused by the active negligence or willful misconduct (other than, as distinguished from, acts of omission, failure to act, or other nonfeasance) of City, its officers, agents, or employees.

8. **STORAGE IN VILLA CHANTICLEER**

Lessee shall have use of and access to a room in the basement of the Villa of approximately ten feet by twelve feet for storage purposes. Such room shall be determined by the City and may be changed from the time to time upon thirty days notice to Lessee. Lessee shall also have space (see Exhibit A) in the basement of the Annex.

9. **ASSIGNMENTS OR SUBLEASE**

This Lease shall not be assigned to any other party without written consent of the City. Any attempted assignment shall be null and void and of no effect. Lessee may enter into agreements with other nationally and/or locally recognized veteran's organizations for long-term use of the Annex, subject to the prior written consent of the City; provided however that such term may not exceed the term of this lease, and shall be subject to the same terms and conditions as this lease.

10. **COMPLIANCE WITH REGULATIONS**

LESSEE shall comply with all laws and regulations of the City of Healdsburg, including regulations governing the use of the Villa Chanticleer property. The Annex shall not be used or permitted to be used in whole or in part during the said term of this lease for any purpose or use in violation of any of the laws or ordinances applicable thereto; and Lessee agrees at all times during the term of this lease to construct, repair, maintain and do all things necessary to maintain the Annex in a clean and sanitary manner and in compliance with any and all Federal, State or Municipal regulations or ordinance now or hereafter enacted concerning Lessee's use of the Annex.

11. **UTILITIES**

City shall supply all water, electricity, gas, sewer services at no charge to Lessee.

12. **DAMAGES TO BUILDING**

Damage to building resulting from use by LESSEE or LESSEE'S sub-tenants, including normal wear and tear shall be repaired by LESSEE. Such damages resulting from use by City's tenants shall be repaired by City. If the building is damaged by fire or any other cause to such extent that the cost of restoration as reasonably estimated by City, will equal or exceed 50% of the replacement value of the building just prior to the occurrence of the damage, City may elect to terminate this lease.

13. **TERMINATION**

This lease may be terminated with out liability by:

- A. Mutual written consent of the parties at any time.
- B. Thirty-day notice by the LESSEE of intent to terminate, provide such notice shall be in writing and for good cause.
- C. Thirty-day written notice by the City upon failure of the LESSEE to cure any breach of the conditions of this lease thirty days after written notice of said breach.
- D. Expiration of the term of the lease (twenty years).
- E. Destruction of Annex or damage to Annex as described in Paragraph 12, above.

14. **ENTRY AND INSPECTIONS**

City shall retain the right to enter into, take possession of and use the Annex with the written consent of Lessee or upon prior reasonable written notice to Lessee (24 hours shall be deemed reasonable advance notice) for the purposes of: reasonable inspection; making repairs, alterations or additions.; or for any other valid and reasonable purpose. In the event of an emergency (such as fire or plumbing leak, etc.) City, or its authorized agent, may enter the Annex without consent or prior notice. The City may show the Assembly and Kitchen area(s) of the Annex without consent or prior notice provided there are no previously scheduled Legion activities taking place in the Annex.

15. **EMERGENCY**

In the event of a national or local disaster or temporary emergency, the City shall have the right to enter into, take possession of and use the leased premises for so long as is deemed necessary, without let or hindrance by LESSEES. The term of this leases shall be extended by the length of time of the City's possession.

16. **CITY'S REMEDIES ON DEFAULT**

If Lessee defaults on any of the conditions herein, fails to cooperate with City in the rental of the building to persons, groups or organizations as set forth herein, City may terminate this Lease as provided herein, and may at thereafter resume possession of the Annex by any lawful means and remove Lessee or other occupants and their effects.

17. **NO WAIVER OF COVENANTS OR CONDITIONS**

The failure of either party to insist on strict performance of any covenant or condition hereof, or to exercise any right herein contained, shall not be construed as a waiver of such covenant, condition or right in any other instance. Notwithstanding the foregoing, the American Legion expressly waives all claims against the City for damage or injury to person or property from any cause whatsoever occurring on, or in relation to the American Legion's use of, the Annex.

18. **SEVERABILITY.**

If any provision of this Lease, or its application, is held invalid, it will not affect other provisions or application herein which can be given effect without the invalid provision or application. To this end, all provisions of this Lease are severable.

19. **OPTION TO RENEW**

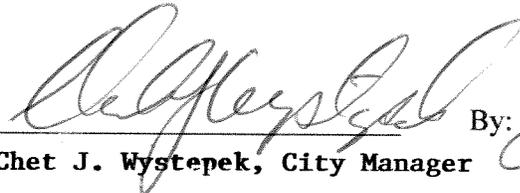
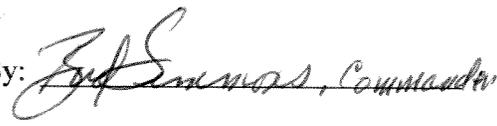
LESSEE shall have the option to renew this lease for an additional twenty years at the same terms. Said option shall be exercised by written notice from LESSEE to City no less than six months prior to expiration.

THIS LEASE CANNOT BE CHANGED OR TERMINATED ORALLY.

Executed at Healdsburg, California, on September 18, 2007

CITY OF HEALDSBURG

AMERICAN LEGION
SOTOYOME POST NO. 111

By:  By: 
Chet J. Wystepek, City Manager Jeff Summers, Commander

Attest: 
Maria Curiel, City Clerk

APPROVED AS TO FORM:

By: 
Michael Gogna, City Attorney

AMERICAN LEGION EVENT SCHEDULE 2007

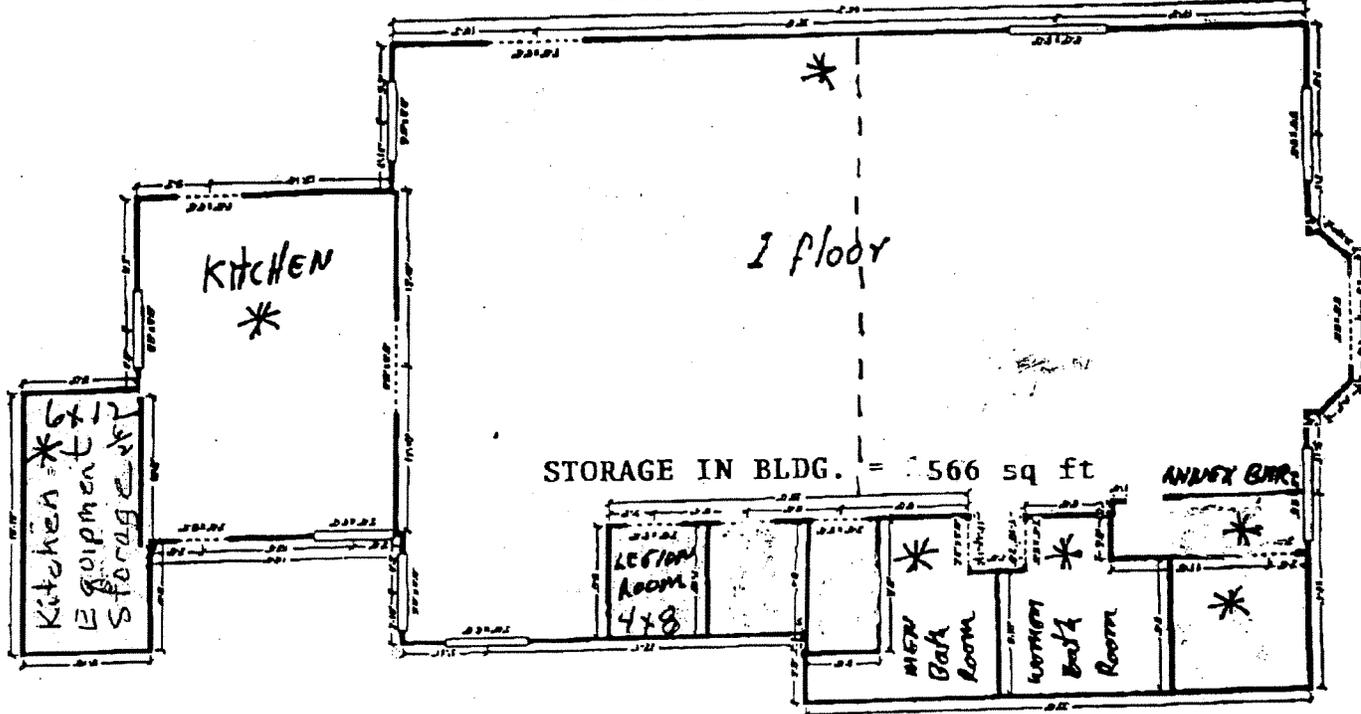
DATE	START	END	EVENT	LOCATION
✓ Tuesday, January 02, 2007	5:00PM	10:00PM	EXECUTIVE BOARD	ANNEX
✓ Thursday, January 11, 2007	5:00PM	10:00PM	MEMBERSHIP MEETING	ANNEX
✓ Friday, January 12, 2007	2:00PM	10:00PM	MOMS	ANNEX
✓ Friday, January 26, 2007	5:00PM	11:00PM	SOCIAL	ANNEX
✓ Saturday, February 03, 2007	8:00AM	10:00PM	CRAB FEED	ANNEX
✓ Monday, February 05, 2007	5:00PM	10:00PM	EXECUTIVE BOARD	VILLA
✓ Thursday, February 08, 2007	5:00PM	10:00PM	MEMBERSHIP MEETING	ANNEX
✓ Thursday, February 15, 2007	2:00PM	10:00PM	MOMS	ANNEX
✓ Friday, February 23, 2007	5:00PM	11:00PM	SOCIAL	ANNEX
✓ Monday, March 05, 2007	5:00PM	10:00PM	EXECUTIVE BOARD	ANNEX
✓ Thursday, March 08, 2007	5:00PM	10:00PM	MEMBERSHIP MEETING	ANNEX
✓ Saturday, March 10, 2007	10:00AM	10:00PM	BIRTHDAY DINNER	ANNEX
✓ Thursday, March 15, 2007	2:00PM	10:00PM	MOMS	????????
✓ Friday, March 23, 2007	5:00PM	11:00PM	SOCIAL	ANNEX
✓ Monday, April 02, 2007	5:00PM	10:00PM	EXECUTIVE BOARD	ANNEX
✓ Thursday, April 12, 2007	5:00PM	10:00PM	MEMBERSHIP MEETING	ANNEX
over to 5/12/07 ✓ Thursday, April 19, 2007	2:00PM	10:00PM	MOMS	ANNEX
✓ Friday, April 20, 2007	5:00PM	11:00PM	SOCIAL	ANNEX
✓ Monday, May 07, 2007	5:00PM	10:00PM	EXECUTIVE BOARD	ANNEX
✓ Thursday, May 10, 2007	5:00PM	10:00PM	MEMBERSHIP MEETING	ANNEX
✓ Thursday, May 17, 2007	2:00PM	10:00PM	MOMS	ANNEX
✓ Friday, May 25, 2007	5:00PM	11:00PM	SOCIAL	ANNEX
✓ Monday, May 28, 2007	1:00PM	5:00PM	MEMORIAL DAY LUNCH	ANNEX
✓ Monday, June 04, 2007	5:00PM	10:00PM	EXECUTIVE BOARD	ANNEX
✓ Thursday, June 14, 2007	5:00PM	10:00PM	MEMBERSHIP MEETING	ANNEX
✓ Thursday, June 21, 2007	2:00PM	10:00PM	MOMS	ANNEX
✓ Friday, June 22, 2007	5:00PM	11:00PM	SOCIAL	ANNEX
✓ Monday, July 02, 2007	5:00PM	10:00PM	EXECUTIVE BOARD	ANNEX
✓ Thursday, July 12, 2007	5:00PM	10:00PM	MEMBERSHIP MEETING	ANNEX
✓ Thursday, July 19, 2007	2:00PM	10:00PM	MOMS	ANNEX
✓ Friday, July 27, 2007	5:00PM	11:00PM	SOCIAL	ANNEX
✓ Monday, August 06, 2007	5:00PM	10:00PM	EXECUTIVE BOARD	ANNEX
✓ Thursday, August 09, 2007	5:00PM	10:00PM	MEMBERSHIP MEETING	ANNEX
✓ Thursday, August 16, 2007	2:00PM	10:00PM	MOMS	ANNEX
✓ Friday, August 24, 2007	5:00PM	11:00PM	SOCIAL	ANNEX
✓ Tuesday, September 04, 2007	5:00PM	10:00PM	EXECUTIVE BOARD	ANNEX
✓ Thursday, September 13, 2007	5:00PM	10:00PM	MEMBERSHIP MEETING	ANNEX
✓ Thursday, September 20, 2007	2:00PM	10:00PM	MOMS	ANNEX
✓ Friday, September 28, 2007	5:00PM	11:00PM	SOCIAL	ANNEX
✓ Monday, October 01, 2007	5:00PM	10:00PM	EXECUTIVE BOARD	ANNEX
✓ Thursday, October 11, 2007	10:00AM	10:00PM	YOUTH APPRECIATION DINNER	ANNEX
✓ Thursday, October 18, 2007	2:00PM	10:00PM	MOMS	ANNEX
✓ Friday, October 26, 2007	5:00PM	11:00PM	SOCIAL	ANNEX
✓ Monday, November 05, 2007	5:00PM	10:00PM	EXECUTIVE BOARD	ANNEX
✓ Thursday, November 08, 2007	10:00AM	10:00PM	PASTA DINNER	ANNEX
✓ Thursday, November 15, 2007	2:00PM	10:00PM	MOMS	ANNEX
✓ Friday, November 23, 2007	5:00PM	11:00PM	SOCIAL	ANNEX
✓ Monday, December 03, 2007	5:00PM	10:00PM	EXECUTIVE BOARD	ANNEX
✓ Thursday, December 13, 2007	10:00AM	10:00PM	CHRISTMAS PARTY	ANNEX
✓ Thursday, December 20, 2007	10:00AM	10:00PM	MOMS	ANNEX
✓ Friday, December 28, 2007	5:00PM	11:00PM	SOCIAL	ANNEX
TO BE DETERMINED	5:00AM	2:00PM	VETERANS BREAKFAST	VILLA

**AMERICAN LEGION EVENT SCHEDULE
2008**

DATE	START	END	EVENT	LOCATION
Monday, January 07, 2008	5:00PM	10:00PM	EXECUTIVE BOARD	ANNEX
Thursday, January 10, 2008	5:00PM	10:00PM	MEMBERSHIP MEETING	ANNEX
Thursday, January 17, 2008	7:00PM	10:00PM	HONOR TEAM TRAINING	ANNEX
Friday, January 25, 2008	5:00PM	11:00PM	SOCIAL	ANNEX
Saturday, February 02, 2008	8:00AM	10:00PM	CRAB FEED	VILLA
Monday, February 04, 2008	5:00PM	10:00PM	EXECUTIVE BOARD	ANNEX
Thursday, February 14, 2008	5:00PM	10:00PM	MEMBERSHIP MEETING	ANNEX
Thursday, February 21, 2008	7:00PM	10:00PM	HONOR TEAM TRAINING	ANNEX
Friday, February 22, 2008	5:00PM	11:00PM	SOCIAL	ANNEX
Monday, March 03, 2008	5:00PM	10:00PM	EXECUTIVE BOARD	ANNEX
Saturday, March 08, 2008	10:00AM	10:00PM	BIRTHDAY DINNER	VILLA
Thursday, March 13, 2008	5:00PM	10:00PM	MEMBERSHIP MEETING	ANNEX
Sunday, March 16, 2008	5:00AM	2:00PM	VETERANS BREAKFAST	ANNEX
Thursday, March 20, 2008	7:00PM	10:00PM	HONOR TEAM TRAINING	ANNEX
Friday, March 28, 2008	5:00PM	11:00PM	SOCIAL	ANNEX
Monday, April 07, 2008	5:00PM	10:00PM	EXECUTIVE BOARD	ANNEX
Thursday, April 10, 2008	5:00PM	10:00PM	MEMBERSHIP MEETING	ANNEX
Thursday, April 17, 2008	7:00PM	10:00PM	HONOR TEAM TRAINING	ANNEX
Friday, April 25, 2008	5:00PM	11:00PM	SOCIAL	ANNEX
Monday, May 05, 2008	5:00PM	10:00PM	EXECUTIVE BOARD	ANNEX
Thursday, May 08, 2008	5:00PM	10:00PM	MEMBERSHIP MEETING	ANNEX
Thursday, May 15, 2008	7:00PM	10:00PM	HONOR TEAM TRAINING	ANNEX
Friday, May 23, 2008	5:00PM	11:00PM	SOCIAL	ANNEX
Monday, May 26, 2008	1:00PM	5:00PM	MEMORIAL DAY LUNCH	ANNEX
Monday, June 02, 2008	5:00PM	10:00PM	EXECUTIVE BOARD	ANNEX
Thursday, June 12, 2008	5:00PM	10:00PM	MEMBERSHIP MEETING	ANNEX
Sunday, June 15, 2008	5:00AM	2:00PM	FATHERS DAY BREAKFAST	ANNEX
Thursday, June 19, 2008	7:00PM	10:00PM	HONOR TEAM TRAINING	ANNEX
Friday, June 27, 2008	5:00PM	11:00PM	SOCIAL	ANNEX
Monday, July 07, 2008	5:00PM	10:00PM	EXECUTIVE BOARD	ANNEX
Thursday, July 10, 2008	5:00PM	10:00PM	MEMBERSHIP MEETING	ANNEX
Thursday, July 17, 2008	7:00PM	10:00PM	HONOR TEAM TRAINING	ANNEX
Friday, July 25, 2008	5:00PM	11:00PM	SOCIAL	ANNEX
Monday, August 04, 2008	5:00PM	10:00PM	EXECUTIVE BOARD	ANNEX
Thursday, August 14, 2008	5:00PM	10:00PM	MEMBERSHIP MEETING	ANNEX
Thursday, August 21, 2008	7:00PM	10:00PM	HONOR TEAM TRAINING	ANNEX
Friday, August 22, 2008	5:00PM	11:00PM	SOCIAL	ANNEX
Tuesday, September 02, 2008	5:00PM	10:00PM	EXECUTIVE BOARD	ANNEX
Thursday, September 11, 2008	5:00PM	10:00PM	MEMBERSHIP MEETING	ANNEX
Thursday, September 18, 2008	7:00PM	10:00PM	HONOR TEAM TRAINING	ANNEX
Sunday, September 21, 2008	5:00AM	2:00PM	VETERANS BREAKFAST	ANNEX
Friday, September 26, 2008	5:00PM	11:00PM	SOCIAL	ANNEX
Monday, October 06, 2008	5:00PM	10:00PM	EXECUTIVE BOARD	ANNEX
Thursday, October 09, 2008	10:00AM	10:00PM	YOUTH APPRECIATION DINNER	ANNEX
Thursday, October 16, 2008	7:00PM	10:00PM	HONOR TEAM TRAINING	ANNEX
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Monday, November 03, 2008	5:00PM	10:00PM	EXECUTIVE BOARD	ANNEX
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Friday, November 21, 2008	5:00PM	11:00PM	SOCIAL	ANNEX
Monday, December 01, 2008	5:00PM	10:00PM	EXECUTIVE BOARD	ANNEX
Thursday, December 11, 2008	10:00AM	10:00PM	CHRISTMAS PARTY	ANNEX
Thursday, December 18, 2008	10:00AM	10:00PM	MOMS	ANNEX
Friday, December 19, 2008	5:00PM	11:00PM	SOCIAL	ANNEX
TBD/ 4 to 6 Evenings	3:30PM	10:00PM	MOMS	ANNEX

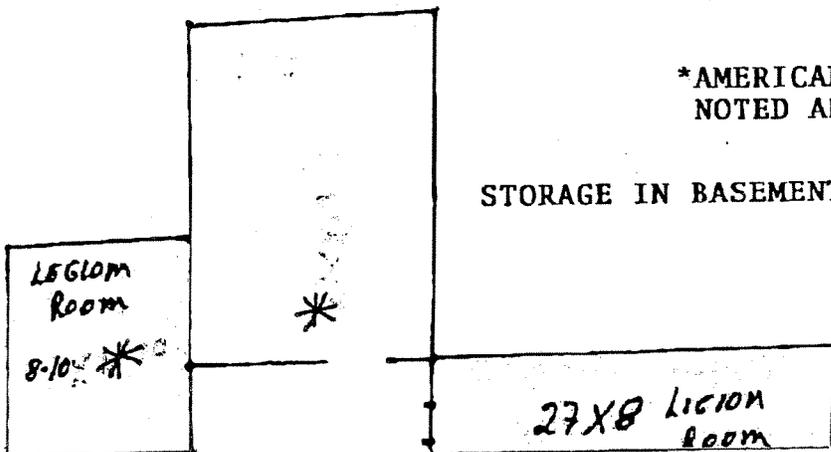
EXHIBIT
 VILLA ANNEX BLDG. (2 floors)
 TOTAL STORAGE SPACE = 670 sq ft

MAIN FLOOR-STORAGE ON MAIN FLOOR = 104 sq.



*AMERICAN LEGION CONSTRUCTED & FURNISHED
 NOTED AREAS AT NO COST TO THE CITY

STORAGE IN BASEMENT = 104 sf



STORAGE AREAS USED BY LEGION

JOINT USE AGREEMENT
BETWEEN CITY OF HEALDSBURG AND
HEALDSBURG UNIFIED SCHOOL DISTRICT

This Joint Use Agreement ("Agreement") is made and entered into this 18 day of January, 201~~7~~², by and between HEALDSBURG UNIFIED SCHOOL DISTRICT of Sonoma County, California, a public school district (hereinafter referred to as "District") and the CITY OF HEALDSBURG, a municipal corporation of the State of California, (hereinafter referred to as "Healdsburg" or "City.") (Collectively the City and District are referred to as "Parties" herein.)

Section 1. Purpose and Background

The purpose of this Agreement is to supersede and replace the Joint Use Agreement between the Parties dated September 2, 2008 and to provide for the shared use of facilities and fields owned and operated by the City and/or the District, and to provide for scheduling, rights of use, maintenance and repair obligations, liability allocation, and associated duties regarding the City's and District's use of facilities and fields owned by the other party, all pursuant to and subject to the terms and conditions of applicable law including, but not limited to, sections 10900 *et seq.* of the California Education Code as may be amended from time to time.

Section 2. Term

The term of this Agreement shall be three (3) years, commencing upon the effective date stated above, and ending January, 201~~7~~⁵, except as otherwise provided herein, and may be renewed upon mutual written consent by both parties as provided herein.

Section 3. Annual Review

The three year term of this Agreement is subject to (optional) annual review. Either Party may request a review for the purpose of negotiating revisions once per year during the first two years of the Agreement. Requesting party shall provide the other with written notice of the request.

Section 4. Definitions

- a. **"Active Turf Areas"** means District practice fields for soccer, football, baseball, physical education classes, and special events..
- b. **"Civic Center Act"** means sections 38130 *et seq.* of the California Education Code.
- c. **"District Facilities"** means the following:

- 1) Healdsburg Elementary School:
 - a) Multi-Purpose Room
 - b) Library
 - c) Bathroom nearest the Multi-Purpose Room
 - d) Outdoor Black Top Areas

- 2) Fitch Mountain Elementary School:
 - a) Multi-Purpose Room
 - b) Library
 - c) Bathroom nearest the Multi-Purpose Room
 - d) Outdoor Black Top Areas
 - e) Gymnasium

- 3) Healdsburg Middle School:
 - a) Full access to the Gymnasium wing of the school, including:
 - Gymnasium
 - Band Room
 - Both Classrooms
 - Bathrooms
 - b) Outdoor Black Top Areas
 - c) Cafeteria
 - d) Multi-purpose room

- 4) Healdsburg High School:
 - a) Main Gymnasium
 - b) Annex Gymnasium
 - c) Band/Chorus Room
 - d) Cafeteria
 - e) Library
 - f) Bathrooms
 - g) All Weather Track
 - h) Monte Vista Storage Room
 - i) Community Use Storage Room

- d. **“District Fields”** means the Active Turf Areas of Healdsburg High School, Healdsburg Middle School, Healdsburg Elementary School, and Fitch Mountain Elementary School.

- e. **“Reimbursement Plan”** means that certain Reimbursement Plan Between the City and the District, a copy of which is attached hereto as Exhibit A.

- f. **“School Hours”** means all hours when school is in session and during school events and activities, including, but not limited to, assemblies, student productions, athletic team practice, or other school function (collectively, “After School Events”) except as otherwise

authorized by District. School Hours shall include thirty (30) minutes before and after the school session and After School Events, or such time as may actually be needed to ensure student safety and to allow for set up, preparation, and cleaning. All other times are referred to as "non-School Hours."

- g. **"Third Party Users"** means parties other than the District or City who are permitted to use any of the District and City property subject to this Agreement, when not in use by District or City, either pursuant to the Civic Center Act or as authorized by the District on District property or as authorized by the City on City Property.

Section 5. Joint Use of District Property

The City shall have the right to use the District Facilities and Fields described in this Agreement subject to the terms and conditions contained herein including, but not limited to, the following:

- a. Use of District Facilities and Fields:

District shall have exclusive use and control of District Facilities and Fields during School Hours, and City shall have priority use of District Facilities and Fields during non-School Hours, provided, however, that such use shall not interfere with the use of the District Facilities and Fields for public school purposes, pursuant to section 10910 of the California Education Code. During After School Events, City may use portions of District Facilities and Fields which are not in use by District, subject to prior authorization by the District Superintendent or his/her designee, and provided such concurrent use does not interfere with the District's use. Permission for such concurrent use during After School Events will not be unreasonably withheld. When not in use by District or City, the District Fields and Facilities may be used by Third Party Users pursuant to the Civic Center Act, and in conformance with applicable District policies and procedures.

- b. Preemption by District:

District may preempt the City's use of District Fields or Facilities during the time of City-scheduled use, provided written notice is given to City one week in advance of District's conflicting use, or as soon as practicable under the circumstances. The District may exercise preemption rights only for emergency needs and/or special activities that cannot be accommodated at days and times not reserved for City use, as determined by the District.

- c. Maintenance of District Facilities and Fields:

Reimbursement for City maintenance services shall be in accordance with the 'Reimbursement Plan' executed in conjunction with this Agreement and attached as Exhibit A, the terms of which are incorporated herein.

1) Except as provided below, Maintenance of Active Turf Areas on District Fields may be conducted during School Hours subject to the requirements of Education Code Section 45125.1, and shall include:

- a) Aeration 3 times/year
- b) Weekly mowing from November 1 through March 31 (or as weather permits); twice weekly mowing between April 1 and October 31
- c) Fertilizing, 5 times/year*
- d) Chemical and mechanical weed control, as necessary*
- e) Pest and disease control, as necessary*
- f) Edging along mow curbs and walkways, once a month
- g) Topdressing and over-seeding once a year, as necessary
- h) Irrigation repair, as necessary
- i.) Grass maintenance (weeds, dead grass replacement, etc.), as needed.

* City shall provide District with adequate advance notice of any planned use of chemicals or toxins on the District Fields, including information regarding the specific substance proposed to be used, and shall coordinate with District to ensure student and staff health and safety. Use of any such substances shall be undertaken in strict conformance with all applicable restrictions, and District may require City to post suitable notices on District Fields at such times to notify students and the public when it is not safe to enter upon or use the fields due to chemical or toxic applications. Maintenance activities involving chemicals or toxins must be conducted during non-School hours and shall comply with all laws and regulations applicable to City and District, respectively.

The term "as necessary" shall mean as needed to maintain the Active Turf Areas in substantially their original condition and suitable and safe for their intended use.

2) The following activities shall be performed, if at all, by District:

- a) Field and line painting, infield preparation and set-up for all District athletic activities.
- b) General site cleanup and restroom maintenance during and after District events.
- c) Repair and/or maintenance for the all-weather track, bleachers, benches, drinking fountains, backstops, fences, outbuildings and all other such improvements to District Fields.

- 3) The City shall also perform landscape maintenance activities at those portions of the District Facilities as described in the City's contract with Golden Gate Landscape Management Inc. dated April 7, 2009.

Section 6. Joint Use of City Property

The District shall have the right to use the following City properties subject to the terms and conditions of this Agreement including, but not limited to, the following:

a. City Hall Council Chambers:

City grants District rights to use the City Council chambers for meetings of the Board of Education when the chambers are not needed for City functions, subject to all applicable laws and regulations and approval of the City Manager.

b. Villa Chanticleer:

City grants District priority rights to use Villa Chanticleer for up to five (5) District-sponsored events each calendar year that this Agreement is in effect. Use of District – sponsored events are excluded on Saturday's during the months of May, June, July, August and September. If the District intends to utilize the facility for an event where alcohol is served, all applicable fees related to alcohol service shall be the responsibility of the District.

The District shall provide City no more than twelve (12) months advance notice of the dates District intends to use Villa Chanticleer. All District use is based on availability.

c. City Recreation Park

- 1) City grants District priority to use Recreation Park during the traditional school athletic seasons for football, baseball, and soccer, and for graduation ceremonies. Football and soccer use shall be limited to games only, no practices are allowed. Baseball use may include both practice and games. City shall be responsible for general maintenance of Recreation Park, including basic turf maintenance such that it remains in safe and satisfactory condition for the intended uses under this Agreement. District shall be responsible for repair and maintenance of the football scoreboard, public address system, and press box at the Recreation Park, except when a third party is responsible for such repair or maintenance pursuant to that third party's use agreement with the City
- 2) City may preempt the District's use of Recreation Park during the time of District-scheduled use, provided written notice is given to District one week in advance of City's conflicting use, or as soon as practicable under the circumstances. The City may exercise preemption rights only for emergency needs and/or unforeseen

maintenance issues that cannot be accommodated at days and times not reserved for District use, as determined by the City.

- 3) All special field preparations that the District requires for games and practices, including, but not limited to, lining ball fields, dragging baseball infields, and chalking the infield and setting up soccer goals, shall be the sole responsibility of the District; except that City shall provide initial infield preparation at Recreation Park once a year prior to March 1, weather permitting, or as soon as possible thereafter. District shall be responsible for leaving Recreation Park in clean and orderly condition following each use by District. Unless the City grants express permission otherwise, which shall be in the sole discretion of the City, there shall be at least a two-day non-use period between dates of District use of Recreation Park.

Section 7. Joint Use Terms and Conditions

a. Scheduling:

Each party shall provide the other party with a schedule of users, including Third Party Users, and events that will affect the other party's facilities or fields as soon as possible in advance of the planned use of the other party's facilities or fields. Whenever possible, each party shall provide at least 6 months advance notice of a planned use of the other party's facilities or fields. Representatives of each party shall meet as needed to establish the use of the facilities or fields for each party's courses/classes and athletic teams.

Except as otherwise provided herein, City shall schedule and coordinate all use of the District Facilities and Fields covered by this Agreement during non-School Hours, including use by Third Parties subject to the Civic Center Act.

b. Communication:

Designated representatives of each party shall meet together annually, at a time and place to be mutually determined, to discuss operation, maintenance and repair of all facilities and fields that are subject to this Agreement. City and District agree to inform each other of, and if necessary, to meet and discuss all plans prior to the start of any major improvement, maintenance or repair to any facility or field that is subject to this Agreement, except when immediate repair is required, e.g., to correct a dangerous condition or to avoid further property damage.

c. Applicable Laws and Rules:

Except as expressly provided herein, City and District agree to staff and fund the operation, management, improvements, maintenance and repairs of their respective

facilities and fields in accordance with applicable laws, regulations, policies, and procedures. Use or possession of alcoholic beverages on District property shall be strictly prohibited pursuant to section 25608 of the California Business and Professions Code.

d. Personnel and Equipment:

- 1) Each party shall provide to the other party a list of all employee names and classifications that are to be hired or assigned to staff events on the other party's property, and will ensure that all such employees are informed of and required to comply with the terms of this Agreement as well as all laws, regulations, and policies and procedures applicable to use of the property. City shall be solely responsible for providing all necessary supervision and teaching personnel for all activities conducted by City using District property. District shall be solely responsible for providing all necessary supervision and teaching personnel for all activities conducted by District using City property.
- 2) Except as otherwise provided herein, City and District shall supply all necessary equipment to conduct their programs and activities using the other party's property.

e. Maintenance, Repair, and Construction:

- 1) Each party shall be responsible for leaving the other party's property in clean and orderly condition following each use, and shall further be responsible for maintenance, repair, or extra custodial services required due to that party's use of the field or facilities, except as otherwise provided herein. Cleaning responsibilities shall include, but not be limited to, appropriate disposal of garbage, refilling paper products in the bathroom as needed, and sweeping gym floors after use.
- 2) All new construction of capital improvements to any field or facility covered by this Agreement shall be the sole responsibility of the property owner. Prior to constructing any capital improvement project(s), the parties agree to meet and discuss the capital improvement project(s), including alternative arrangements for the uninterrupted use provided for in this Agreement, to the extent practicable. District agrees to provide notice to City at least six (6) months advance or as soon as practicable if District plans to schedule major work, including refinishing, on the floor of any of its gymnasium facilities. Likewise, City shall provide notice to District at least six (6) month in advance or as soon as practicable if City intends to schedule major work on Villa Chanticleer, Recreation Park, or District Facilities or Fields, if the work will require disruption of planned District events at those sites. The six (6) months notice contemplated by this section shall be calculated from the date the action is authorized by the legislative body or department with authority to approve the project on behalf of the City or the District.

f. Promotional Materials:

City may distribute promotional materials such as flyers and recreation brochures as they relate to City sponsored youth programs at District fields and facilities, subject to the limitations of and in conformance with District policy, procedures, and practices for distributing materials provided by a third party. District shall designate a representative to review and approve flyers prior to being distributed. The City will bundle the flyers by class size prior to the distribution to the District.

District may distribute promotional materials such as flyers and recreation brochures as they relate to District sponsored youth programs on City property, subject to the limitations of and in conformance with City policy, procedures, and practices for distributing materials provided by a third party. City shall designate a representative to review and approve flyers prior to being distributed.

g. Utilities:

Except as otherwise provided herein, City and District shall each pay all costs for all utilities (including field lighting) for their respective athletics fields and facilities, regardless of whether the field or facilities are used by the other party.

Section 8. Dangerous Conditions

Each party shall report to the other party any defects or dangerous conditions in any of the fields or facilities covered by this Agreement within 24 hours of discovery, or sooner if practicable, by telephone call to a designated representative of the party to be notified. Each party shall provide the other with current emergency contact information for such purposes, including contact information for evenings and weekends. In addition to a telephone call, the party discovering the defect shall provide written notice to the designated representative of the party to be notified no later than the next business day after discovering the defect. If a party becomes aware of a defect or dangerous condition on any field or facility covered by this Agreement, that party shall immediately cease all activities on the field or facility until the condition has been corrected and clearance has been given by the owner of the field or facility to resume use.

Section 9. Liability and Mutual Indemnity

a. City Obligations:

City shall assume responsibility for all injuries or damage occurring during its use of District property pursuant to this Agreement, unless the injury or damage was caused by the sole negligence or willful misconduct of District or a third party over which City has no control.

City shall defend, indemnify, and hold harmless District and its officers, officials, employees, agents, and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of or in connection with City's use of District property pursuant to this Agreement or City's acts or omissions in connection with this Agreement, except where the claim, injury, damage, loss, or expense is caused by the sole negligence or willful misconduct of District.

b. District Obligations:

District shall assume responsibility for all injuries or damage occurring during its use of City property pursuant to this Agreement, unless the injury or damage was caused by the sole negligence or willful misconduct of City or a third party over which District has no control.

District shall defend, indemnify, and hold harmless City and its officers, officials, employees, agents, and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of or in connection with District's use of City property pursuant to this Agreement or District's acts or omissions in connection with this Agreement, except where the claim, injury, damage, loss or expense is caused by the sole negligence or willful misconduct of the City.

Section 10. Insurance

a. Liability Insurance: Throughout the term of this Agreement, District and City shall maintain in full force and effect, Comprehensive General Liability or Commercial General Liability Insurance covering bodily injury (including death), personal injury, and property damage.

- 1) Limits shall be in an amount not less than one million dollars (\$1,000,000.00) per occurrence, and two million dollars (\$2,000,000.00) aggregate if applicable.
- 2) District shall name City, its officers, agents, and employees, individually and collectively, as additional insureds. City shall name District, its officers, agents, and employees, individually and collectively, as additional insureds.
- 3) The City's insurance shall be primary as to liability arising from its use of District facilities or fields, and the District's insurance shall be primary as to liability arising from its use of City property.

b. Workers' Compensation and Employer's Liability Insurance: Throughout the term of this Agreement, District and City shall maintain in full force and effect, Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly. The Workers' Compensation Insurance and Employer's Liability Insurance must be provided with limits of not less than one million dollars (\$1,000,000.00) per accident. The insurance shall be endorsed to waive all rights of subrogation against the other party and its officials, officers, employees, and volunteers for loss arising from or related to the uses provided for in this Agreement.

- c. Property Insurance. District shall be solely responsible for maintaining adequate property insurance coverage for all District property. City shall be solely responsible for maintaining adequate property insurance coverage for all City property.
- d. Notification of Change: Required insurance coverage may not be suspended, voided, canceled, or reduced in coverage or in limits, unless thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the other party to this Agreement.

Section 11. Destruction and Damage

Total destruction of any field or facility shall automatically terminate user rights under this Agreement as to that field or facility. If a field or facility that is subject to this Agreement becomes damaged to the extent that the District or City determines that its field or the facility is unusable, the District or City shall notify the other party and user rights under this Agreement shall be suspended with respect to the damaged field or facility until it is restored to a usable condition. The party that owns the property shall use best efforts to restore a damaged field or facility to a usable condition, when and if it is financially and practically able to do so.

Section 12. Defaults

In the event of either party's default of any material obligation under this Agreement, including any obligation under the Reimbursement Plan, the non-defaulting party must give the defaulting party written notice of and a reasonable time to cure the default. If the defaulting party has not made a substantial effort to cure the default within a reasonable time, the non-defaulting party may perform the obligation at the expense of the defaulting party. The defaulting party shall reimburse the non-defaulting party for its reasonable expenses arising directly from actions required to cure the default within thirty (30) days after the non-defaulting party submits a detailed invoice of such costs.

Section 13. Termination

District shall have the right to terminate this Agreement at any time following one hundred eighty (180) days written notice to the City. City shall have the right to terminate this Agreement at any time following ninety (90) days written notice to the other party

Section 14. Expiration

Upon expiration of the term of this Agreement, the Agreement will operate on a month-to-month basis with existing terms and conditions unless this section is amended, or unless either party provides timely notice of its intent not to renew the agreement.

Section 15. Successors and Assigns

Neither party may transfer or assign its rights or obligations under this Agreement, in part or in whole, without the other party's prior written consent. The terms and provisions of this Agreement shall extend to and be binding upon and inure to the benefit of the successors and permitted assigns of the Parties.

Section 16. Amendments

This Agreement can only be amended by a writing duly authorized and signed by both Parties.

Section 17. Severability

In the event that any provision herein is held to be invalid by any court of competent jurisdiction, the invalidity of any such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect.

Section 18. Time is of the Essence

Time is of the essence for each and all of the terms and provisions of this Agreement.

Section 19. Written Agreement

Neither party has relied on any promise or representation not contained in this Agreement. This Agreement, including the Reimbursement Plan, constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties regarding the subject matter of this Agreement and supercedes all prior written or oral understandings or agreements of the Parties. Upon execution of this Agreement by the Parties, all prior written agreements between the Parties as to the subject matter of this Agreement, not including the Reimbursement Plan, shall be deemed terminated in their entirety.

Section 20. Headings

The headings of the paragraphs are for convenience only and are not a part of this Agreement, nor shall they be considered in construing the intent of this Agreement nor affect any of the rights or obligations of the Parties.

Section 21. Governing Law

This Agreement shall be governed by the laws of the State of California and action brought relating to this Agreement or the Reimbursement Plan shall be brought solely in a court of competent jurisdiction in Sonoma County, California.

Section 22. Notices

All notices, including invoices, given hereunder shall be in writing and shall be deemed to have been given if personally delivered or deposited in the United States mail postage prepaid, certified or registered, return receipt requested, and addressed to the other party as follows or as otherwise designated by written notice hereunder from time to time:

To DISTRICT: Healdsburg Unified School District
 Superintendent
 1028 Prince Street
 Healdsburg, CA 95448

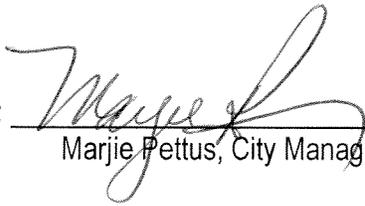
To CITY: City of Healdsburg
 City Manager
 City Hall
 401 Grove Street
 Healdsburg, CA 95448

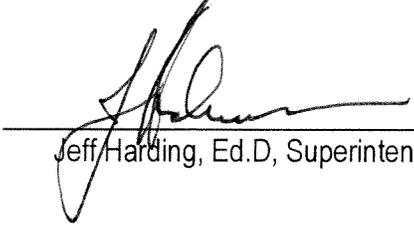
Section 23. Authorization

Each person signing below represents that he or she is duly authorized to do so by the party he or she represents.

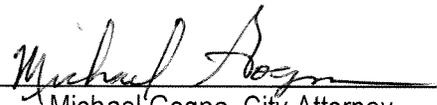
CITY OF HEALDSBURG

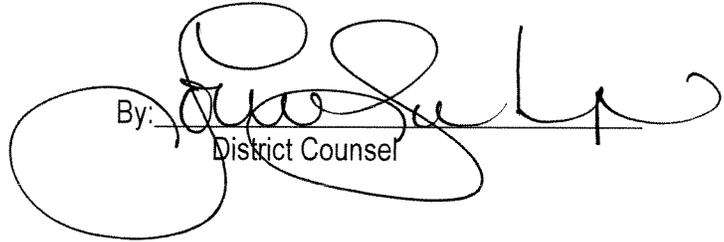
HEALDSBURG UNIFIED SCHOOL DISTRICT

By: 
Marjie Pettus, City Manager

By: 
Jeff Harding, Ed.D, Superintendent

APPROVED AS TO FORM:

By: 
Michael Gogna, City Attorney

By: 
District Counsel

Attachments: Exhibit A – Reimbursement Plan

1752442.3

Concessionaire Operating Agreement Villa Chanticleer

