

ORDINANCE NO. 26-010

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE
APPROVING A CONCESSION LEASE BETWEEN FORTUNATE FORK, LLC AND
THE CITY OF PACIFIC GROVE FOR FOOD AND BEVERAGE CONCESSION
SERVICES AT THE POINT PINOS GRILL**

FACTS

1. The City owns the Pacific Grove Golf Course Clubhouse, known as Point Pinos Grill, located at 79 Asilomar Boulevard (“PREMISES”).
2. The City operates the PREMISES through a concessionaire agreement for food and beverage services.
3. The PREMISES is improved with a restaurant including a kitchen, a banquet room, a dining room, outdoor patio, two public restrooms, and a snack bar.
4. The previous tenant of the PREMISES vacated the PREMISES on November 23, 2025. In order to maintain business continuity, staff negotiated and entered into a temporary month-to-month management agreement with CourseCo Inc. effective December 1, 2025.
5. The City issued a Request for Proposal (RFP) on December 15, 2025. The RFP closed January 29, 2026 at 2:00 pm. On January 29, 2026, the City received sealed proposals from two entities. A panel of staff reviewed the proposals and interviewed each proposer. As a result of the selection process, the proposal submitted by Fortunate Fork, LLC was selected as the highest rated proposal for their unique qualifications and vision for the PREMISES.
6. The concession lease allows Fortunate Fork, LLC the exclusive use of PREMISES for the sale of food, beverages (including alcoholic beverages) and related services including banquets, and other related events.
7. The concession lease is not an expanded use of the PREMISES.
8. The concession lease allows Fortunate Fork, LLC to change the name of the PREMISES from “Point Pinos Grill” to “The Grove at Point Pinos”.
9. Leasing of the PREMISES will not have a significant effect on the environment and is found exempt from the California Environmental Quality Act (CEQA) per Section 15301 of the CEQA Guidelines which allows for the leasing, licensing, repair, and maintenance of public or private structures.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES ORDAIN AS FOLLOWS:

SECTION 1. The foregoing Facts are adopted as findings of the City Council as though set forth in fully within the body of this ordinance.

SECTION 2. The request for concession agreement hereby is approved, in the form attached hereto, titled AGREEMENT FOR FOOD AND BEVERAGE CONCESSION SERVICES AT THE POINT PINOS GRILL.

SECTION 3. In the event of legal challenge to any aspect of this approval, Fortunate Fork, LLC shall defend and save harmless city against any claim, judgment or liability arising out of such challenge. Fortunate Fork, LLC may, in the event of such challenge and as an alternative to its obligation to defend and save harmless, terminate the concession agreement.

SECTION 4. As a condition of the approval hereby made, Fortunate Fork, LLC shall not only execute the concession lease, but shall also sign and acknowledge the findings, terms and conditions of this ordinance on a line to be provided below by the city clerk.

SECTION 5. The City Manager is directed to execute all documents and to perform all other necessary City acts to implement effect this Ordinance.

SECTION 6. Severability. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 7. In accord with Article 15 of the City Charter, this ordinance shall become effective on the thirtieth (30th) day following its passage and adoption.

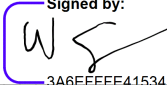
PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
this 5th day of May, 2026, by the following vote:

AYES: Mayor Smith, Councilmembers Garfield, McDonnell, Poduri, and Rau.

NOES: None.

ABSENT: Mayor Pro Tem Amelio.

APPROVED:

Signed by:

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NICK SMITH, Mayor

ATTEST: 6/23/2026

DATED: _____

DocuSigned by:
Sandra Kandell
4F11A61C850B4E1...

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

Signed by:
Alex J. Lorca, Esq.
FBE53BA816BC469...

ALEX LORCA, City Attorney

CITY OF PACIFIC GROVE
LEASE

THE GROVE AT POINT PINOS
79 ASILOMAR BLVD, PACIFIC GROVE

CITY:
CITY OF PACIFIC GROVE

TENANT:
FORTUNATE FORK, LLC

1. BASIC LEASE PROVISIONS.

- 1.1 EFFECTIVE DATE OF LEASE:** The date the CITY signs the Lease
- 1.2 LANDLORD:** City of Pacific Grove,
a California Municipal Corporation and charter city (CITY)
- 1.3 TENANT:** Fortunate Fork, LLC, a California Limited Liability Corporation
- 1.4 PREMISES:** The portion of the building located at 79 Asilomar, Pacific Grove, CA ("**Building**"), that includes a kitchen, a banquet room, a dining room, service window and indoor space adjacent thereto, and two public restrooms plus the outdoor patio adjacent to the Building.
- 1.5 COMMENCEMENT DATE** The date TENANT is delivered possession of the Premises. The Commencement Date shall be confirmed using Exhibit E of this Agreement.
- 1.6 EXPIRATION DATE** Five Years from the Effective Date of Lease.
- 1.7 PERCENTAGE RENT:** 7% of TENANT'S gross sales.
- 1.8 UTILITIES** TENANT shall arrange for and pay for all utilities (including but not limited to water, electricity, gas, sewer, telephone, and cable) furnished upon the Premises.
- 1.9 ADDRESS FOR CITY NOTICES:** See section 18
- 1.10 ADDRESS FOR TENANT NOTICE:** See section 18
- 1.11 PERMITTED USE:** Food and beverage service including a restaurant facility, snack bar, banquet and dining rooms, outdoor patio, and vending machines, subject to the provisions of this Lease and Applicable Law, and no other purpose.
- 1.12 SECURITY DEPOSIT:** \$11,000, payable to the CITY upon execution of the Lease.
- 1.13 PARKING:** TENANT may use all unreserved parking spaces adjacent to the Premises. All parking shall be subject to Article 15 of this Lease.
- 1.14 LEASE ELEMENTS:** This Lease is comprised of the Basic Lease Provisions contained here in Section 1, the provisions of this Lease, and the following Exhibits:
Exhibit A – Premises Diagram
Exhibit B – Rules and Regulations
Exhibit C – Ongoing Maintenance Schedule
Exhibit D – List of Lessor-owned Furnishings
Exhibit E – Confirmation of Term of Lease

2. LEASE.

2.1 Agreement to Lease. CITY hereby leases to TENANT, and TENANT leases from CITY, the Premises on the following terms and conditions. CITY and TENANT understand this Lease is comprised of the Basic Lease Provisions contained in Article 1 above and Article 2 through 20 and any Exhibits attached hereto. The Exhibits attached hereto are incorporated herein by this reference.

2.2 Premises; Property; Common Areas. The Premises consists of the area specified in Section 1.4 of the Basic Lease Provisions and more particularly described in **Exhibit A**. TENANT shall have exclusive use of the Premises. The “**Property**” is that certain real property located at 79 Asilomar Boulevard, Pacific Grove, CA 93950 which is improved with the Building and associated walkways, drive aisles, and parking spaces, those landscaped areas that are not part of the Golf Course, and hallways used in common with other tenants (“**Common Areas**”). TENANT shall have the non-exclusive right to use the Common Areas in common with the adjacent golf course (“**Golf Course**”), subject to Article 15 with respect to parking spaces. CITY reserves the right at any time and from time to time, to: (a) make alterations in or additions to the Common Areas; (b) temporarily close any of the Common Areas for alterations, additions, improvements, or maintenance purposes; (c) promulgate reasonable and nondiscriminatory rules and regulations governing the use of the Common Areas; (d) utilize from time to time any portion of the Common Area for promotional, entertainment and related matters; (e) renovate, upgrade or change the shape and size of the Common Area; and (f) add, eliminate, or change the location of improvements to the Common Area including, without limitation, buildings, parking areas, cart paths, and to construct structures on the Common Area. CITY further reserves to itself the right, from time to time, to grant such easements, dedications and rights in, on or over the Common Areas that CITY deems necessary or desirable, provided that such easements, dedications and rights do not unreasonably interfere with TENANT’s use of the Premises.

2.3 Permitted Use. TENANT may use the Premises only for the Permitted Use, and the Common Areas only in connection with the Permitted Use, as set forth in Section 1.11 above. No other persons shall use or occupy the Premises without CITY’s prior written consent. TENANT shall not commit or permit any unlawful act in or about the Premises or Common Areas or permit use of the Premises or Common Areas for any purpose or in any manner that (i) is unsafe, (ii) could constitute a nuisance, (iii) may annoy, obstruct, or interfere with the peaceful enjoyment of the public, (iv) keep or permit to be kept in or on the Premises or Common Areas anything that is prohibited by any insurance company providing coverage for the Premises, Building or Common Areas that will, in the reasonable opinion of CITY, increase the possibility of fire or other casualty or increase the then-existing premiums for or void the coverage of any insurance on the Premises, Building, or Common Areas or (v) does not comply with any Laws. TENANT shall not use any portion of the Property for auction, going-out-of business, or liquidation sales or special events of any kind without prior written consent from CITY.

2.3.1 CITY Events. CITY retains the right to book events at the Premises (for itself or third parties) as long as the events do not conflict with an event previously booked by TENANT. CITY shall coordinate the scheduling of its event booking through TENANT. TENANT shall maintain the master event booking calendar, which the CITY may reference. TENANT and CITY agree to use their best efforts to prevent the booking of conflicting events. The CITY’s booking of events shall not unreasonably interfere with TENANT’s use and TENANT shall remain the exclusive food and beverage services provider for the Premises and Property except as provided in Section 2.3.4.

2.3.2 Room Rental Fees. CITY may charge a room rental fee for events it books for third parties at the Premises. CITY will consult with TENANT before it charges a room rental fee to receive guidance from TENANT as to food and beverage services TENANT may wish to provide in conjunction with the event that CITY desires to book. CITY will not seek to charge room rental fees

that unreasonably interfere with the TENANT's ability to offer food and beverage services. All room rental fees charged by the CITY will be split 50-50 between CITY and TENANT.

2.3.3 Certain Events. CITY-booked events that do not include food and beverage services shall be limited to a total of only four such events per year. CITY will be responsible for security, premises liability, and post event cleanup for all such events.

2.3.4 Exclusive Rights. TENANT shall have the exclusive right to provide food and beverages to patrons of the Golf Course during the Term except that incidental food and beverage may be brought to the course as part of a CITY sponsored or CITY approved event including, but not limited to the annual Employees Golf Tournament or charity golf tournaments that benefit CITY services or programs. In no case shall the number of events for which food and beverage may be brought onto the course exceed four (4) per calendar year. All such events shall be approved by the Golf Course Superintendent (Superintendent) and CITY.

2.3.5 CITY Event Blackout Periods. CITY shall not book events Memorial Day weekend, July 4th weekend, Labor Day weekend, Thanksgiving week, or December 15th through January 1st.

2.4 Operations.

2.4.1 Hours of Operation. TENANT agrees to open its business to the public within seven (7) calendar days of the Commencement Date and to operate continuously and uninterruptedly from no later than dawn until dusk every day of the year except that the business shall close on Christmas Day. Any shortening of these hours of operation shall require CITY's prior written consent, which may be withheld or conditioned in CITY's sole and absolute discretion. TENANT may extend these hours to the fullest extent allowable under applicable Laws (defined below). CITY understands that TENANT may seek necessary use permits or ordinance changes in order to allow TENANT to provide nighttime food and beverage service for special events, but CITY shall retain full discretion respecting any such change. TENANT's hours of operation shall be posted on the exterior of the Premises or in the Common Areas in a reasonably prominent location approved by CITY and on any TENANT website that is primarily used for the restaurant.

2.4.2 Special Events and Golf Related Service. TENANT and CITY shall work together to book food and beverage service for golf related events. TENANT shall determine the appropriateness of the food and beverage service for all golf related events and special events, with due consideration given to reasonable advice or requests of the CITY for golf related events and special events and the Golf Course Superintendent for golf related events. TENANT shall maintain the master calendar for events in order to maximize the utility of the facility.

2.4.3 General Method of Operation. TENANT shall operate the business with such due diligence and efficiency as will reasonably produce the maximum return to TENANT. The business will be operated taking into account the Premises' proximity to the Golf Course and the fact that the Golf Course and the business in the Premises share customers, and TENANT will give reasonable consideration to the advice and requests of the Golf Course Superintendent.

2.4.4 Management. A manager of TENANT shall be present at all times TENANT's business is open to the public.

2.4.5 Quality and Price Control. Food and beverage sold at the Premises shall be of high quality and sold at prices comparable to those prevailing for similar services and facilities at similar golf courses. TENANT shall provide CITY with notice of the initial menu concept and general price

positioning. CITY's consent (which shall not be unreasonably withheld) shall only be required for a material reconceptualization of the restaurant concept (e.g., converting from chef-inspired cafe cuisine to a fundamentally different cuisine type such as a ramen shop or taqueria). Routine menu item additions, deletions, seasonal changes, and pricing adjustments are at TENANT's sole discretion. A quick service lunch menu and a "grab and go" lunch menu shall also be provided.

2.4.6 Compliance with Law. TENANT shall not use the Premises, Common Areas, or Property or permit anything to be done in or about the Premises, Common Areas, or Property which will in any way conflict with any law, statute, zoning restriction, ordinance or governmental law or rule, regulation, or requirement, or regulations, of any duly constituted public authorities now in force or which may hereafter be enacted or promulgated, or any orders, permits, licenses, approvals, authorizations, or regulations promulgated under any of the foregoing (each individually a "**Law**" and collectively, "**Laws**"), or which will subject CITY to any liability for injury to any person or property by reason of any business operation being conducted in or about the Premises. Laws include any "**Environmental Law**" which means any Law relating to Hazardous Materials or other environmental conditions on, under, or about the Premises, the Building, or the Common Areas, or soil and ground water conditions, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. § 6901 et seq.), the Hazardous Materials Transportation Act of 1975 (49 U.S.C. § 1801 et seq.), the California Carpenter-Presley-Tanner Hazardous Substance Account Act (Cal. Health & Safety Code § 78000 et seq.), the Hazardous Materials Release Response Plans and Inventory Act (Cal. Health & Safety Code § 25500 et seq.), the California Hazardous Waste Control Law (Cal. Health & Safety Code § 25100 et seq.), the California Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 et seq.), the California Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 et seq.), any other Law or legal requirement concerning Hazardous Materials, and any amendments or successor statutes to the foregoing and all Laws: (a) relating to the environment, human health, or natural resources; (b) regulating, controlling, or imposing liability or standards of conduct concerning any Hazardous Materials; or (c) requiring notification or disclosure of releases of Hazardous Materials or of the existence of any environmental conditions on or at the Premises, Common Areas, or Property, as any of the foregoing may be amended, supplemented, or supplanted from time to time.

2.4.7 Licenses, approvals and permits. TENANT shall obtain all permits, licenses, and approvals required under any Law for the lawful conduct of TENANT's business, for lawful use of the Premises, or to allow TENANT to meet the obligations under this Lease, prior to performing any act requiring such permits, licenses, or approvals. TENANT shall obtain and maintain a liquor license. All permits and licenses shall be maintained in TENANT's name. TENANT shall pay, at TENANT's sole cost and expense, all charges and fees associated with such permits, licenses, and any other approval required under any Law.

2.4.8 Restaurant Name. The restaurant name shall be "The Grove at Point Pinos." Any change to this name shall require CITY's prior written consent. This name shall attach to the Premises, TENANT and CITY shall only have the right to use the name during the Term. The TENANT and CITY shall cease using any website or merchandise with the restaurant name on it upon the Expiration Date or earlier termination of the Lease.

2.4.9 Health and Sanitation. TENANT shall insure that all its employees are neatly attired in clean and appropriate uniforms whenever on duty. Before any of TENANT's employees engage in the preparation, handling, serving, or storage of food, such employee shall meet all requirements under applicable Laws to engage in such activity.

2.4.10 City Municipal Powers. City enters this Lease in its proprietary capacity, and as such nothing in this Lease shall be construed as restraining, impairing, or restricting the City in its regulatory capacity, or granting any rights upon the TENANT with respect to the use, occupancy, or operation of the Premises in a manner inconsistent with the Law.

2.5 Rules. TENANT shall use the Premises and Common Areas in compliance with all Rules and Regulations in **Exhibit B** attached hereto and incorporated herein.

3. TERM.

3.1 Term. The term of the lease shall be five (5) years. The term of this Lease commences on the Commencement Date and terminates on the Expiration Date as described in Sections 1.5 and 1.6, unless sooner terminated or extended as provided in this Lease (the “**Initial Term**”).

3.2 Option. At the end of the Initial Term, TENANT may exercise an option to extend the Lease for five (5) additional years (“**Additional Term**”). TENANT shall have the option to further extend the Lease for five (5) additional years at the end of the Additional Term. This provides TENANT a total of two options to extend the Lease five (5) years, for a total of ten years. Such exercise must be made in writing to CITY at least sixty (60) days prior to the Expiration Date. The exercise of TENANT’S option(s) shall constitute agreement to and extension of the terms of this Lease. Each time TENANT exercises an option, the Expiration Date contained in Section 1.6 will be extended five (5) years.

3.3 Holdover. If TENANT remains in possession of any part of the Premises after the Expiration Date, CITY may, at CITY’s option in its sole and absolute discretion, (i) treat TENANT as a trespasser and pursue any remedy described in Section 13.2, or (ii) treat such holding over as a tenancy at will upon the same provisions as this Lease, including, but not limited to Section 9.1, except that, in either event, the Base Rent during such tenancy at will shall be one hundred thirty percent (130%) of the Base Rent in effect immediately prior to the Expiration Date (a “**Hold Over TENANT**”). No holding over by TENANT, whether with or without consent of CITY, shall operate to extend this Lease. **IN ORDER FOR TENANT TO EXTEND THIS LEASE AT THE EXPIRATION OF THE TERM AND FOR TENANT NOT TO BE CONSIDERED A “HOLD OVER TENANT” WITH AN AUTOMATIC INCREASE IN BASE RENT BY 130%, TENANT MUST NOTIFY CITY OF ITS DESIRE TO EXTEND THE TERM OF THE LEASE IN WRITING AT LEAST SIXTY (60) DAYS PRIOR TO THE EXPIRATION OF THE TERM. IF TENANT NOTIFIES CITY THAT IT DESIRES TO EXTEND THE TERM, AND THE CITY IS WILLING TO EXTEND THE TERM, CITY AND TENANT SHALL AGREE ON THE TERMS AND CONDITIONS OF THE EXTENSION AND EXECUTE AN AMENDMENT TO THE LEASE.**

4. RENT AND UTILITIES.

4.1 Rent. Commencing on the twenty-eighth (28th) day of each month after the Commencement Date, TENANT shall pay Percentage Rent, without deduction or offset whatsoever, in the amount set forth in Section 1.7. Percentage Rent due shall be based upon the monthly accounting of gross sales pursuant to Section 7.4. Percentage Rent for any partial calendar month at the beginning or end of the Term shall equal the product of (i) the number of days in such partial month, and (ii) the quotient of the applicable Rent divided by the actual number of days in such calendar month. Percentage Rent and any other charges due under the Lease are collectively referred to as “**Rent**” in this Lease. Unless otherwise stated, any Rent is due within ten (10) days after CITY’s written demand therefor.

4.1.1 Gross Sales Defined. Gross sales shall include the full sale price of each beverage, food product, ingredient, gift card, or item of merchandise sold at any time during the Term, including online sales; rental fees for any room in the Premises that are imposed at any time during the Term; catering charges or other specialty service charges imposed at any time during the Term, when any of such prices, fees, or charges pertain to sales ordered or fulfilled at or services provided in whole or in part at, related to, on or from the Premises (restaurant, banquet and meeting rooms, walk-up window, online sales, or portable concession stands in the Common Areas). Gross sales shall exclude credit card service charges that are not included in the sale price to customers.

4.1.2. Rental Cap. The dollar amount of gross sales percentage due under this section shall be capped at thirteen thousand, five hundred dollars (\$13,500) per month. This monthly cap shall increase by three percent (3%) annually, with the increase occurring on the yearly anniversary of the Effective Date identified in Section 1.1.

4.2 Utilities. During the Term, TENANT shall pay when due, directly to the utility suppliers, the cost of all separately-metered utilities furnished to the Premises, including, without limitation, electricity, gas, and sewer. TENANT shall maintain accounts with the utility suppliers in TENANT's name. As of the Effective Date all utilities furnished to the Premises are separately metered. If utilities provided to the Premises are not separately metered in the future, CITY may determine in the exercise of its reasonable discretion TENANT's "Proportionate Share" of such utilities furnished and TENANT shall pay CITY such "Proportionate Share" after CITY provides TENANT a statement requesting such payment. CITY shall not be liable to TENANT for injury, damage, loss of TENANT's business or profits, from any failure, interruption, rationing or other curtailment in the supply of water, electric, gas, or other utilities from whatever cause.

4.3 Late Charges and Interest Rate. If CITY does not receive Rent or any other payment due from TENANT on or before 4:59p.m. of the fifth (5th) day after the date due, TENANT shall pay to CITY a late charge equal Five percent (5%) of such past due Rent or other payment ("**Late Charge**"). TENANT agrees that this Late Charge represents a fair and reasonable estimate of the cost CITY will incur by reason of TENANT's late payment. Accepting any Late Charge shall not constitute a waiver by CITY of TENANT's default with respect to any overdue amount nor prevent CITY from exercising any other rights or remedies available to CITY. If any installment of Percentage Rent or any other amount payable by TENANT hereunder is not received by CITY by the date due, it shall bear interest at the Applicable Interest Rate until paid. All interest, and any late charges imposed pursuant to this Section, shall be considered additional Rent due from TENANT to CITY under the terms of this Lease. The "**Applicable Interest Rate**" is the lesser of Five Percent (5%) per annum or the maximum allowable interest under any usury Law. In the event of a Rent payment by check which is returned for insufficient funds, TENANT will also be charged a "Returned Check Charge" of \$100.00 as additional Rent. CITY and TENANT recognize that the damage which CITY will suffer as a result of TENANT's failure to pay any Rent timely is difficult to ascertain and said Late Charge and interest are the best estimate of the damage that CITY will suffer in the event of late payment of Rent.

5. SECURITY DEPOSIT.

5.1 Security Deposit. Concurrently with TENANT's execution and delivery of this Lease to CITY, TENANT shall deposit with CITY the Security Deposit as set forth in Section 1.12 above. The Security Deposit shall be held by CITY as security for the full and faithful performance by TENANT of all of the terms, covenants and conditions of this Lease to be performed by TENANT during the Term. In the event of a TENANT Default with respect to any of its obligations under this Lease and in the event CITY discovers after expiration or termination of the Lease that TENANT has failed to clean the Premises or repair damage any TENANT Party (defined below) caused, CITY may (but shall not be required to) use,

apply or retain all or any part of the Security Deposit for the payment of any unpaid Percentage Rent, any other Rent, or for the payment of any other amount, loss or damage which CITY may spend, incur or suffer to correct such TENANT Default or such TENANT failure. If any portion of the Security Deposit is so used or applied during the Term, TENANT shall, within five (5) days after demand therefor, deposit cash with CITY in an amount sufficient to restore the Security Deposit to its original amount. CITY shall not be required to keep the Security Deposit separate from its general funds, and TENANT shall not be entitled to interest on the Security Deposit. Although the Security Deposit shall be deemed the property of CITY, the Security Deposit or any balance thereof shall be returned to TENANT within thirty (30) days following the Expiration Date or sooner termination of this Lease, provided that CITY may retain the Security Deposit until such time as any amount due from TENANT in accordance with this Lease has been determined and paid in full. TENANT hereby waives the provisions of Section 1950.7 of the California Civil Code, or any similar Law now or hereinafter in effect governing use and return of the Security Deposit.

5.2 Failure to Obtain Loan. TENANT has informed CITY that it intends to finance the Security Deposit and operations through a loan. If TENANT fails to obtain its desired loan, TENANT may terminate this agreement in writing. TENANT agrees to provide written termination within forty-eight (48) hours after determining it cannot procure sufficient funds to deliver the Security Deposit on time, or to operate its business.

6. USAGE AND COMPLIANCE.

6.1 Hazardous Materials. TENANT agrees that neither TENANT nor the TENANT Parties (defined below) shall install, introduce, use, generate, transport, store, treat, dispose of, release or otherwise handle any Hazardous Materials (as defined below) in, on, under or about the Premises, Common Areas, or Property without CITY's prior written consent, which consent may be granted, denied, or conditioned upon delivery of a Hazardous Materials Disclosure Certificate and compliance with any other requirements of CITY, all in CITY's absolute discretion, or transport any Hazardous Materials to or from the Premises, Common Areas, or Property in violation of any applicable Environmental Laws. The term "**Hazardous Material**" shall mean any and all substances, materials, chemicals, or wastes that now or hereafter are classified or considered to be hazardous or toxic under any Environmental Law, or that are or become regulated by any governmental authority because of toxicity, infectiousness, radioactivity, explosiveness, ignitability, corrosiveness, or reactivity under any Environmental Law applicable to the Premises, Common Areas, or Property, and shall also include: (a) gasoline, diesel fuel, and any other petroleum hydrocarbons; (b) asbestos and asbestos containing materials, in any form, whether friable or non-friable; (c) polychlorinated biphenyls ("**PCB**"); (d) radon gas; and (e) flammable liquids and explosives.. TENANT shall provide CITY with prompt written notice of any known or suspected environmental discharges or releases of Hazardous Materials that are reportable to governmental authorities under any applicable Environmental Laws, together with a copy of any report, statement, notice, registration, application, permit, license, claim, action or proceeding or other communication given to or received from any governmental authority or third party with respect to any such release. TENANT covenants and agrees that no asbestos, asbestos-containing materials, PCB compounds will be used in any alterations, additions or improvements to, any portion of the Premises. TENANT shall indemnify, protect, defend and hold harmless CITY from and against all loss, costs, damages, claims, proceedings, demands, liabilities, liens, penalties, taxes, fines and expenses, including reasonable attorneys' fees, consultants' fees, litigation costs, and investigation, removal, remediation, cleanup and monitoring costs, asserted against or incurred by CITY at any time by reason of or arising out of the presence of any Hazardous Materials in, on, under, about or emanating from the Premises, Common Areas, or Property resulting from or in connection with (i) the action, inaction, fault or neglect of TENANT or any TENANT Party, (ii) the use, generation, storage, treatment, handling, transportation, disposal or release of any Hazardous Material in, on, about or emanating from the Premises, Common Areas, or Property by or for TENANT or any TENANT Party, or (iii) the violation of any

Environmental Law by TENANT or by any TENANT Party. TENANT's indemnity and duty to defend set forth in this Section shall survive the expiration or termination of this Lease.

6.2 Suitability of Premises. TENANT acknowledges that neither CITY nor any of its representatives has made any representation or warranty with respect to the Premises, or the fitness of the Premises or the furniture, fixtures, and improvements therein as of the Effective Date, with respect to the suitability or fitness of the same for the conduct of TENANT's business or for any other purpose or with respect to compliance of any of the foregoing with any Law.

6.3 Sewer Damage. TENANT agrees not to discharge any harmful or dangerous chemicals into the sewer system, whether it be inside the Premises area or inside the main system leading from the Premises to the main sewer line. Should TENANT discharge any harmful chemicals into the sewer system, TENANT shall be fully responsible for the cost and repair of such damage. CITY reserves the right to select an expert of its choosing to inspect any damage at TENANT's cost. TENANT shall not be responsible for the cost of the expert if it is determined such damage is not caused by TENANT. TENANT accepts responsibility for any damage if the following conditions exist: (i) the damage to the sewer system is determined to be due to the chemicals used in the operation of TENANT's business; or (ii) the damage exists only in the designated portion of the sewer system connecting to the Premises.

6.4 TENANT's Nondiscrimination Covenant. TENANT herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this Lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, physical or mental disability or medical condition, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises herein leased nor shall the TENANT himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of TENANT or TENANT'S assignees or subtenants in the Premises herein leased.

6.5 Pest Control. TENANT, at TENANT's sole cost, shall at all times keep the Premises free of pests (including without limitation rats, mice, spiders, mosquitoes, flies, termites, roaches, ants and other insects), including the obligation to maintain a pest control service contract with a licensed pest control operator and provide CITY with a copy of such pest control service contract. If TENANT fails to promptly and fully comply with this Section, CITY shall have the right, but not the obligation, to enter the Premises to perform such spraying or inspections at TENANT's expense. Performance of such work by CITY shall not constitute a waiver of TENANT's default in failing to do the same nor shall it entitle TENANT to any damage for any injury or inconvenience occasioned thereby nor to any abatement of Rent. TENANT shall reimburse CITY for any cost incurred by CITY pursuant to this Section upon demand therefor.

6.6 Recycling Program. TENANT, at TENANT's cost, shall participate in any and all recycling programs in which CITY is obligated to participate by law or if TENANT is otherwise required to do so pursuant to any federal, state or local law, rule or regulation.

7. TAXES; RECORDS AND ACCOUNTING.

7.1 Taxes. TENANT shall be solely responsible for paying all of the following, collectively "Taxes": (i) taxes and assessments levied on trade fixtures, alterations, additions, improvements, partitions, cabling, wiring, furniture, equipment, inventories and other personal property located and/or installed on the Premises by or on behalf of TENANT; (ii) any and all property taxes levied on the TENANT's possessory property interest; (iii) although not assessed as of the Effective Date, in the event later assessed due to a

change in ownership or otherwise, TENANT shall be responsible for all real property taxes, public infrastructure improvement assessments or any other assessments, levies, fees, exactions or charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen (including fees "in lieu" of any such tax or assessment) which are assessed, levied, charged, conferred or imposed by any public authority upon the Premises or its operations, together with all taxes, assessments or other fees imposed by any public authority upon or measured by any Rent or other charges payable hereunder, including any gross receipts tax or excise tax levied by any governmental authority with respect to receipt of rental income, or upon, with respect to or by reason of the development, possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by TENANT of the Premises or any portion thereof.

7.2 Notice: Payment of Taxes. A possessory property interest is created by this Lease, and may be subject to property taxation. TENANT acknowledges that this Section 7.2 constitutes notice under Revenue and Taxation Code Section 107.6 and that TENANT or the party in whom the possessory interest is vested shall be responsible for payment of such Taxes.

TENANT shall pay all Taxes prior to delinquency. To the extent any Taxes are not separately assessed or billed to TENANT by the taxing authority, CITY shall deliver to TENANT copies of the bill for such Taxes. TENANT shall pay the bill amount directly to the taxing authority no later than ten (10) business days prior to the date on which such Taxes are due. Should TENANT fail to pay its Taxes, CITY may elect to do so on TENANT's behalf and, within five (5) days after CITY's demand therefor, TENANT shall reimburse CITY for such Taxes and any penalties and fines, together with interest at the Applicable Interest Rate, from the date CITY tendered payment.

7.3 Records and Accounting. TENANT shall keep proper records and accounts of the Gross Sales and such records shall be kept in accordance with GAAP. Such records and accounts, including any sales tax reports that TENANT is required to furnish to any governmental authority, shall be open at all reasonable times to the inspection or audit of CITY or CITY's third party professional auditor or authorized representative, upon at least five (5) business days' prior notice and during business hours. TENANT shall maintain records and accounts in accordance with this Section for at least two (2) years after expiration of each period of twelve calendar months that commences on an anniversary of the Commencement Date and ends on the day immediately preceding the next anniversary of the Commencement Date ("**Lease Year**"). TENANT shall reimburse CITY for all reasonable and documented expenses incurred by CITY in performing the audit or inspection, in addition to all additional Percentage Rent found to be owed by TENANT following an audit or inspection under this Section.

CITY is a public entity subject to the California Public Records Act. Information provided to CITY pursuant to this Section 7.3 will be disclosed publicly as required by law. If CITY receives a request for records related to information obtained from TENANT pursuant to this Section 7.3, CITY agrees to promptly provide TENANT with written notice of the request. TENANT will then have the time specified in the CITY's notice to determine whether it considers any of the information confidential proprietary information and whether it will take legal action to preclude disclosure of the requested information. TENANT understands CITY's notice of a request for records under the California Public Records Act will require a prompt response from TENANT given the CITY's legal obligation to respond to such a request within 10 days of its receipt. Absent a timely response, CITY may release the requested records. CITY shall have no monetary liability to TENANT for release of information pursuant to a request under the California Public Records Act or any subpoena. Likewise, CITY shall not be obligated to defend against any challenge related to a California Public Records Act request or a subpoena for records that TENANT asserts are confidential or not disclosable. TENANT further agrees to be liable for and pay all judgments against the CITY, as well as attorney fees and costs, resulting from a challenge related to a records request or subpoena for records that TENANT asserts are confidential or not disclosable.

7.4 Monthly Accounting. A monthly accounting of Gross Sales shall be compiled and furnished to CITY by the fourteenth (14th) of each month beginning after the Commencement Date, and attached to the payment of Percentage Rent as described in Section 4.1.

7.5 Annual Financial Statements. TENANT shall provide to CITY annual compiled financial statements for TENANT's business at the Premises. The annual financial statements shall be compiled by a Certified Public Accountant and are due to CITY within three (3) months after the end of each Lease Year. If an annual compiled financial statement shows an amount owing by TENANT that is more than the Percentage Rent previously paid by TENANT for such Lease Year, TENANT shall pay CITY the deficiency. If such statement shows an amount owing by TENANT that is less than the Percentage Rent paid by TENANT for the Lease Year, the excess shall be held by CITY and credited against the next payment of Percentage Rent; however, if the Term has ended and TENANT was not in default at its end, CITY shall refund TENANT the excess.

8. INDEMNIFICATION AND EXCULPATION.

8.1 TENANT's Assumption of Risk and Waiver. Except to the extent such matter is attributable to the gross negligence or willful misconduct of CITY or CITY's agents, contractors, officers or employees, CITY shall not be liable to TENANT, or any of TENANT's Parties, as hereinafter defined, for: (i) any damage to property of TENANT, or of others, located in, on or about the Premises, (ii) the loss of or damage to any property of TENANT or of others by theft or otherwise, (iii) any injury or damage to persons or property resulting from fire, explosion, personal injury, steam, gas, electricity, water, rain or leaks from any part of the Premises or from the pipes, appliance of plumbing works or from the roof, street or subsurface or from any other places or by dampness or by any other cause of whatsoever nature, (iv) any such damage caused by other persons in the Premises, occupants of any other portions of the Property, or the public, or caused by operations in construction of any private, public or quasi-public work, or (v) any interruption of utilities and services. CITY shall in no event be liable to TENANT for any consequential damages or for loss of business, revenue, income or profits and TENANT hereby waives any and all claims for any such damages. Notwithstanding anything to the contrary contained in this Section, all property of TENANT and TENANT Parties kept or stored on the Premises, whether leased or owned by any such parties, shall be so kept or stored at the sole risk of TENANT and TENANT shall hold CITY harmless from any claims arising out of damage to the same, including subrogation claims by TENANT's insurance carriers. "TENANT Parties" or "Tenant Party" includes TENANT, TENANT's employees, members, partners, shareholders, agents, representatives, contractors, guests, customers, and invitees.

8.2 TENANT's Indemnification. TENANT shall indemnify, defend, and hold harmless the CITY, its officers, agents, employees, and volunteers, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Lease, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with (i) any default in the performance of any obligation on TENANT's part to be performed under the terms of this Lease, (ii) TENANT's or TENANT Parties' use of the Premises, Property, or Common Areas; (iii) the conduct of TENANT's business or any activity, work or thing done, permitted or suffered by TENANT or TENANT Parties in or about the Premises, Property, or Common Areas; or (iii) any act, error or omission of TENANT or TENANT Parties in or about the Premises, Property, Common Areas or any portion thereof except to the extent that such claims, liabilities, or losses described in (i), (ii), or (iii) result from, in whole or in part, the gross negligence or willful misconduct of the CITY.

8.3 Survival. The obligations of TENANT under this Article 8 shall survive the expiration or other termination of this Lease with respect to any claims or liability arising prior to such expiration or other termination.

9. INSURANCE.

9.1 TENANT's Insurance Policies and Limits. Without limiting TENANT's duty to indemnify, TENANT shall maintain in effect throughout the term of this Lease a policy or policies of insurance with the following minimum limits of liability:

(i) Commercial general liability insurance, no less broad than Insurance Services Office (ISO) CG 00 01, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Products and Completed Operations, with a minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Umbrella Liability Insurance. If TENANT maintains higher limits than the specified minimum limits, CITY requires and shall be entitled to coverage for the higher limits maintained by TENANT.

(ii) Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Lease, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(iii) Workers' Compensation Insurance, if TENANT employs others in the performance of this Lease, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

9.2. Other Insurance Requirements.

(i) Insurer. All insurance required by this Lease shall be executed by an admitted insurer authorized to transact Insurance business in the State of California that is acceptable to the CITY with a rating of A- or better. Unless otherwise specified by this Lease, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date TENANT completes its performance of services under this Lease.

(ii) Notice. TENANT shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, TENANT shall forthwith obtain and submit proof of substitute insurance. Should TENANT fail to immediately procure other insurance, as specified, to substitute for any canceled policy, CITY may procure such insurance at TENANT's sole cost and expense.

(iii) Additional Insureds. Commercial general liability and automobile liability policies shall provide an endorsement naming the City of Pacific Grove, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the TENANT's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the City and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the TENANT's insurance. The required endorsement form for Commercial General Liability Additional Insured is **ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000)**. The required endorsement form for Automobile Additional Insured

endorsement is **ISO Form CA 20 48 02 99**. The general liability policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.

(iv) **Certificates of Insurance.** Prior to the execution of this Lease by CITY, TENANT shall file certificates of insurance with CITY's Lease Administrator, showing TENANT has in effect the insurance required by this Lease. TENANT shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Lease, which shall continue in full force and effect.

(v) **Maintain in Force.** TENANT shall at all times during the Term maintain in force the insurance coverage required under this Lease and shall send, without demand by CITY, annual certificates to CITY's Administrative Services Director. If a new certificate is not received by the expiration date shown on any annual certificate provided to CITY, CITY shall notify TENANT and TENANT shall have five (5) calendar days to send in the certificate, evidencing no lapse in coverage during the interim.

9.3 CITY's Insurance. During the Term, CITY shall maintain insurance or an insurance equivalent (including, but not limited to, that offered to a municipality through and by a joint powers authority, a self insurance pool of liability coverage authorized pursuant to California Government Code Section 6500, or similar collective) covering the Premises (excluding, however, TENANT's furniture, equipment and other personal property) against damage by fire and standard extended coverage perils (including, if CITY elects, "all risk" coverage, earthquake/volcanic action, flood and/or surface water insurance) and with vandalism and malicious mischief endorsements, rental loss coverage, and such additional coverage as CITY deems appropriate. At CITY's option, all such insurance may be carried under any blanket or umbrella policies that CITY has in force for other buildings and projects. In addition, at CITY's option, CITY may elect to self-insure all or any part of such required insurance coverage. CITY may, but shall not be obligated to, carry any other form or forms of insurance as CITY may reasonably determine is advisable.

9.4 Waiver of Subrogation. CITY and TENANT hereby mutually waive their respective rights of recovery against each other for any loss to the Premises or its contents resulting from actions on or with respect to the Premises covered (or required by this Lease to be covered) by any insurance policy required to be carried by such party under this Lease and each party agrees to apply to their insurers to obtain similar waivers from such insurers. Each party shall obtain any special endorsements required by such party's insurer to evidence compliance with the aforementioned waiver. TENANT shall provide to CITY an endorsement that the issuer waives the right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

10. CONDITION; MAINTENANCE AND REPAIRS.

10.1 Beginning Condition. On the Commencement Date, TENANT shall accept the Premises and all furniture, fixtures, improvements, and equipment therein, including those in Exhibit D, in their "AS IS" condition. TENANT acknowledges that it has inspected the Premises and agrees that the Premises are suitable for TENANT's intended use and TENANT agrees that it is not relying on any warranty or representation made by CITY or its officers concerning the use of the Premises. CITY does not represent or warrant that the Premises conform to zoning, setback, parking, impervious ground cover ratio, or other requirements under any Law that may relate to TENANT's intended use.

10.2 Maintenance During the Lease.

10.2.1 TENANT's Maintenance Obligations. During the Term of this Lease, TENANT, at its expense, shall keep and timely maintain the interior of the Premises, including, without limitation,

the restrooms, lighting, lighting fixtures, light bulbs, light switches, light switch coverings, dock doors, levelers, shelters, seals and bumpers (if any), all doors, sinks, faucets, toilets, windows, floors, floor surfaces, mirrors, walls, fireplaces, the interior surfaces of the chimney, planters, patio improvements, and patio pavement in a clean, good, safe condition and repair. In addition, TENANT shall provide interior/exterior window cleaning services for the windows of the Premises and shall maintain the landscaping improvements in the landscaped portions of the Common Area that are not a part of the Golf Course. If damage to the Premises results from the carelessness, negligence or improper use of the Premises by TENANT Parties, CITY may (i) require TENANT to repair such damage at TENANT's expense, or (ii) undertake such repairs on behalf of TENANT. TENANT shall pay CITY for all costs incurred by CITY in making such repairs after receiving a statement from CITY indicating the amount due.

10.2.2 Services. TENANT shall arrange and pay for its own security system, telecommunication systems, and any and all other services that TENANT desires. TENANT shall arrange and pay for its own daily janitorial service (including on weekends) and trash removal service. TENANT shall also arrange and pay for the types of services at the frequency stated in **Exhibit C**.

10.2.3 Maintenance and Repair of Equipment and Fixtures. TENANT shall maintain and repair the equipment and fixtures in the Premises, whether provided initially by TENANT or CITY. TENANT shall maintain these items in a clean, good, safe condition and repair at all times.

10.2.4 Repair/Replace Costs.

(a) If any CITY-owned fixture or equipment identified on **Exhibit D** (as it may be updated from time to time with the approval of TENANT and CITY) fails to operate properly, TENANT shall notify CITY and TENANT shall attempt to have such fixture or equipment repaired. The cost to repair such fixture or equipment shall be at TENANT's sole expense. All items on Exhibit D shall remain the property of CITY at the expiration or sooner termination of the Lease.

(b) Before replacing any fixtures or equipment owned by CITY (including items on Exhibit D as it may be updated from time to time, and fixture and equipment purchased by CITY for the Premises in CITY's sole and absolute discretion), TENANT shall obtain CITY's prior written consent for the proposed replacement item and brand and replace the item at TENANT's sole cost and expense. TENANT will retain ownership of equipment purchased at their expense, excepting, however, that if replacement of the CITY-owned item is due to TENANT or TENANT's Party damaging the item, CITY shall maintain ownership of the item. If it notes any deficiencies in the repair or maintenance, CITY shall send written notice of the deficiency to TENANT. TENANT shall repair or maintain the noted item(s) within a reasonable time as stated in the notice. If TENANT fails to do so, CITY may perform the necessary maintenance or repairs and require reimbursement from TENANT.

10.2.5 Premises Décor and Improvements.

(a) In accordance with Section 11.1, TENANT shall be responsible, at its sole cost and expense, for performing, installing, constructing, or causing to be performed, installed, or constructed, all TENANT-proposed painting, decorations, and Alterations, including all approved TENANT-proposed fixtures, improvements and furnishings.

(b) TENANT shall not remove artwork, trophies, memorabilia, furniture, or equipment belonging to CITY in the Premises as of the Effective Date without prior written consent from CITY.

10.2.6 CITY Maintenance Obligations.

(a) CITY shall repair and maintain in good condition the exterior walls of the Building and Premises; the structure and exterior of the chimney connected to the Premises, including any flu or fan; the roof, foundation, and other structural components of the Building; the components of the electrical, plumbing, mechanical, life/safety, heating, ventilation and air conditioning ("HVAC") systems; exterior painting, exterior doors and door surfaces; the patio portion of the Premises; and the Common Areas. Notwithstanding the foregoing, CITY shall not be responsible for repairing any damage caused by any act, omission, or negligence of TENANT, or its responsible employees, agents, invitees, licensees, assignees, or subtenants.

(b) CITY shall provide TENANT with written notice at least 30 days before it begins substantial repairs or modifications to the Golf Course, the Golf Pro Shop, or parking lot in the Common Areas, which would have the effect of impairing the TENANT's business.

10.3 Condition Upon Surrender. Upon the expiration or termination of this Lease, TENANT shall surrender the Premises to CITY broom clean, and, subject to reasonable wear and tear, in the condition which TENANT shall have been required to maintain the Premises under this Lease with the heating, ventilation, plumbing, electrical, lighting, man doors, dock doors, levelers, shelters, seals and bumpers (if any), windows and floors serving the Premises in good operating condition. TENANT shall repair all damage to the Premises caused by the installation or removal of its trade fixtures and other property of TENANT. TENANT shall restore the Premises to the same condition or better as existed immediately prior to the installation of any item removed.

11. ALTERATIONS AND SIGNS

11.1 Alterations. TENANT shall not make any alterations or construct, install, or allow to be constructed or installed any physical additions, fixtures, or improvements in, about, or to the Premises ("Alterations") without the prior written consent of CITY. TENANT's request for consent shall include detailed specifications, floor plans and necessary permits (if applicable) for CITY's review. TENANT must obtain such consent of CITY prior to applying for any permit or approval. If CITY consents to TENANT's proposed Alterations, TENANT shall ensure that the Alterations and the installation or construction of the Alterations comply with all Laws and obtain any and all permits or approvals required for the Alterations under any Laws. All contractors must be licensed in the State of California. CITY may, at any time during the Term of this Lease, notify TENANT that it requires TENANT to remove any or all Alterations and restore the Premises to their prior condition at TENANT's sole cost and expense. Any approved Alterations (except trade fixtures) shall become the property of CITY unless CITY notifies TENANT that CITY requires TENANT to remove the Alterations at any time before the Expiration Date or sooner termination of the Lease. If TENANT fails to perform its obligations under this Article 11, CITY may perform TENANT's obligations, and TENANT shall pay CITY for all costs so incurred by CITY as additional Rent after receiving a statement from CITY indicating the amount due.

11.2 Signs. TENANT shall have the right to install any directional, pricing, or other signs on the interior walls of the Premises. TENANT shall not have the right to place signs on the exterior of the Premises or in or on the Common Areas without CITY's prior written consent. All signs must comply with applicable Laws. CITY may refuse consent to any proposed signage that is in CITY's opinion too large, deceptive,

unattractive or otherwise inconsistent with or inappropriate to the character of the Premises or the Golf Course. CITY shall assist and cooperate with TENANT in obtaining any necessary permission from authorities or adjoining owners and occupants for TENANT to place or construct the foregoing signs. TENANT shall repair all damage to the Premises resulting from the removal of signs installed by TENANT.

12. ENTRY BY CITY.

Upon reasonable prior written notice, CITY and its employees and agents shall have the right to enter the Premises to inspect the Premises, to show the Premises to prospective tenants or purchasers, post notices of non-responsibility on the Premises, to alter, improve or repair the Premises, or to perform any obligation of CITY or (if CITY so elects) any obligation of TENANT under this Lease. In exercising such entry rights, CITY shall endeavor to minimize, to the extent reasonably practicable, the interference with TENANT's business, and shall provide TENANT with reasonable advance notice (oral or written) of such entry (except in emergency situations and for scheduled services). For each of the foregoing purposes, CITY shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding TENANT's vaults and safes (if any), and CITY shall have the means which CITY may deem proper to open said doors in an emergency in order to obtain entry to the Premises.

13. DEFAULT AND REMEDIES.

13.1 TENANT's Default. The occurrence of any one (1) or more of the following events shall constitute a "Default" under this Lease by TENANT:

- a) TENANT's failure to pay any Rent by the date such amount is due where such failure continues for three (3) business days after TENANT's receipt of CITY's notice that Rent was not received;
- b) TENANT fails more than twice within a 12-month period to make any payment of Rent when due, in which case the third failure shall be a noncurable default, provided that in the first two instances in a 12-month period CITY has given TENANT the required written notice described in 13.1(a) above;
- c) The abandonment of the Premises by TENANT;
- d) TENANT's failure to observe and perform any other required provision of this Lease, where such failure continues for thirty (30) days after written notice from CITY;
- e) TENANT's failure to maintain in effect any insurance policy required under Article 9 or failure of any insurance policy carried by TENANT to satisfy any of the terms and conditions of Article 9;
- f) TENANT's making of any general assignment for the benefit of creditors;
- g) The filing by or against TENANT of a petition to have TENANT adjudged a bankruptcy or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against TENANT, the same is dismissed after the filing);
- h) The appointment of a trustee or receiver to take possession of substantially all of TENANT's assets located at the Premises or of TENANT's interest in this Lease, where possession is not restored to TENANT within thirty (30) days;
- i) TENANT's failure to operate the Premises for 7 or more consecutive days and failure to resume operation within three calendar days of notice from CITY regarding such non-operation, absent

written consent from the CITY for the closure; or

- j) The attachment, execution or other judicial seizure of substantially all of TENANT's assets located at the Premises or of TENANT's interest in this Lease, where such seizure is not discharged within thirty (30) days.

13.2 CITY Remedies Upon TENANT Default. In the event of a TENANT Default, CITY, at its option, may do one or more of the following:

- a) Terminate this Lease, enter and take possession of the Premises in accordance with any applicable Laws governing such repossession, and remove TENANT and recover all damages caused by TENANT's breach;
- b) With or without terminating the Lease, enter and take possession of the Premises in accordance with any applicable Laws governing such repossession, and remove TENANT;
- c) Continue the Lease in effect and recover Rent as it becomes due under California Civil Code Section 1951.4. Acts of maintenance or preservation, efforts to relet the Premises, or the appointment of a receiver upon CITY's initiative to protect its interest under this Lease shall not of themselves constitute a termination of TENANT's right to possession;
- d) If CITY terminates the Lease, recover the worth at the time of award of the amount by which the unpaid Rent would have been earned after termination until the time of award exceeds the amount of such Rent loss that TENANT proves could have been reasonably avoided. For purposes of this provision, TENANT agrees that "Rent" shall mean the fair market rental value of the property;
- e) If CITY terminates the Lease, recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss that TENANT proves could be reasonably avoided. For purposes of this provision, TENANT agrees that "Rent" shall mean the fair market rental value of the property;
- f) To appoint a receiver to take possession of the Premises, collect and apply Rent, perform any obligation of TENANT, and exercise any remedy of CITY under this Lease;
- g) Bring action for recovery of all amounts due from TENANT;
- h) Perform any obligation of TENANT and charge TENANT the cost incurred to perform such obligation;
- i) Pursue any other remedies available to CITY under this Lease, at law or in equity.

TENANT acknowledges that its default of any provision under this Lease will cause CITY to incur additional costs and expenses, the exact amounts of which are extremely difficult or impractical to fix at the time of TENANT's amount due. TENANT further acknowledges that the negotiated rent, being a Percentage Rent of gross sales, makes it difficult or impractical to establish the amount of Rent owed under the remainder of the Lease in the event this Lease is terminated. Therefore, if any default by TENANT results in CITY exercising the right to terminate this Lease, TENANT acknowledges that damages related to Rent owed or lost from the time the Lease is terminated until the Expiration Date of this Lease shall be calculated based on the fair market rental value of the property. TENANT agrees that for the purposes of this agreement only, the fair rental market value of the Lease is eleven thousand (\$11,000) per month. TENANT further agrees that the anticipated fair market value of the Lease in future years is difficult or

impractical to fix at the Effective Date of this Lease, and so agrees that the fair market value shall be calculated as increasing at a rate of three percent (3%) per year every year after the first year of this Lease. TENANT agrees that such calculation is reasonable and not punitive.

The "worth at the time of award" of the amounts referred to in clauses (c), (d), and (e) above shall be computed by allowing interest at the Interest Rate. The "worth at the time of award" of the amount referred to in clause (f) above shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

13.3 Costs Upon Default and Litigation. TENANT shall pay to CITY as additional Rent all the expenses incurred by CITY in connection with any Default by TENANT hereunder or the exercise of any remedy by reason of any Default by TENANT hereunder, including court costs and reasonable attorneys' fees and expenses.

13.4 CITY Default. If CITY fails to perform an obligation of CITY hereunder on or before (a) thirty (30) days after TENANT gives written notice that such obligation has not been performed when due, or (b) if such obligation cannot be reasonably performed in such thirty (30) day period, then such longer period as is reasonably required so long as CITY is diligently pursuing action to cure such obligation. Until such time, CITY shall not be deemed in Default, and TENANT shall have no remedy against CITY for such failure. If CITY is deemed in Default, TENANT's sole remedies are to (i) seek specific performance or injunctive relief, (ii) file suit against CITY seeking damages directly resulting from such default, or (iii) seek a declaratory judgment. TENANT waives and releases its rights, including its right to make repairs at CITY's expense, under California Civil Code sections 1932(1), 1941, and 1942 or any similar Laws now or hereinafter in effect.

14. ABANDONED PROPERTY.

If TENANT leaves any personal property in or about the Premises after the Expiration Date or the earlier termination of this Lease, at CITY's option, (i) such personal property shall become the sole property of CITY without any liability to account for the proceeds from CITY's disposition, if any, of the property, or (ii) CITY may remove, store, destroy, sell, discard or otherwise dispose of the personal property. In such event, TENANT shall reimburse CITY for all expenses incurred by CITY in such disposition. TENANT hereby waives its rights under Sections 1980 to 1993.09 of the California Civil Code and agrees that CITY has no obligations to TENANT thereunder, including any obligation to pay TENANT any proceeds from any sale thereof or follow the noticing process described therein, with respect to TENANT's personal property left at the Premises after the Expiration Date or earlier termination of this Lease. The provisions of this Section shall survive the Expiration Date or earlier termination of this Lease.

15. PARKING.

During the Term, TENANT shall be entitled to the non-exclusive use of the number and type of parking spaces specified in Section 1.13 of the Basic Lease Provisions within the parking areas of the Common Areas as designated by CITY from time to time. CITY shall at all times have the right to establish and modify the configuration of the parking areas of the Common Areas, including changing the type or number of parking spaces. In addition, CITY may, in its discretion, designate any unreserved parking spaces as reserved parking for other tenants or CITY staff members. TENANT shall not use any parking spaces specifically assigned by CITY to other tenants, if any, or for such other uses such as visitor, handicapped or other special purpose parking. While TENANT is entitled to use the above-described parking spots, TENANT acknowledges that it shares these parking spaces with the Golf Course and that CITY does not guarantee the availability of any parking.

16. CASUALTY.

16.1 CITY's Rights and Obligations. If the Premises is damaged by fire or other casualty not caused by the negligence or willful misconduct of TENANT ("Casualty") to an extent not exceeding twenty-five percent (25%) of the full replacement cost thereof, and CITY's contractor estimates in writing delivered to the parties that the damage thereto is such that the Premises may be repaired, reconstructed or restored to substantially its condition immediately prior to such Casualty within one hundred twenty (120) days from the date of such Casualty, and CITY will receive insurance proceeds sufficient to cover the costs of such repairs, reconstruction and restoration (including proceeds from TENANT and/or TENANT's insurance which TENANT is required to deliver to CITY pursuant to this Lease), then CITY shall commence and proceed diligently with the work of repair, reconstruction and restoration and this Lease shall continue in full force and effect. If, however, the Premises is damaged to an extent exceeding twenty-five percent (25%) of the full replacement cost thereof, or CITY's contractor estimates that such work of repair, reconstruction and restoration will require longer than one hundred twenty (120) days to complete from the date of Casualty, or CITY will not receive insurance proceeds (and/or proceeds from TENANT, as applicable) sufficient to cover the costs of such repairs, reconstruction and restoration, then CITY may elect to either: (i) repair, reconstruct and restore the portion of the Premises damaged by such Casualty, in which case this Lease shall continue in full force and effect; or (ii) terminate this Lease effective as of the date which is thirty (30) days after TENANT's receipt of CITY's election to so terminate. Under any of the conditions of this Section, CITY shall give written notice to TENANT of its intention to repair or terminate within the later of sixty (60) days after the occurrence of such Casualty, or fifteen (15) days after CITY's receipt of the estimate from CITY's contractor or, as applicable, thirty (30) days after CITY receives approval from CITY's Mortgagee to rebuild.

16.2 TENANT's Termination Right. In the event of any damage or destruction which (i) is not caused by TENANT or any of the TENANT Parties, (ii) materially affects TENANT's use and enjoyment of the Premises and (iii) TENANT's possession and use of the Premises cannot be restored by CITY within one hundred twenty (120) days for reasons other than delays caused by TENANT or any of TENANT's Parties, TENANT shall have the right to terminate this Lease upon written notice to CITY given within thirty (30) days after the expiration of said 120-day period. TENANT waives the provisions of Sections 1932(2) and 1933(4) of the California Civil Code, or any other similar Law now or hereinafter in effect.

17. CONDEMNATION.

If any legally constituted authority condemns the Premises or if a portion of the Premises greater than or equal to 25% is condemned or the portion to be condemned includes a majority of the kitchen area, this Lease shall terminate on the date the public authority takes possession and TENANT's obligation to pay Percentage Rent shall cease on such date. All compensation awarded for such taking of the fee and leasehold shall belong to and be the property of CITY without any deduction therefrom for any present or future estate of TENANT and TENANT hereby assigns to CITY all its right, title, and interest to any such award. However, TENANT shall have the right to recover from the condemning authority, but not from CITY, such compensation as may be awarded to TENANT for goodwill lost by TENANT's business conducted on the Premises, for moving and relocation expenses, and for depreciation to and removal of TENANT's trade fixtures or personal property on the Premises.

18. NOTICES. Notices required under this Agreement shall be delivered personally or by nationally recognized overnight courier to CITY and TENANT at the addresses listed below, unless CITY or TENANT receives proper notice that the other party wishes to change the address listed below.

FOR CITY:	FOR TENANT:
Attn: City Manager	Attn: Jerry Register or Gail Grammatico
City of Pacific Grove	Fortunate Fork LLC
300 Forest Avenue	4000 Rio Road, Suite 28
Pacific Grove, CA 93950	Carmel, CA 93923
Address	Address
(831) 648-3101	831-269-9097 or 831-920-8217
Phone	Phone

19. ASSIGNMENT AND SUBLETTING.

19.1 Consent Required. TENANT may not assign this Lease or sublet the Premises in whole or in part without CITY's prior written consent. An assignment of this Lease or subletting of the Premises in whole or in part without CITY's prior written consent is voidable by CITY in CITY's sole and absolute discretion.

19.2 Change in Control Is An Assignment. If TENANT is a partnership or a limited liability company, any cumulative transfer of more than fifty percent (50%) of the partnership or the limited liability company membership interests, as applicable, shall constitute an assignment and shall require CITY's consent. Without limiting the foregoing, it shall constitute an assignment requiring CITY's consent if: (a) TENANT is a limited partnership and there is a transfer of a general partner interest; or (b) if TENANT is a limited liability company and there is a transfer of any managing membership interest. If TENANT is a corporation, any change in a controlling interest of the voting stock of the corporation is an assignment requiring CITY's consent.

19.3 Request for Consent. If TENANT seeks to assign this Lease or sublet any part of the Premises, then at least thirty (30) days prior to the proposed effective date of the proposed assignment or sublease, TENANT shall deliver to CITY written notice setting forth the terms and conditions of the assignment or sublease and the identity of the proposed assignee or subtenant. CITY will then notify TENANT of its election to do one of the following: (i) request additional information about the proposed assignee or subtenant to evaluate the proposal; (ii) consent to the proposed assignment or sublease subject to such reasonable conditions as CITY may impose in providing such consent; (iii) refuse such consent, in CITY's reasonable discretion; or (iv) terminate this Lease as to all or such portion of the Premises which is proposed to be sublet or assigned and recapture all or such portion of the Premises for reletting by CITY.

19.4 TENANT Primarily Liable. If TENANT assigns this Lease or sublets any part of the Premises, TENANT will remain primarily liable for all of TENANT's obligations under this Lease.

20. RELOCATION WAIVER

TENANT fully releases and discharges CITY from all and any manner of rights, demands, liabilities, obligations, claims, or cause of actions, in law or equity, of any kind or nature, known or unknown, now existing or hereinafter arising, which arise from or relate in any manner to the relocation of TENANT's business operations, or the relocation of any person(s), business(es), or other occupant(s) located on within, on, or about, the Premises following the full or partial termination or expiration of TENANT's leasehold interest in the Premises (collectively, "**Relocation Claims**"), including waiver and release of any relocation rights under Government Code sections 7260 et seq. ("**Relocation Assistance Law**"). TENANT acknowledges and agrees that the release and waiver set forth in this Article 20 is material consideration for CITY's agreement to this Lease, and that, but for this release and waiver, CITY would not have entered into this Lease. By releasing and forever discharging the Relocation Claims, TENANT expressly waives any rights under California Civil Code section 1542, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

21. GENERAL PROVISIONS.

21.1 Governing Law. This Lease shall be governed by, and construed pursuant to, the laws of the State of California. Venue for any litigation between the parties hereto concerning this Lease or the occupancy of the Premises shall be initiated in Monterey County, California.

21.2 City Consent. Unless the context or Law requires otherwise or this Lease explicitly states otherwise, the City Manager shall have the authority to approve any consent TENANT is required to obtain from CITY under this Lease.

21.3 No Presumption Against Drafter. There shall be no presumption against CITY on the basis that the CITY drafted the Lease, and the Parties agree that the Lease was jointly prepared by both Parties.

21.4 Independent Covenants. TENANT's covenants to pay Rent and other sums due hereunder are independent of CITY's covenants hereunder and TENANT shall have no right to withhold any such payments on account of any alleged failure by CITY to perform or comply with any of CITY's covenants.

21.5 Calculation of Time for Performance; Extension for Performance Due on Non-Business Days. Days will be counted by excluding the first day and including the last day. If the last day is a Saturday, Sunday, or legal holiday as described in California Government Code §§6700–6701, then it will be excluded. Any act required by this Lease to be performed by a certain day will be timely performed if completed before 5 p.m. Pacific time on that date. If the day for performance of any obligation under this Lease is a Saturday, Sunday, or legal holiday, then the time for performance of that obligation is extended to 5 p.m. local time on the first following date that is not a Saturday, Sunday, or legal holiday. Unless otherwise expressly provided in this Lease, all periods of time referenced in this Lease will include all calendar days. For purposes of this Lease, the term "business day" will mean any calendar day other than a Saturday, Sunday, or legal holiday as described in Government Code §§6700–6701. Section 13.1(i) is not subject to this provision, and timelines thereunder shall be calculated by calendar days regardless of the existence of a Saturday, Sunday, or legal holiday occurring during the relevant timeframe.

21.6 Successors and Assigns. Subject to the provisions of Article 19, above, and except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives and

permitted successors and assigns; provided, however, no options or other rights which are expressly made personal to the original TENANT hereunder or in any Exhibit attached hereto shall be assignable to or exercisable by anyone other than the original TENANT under this Lease.

21.7 No Merger. The voluntary or other surrender of this Lease by TENANT or a mutual termination thereof shall not work as a merger and shall, at the option of CITY, either (i) terminate all or any existing subleases, or (ii) operate as an assignment to CITY of TENANT's interest under any or all such subleases.

21.8 Memorandum of Lease. CITY may elect to have either this Lease or a short form memorandum hereof recorded pursuant to the requirements of California Government Code section 37393. TENANT shall cooperate with CITY in executing and acknowledging any such memorandum of lease.

21.9 Waiver. Any waiver of any terms and conditions of this Lease must be in writing and signed by CITY and TENANT. A waiver of any of the terms and conditions of this Lease shall not be construed as a waiver of any other terms or conditions in this Lease. A failure to enforce a term of this Lease shall not be construed as a waiver of such term or condition.

21.10 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.

21.11 Time of the Essence. Time is of the essence with respect to performance of every provision of this Lease in which time or performance is a factor.

21.12 Payments and Notices. All Rent and other sums payable by TENANT to CITY hereunder shall be paid to CITY at the address designated in the Basic Lease Provisions, or to such other persons and/or at such other places as CITY may hereafter designate in writing.

21.13 Prior Agreements; Amendments. This Lease, including the Summary and all Exhibits attached hereto, contains all of the covenants, provisions, agreements, conditions and understandings between CITY and TENANT concerning the Premises and any other matter covered or mentioned in this Lease, and no prior agreement or understanding, oral or written, express or implied, pertaining to the Premises or any such other matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. The parties acknowledge that all prior agreements, representations and negotiations are deemed superseded by the execution of this Lease to the extent they are not expressly incorporated herein.

21.14 Accord and Satisfaction. No payment by TENANT or receipt by CITY of a lesser amount than the Rent payment herein stipulated shall be deemed to be other than on account of the Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and CITY may accept such check or payment without prejudice to CITY's right to recover the balance of such Rent or pursue any other remedy provided in this Lease. TENANT agrees that each of the foregoing covenants and agreements shall be applicable to any covenant or agreement either expressly contained in this Lease or imposed by any statute or at common law.

21.15 Force Majeure. If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction (including, without limitation, failure, refusal or delay in issuing permits, approvals and/or authorizations), injunction or court order, riots, insurrection, war, terrorism, bioterrorism, fire, earthquake, inclement weather including rain, flood or other natural disaster or other reason of a like nature not the fault of the party delaying in performing work or doing acts required under the terms of this Lease (but excluding delays

due to financial inability) (herein collectively, “**Force Majeure Delay(s)**”), then performance of such act shall be excused for the period of such Force Majeure Delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section shall not apply to nor operate to excuse TENANT from the payment of Rent, or any other payments strictly in accordance with the terms of this Lease.

21.16 Signatures; Counterparts. TENANT shall sign this Lease prior to CITY executing this Lease. This Lease may be executed in any number of counterparts, each of which shall be deemed an original binding on the parties hereto. The exchange of copies of this Lease and of signature pages by electronic means, including PDF e-mail or shall constitute effective execution and delivery of this Lease as to the Parties and may be used in lieu of the original Lease for all purposes. Signatures of the Parties transmitted by electronic means, including PDF, shall be deemed to be their original signatures for all purposes. Neither Party shall raise the use of electronic means to deliver a signature hereto or to any notice delivered hereunder, or the fact that any signature or agreement or instrument was transmitted or communicated electronically, as a defense to the formation of a contract, and each Party forever waives any such defense.

21.17 Authority. Any individual executing this Lease on behalf of CITY or TENANT represents and warrants hereby that he or she has the requisite authority to enter into this Lease on behalf of such party and bind the party to the terms and conditions of this Lease.

21.18 Joint and Several Liability. If more than one person or entity executes this Lease as TENANT: (a) each of them is and shall be jointly and severally liable for the covenants, conditions, provisions and agreements of this Lease to be kept, observed and performed by TENANT; and (b) the act or signature of, or notice from or to, any one or more of them with respect to this Lease shall be binding upon each and all of the persons and entities executing this Lease as TENANT with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.

21.19 Waste. TENANT shall not commit, or allow to be committed, any waste, damage, or nuisance on the Premises.

21.20 Liens. TENANT shall keep the Premises free and clear from any liens arising out of any work performed, material furnished, or obligation incurred by TENANT.

21.21 Claims. TENANT shall notify CITY, in writing, by the end of the next non-holiday weekday, of any occurrences at the Premises which involve any injury to person or property including a full description of the facts, circumstances, nature and results of the occurrence; names and addresses of persons involved; photographs of any injuries or damage; and a map, diagram or plat of the place of the occurrence. TENANT will promptly provide CITY with copies of any claims for damage of any sort, including complaints in any court actions involving such claims. Likewise, if CITY is involved in any claims that affect the Premises or affect the TENANT's use of the Premises, CITY shall promptly notify TENANT in writing.

This space is left blank, intentionally.

IN WITNESS WHEREOF, CITY and TENANT have executed this Lease as of the day and year written below.

CITY OF PACIFIC GROVE

TENANT

By: _____
Matthew Mogensen, City Manager

Date: _____

Approved as to Form
By: _____
City Attorney

Date: _____

Approved as to
Fiscal Provisions^a
By: _____
Finance

Date: _____

By: _____

Date: _____

By: _____

Date: _____
(Signature of Secretary, Asst. Secretary,
CFO, or Asst. Treasurer)

By: _____
Date: _____

City Lease Number: _____.

^a Approval by Finance necessary only if financial questions or issues raised in the City’s approval of agreement.

[illegible]

EXHIBIT B

RULES AND REGULATIONS

1. TENANT shall not obstruct any sidewalks, halls, passages, exits, entrances, elevators, escalators or stairways of the Building. The halls, passages, exits, and entrances are not for the general public, and CITY shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of CITY would be prejudicial to the safety, character, reputation and interests of the Building and its tenants provided, that nothing herein contained shall be construed to prevent such access to persons with whom any tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. TENANT and no employee, invitee, agent, licensee or contractor of TENANT shall go upon or be entitled to use any portion of the roof of the Building unless in connection with the chimney sweep work or otherwise authorized by the City.
2. CITY will furnish TENANT, free of charge, two keys to each door lock in the Premises. CITY may impose a reasonable charge for any additional keys. TENANT may not make or have made additional keys, and TENANT shall not alter any lock or install a new additional lock or bolt on any door or window of its Premises. TENANT, upon termination of its tenancy, shall deliver to CITY the keys of all doors which have been furnished to, or otherwise procured by TENANT, and, in the event of loss of any keys, shall pay CITY the cost of replacing the same or of changing the lock or locks opened by such lost key if CITY shall deem it necessary to make such change.
3. IT cables and equipment, telephone lines and security systems shall not be installed in the Premises except with the approval and under the direction of CITY.
4. CITY reserves the right to exclude from the Building between the hours of 7:00 p.m. and 6:00 a.m., or such other hours as may be established from time to time by CITY, and on legal holidays, any person unless that person is known to the person or employee in charge of the Building and has a pass or is properly identified. CITY shall not be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. TENANT shall be responsible for all persons for whom it requests passes and shall be liable to CITY for all acts of such persons.
5. TENANT shall close and lock all doors of its Premises and entirely shut off all water faucets or other water apparatus, and, except with regard to TENANT's computers and other equipment which reasonably require electricity on a 24-hour basis, all electricity, gas or air outlets before TENANT and its employees leave the Premises. TENANT shall be responsible for any damage or injuries sustained by other TENANTS or occupants of the Building or by CITY for noncompliance with this rule.
6. The bathrooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed.
7. TENANT shall not sell, or permit the sale at retail, of newspapers, magazines, periodicals, theater tickets, or any other goods or merchandise to the general public in or on the Premises.
8. TENANT shall not install any radio or television antenna, loudspeaker or other device on the roof or exterior walls of the Building. TENANT shall not interfere with radio or television broadcasting or reception from or in the Building or elsewhere.
9. Except as expressly permitted in the Lease, TENANT shall not mark, drive nails, screw or drill into the partitions, window mullions, woodwork or plaster, or in any way deface the Premises or any part thereof, except to install normal wall hangings. TENANT shall repair any damage resulting from noncompliance under this rule.
10. Canvassing, soliciting and distribution of handbills or any other written material, and peddling in and around the Project or the Buildings are expressly prohibited, and each TENANT shall cooperate to prevent same.
11. CITY reserves the right to exclude or expel from the Buildings any person who, in CITY's judgment, is intoxicated or under the influence of liquor or drugs or who is in violation of any of the Rules and Regulations of the Project.

12. All garbage and refuse disposal shall be made in accordance with directions reasonably issued from time to time by CITY.

13. TENANT shall not use in any space any hand trucks except those equipped with rubber tires and side guards, or such other material-handling equipment as CITY may approve.

14. TENANT agrees that it shall comply with all fire and security regulations that may be issued from time to time by CITY, and TENANT also shall provide CITY with the name of a designated responsible employee to represent TENANT in all matters pertaining to such fire or security regulations. TENANT shall cooperate fully with CITY in all matters concerning fire and other emergency procedures.

15. TENANT assumes any and all responsibility for protecting its Premises from theft, robbery and pilferage. Such responsibility shall include keeping doors locked and other means of entry to the Premises closed.

16. CITY may waive any one or more of these Rules and Regulations for the benefit of TENANT or any other TENANT, but no such waiver by CITY shall be construed as a waiver of such Rules and Regulations in favor of TENANT or any other such TENANT, nor prevent CITY from thereafter enforcing any such Rules and Regulations against any and all of the TENANTS in the Building.

17. These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of any lease of premises in the Buildings.

18. CITY reserves the right to make such other and reasonable Rules and Regulations as, in its judgment, may from time to time be needed for safety, security, care and cleanliness of the Buildings and for the preservation of good order therein. TENANT agrees to abide by all such Rules and Regulations hereinabove stated and any additional rules and regulations which are adopted.

19. TENANT shall be responsible for the observance of all of the foregoing rules by TENANT's employees, agents, clients, customers, invitees or guests.

20. TENANT shall not without CITY's consent, which may be given or withheld in CITY's sole and absolute discretion, receive, store, discharge, or transport firearms, ammunition, or weapons or explosives of any kind or nature at, on or from the Premises or the Buildings.

21. EXCEPT WITH THE PRIOR WRITTEN PERMISSION OF CITY, NO OVERNIGHT PARKING IS PERMITTED AT THE PREMISES. A DAILY FEE OF (\$100) SHALL BE CHARGED AS RENT FOR EACH VIOLATION.

22. SMOKING IS NOT PERMITTED ON THE PREMISES OR COMMON AREAS EXCEPT IN SPECIFIC AREAS DESIGNATED BY CITY. A FEE OF (\$50) SHALL BE CHARGED AS RENT FOR EACH VIOLATION.

EXHIBIT C

ONGOING MAINTENANCE SCHEDULE

Type	Frequency
Carpet Cleaning	Every 6 months
Window Washing	Monthly
Ansul System Flush	Every 6 months
Grease Trap	Quarterly
Hoods ducts	Every 6 months
Hoods and Stove Trays	Weekly
Auto-Chlor	Monthly
Fridge and Freezer Preventative Maintenance	Annually
Deep Clean	Annually
Interior Paint Touch Ups	Annually
Chimney Sweep	Annually
Outdoor Furniture Weather Treatment	Annually
Bathroom Cleaning/janitorial service	At least twice per day or more as needed

Exhibit D**THE GROVE AT POINT PINOS
EQUIPMENT AND FURNISHINGS LIST AT COMMENCEMENT DATE**

LESSOR-OWNED EQUIPMENT AND FURNISHINGS		
ITEM	QTY	DESCRIPTION
1	1	Can Wash Faucet and Hose (outside the building)
2	1	Janitors/Mop Sink in the storage room
3	2	Chemical storage multi-rack shelf in the storage room
4	7	6 dry storage multi-rack shelves and 1 wine rack in the storage room
6	1	Walk-in Refrigerator with 5 multi-rack storage shelves
7	1	Walk-in Freezer with 4 multi-rack storage shelves
8	1	Unit Evaporator (Freezer)
9	1	Unit Evaporator (Refrigerator)
11	1	Snack bar counter
12	1	Worktable with preparation sinks
13	1	Fire suppression system
14	1	Cube ice machine with storage bin
15	1	Employee handwashing sink
16	1 lot	Wall mounted shelf and utensil rack
17	1	Clean dish table/utensil sinks and drain boards
18	1	Booster heater
19	1	Type II vapor hood
21	1	Pre-rinse unit
22	1	Soiled dish table
23	1	Wall mounted rack shelf
24	1	Stainless steel wall lining
25	1	Type 1 exhaust ventilator
26	1	Vulcan six burner stove w/ convection oven
27	1	Vulcan six burner stove w/ oven
28	1	Under boiler with oven
29	1	Griddle top range with convection oven
30	1	Salamander broiler
31	2	Deep fat fryer with filter system
32	1	Worktop with base cabinet
33	1	Single section reach-in refrigerator/Freeze
34	1	Refrigerated work counter with cold rail
35	2	Refrigerated prep stations
36	1 lot	Wall-mounted shelf
37	1	Chef's work counter with sink
38	1	11-quart soup well unit
39	1	Waitress counter
40	1	Two-section under counter refrigerator
42	1	Ice/Water station
43	3	Compartment sink with two drain boards
44	1	Bottle cooler
45	1	Drain board
46	1	Handwashing sink
47	1	Drain board
48	1	Serving counter
49	12	Bar Stools
50	3	Round High-Top Tables
51	22	Square Tables
52	2	Outdoor Teak Bench (Matches patio furniture)
54	50	Indoor dining chairs
55	12	Teak Patio Tables – various sizes
56	72	Teak Patio Chairs – various styles
57	5	Child highchair

EXHIBIT E

CONFIRMATION OF TERM OF LEASE

This Confirmation of Term of Lease is made by and between City of Pacific Grove, a California Municipal Corporation and charter city (“CITY”) and _____, a _____ (“TENANT”), who agree as follows:

1. CITY and TENANT entered into a Lease dated *[insert Effective Date: _____]* (“Lease”), in which CITY leased to TENANT and TENANT leased from CITY the Premises (as defined in the Lease) in the building located at 79 Asilomar Boulevard, Pacific Grove, CA 93950.

2. CITY and TENANT agree to confirm the Commencement Date and Expiration Date of the Term of the Lease as follows:

- (a) _____, 20__, is the Commencement Date;
- (b) _____, 20__, is the Expiration Date; and
- (c) *[insert other relevant negotiated dates, add lowercase letter sections as needed]*

3. TENANT hereby confirms that the Lease is in full force and effect and:

- (a) TENANT has accepted possession of the Premises as provided in the Lease;
- (b) The improvements (including those identified in Lease Exhibit E) and space required to be furnished by CITY under the Lease have been furnished;

4. The Lease has not been modified, altered or amended, except as follows:
_____;

5. There are no setoffs or credits against rent and no security deposit has been paid except as expressly provided by the Lease.

6. The provisions of this Confirmation of Term of Lease shall inure to the benefit of, or bind, as the case may require, the parties and their respective successors, subject to the restrictions on transfer and subleasing contained in the Lease.

[Remainder of page intentionally left blank; signature page follows]

CITY OF PACIFIC GROVE

TENANT

By: _____
Matthew Mogensen, City Manager

Date: _____

By: _____

Approved as to Form

By: _____
City Attorney

Date: _____

By: _____

By: _____

Approved as to
Fiscal Provisions^b

By: _____
Finance

Date: _____

Date: _____

DRAFT

^b Approval by Finance necessary only if financial questions or issues raised in the City’s approval of agreement.