

LANDA PARK MUNICIPAL GOLF COURSE
FOOD AND BEVERAGE SERVICE LEASE AGREEMENT

This Lease is entered into by and between the City of New Braunfels (hereinafter called "City"), acting by and through its City Manager and River Hofbrau NB LLC hereinafter called "Concessionaire", for the operation of a food and beverage service to be located at Landa Park Golf Course (hereinafter called "Golf Course"): This Lease is pursuant to the following terms, conditions and covenants:

1. INDEPENDENT CONTRACTOR AGREEMENT

- 1.1 City hereby engages Concessionaire to operate a food and beverage service pursuant to the provisions contained herein. Such operations are to include, but not necessarily be limited to, the storage, preparation, cooking, refrigeration, and distribution of all types of food for breakfast, brunch, lunch, dinner, and event-type (when applicable) meals, and alcoholic beverages and non- alcoholic beverages. These items may include, but are not limited to: sandwiches, "grill" items, snacks, chips, cookies, muffins, pastries, breads, dessert items, fruit, specialty coffees, teas, cheeses, fresh juices, candies, mineral water, and complete entrees. Concessionaire shall be responsible for the maintenance and upkeep of kitchen and dining areas at the Golf Course clubhouse, as promulgated by the City through the Golf Course Manager (hereinafter called the "Manager") or Golf Course Manager's designee and on the Golf Course.
- 1.2 The Food and Beverage operation shall be provided to the general public and golfers enjoying the facilities.
- 1.3 Concessionaire shall be an independent contractor and not an employee of City. Concessionaire shall not be entitled to or receive any benefits provided by City to City's employees. Concessionaire accepts full responsibility for filing all tax returns and paying all taxes that may be required or due for Concessionaire's employees under the terms and conditions of this Lease.

2. TERMINATION PROVISIONS

2.1 In addition to causes for termination delineated in this Article and Article 3 and paragraph 14.1 hereinafter, City shall have the right to terminate this Lease under the following conditions:

2.1.1 Failure by Concessionaire, through any cause, to fulfill in a timely, proper or satisfactory manner Concessionaire's responsibilities under this Lease, or violation by Concessionaire of any of the covenants or agreements of this Lease after being notified in writing by the Golf Course Manager of such failure or violation. If deficiencies in compliance by Concessionaire are correctable, Concessionaire shall have thirty (30) days ("Deficiency Cure Period") following receipt of written notice that Concessionaire's compliance is untimely, improper or unsatisfactory to correct such compliance deficiencies. Failure to correct such deficiencies to the satisfaction of the Manager during said thirty (30) days may result in termination of this Lease upon the conclusion of said thirty (30) days. If compliance deficiencies by Concessionaire are not correctable, City shall thereupon have the right to terminate this Lease, by giving written notice to Concessionaire of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. Notwithstanding the foregoing, the City may terminate this Lease if the same or similar deficiency or deficiencies by Concessionaire occur after the 30-day Deficiency Cure Period has concluded, even if Concessionaire corrected the deficiency or deficiencies within the original Deficiency Cure Period.

2.2 Concessionaire may, at Concessionaire's discretion, terminate this Lease by giving City one hundred eighty (180) day's prior written notice of intent to terminate.

3. DEFAULTS AND REMEDIES

3.1 The following events shall be deemed to be events of default by Concessionaire under this Lease:

- 3.2 Concessionaire's failure to pay any installment or any part thereof, of monthly concession fee due City as provided for in this Lease shall result in a declaration of default. The failure by Concessionaire, through any cause, to fulfill in a timely, proper or satisfactory manner of Concessionaire's responsibilities under this Lease, or violation by Concessionaire of any of the covenants or agreements of this Lease after being notified in writing by the Manager of such failure or violation shall result in Concessionaire being declared in default. Concessionaire shall have five (5) days ("Default Cure Period") to cure any default that can be cured in the opinion of the City. If such default is not cured by Concessionaire during the Default Cure Period, City has the right to terminate this Lease instanter. Notwithstanding the foregoing, the City may terminate this Lease if the same type of event of default occurs by Concessionaire after the 5-day Default Cure Period has concluded, even if Concessionaire cured the original event of default within the original Default Cure Period.
- 3.3 Upon the occurrence of an event of default as heretofore provided, City has the right, at its option, to declare this Lease, and all rights and interests created by it, terminated. Upon City electing to so terminate, this Lease shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof; or City, its agents or attorney has the right, at its option, to resume possession of the Golf Course Clubhouse kitchen and dining areas without relieving Concessionaire of any obligation hereunder related to commission still due and owing in this Lease, or any extension thereof, as applicable.
- 3.4 Any termination of this Lease as herein provided, does not relieve Concessionaire from the payment of any sum or sums that are due and payable or become due and payable to City hereunder, or any claim for damages then or theretofore accruing against Concessionaire hereunder, or any such sum or sums or claim for damages by any remedy provided for by law, or prevent City from recovering damages from Concessionaire for any default there under. All rights, options and remedies of City contained in this Lease shall be cumulative of the other, and City shall have the right to pursue

any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Lease. No waiver by City of a breach of any of the covenants, conditions or restrictions of this Lease shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or restriction herein contained.

4. TERM OF LEASE

- 4.1 The term of this Lease shall be for two (2) years beginning September 1, 2026 through August 31, 2028, unless sooner terminated pursuant to the provisions of Articles 2 and 3. This Lease will be renewed automatically for three (3) additional one (1) year renewal terms unless notice is provided by either party no less than 120 days prior to the renewal date.

5. COMPENSATION TO THE CITY

- 5.1 Concessionaire agrees to pay to the City throughout the term of this Lease, the following percentage on Gross Sales from this food and beverage concession operations, which also include, mobile and vending revenues, and event or catering revenues, including third-party catered events, which are subject to the provisions in Section 20

8% of gross sales or \$32,000, whichever is greater; payable monthly

- 5.1.1 "Gross Sales" is defined as (1) the aggregate amount each calendar month of all Clubhouse food and beverage service sales, (2) the aggregate amount each calendar month of all vending services of food and beverage, and (3) the aggregate amount each calendar month of all mobile services of food and beverage, all other items made and/or sold at the contracted Premises. The aggregate "Gross Sales" excludes actual sales tax paid. Concession food and beverage services include, but are not limited to, items prepared on and off the Premises, including delivery, "food-to-go" orders, and sales which are catered events, including catering fees and delivery fees not at the Clubhouse or adjacent Golf Course ("off-premises") that

Concessionaire provides in whole or part through the Contracted Premises, including by telephone, fax or other means of electronic transmission, and catered or delivered there from, before, during, and after Concession operation hours, for cash, credit, or otherwise, of every kind, name or nature regardless of when or whether paid or not, together with the aggregate amount of all exchanges of goods, wares, merchandise or services for like property or services, at the selling price thereof, as if the same had been sold for cash or the fair and reasonable value thereof, whichever is greater.

- 5.2 Percentage to City for catered events shall not be less than the percentage of Concessionaire- provided food and beverage service revenues per paragraph 5.4
- 5.3 Concessionaire shall make a forecasted payment to City no later than the tenth (10th) day of each month for the preceding business month. Said payments shall be submitted to:

City of New Braunfels Finance Division

550 Landa Street New Braunfels, Texas 78130

- 5.4 Accompanying aforesaid monthly payments to the City shall be a Gross Sales Report, prepared by Concessionaire, in form and content acceptable to City as herein prescribed. The purpose of said monthly Gross Sales Report is to provide the basis for computation of Concessionaire's monthly payments to the City. In addition to retail sales figures from food and beverage (both alcoholic and non-alcoholic) concession operations, said monthly Gross Receipts Report shall include Concessionaire's revenue from mobile and vending concessions, and revenues from special and catered events, including those catered by third parties.

6. FOOD AND BEVERAGE CONCESSION OPERATION

- 6.1 The food and beverage concession conducted by Concessionaire shall be done so within the framework of those rules and regulations delineated in this Article. City, through the Golf Course Manager, shall notify Concessionaire in writing of any non-compliance of operational issues

therewith. Concessionaire shall correct any such non-compliance within five (5) calendar days following receipt of such written notice.

6.1.1 Concessionaire agrees to maintain operating hours that coincide with the golf facilities' hours of operation.

6.2 To ensure accountability, Concessionaire shall install, at Concessionaire's sole cost and expense, and utilize a "point of sale (POS)" system to handle all food and beverage transactions at each location. Such system shall correctly and accurately measure, account for and document all Gross Revenues each year, and be capable of generating monthly, quarterly and annual financial reports of all Gross Sales, less sales tax, generated each year. Every effort shall be made to capture revenues from catered and special events, vending sales and mobile concession receipts within the POS accounting system. Concessionaire shall maintain such records for at least five (5) years following the end of the calendar year in which they are generated.

6.2.1 Any alternate accounting system used to record the foregoing sales must be approved in advance by the City.

6.3 Concessionaire will be responsible for the cleanliness of all food preparation and serving areas, as well as the tabletops and floor spaces in the eating areas, i.e. tables and chairs in the bar and grill, dining room and outside patio. Concessionaire shall maintain the Premises in a clean and sanitary condition at all times, which condition must conform to Concession minimum standards mandated by the City of New Braunfels.

6.4 City is responsible for the cleanliness of the eating areas, including walls, windows, light fixtures and the common area restroom facilities. Excluded are the tabletops, floor spaces and any accompanying condiment containers in bar and grill, dining room, and outside patio area. These areas shall be cleaned and straightened throughout the day by Concessionaire.

- 6.5 The Concessionaire is responsible for the upkeep, repairs, and annual service of the City owned kitchen equipment until the equipment is beyond repair or has outlived normal usage (75% of replacement value, cumulative). At that time, the City will replace the equipment.
- 6.6 The Concessionaire shall also supply and maintain, at its own expense, any extra and incidental kitchen and dining room appliances, equipment and/or paraphernalia necessary to ensure that the food and beverages served are acceptable for both the food service operation and a particular catered event, including, but not necessarily limited to, chairs, tables, and individual linen. All equipment that is provided solely by Concessionaire shall remain the property of the Concessionaire and may be removed by the same at termination of the Concession Agreement with the City, subject to the terms of said Agreement.
- 6.6.1 Concessionaire may remove an item or items of equipment, not the property of the City, at Concessionaire's discretion, prior to the termination of the Concession Agreement, so long as the removed item does not hinder efficient and continuous food and beverage operations.
- 6.6.2 Catered events ("Special Events) scheduled by Concessionaire must be submitted to Manager for written approval at least five (5) days before the function.
- 6.6.3 Equipment for mobile vending (golf cart-type) of food and beverage concessions is required for the golf course, as is the implementation and operation of same by concessionaire.
- 6.7 City will provide ice machine.

- 6.8 Concessionaire must meet all state and local alcoholic drink licensing requirements to include having a mixed beverage license. The City shall approve all state permit applications, such as those for "Beer and Wine," or "By the Drink."
- 6.8.1 Copies of all current Texas Alcoholic Beverage Commission (TABC) permits must be provided to Manager.
- 6.8.2 Concessionaire will require the applicable employees to take the TABC-approved "seller/server" certification course.
- 6.9 All items sold and distributed by the Concessionaire shall be of First Class (Grade "A") quality, and all services provided by the Concessionaire shall be rendered courteously, efficiently and in a business-like and accommodating manner.
- 6.9.1 The City reserves the right to prohibit the sale of any item that it deems objectionable and shall have the right to order the improvement of the quality of the merchandise or the services rendered.
- 6.9.2 The Manager reserves the right to make reasonable objections to the food or drinks served or other items sold or otherwise used or distributed the service in the operation, the number of staff available for service, and the character of the appearance, cleanliness and condition of the Premises.
- 6.10 After the Lease is awarded and initial pricing established, all items sold, and their pricing, for subsequent Lease years, as described above will be subject to annual review and approval by the Golf Course Manager.

6.10.1 Concessionaire shall observe an industry wide pricing structure as it relates to the prices of beer and soft drinks.

6.10.2 Concessionaire may run specials and promotions consistent with good business practices.

6.10.3 The Manager must approve all price increases in writing in advance.

6.10.4 Concessionaire shall prominently post current food and beverage menu(s) and prices.

6.11 Concessionaire shall comply with all building, plumbing, electrical and other applicable codes and regulations in the installation and operation of Concessionaire's food and beverage related equipment.

6.12 Food and beverage concession area shall not be used to store any supplies, materials or equipment not used in the food and beverage operation.

6.13 Concessionaire must provide a sufficient number of qualified employees to insure prompt customer service. All food and beverage concession employees shall comply with and be subject to applicable health codes, rules and regulations. Appropriate dress code is required as outlined in Section 16.2.

6.14 Concessionaire must comply with all federal and state laws and City ordinances and codes applicable to the food and beverage concession including payment of all federal, state and local taxes, fees, licenses and permits.

6.15 Concessionaire shall supply a beverage cart.

- 6.16 Concessionaire has the option to provide food service to the City Pool.
- 6.17 Concessionaire is responsible for controlling and/or policing of unauthorized food and alcoholic beverages brought onto the golf course by golfers and their guests.
- 6.18 Concessionaire shall develop and present a marketing plan to the City outlining a plan to increase business and maximize profits.
- 6.19 Concessionaire shall provide credit card service for transactions
- 6.20 Concessionaire shall be the exclusive provider of Food and Beverage Service at the golf course. However, under no circumstances is the Concessionaire to use City property for any food prep or other operation not servicing City facilities.

7. IMPROVEMENTS BY CONCESSIONAIRE

- 7.1 Concessionaire shall make no physical construction, improvements or alterations to the Golf Course Clubhouse kitchen and dining areas without prior review and written approval of plans therefore by the Parks and Recreation Director. All costs and expenses of such approved physical construction, improvements or alterations to the Golf Course initiated by Concessionaire shall be at Concessionaire's sole cost and expense.
- 7.2 All permanent improvements and/or alterations made by Concessionaire become the property of City upon completion thereof.

- 7.3 Concessionaire covenants that he shall not bind, or attempt to bind, City for the payment of any money in connection with the construction, repair, alteration, addition, or reconstruction in, on or about the Clubhouse kitchen and dining areas.
- 7.4 Concessionaire has had full opportunity to examine the Clubhouse facilities and acknowledges that there is in and about it nothing dangerous to life, limb or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. Concessionaire's use of the Clubhouse kitchen and dining areas for the purposes authorized herein shall be conclusive evidence of Concessionaire's acceptance thereof in good order and satisfactory condition, and Concessionaire hereby accepts the kitchen and dining areas in their present condition as suitable for the purposes for which this Lease prescribes.
- 7.5 Concessionaire agrees that no representations respecting the conditions of the Golf Course's Clubhouse kitchen and dining areas and no promises to construct, reconstruct, alter, repair or improve same, either before or after the execution hereof, have been made by City or its agents to Concessionaire unless the same are contained herein or made a part hereof by specific reference herein. City expressly denies making any warranty as to the suitability of the Licensed Premises for any purpose. Concessionaire acknowledges that City has made no representations regarding the suitability of the premises for Concessionaire's purposes.

8. UTILITY AND MAINTENANCE RESPONSIBILITIES

- 8.1 The Concessionaire shall pay a pro-rata share of utilities provided by City to the clubhouse kitchens in the amount of \$500 per month. Concessionaire shall provide for and pay directly to the utility company's services fees for telephone lines and connections, and any other supplemental utility services Concessionaire requires in or on the Contracted Premises. City shall not be liable to Concessionaire in damages or otherwise if said services are

interrupted or terminated because of necessary repairs, installations, improvements or any cause beyond the control of the City.

8.1.1 Concessionaire shall provide and pay for all necessary safety inspections and maintenance of vent hoods, grills, grease traps and fire-suppression systems.

8.2 The Concessionaire shall be responsible for the prompt removal of waste, trash and garbage from the Premises and will keep Premises clean and washed at all times. In addition, Concessionaire will arrange for all grease traps to be cleaned and maintained on a regular schedule per NBU code.

8.3 Concessionaire agrees, at Concessionaire's sole cost and expense, to maintain and keep the interior of the Contracted Premises, including, but not limited to, interior plumbing, plumbing fixtures, plumbing lines and plumbing connections and interior electrical fixtures, lamps, bulbs, wiring and connections, and interior walls, flooring, doors, plate glass and other interior improvement, as well as, all appliances, tables and chairs, in good working order and repair and in a good, clean, safe and sanitary condition (usual wear, tear, acts of God, or unavoidable accident, only excepted).

8.4 The City, the Manager or City Manager's designee shall have access to the Concession Premises during its regular business hours of operation for the purpose of inspecting the conditions of the facility and for making repairs, when applicable and necessary.

9. INDEMNIFICATION

9.1 CONCESSIONAIRE covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses,

fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONCESSIONAIRE'S activities under this LEASE, including any acts or omissions of CONCESSIONAIRE, any agent, officer, director, representative, employee, consultant or subcontractor of CONCESSIONAIRE, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this LEASE, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONCESSIONAIRE shall promptly advise the CITY in writing of any claim or demand against the CITY or CONCESSIONAIRE known to CONCESSIONAIRE related to or arising out of CONCESSIONAIRE'S activities under this LEASE and shall see to the investigation and defense of such claim or demand at CONCESSIONAIRE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONCESSIONAIRE of any of its obligations under this paragraph.

- 9.2 It is the EXPRESS INTENT of the parties to this LEASE, that the INDEMNITY provided for in this section (Section 10), is an INDEMNITY extended by CONCESSIONAIRE to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage.
- 9.3 CONCESSIONAIRE further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

10. INSURANCE REQUIREMENTS

- 10.1 Any and all employees, representatives, agents or volunteers of Concessionaire while engaged in the performance of any work required by the City or any work related to a lease of space or Concession Agreement with the City shall be considered employees, representatives, agents or volunteers of Concessionaire only and not of the City. Any and all claims that may result from any obligation for which Concessionaire may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of Concessionaire.
- 10.2 Prior to the commencement of any work under this Agreement, Concessionaire shall furnish an original completed Certificate(s) of Insurance to the Golf Course Manager and City Secretary's Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to the City's Golf Course Manager and the City and no officer or employee shall have authority to waive this requirement.
- 10.3 The City reserves the right to review the insurance requirements of this section during the effective period of the Lease Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the City, based upon changes in statutory law, court decisions, or circumstances surrounding the Lease Agreement, but in no instance will the City allow modification whereupon the City may incur increased risk.

- 10.4 A Concessionaire's financial integrity is of interest to City, therefore, subject to Concessionaire's right to maintain reasonable deductibles in such amounts as are approved by City, Concessionaire shall obtain and maintain in full force and effect for the duration of the Lease Agreement, and any extension hereof, at Concessionaire's sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A-or better by AM. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

Insurance Type	Amount Required
Workers' Compensation and Employers Liability	Statutory \$500,000/\$500,000/\$500,000
Commercial General (Public) Liability Insurance to include the following	\$1,000,000 per occurrence; \$2,000,000 aggregate
Injury and Property Damage	
Premises/Operations	
Independent Contractors	
Broad Form Contractual Liability	
Products/completed operations	
Broad form property damage, to include fire legal liability	
Personal Injury	
Explosion, Collapse, Underground	
Comprehensive Automobile Liability	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 (or equivalent)
Owned/Leased Vehicles	
Non-Owned Vehicles	
Hired Vehicles	
Motor Truck cargo insurance including loading and unloading coverage: written on an inland marine form and an all-risk basis	\$1,000,000
Property Insurance: For physical damage to Concessionaire	Coverage for a minimum of 80% of the replacement cost of the premises
Liquor Liability	\$1,000,000 per occurrence
Liquor Host Liability	\$1,000,000 per occurrence

- 10.5 The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by the City, the Concessionaire shall exercise reasonable efforts to accomplish such changes in policy coverages and shall pay the cost thereof.
- 10.6 Concessionaire agrees that with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.
- 10.7 Name the City and its officers, employees, volunteers and elected representatives as additional insured's as respects operations and activities of, or on behalf of, the named insured performed under Lease with the City, with the exception of the workers' compensation and professional liability policies:
- 10.7.1 Provide for an endorsement that the "other insurance" clause shall not apply to the City of New Braunfels where the City is an additional insured shown on the policy.
- 10.7.2 Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the City.
- 10.8 Concessionaire shall notify the City in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) day notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

City of New Braunfels Landa Park Golf Course

Attn: Course Manager

180 Golf Course Rd.

New Braunfels, Texas 78130

City of New Braunfels Finance Division

550 Landa Street

New Braunfels, Texas 78130

- 10.9 If Concessionaire fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Lease Agreement. Procuring of said insurance by the City, however, is not the exclusive remedy for failure of Concessionaire to maintain said insurance or secure said endorsements. In addition to any other remedies the City may have upon Concessionaire's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Concessionaire to stop work hereunder, and/or withhold any payments(s) which become due to Concessionaire hereunder until Concessionaire demonstrates compliance with the requirements hereof.
- 10.10 Nothing herein contained shall be construed as limiting in any way the extent to which Concessionaire may be held responsible for payments of damages to persons or property resulting from Concessionaire's or its subcontractors' performance of the work covered under this Lease Agreement.
- 10.11 All personal property placed in the Leased Premises shall be at the sole risk of Concessionaire. City shall not be liable, and Concessionaire waives all

claims for any damage either to the person or property of Concessionaire or to other persons due to the Leased Premises or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the Leased Premises, or any other persons; due to the happening of any accident in or about said Leased Premises. Concessionaire shall save and hold harmless City from any claims arising out of damage to Concessionaire's property or damage to Concessionaire's business, including subrogation claims by Concessionaire's insurers.

11. LEASE AGREEMENT OVERSIGHT

- 11.1 The Golf Course Manager, or Golf Course Manager's designee, shall be City's principal agent for monitoring Concessionaire's compliance with this Lease Agreement.

12. HOLD HARMLESS AND NO LIABILITY FOR LOSSES INCURRED BY CONCESSIONAIRE

- 12.1 Concessionaire specifically understands and agrees that City accepts no liability for any loss by Concessionaire of funds/revenues, merchandise, equipment, supplies, materials or other goods owned by Concessionaire whether due to theft, robbery, break-in, vandalism, acts of God or any other causes.
- 12.2 Concessionaire agrees to hold City harmless for any theft, damages or destruction of signs, goods and/or other property of Concessionaire so left on the Contracted Premises after Concessionaire vacates the Golf Course's Clubhouse kitchen and dining areas. If said signs, goods and any other property placed by Concessionaire upon the Contracted Premises are not removed by Concessionaire within thirty (30) days after the Contracted

Premises are vacated, then the City may remove same without further notice or liability therefor.

- 12.3 Upon any such expiration or termination of this Lease, Concessionaire shall quit and peacefully relinquish control of the Food and Beverage Concession to City, and City, upon or at any time after such expiration or termination, may, without further notice, enter upon and re-enter the Clubhouse and possess itself thereof, by force, summary proceedings, ejectment or otherwise, and may remove Concessionaire and all other persons and property, including all signs, furniture, trade fixtures, and other personal property which may be disputed as to its status as fixtures, from the Clubhouse kitchen and dining areas.

13. RECORDS, REPORTS AND AUDIT RIGHTS

- 13.1 Concessionaire shall maintain, in the City of New Braunfels, Texas, books and records reflecting Concessionaire's operations hereunder in accordance with generally accepted accounting principles. Such books and records, together with any other documentation necessary for verification of Concessionaire's compliance with the terms of this Lease, shall be made available to Manager or any authorized representative, upon request. The City Finance Division shall have the right to conduct an audit, examine and make excerpts or transcripts from said books, records and documentation to verify the amount of Gross Revenues reported and Compensation paid to City each year.
- 13.2 Concessionaire shall furnish an annual financial statement, prepared by a certified public accountant, showing all Gross Sales for the applicable year, within ninety (90) days after the end of Concessionaire's fiscal year. Any accounting system utilized by Concessionaire shall adhere at all times to generally accepted accounting practices.

13.3 All applicable records and accounts of Concessionaire, together with all supporting documentation, shall be preserved in Comal County, Texas, by Concessionaire for five (5) years after the final payment under this Lease or until all audits, if any, are complete and findings on all claims have been finally resolved, whichever is the greater period of time. City, if it elects, has the right to require that any or all of such records and accounts be submitted for audit to City or to a certified public accountant to be selected by City. If it shall be determined, as a result of such audit, that there has been a deficiency in the payments due to City hereunder, then such deficiency shall become immediately due and payable with interest at the maximum legal rate under applicable law from the date when said payments should have been made. In addition, if payments have been understated by more than two percent (2%) and City is entitled to an increase in payments due hereunder as a result of such understatement, then Concessionaire shall pay the cost of such audit by City or City's designated auditor. In the event Concessionaire shall be delinquent in furnishing to City any monthly statement or other statements required hereunder and shall not furnish said statements to City within two (2) days following the request for same, then Concessionaire shall be automatically in default of this Lease and shall constitute grounds for termination of this Lease by City.

14. TAXES AND LICENSES

14.1 Concessionaire shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State, and local taxes and fees and applicable employment taxes which are now or may hereafter be levied upon Concessionaire, or upon the business conducted on the Golf Course by Concessionaire, or upon any of Concessionaire's property used in connection therewith; and shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by Concessionaire. Failure to comply with the foregoing provisions shall constitute grounds for termination of this Lease by City.

15. ASSIGNMENT AND SUBLETTING

- 15.1 Concessionaire shall not assign this Lease or any portion hereof or allow same to be assigned by operation of law or otherwise or sublet the Lease or any part thereof. Any assignment or subletting by Concessionaire shall constitute grounds for termination of this Lease by City.
- 15.2 Without the prior written consent of Concessionaire, City shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this Lease and in the Golf Course Clubhouse referred to herein; and to the extent that such assignee assumes City's obligations hereunder, City shall, by virtue of such assignment, be released from such obligation.

16. CONCESSIONAIRE'S EMPLOYEES

- 16.1 Concessionaire shall provide and train, at Concessionaire's sole cost and expense, a sufficient number of employees to comply with Concessionaire's contractual obligations hereunder. Such employees of Concessionaire shall in no way be construed as City employees nor shall they be entitled to any compensation or benefits from or by the City.
- 16.2 Concessionaire shall develop and enforce a policy of employee standards for on-the-job conduct, appearance and demeanor.
- 16.2.1 The Concessionaire staff shall be dressed in polo shirts (which shall be furnished by Concessionaire at its sole cost and expense) and appropriate length bottoms (shorts, skort, skirts) consistent with the City of New Braunfels, Parks Department dress code. Jeans and Cut-Offs are strictly prohibited. Employees must be properly attired in dress that is clean and neat at all times.

17. NON-DISCRIMINATION

- 17.1 Discrimination based on race, color, sex, age, religion, disability, political affiliation, belief, or national origin, directly or indirectly, in employment practices or in the use of or admission to the Golf Course Clubhouse Food and Beverage Service is prohibited.

18. MINIMUM WAGE

18.1 Concessionaire shall not, except as may otherwise be permitted by applicable laws and regulations, pay less than the minimum wage required by Federal and State statutes to persons employed in Concessionaire's operations hereunder.

19. CONFLICT OF INTEREST

19.1 Concessionaire acknowledges that he is informed that Texas law prohibits contracts between the Concessionaire and any local public official, such as a City officer or employee, and that the prohibition extends to an officer or employee of City agencies, such as City-owned utilities and certain City boards and commissions, and to contracts involving a business entity in which the official has a substantial interest, as defined by Texas law, if it is reasonably foreseeable that an action on the matter would confer an economic benefit on the business entity. Concessionaire certifies (and this Lease is made in reliance thereon) that neither he, nor Concessionaire's employees or agents, nor any person having a substantial interest in this Lease is an officer or an employee of the City or any of its agencies.

20. SPECIAL EVENT RESERVATIONS

20.1 City reserves the right to approve or disapprove of any food and beverage service Special Event scheduled by Concessionaire; any function that requires a third-party vendor must receive written approval from the Golf Course Manager at least five (5) days prior to the event.

21. SEVERABILITY

21.1 If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease, then and in that event it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable there be added as a part of this Lease a legal,

valid and enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

22. NOTICES

22.1 Notices to City required or appropriate under this Lease shall be deemed sufficient if in writing and mailed, first class, U.S. Mail, postage pre-paid, addressed to the City Manager of the City of New Braunfels, or the City Manager's designee, at 550 Landa Street, New Braunfels, Texas 78130, or to such other address as may have been designated from time to time in writing by the City of New Braunfels. Notices to Concessionaire shall be deemed sufficient if in writing and mailed, first class, U.S. Mail, postage pre-paid, addressed to Concessionaire at the address currently on file with the Manager or at such other address on file with the City as Concessionaire may provide from time-to-time in writing to City.

23. PARTIES BOUND

23.1 The covenants and agreements herein contained shall inure to the benefits of and be binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns, and if there shall be more than one party designated as Concessionaire in this Lease, they shall each be bound jointly and severally hereunder.

24. TEXAS LAW TO APPLY

24.1 THIS LEASE SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN COMAL COUNTY, TEXAS.

25. GENDER

25.1 Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

26. CAPTIONS

26.1 The captions contained in this Lease are for convenience of reference only and in no way limit or enlarge the terms and conditions of this Lease.

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SIGNATURE PAGE

City of New Braunfels

By: _____

Print Name: Robert Camareno

Title: City Manager

Date: _____

550 Landa Street

New Braunfels, TX 78130

River Hofbrau NB LLC

By: _____

Print Name: _____

Title: _____

Date: _____

14711 Cadillac Drive

San Antonio, TX 78248