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Superior Court of California
County of Santa Barbara
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SANTA BARBARA**

10
11 FLIGHTLINE RESTAURANT, LLC, a
California limited liability company;
12 HIGH SIERRA GRILL SANTA BARBARA,
INC., a California corporation;
13 MANUEL PERALES, an individual;
MARIO MEDINA, an individual; and
14 PAUL YBARRA, an individual,

15 Plaintiffs,

16 vs.

17 CITY OF SANTA BARBARA, a municipal
corporation;
18 and DOES 1 through 20, inclusive,

19 Defendants.

Case No.: 19CV06555

COMPLAINT FOR:

1. Breach of Written Lease
2. Breach of the Covenant of Good Faith and Fair Dealing
3. Interference with Contract
4. Intentional Interference with Prospective Economic Advantage
5. Interference with Contract
6. Intentional Interference with Prospective Economic Advantage
7. Breach of Written Lease
8. Breach of the Covenant of Good Faith and Fair Dealing
9. Rescission
10. Exoneration of Guaranty

DEMAND FOR JURY TRIAL

1 Plaintiffs allege as follows:

2 **INTRODUCTION**

3 1. All allegations made in this complaint are based upon information and belief, except
4 those allegations which pertain to the named plaintiffs, which are based on personal knowledge. The
5 allegations of this complaint stated on information and belief are likely to have evidentiary support
6 after a reasonable opportunity for further investigation or discovery.

7 2. California law provides that a lessee is entitled to assign its lease. It further provides
8 that assignment is a benefit to the lessor. California Civil Code, section 1995.260, expressly
9 provides that a landlord’s consent to assignment “may not be unreasonably withheld.”

10 3. In this case, plaintiff and lessee High Sierra Restaurant Santa Barbara, Inc. (“HSG”),
11 sought to assign its long-term lease to plaintiff Flightline Restaurant, LLC (“Flightline”). Flightline
12 was a manifestly reasonable assignee for the lease. It had a new vision for the restaurant and bar
13 premises; it had a business plan to turn the venture around, and its principal had initiated that
14 turnaround as manager for HSG; and it had obtained adequate financial resources to support the
15 premises and the new business plan. The problem? The landlord was the City of Santa Barbara (the
16 “City”), and the premises were on the Santa Barbara Municipal Airport property.

17 4. By the time HSG asked to assign its lease, the City was considering how it might
18 reorganize the Airport facilities, and the HSG restaurant was simply in the way of the City’s future
19 plans. The City therefore responded to HSG’s reasonable requests for approval to assign the lease
20 with delay, pretextual reasons, and improper demands for lease modifications.

21 5. As set forth below, throughout this time period, the City was aware that HSG was
22 struggling financially, and was holding on only so that the assignment could be accomplished.
23 Finally, however, HSG could not sustain operations and informed the City that it had to close the
24 restaurant. Upon receipt of that information, the City promptly notified HSG that it denied the
25 reasonable, and still pending, request for approval of the assignment.

26 6. During the unreasonably delayed process for assignment approval, Flightline also was
27 strung along by the City. Flightline’s principal had been brought on to manage the restaurant. He
28 had conceived the new vision, placed substantial Flightline resources into the restaurant’s

1 renovation, and worked to obtain sufficient investment and financing to support the lease
2 assignment, all in reliance on the City’s continued encouragement. The City was well aware of the
3 work Flightline’s manager had done, of the time and money Flightline had put into the restaurant, of
4 the agreement between HSG and Flightline for purchase of assets, and of Flightline’s financing
5 agreements with third parties, all designed to enable the success of the restaurant once the
6 assignment was formalized. The City nonetheless continued on its unreasonable track of delay and
7 pretext, all designed to torpedo the potential assignment and take over the premises.

8 7. As a result of the City’s conduct, HSG has incurred damages, including but not
9 limited to the loss of the value of the long-term lease, and other damages, all estimated to exceed \$1
10 million. Flightline, for its part, has incurred damages in the form of lost profits which it would have
11 received over the course of the long-term lease, and other damages, all estimated to exceed \$5
12 million. Additionally, HSG is entitled to exoneration of all rent liabilities, and HSG’s principals,
13 who guaranteed the Lease, are entitled to rescission and exoneration of their guaranties.

14 **JURISDICTION AND VENUE**

15 8. This Court has jurisdiction over this action pursuant to California *Code of Civil*
16 *Procedure* section 410.10. Venue is proper in this Court because the City is located in this County,
17 and the contracts at issue were entered into and performed, or to be performed, in Santa Barbara
18 County.

19 **PARTIES**

20 9. Plaintiff HSG is a California corporation, with principal place of business in Goleta,
21 Santa Barbara County, California. Its principals are plaintiffs Manuel Perales, Mario Medina and
22 Paul Ybarra, each of whom executed a guaranty for the HSG Lease. Plaintiff Perales resides in
23 Fresno County; Mr. Ybarra resides in Calaveras County; and Mr. Medina resides in Santa Barbara
24 County.

25 10. Plaintiff Flightline is a California limited liability corporation, with principal place of
26 business in the City of Santa Barbara, Santa Barbara County, California. Its manager is Mr. Warren
27 Butler.

28 11. The City of Santa Barbara (“City”) is a municipal corporation formed under the laws

1 of the State of California, located in Santa Barbara County. The City is the owner of that certain real
2 property commonly known as the Santa Barbara Municipal Airport (“Airport”). The City’s Airport
3 Commission (the “Commission”) is established pursuant to Santa Barbara Municipal Code, Title 18,
4 section 18.44.010 *et seq.*, and pursuant to the City Charter, Article VIII, Section 812, to advise the
5 City regarding administration and operations of the Airport, and to authorize certain matters which
6 do not require City approval. The City’s Airport Director administers the City’s responsibilities
7 related to the Airport, and will make recommendations to the Commission on Lease proposals for
8 terms of more than five (5) years.

9 12. The true names and capacities, whether individual, corporate, associate or otherwise,
10 of the defendants named herein under the fictitious names of DOES 1 through 20, inclusive, are
11 unknown to plaintiffs, who therefore sue said defendants by such fictitious names. Plaintiffs will ask
12 leave of Court to amend this complaint and insert the true names and capacities of said defendants
13 when the same have been ascertained. Plaintiffs are informed and believe, and based thereon allege,
14 that each of the defendants designated herein as a "DOE" is legally responsible in some manner for
15 the events and happenings herein alleged, and that plaintiffs' damages as alleged herein were
16 proximately caused by such defendants.

17 13. At all times material herein, each defendant was the agent, servant and employee of
18 each of the remaining defendants, and acting within the purpose, scope and course of said agency,
19 service and employment, with the express and/or implied knowledge, permission and consent of the
20 remaining defendants, and each of them, and each of said defendants ratified and approved the acts
21 of the other defendants.

22 **GENERAL ALLEGATIONS**

23 14. HSG’s principals, Manuel Perales, Mario Medina and Paul Ybarra (collectively, the
24 “Owners”) are longtime restauranteurs and friends who have had a high level of success in the
25 restaurant business. They met in approximately 1995, when they all worked together in the Santa
26 Barbara Carrows Restaurants.

27 15. At that time, Mr. Medina was also the owner and operator of Mulligans Café & Bar at
28 the City’s Municipal Golf Course. The three Owners joined together as business partners in

1 approximately 2005. By the end of 2014, the Owners had opened six restaurants together, including
2 four Yosemite Falls Cafes and the first High Sierra Grill, all in Fresno, California, where Mr. Perales
3 resided. Mr. Ybarra, who grew up in Santa Barbara, also had opened Paul's Place in Merced, where
4 he resided at the time.

5 16. In approximately August 2013, after 30 years, the Elephant Bar Restaurant closed its
6 doors. The Elephant Bar had been created by David Nancarrow, who also built the Carrows chain.
7 It was located at 521 Firestone Road, on the Airport property. The Owners, all of whom had Santa
8 Barbara ties, including having met at the Santa Barbara Carrows, became intrigued with the
9 possibility of revitalizing the Elephant Bar Restaurant property.

10 17. Beginning in approximately August, 2014, the Owners formed HSG and began
11 negotiations for the lease opportunity. They negotiated with the City's broker, as well as with Hazel
12 Johns, the City's Airport Director. In January, 2015, the Airport Commission approved the proposed
13 Santa Barbara Municipal Airport Access License and Lease Agreement with High Sierra Grill Santa
14 Barbara, Inc., Lease No. 25,105 (the "Lease"), after vetting the Owners' financial resources,
15 performing site visits to the Owners' other restaurant properties, and conducting other due diligence.
16 The City subsequently approved the Lease and adopted an Ordinance so stating on February 24,
17 2015. The Lease and the Guaranties were signed on or about March 26, 2015. As referred to
18 hereinafter, the principals are the "Owners" in their capacity as owners of HSG, and the
19 "Guarantors" in their capacity as signatories of the Guaranties.

20 18. The Lease has a ten-year term, with options to renew for three (3) additional five-year
21 terms. A true copy of the document which plaintiffs believe constitutes the Lease, including the
22 Guaranties as exhibits, is attached hereto as **Exhibit A**. The Lease expressly provides that it cannot
23 be assigned "without the prior written consent of the City." Lease § 23.A. Plaintiffs are informed
24 and believe that, as a matter of law, a landlord may not unreasonably withhold consent to
25 assignment. See, e.g., Cal. Civil Code sections 1995.250, 1995.260.

26 19. After renovations were completed by the City, the Lease was effective on November
27 1, 2015. Restaurant sales were promising initially. However, by late 2016, sales had declined. HSG
28 had begun its operations with a "High Sierra" concept. This motif had worked well for the Owners

1 in their other respective restaurants. However, this restaurant was associated with the Airport, not
2 the mountains. The community ultimately did not support the “High Sierra” concept for an airport
3 restaurant. Moreover, the Owners were managing the premises largely on a rotating basis, as
4 absentee owners, lacking substantive community connections.

5 20. In approximately late 2016 or early 2017, HSG brought in Mr. Warren Butler as
6 restaurant manager, with the intent that he would bring in financing and ultimately take over the
7 Lease. This change was strongly supported by the City. Mr. Butler has strong local connections and
8 a long background in restaurant operations. He also had the creative vision necessary to re-brand the
9 restaurant, consistent with both Santa Barbara and Airport history, in order to generate community
10 loyalty. He provided the restaurant with the stable management it had lacked.

11 21. In addition, he conceptualized a re-branding of the restaurant, changing the
12 restaurant’s name to “Flightline,” in a nod to an airfield restaurant from the past. Consistent with
13 that vision, he started changing the restaurant décor, filling it with airplane memorabilia.

14 22. Mr. Butler created Flightline Restaurant, LLC (“Flightline”) in approximately late
15 2017. In recognition of the restaurant’s now-stable management and desire to re-brand, the City
16 approved HSG’s request for short-term rent relief in early 2018. The City also acknowledged that it
17 knew HSG wanted to assign the Lease to Mr. Butler, and provided HSG and Flightline its list of
18 required information for the request.

19 23. In approximately January, 2019, Flightline and HSG entered into an Asset Purchase
20 Agreement (“APA”), under which Flightline would purchase the assets of HSG, once the assignment
21 was formalized. The City was aware of the APA, as it had received drafts of this document
22 previously, and had continually provided positive input to HSG and Mr. Butler on the plan for
23 assignment.

24 24. In 2017 and 2018, Mr. Butler also had worked to obtain financing. HSG and Mr.
25 Butler kept the City informed, and repeatedly made it clear to Airport management that the HSG
26 plan was to assign the Lease to Mr. Butler and Flightline. By approximately late December, 2018,
27 Mr. Butler also had obtained financing via a guaranteed loan of \$510,000 from third-party ACI Jet
28 (the “Convertible Note Purchase Agreement”). Those funds were escrowed, and specifically

1 allocated toward restaurant purposes, including, inter alia, renovation and signage, payment for the
2 assets, and ongoing cash flow needs. Airport management was provided with the APA and proof of
3 funds by hand delivery. However, the Airport Director was slated to retire, and things were put on
4 hold awaiting the new director, Mr. Thompson. Mr. Thompson was installed as director on or about
5 February 1, 2019.

6 **The City Generates Additional Delay and Creates Pretextual Reasons**
7 **to Deny the Request for Assignment**

8 25. On or about February 12, 2019, HSG and Flightline submitted all additional materials
9 for their requested formal proposal for assignment of the Lease, including the pro forma and other
10 materials to complete the package the City required.

11 26. In March 2019, the City's Airport management responded with notices of default and
12 a denial of the Lease assignment request, based on alleged defaults related to HSG's holding comedy
13 and Latin nights, and the HSG/Flightline initial request for a continuation of the rent reduction.
14 HSG and Flightline responded with a denial that any default existed for individual night events and
15 their agreement to withdraw the request for continuation of the rent reduction.

16 27. In approximately April 2019, Mr. Thompson offered to extend the rent reduction to
17 HSG, but not to Flightline, which HSG rejected. In May 2019, three months after the formal
18 package had been submitted, Mr. Thompson requested further materials from Flightline that
19 allegedly were still lacking in order to evaluate the Flightline assignment request. HSG and
20 Flightline submitted the requested additional materials by May 31, 2019. In approximately mid-June
21 2019, the City then asked for additional clarification, and an in-person meeting, and HSG and
22 Flightline again complied, and again sent an updated comprehensive package.

23 28. On July 22, 2019, Mr. Thompson demanded several onerous amendments to the
24 Lease before it would recommend approval of the assignment. These amendments included the
25 elimination of the options to extend; additional use restrictions and added security personnel; the
26 requirement that the City would receive a percentage of sales of all special event functions; and the
27 requirement for additional signage. HSG and Flightline responded within two (2) days with a
28 concession to reduce one option period, no more; and a rejection of the City's unreasonable other

1 demands for Lease amendments.

2 29. On July 29, 2019, Mr. Thompson changed his demands once again. He stated he was
3 interested in proceeding with the assignment to Flightline if Flightline and HSG would agree to:
4 condition the two options on specific performance goals, without reference to potential unforeseen
5 events such as fires, etc.; provide enhanced security for dances and special events, including security
6 personnel with firearms; consent to a disclosure that the leased premises were not part of any future
7 fixed base operator (“FBO”) and the Lease would not provide any rights, advantages, or licenses to
8 any future FBO; and that the Lessee come current on the rent.

9 30. On or about July 31, 2019, HSG and Flightline sent Mr. Thompson a revised Lease in
10 which they essentially agreed to the City’s demands. In short, they agreed to disclose the new FBO
11 term, which in fact had been clear to ACI Jet since late December, 2018; agreed to come current on
12 rent; voiced concern about the City’s demand for security with firearms at the Airport, and proposed
13 a revised Use clause requiring personnel with appropriate approval by the police department; and
14 objected only to the proposed new amendment of the performance clause of the Lease, which did not
15 consider potential natural or unforeseen events. Flightline and HSG then awaited the formal
16 agreement from the Airport Director to recommend the Lease assignment.

17 31. The Owners were losing substantial sums during the exceedingly long and
18 unreasonable Lease assignment process. In fact, the Owners had been willing to put their funds into
19 the business in order so that they could assign the Lease to Flightline. Flightline, for its part: had a
20 principal with substantial restaurant operating experience and community support; had specific
21 operational knowledge of the restaurant and its problems; had put tens of thousands of dollars into
22 the premises based on its understanding that the City would approve the Lease assignment; had
23 obtained properly escrowed and allocated funding; and stood ready and willing to undertake the
24 restaurant Lease as a newly re-branded business. The City had known all of these facts.

25 32. Had the Airport Director agreed to recommend the Lease assignment proposal,
26 instead of stalling, attempting improperly to amend the Lease, or otherwise seeking unreasonable
27 concessions, the Lease would have been assigned, and Flightline, the new lessee, would have been
28 up and running, or HSG, alternatively, could have found another assignee.

1 33. However, by mid-August 2019, when the City had still not responded, HSG informed
2 the City that it would have to close its doors. The City promptly accepted the closure, and stated its
3 assumption that the Lease assignment request also was withdrawn. The Owners responded that the
4 Lease assignment was still requested. However, on August 19, 2019, the City informed HSG by
5 letter that it rejected the Lease assignment request.

6 34. Plaintiffs are informed and believe that the reasons the City articulated for repeatedly
7 rejecting the Lease assignment are spurious and pretextual, and constitute breaches of agreement as
8 set forth herein, as the assignment proposal was reasonable. The Plaintiffs are further informed and
9 believe that the City wanted to push the Owners to the point where they would have to close the
10 doors of the restaurant under economic duress, in order for the City to take over the property and
11 implement an alternative plan to re-position current FBOs.

12 35. As a result of the City's conduct: (a) HSG has suffered damages, including but not
13 limited to the loss of the value of the long-term lease, and other damages, all estimated to exceed \$1
14 million \$150,000, and is entitled to exoneration of all rent liabilities; (b) Flightline has incurred
15 damages in the form of lost profits which it would have received over the course of the long-term
16 lease, and other damages, all estimated to exceed \$5 million; and (c) the Guarantors are entitled to
17 rescission and exoneration on their Guaranties based on the City's bad faith conduct.

18 **FIRST CAUSE OF ACTION**

19 **Breach of Written Lease – By HSG Against the City and Does 1-7**

20 36. Plaintiff alleges and incorporates herein by reference each and every allegation set
21 forth above, as though fully incorporated herein and made a part hereof.

22 37. As alleged herein, Plaintiff entered into the Lease, which provided that the Lease
23 could not be assigned without the prior written consent of the City. Plaintiff is informed and
24 believes that, under California law, the City's consent could not be unreasonably withheld.

25 38. Plaintiff has performed all conditions, covenants and promises required by it on its
26 part to be performed in accordance with the terms and conditions of the agreement, except for those
27 it was prevented from performing or which were waived or excused by the City's misconduct.

28 39. The City breached the written Lease by, among other things, failing to approve the

1 assignment of the Lease to Flightline.

2 40. As a proximate result of the City's breach of Lease agreement, Plaintiff has been
3 damaged in an amount to be proven at trial, but which exceeds the jurisdictional limits of this Court.

4 **SECOND CAUSE OF ACTION**

5 **Breach of the Implied Covenant of Good Faith and Fair Dealing –**

6 **By HSG Against the City and Does 1-7**

7 41. Plaintiff alleges and incorporates herein by reference each and every allegation set
8 forth above, as though fully incorporated herein and made a part hereof.

9 42. There was implied in all of the written agreements between HSG and the City,
10 including the Lease Agreement, a covenant of good faith and fair dealing whereby the City impliedly
11 covenanted that it would in good faith and in the exercise of fair dealing deal with Plaintiff fairly and
12 honestly, and do nothing to impair, interfere with, hinder, or potentially injury Plaintiff's rights.

13 43. As alleged herein, the City breached the covenant of good faith by its acts, including
14 but not limited to:

- 15 a. Misrepresenting that the City would favorably review HSG's request to assign the Lease to
16 Flightline, when the City was looking for a way to force HSG out;
- 17 b. Delaying the review of the multiple requests for assignment in order to wrongfully drain
18 HSG's economic resources so HSG would be forced to shut down due to economic duress;
- 19 c. Improperly demanding onerous Lease modifications as conditions to approving the Lease
20 assignment;
- 21 d. Engaging in a course of changing and spurious demands, instead of honestly dealing with
22 Plaintiff;
- 23 e. Failing to cooperate with Plaintiff's performance pursuant to the various agreements between
24 the parties and taking actions which prevented or interfered with Plaintiff's performance
25 under the Lease;
- 26 f. Assuming an interpretation of the Lease, and the parties' obligations pursuant to the Lease,
27 which were contrary to the City's understanding of those agreements;
- 28 g. Interfering with HSG's contracts with third parties by a system of delay and pretext;

- 1 h. Conjuring up pretended disputes as excuses for the City's refusal to perform;
- 2 i. Abusing its power to determine compliance with the Lease;
- 3 j. Evading the spirit of the bargain which the City had made with Plaintiff; and;
- 4 k. Otherwise failing to do everything the Lease presupposed the City would do to accomplish
- 5 the Lease's purpose.

6 44. Plaintiff performed each and every covenant and condition of its agreements with the
7 City, except for those it was prevented from performing or which were excused by the City's
8 misconduct.

9 45. As a proximate result of the City's acts as alleged herein, Plaintiff has been damaged
10 in an amount to be determined at trial, but which exceeds the jurisdictional limits of this Court.

11 **THIRD CAUSE OF ACTION**

12 **Interference with Contract – by HSG Against City and Does 1-7**

13 46. Plaintiff alleges and incorporates herein by reference each and every allegation set
14 forth above, as though fully incorporated herein and made a part hereof.

15 47. Plaintiff had executed the APA with Flightline.

16 48. The City knew of the APA.

17 49. The City's conduct prevented performance or made performance more expensive or
18 difficult.

19 50. The City intended to disrupt the performance of the APA contract or knew that
20 disruption of performance was certain or substantially certain to occur.

21 51. Plaintiff has been harmed.

22 52. Defendant's conduct was a substantial factor in causing Plaintiff's harm.

23 53. In doing the acts herein alleged, the City acted fraudulently, willfully, maliciously,
24 oppressively, and subjected Plaintiff to unjust hardship, knowing that its conduct was substantially
25 likely to vex, annoy, and injure Plaintiff. As a result of this conduct, Plaintiff is entitled to punitive
26 damages.

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1 **FOURTH CAUSE OF ACTION**

2 **Intentional Interference with Prospective Economic Advantage**

3 **– By HSG Against City and Does 1-7**

4 54. As an alternative to the third cause of action, Plaintiff alleges and incorporates herein
5 by reference each and every allegation set forth above, as though fully incorporated herein and made
6 a part hereof.

7 55. As alleged herein, Plaintiff had economic relationships with Flightline, which
8 contained the probability of future economic benefit.

9 56. The City knew of this relationship.

10 57. The City engaged in improper, pretextual and spurious actions designed to exert
11 economic duress on HSG in order to force HSG to shut down.

12 58. By engaging in this conduct, the City intended to disrupt the relationship or knew that
13 disruption of the relationship was certain or substantially certain to occur.

14 59. The Plaintiff was harmed.

15 60. The City's conduct was a substantial factor in causing Plaintiff's harm.

16 61. In doing the acts herein alleged, the City acted fraudulently, willfully, maliciously,
17 oppressively, and subjected Plaintiff to unjust hardship, knowing that its conduct was substantially
18 likely to vex, annoy, and injure Plaintiff. As a result of this conduct, Plaintiff is entitled to punitive
19 damages.

20 **FIFTH CAUSE OF ACTION**

21 **Interference with Contract – by Flightline Against City and Does 8-14**

22 62. Plaintiff alleges and incorporates herein by reference each and every allegation set
23 forth above, as though fully incorporated herein and made a part hereof.

24 63. Plaintiff had executed the APA with HSG, and the Convertible Note Agreement and
25 Note with ACI Jet.

26 64. The City knew of both the APA and the Convertible Note agreements with ACI Jet.

27 65. The City's conduct prevented performance or made performance more expensive or
28 difficult.

1 66. The City intended to disrupt the performance of the APA and ACI Jet contracts or
2 knew that disruption of performance was certain or substantially certain to occur.

3 67. Plaintiff has been harmed.

4 68. Defendant's conduct was a substantial factor in causing Plaintiff's harm.

5 69. In doing the acts herein alleged, the City acted fraudulently, willfully, maliciously,
6 oppressively, and subjected Plaintiff to unjust hardship, knowing that its conduct was substantially
7 likely to vex, annoy, and injure Plaintiff. As a result of this conduct, Plaintiff is entitled to punitive
8 damages.

9 **SIXTH CAUSE OF ACTION**

10 **Intentional Interference with Prospective Economic Advantage**

11 **– By Flightline Against City and Does 8-14**

12 70. Plaintiff alleges and incorporates herein by reference each and every allegation set
13 forth above, as though fully incorporated herein and made a part hereof.

14 71. As alleged herein, Plaintiff had economic relationships with HSG and with ACI Jet,
15 which contained the probability of future economic benefit.

16 72. The City knew of these relationships.

17 73. The City engaged in improper, deceptive, pretextual and spurious actions designed to
18 exert economic duress on HSG in order to force HSG to shut down.

19 74. By engaging in this conduct, the City intended to disrupt the relationships or knew
20 that disruption of the relationships was certain or substantially certain to occur.

21 75. The Plaintiff was harmed.

22 76. The City's conduct was a substantial factor in causing Plaintiff's harm.

23 77. In doing the acts herein alleged, the City acted fraudulently, willfully, maliciously,
24 oppressively, and subjected Plaintiff to unjust hardship, knowing that its conduct was substantially
25 likely to vex, annoy, and injure Plaintiff. As a result of this conduct, Plaintiff is entitled to punitive
26 damages.

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1 **SEVENTH CAUSE OF ACTION**

2 **Breach of Written Lease – By Flightline Against the City and Does 1-7**

3 78. Plaintiff alleges and incorporates herein by reference each and every allegation set
4 forth above, as though fully incorporated herein and made a part hereof.

5 79. As alleged herein, Plaintiff is a third-party beneficiary to the Lease, which HSG
6 entered into as Tenant. The Lease provides that it may be assigned with the prior written consent of
7 the City. Plaintiff is informed and believes that, under California law, the City’s consent may not be
8 unreasonably withheld.

9 80. Plaintiff has performed all conditions, covenants and promises required by it on its
10 part to be performed in accordance with the terms and conditions of the agreement, except for those
11 it was prevented from performing or which were waived or excused by the City’s misconduct.

12 81. The City breached the written Lease by, among other things, failing to approve the
13 assignment of the Lease to Plaintiff.

14 82. As a proximate result of the City’s breach of Lease agreement, Plaintiff has been
15 damaged in an amount to be proven at trial, but which exceeds the jurisdictional limits of this Court.

16 **EIGHTH CAUSE OF ACTION**

17 **Breach of the Implied Covenant of Good Faith and Fair Dealing –**

18 **By Flightline Against the City and Does 1-7**

19 83. Plaintiff alleges and incorporates herein by reference each and every allegation set
20 forth above, as though fully incorporated herein and made a part hereof.

21 84. There was implied in all of the written agreements between HSG and the City,
22 including the Lease Agreement, as to which Plaintiff was a third-party beneficiary, a covenant of
23 good faith and fair dealing whereby the City impliedly covenanted that it would in good faith and in
24 the exercise of fair dealing deal with HSG and its assignee fairly and honestly, and do nothing to
25 impair, interfere with, hinder, or potentially injury HSG or Plaintiff’s rights.

26 85. As alleged herein, the City breached the covenant of good faith by its acts, including
27 but not limited to:

- 28 a. Misrepresenting that the City would favorably review HSG’s request to assign the Lease to

- 1 Flightline, when the City was looking for a way to force HSG out;
- 2 b. Delaying the review of the multiple requests for assignment in order to wrongfully drain
- 3 HSG's economic resources so HSG would be forced to shut down due to economic duress;
- 4 c. Improperly demanding onerous Lease modifications as conditions to approving the Lease
- 5 assignment;
- 6 d. Engaging in a course of changing and spurious demands, instead of honestly dealing with
- 7 HSG or Plaintiff;
- 8 e. Failing to cooperate with HSG's performance pursuant to the various agreements between
- 9 the parties and taking actions which prevented or interfered with HSG's performance under
- 10 the Lease.
- 11 f. Assuming an interpretation of the Lease, and the parties' obligations pursuant to the Lease,
- 12 which were contrary to the City's understanding of those agreements;
- 13 g. Conjuring up pretended disputes as excuses for the City's refusal to perform;
- 14 h. Abusing its power to determine compliance with the Lease;
- 15 i. Evading the spirit of the bargain which the City had made with HSG or Plaintiff; and;
- 16 j. Otherwise failing to do everything the Lease presupposed the City would do to accomplish
- 17 the Lease's purpose.

18 86. Plaintiff performed each and every covenant and condition of its agreements with the
19 City, except for those it was prevented from performing or which were excused by the City's
20 misconduct.

21 87. As a proximate result of the City's acts as alleged herein, Plaintiff has been damaged
22 in an amount to be determined at trial, but which exceeds the jurisdictional limits of this Court.

23 **NINTH CAUSE OF ACTION**

24 **Rescission – By the Guarantors against the City and Does 15-20**

25 88. Plaintiffs allege and incorporate herein by reference each and every allegation set
26 forth above, as though fully incorporated herein and made a part hereof.

27 89. As alleged herein, the City failed to approve the assignment of Lease from HSG to
28 Flightline, despite its agreement to do so. The City also engaged in a course of bad faith dealing

1 which improperly stalled the assignment approval process in violation of the covenant of good faith.

2 90. The City took the above actions with the intent to deceive the Guarantors and deprive
3 them of their right to obtain an assignee for the Lease they had guaranteed, and with the knowledge
4 that that such actions constituted a material failure of consideration related to the Lease. The
5 Guaranties are additionally internally inconsistent with respect to certain items, including but not
6 limited to percentage of interest and signatures.

7 91. Plaintiffs intend service of the summons and complaint in this action to serve as
8 notice of rescission of the Guaranties.

9 92. As a result of the City's conduct, Plaintiffs are entitled to an order determining that
10 their Guaranties are rescinded.

11 **TENTH CAUSE OF ACTION**

12 **Exoneration of Guaranties – By the Guarantors against the City and Does 15-20**

13 93. Plaintiffs allege and incorporate herein by reference each and every allegation set
14 forth above, as though fully incorporated herein and made a part hereof.

15 94. As alleged herein, the City's conduct, including but not limited to, willfully
16 generating delay and economic duress, and engaging in a course of bad faith dealing which
17 improperly stalled the assignment approval process, constituted conduct which violated the
18 reasonable expectations of the parties as of the execution of the Guaranties, and which was not in the
19 contemplation, consent or agreement of the parties as of the time any purported waiver was
20 executed. With respect to such conduct, any purported pre-dispute waiver was in violation of public
21 policy and is invalid.

22 95. The City took the above actions with the intent to deceive the Guarantors and deprive
23 them of their right to obtain an assignee for the Lease they had guaranteed, and with the knowledge
24 that that such actions constituted a material failure of consideration related to the Lease.

25 96. Because the City could not in good faith obtain from the Guarantors any pre-dispute
26 waiver of defenses to the wrongful conduct alleged herein, the Guarantors are exonerated from
27 performance under the Guaranties by virtue, inter alia, of the defenses afforded to them pursuant to
28 Civil Code sections 2787 through 2855, and under relevant subrogation and other law.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues so triable in this action.

DATED: December 11, 2019

CAPPELLO & NOËL LLP

By: /s/ A. Barry Cappello

A. Barry Cappello

Wendy D. Welkom

Attorneys for Plaintiffs

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Santa Barbara Municipal Airport

ACCESS LICENSE AND LEASE
AGREEMENT

with

HIGH SIERRA GRILL SANTA
BARBARA, INC.
A CALIFORNIA CORPORATION

AGREEMENT NO.



TABLE OF CONTENTS

1.	LICENSE	4
2.	LEASE COMMENCEMENT DATE	5
3.	PREMISES	5
4.	USE	5
5.	OBLIGATION TO CONSTRUCT IMPROVEMENTS	6
6.	OWNERSHIP OF IMPROVEMENTS	6
7.	TERM	8
8.	RENTAL	8
9.	UTILITIES	10
10.	DEPOSIT	10
11.	CHARGE FOR LATE PAYMENT (LIQUIDATED DAMAGES	11
12.	INSURANCE, INDEMNIFICATION, AND DAMAGE OR DESTRUCTION	12
13.	ASSUMPTION OF RISKS	16
14.	GENERAL	16
15.	MAINTENANCE OF LEASED PREMISES	18
16.	CLEANLINESS AND LANDSCAPING	20
17.	STORMWATER POLLUTION PREVENTION	20
18.	RESTRICTION ON USE OF PREMISES	21
19.	STORAGE AND DISCHARGE OF HAZARDOUS MATERIALS	22
20.	INSPECTION	24
21.	ALTERATIONS AND IMPROVEMENTS	24
22.	ADVERTISING AND SIGNAGE	25
23.	SUBLETTING AND ASSIGNMENT	25
24.	WAIVER OF BREACH	27
25.	DEFAULT, REMEDIES, BREACH	28
26.	SURRENDER; HOLDING OVER	30
27.	PEACEABLE POSSESSION	31
28.	REPRESENTATION	31
29.	SUCCESSORS	31

30.	.NOTICES	31
31.	FORCE MAJEURE	32
32.	COMPLETE UNDERSTANDING AND AMENDMENTS	32
33.	CONSTRUCTION DURING TERM	32
34.	CORPORATE AUTHORITY	33
35.	NO JOINT VENTURE	33
36.	PERSONAL GUARANTY	33

LEASE

Agreement No. 25,105

THIS LEASE (this "Agreement" or "Lease"), made and entered into this 26th day of March, 2015.

by and between

CITY OF SANTA BARBARA,
a **Municipal Corporation,**
hereinafter referred to as "City",

and

HIGH SIERRA GRILL
SANTA BARBARA, INC.,
a **California Corporation,**
hereinafter referred to as "Tenant".

WITNESSETH:

WHEREAS, City is owner of certain property at the Santa Barbara Municipal Airport; and

WHEREAS, Tenant is desirous of leasing a certain portion of property at the Santa Barbara Municipal airport (the "Airport") in an Airport Industrial (AI-2) conforming zone; and

WHEREAS, City is willing to grant the same to Tenant upon the terms, conditions and covenants set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree that:

1. **LICENSE**

License During Construction. Beginning on the date upon which the Ordinance adopted by the City Council approving the Lease becomes effective ("License Commencement Date"), City and Tenant shall have access to enter onto the real property (the "License") located at 521 Norman Firestone Road, Santa Barbara, CA, defined as Premises in Exhibit A for the purpose of constructing and shall construct, the interior and exterior improvements as further defined in Exhibits B1-3 and C attached hereto and incorporated herein as though set forth in full. The parties anticipate that this License shall extend for a period of nine (9) months from the License Commencement

Date to the Lease Commencement Date (defined below); provided, however, in the event that City does not complete the City Improvements (as defined and set forth in Exhibit C) within such nine month period (subject to the events described in Article 31, "Force Majeure"), Tenant may, in its sole discretion, terminate this Lease Agreement and receive a refund of its Security Deposit (as defined in Article 10) and the Tenant Advance Rent (as defined in Article 8) and this Agreement shall be of no further force and effect. Assuming City Completes Improvements noted in Exhibit C within 9 months from the License Commencement Date, Tenant's right to unilateral termination of this Agreement shall expire upon the completion of the City Improvements noted in Exhibit C as evidenced by the City building official's sign-off of the building permit.

Beginning on the License Commencement Date and continuing until the Lease Commencement Date, City shall retain possession and control of the Premises and, provided Tenant complies with the requirements of Article 12 hereof and provides the required insurance certificates, shall have the right to access the Premises for the purpose of constructing the Tenant Improvements (as defined and set forth in Exhibit B attached hereto).

2. LEASE COMMENCEMENT DATE

Provided Tenant has not terminated this Agreement as provided in Article 1, the Lease shall commence (hereinafter defined as the "Lease Commencement Date") on the date that City completes the Improvements described in Exhibit C. The parties shall execute a joint letter agreeing to the date of the Lease Commencement Date.

3. PREMISES

City hereby agrees to lease to Tenant the real property located at 521 Norman Firestone Road, Santa Barbara, CA, encompassing approximately 79,752 square feet of land, including 8,695 square feet of Building 252 and associated parking, as indicated on the attached Exhibit A, hereinafter referred to as the "Premises".

4. USE

The Premises shall be used for a restaurant and full bar. Live music may be played in the restaurant or on the patio. In addition, Tenant may provide catering services and banquet functions.

Tenant shall not use or permit the use of said Premises for any purpose other than expressly allowed in the Lease without the written consent of City which may be denied in City's sole discretion.

Tenant will confirm Tenant's ability to obtain Type 47 Liquor License prior to Lease Execution. The Cost to obtain said licence (not to exceed \$6,000) shall be split

between Tenant and City. City's portion of said payment will be remitted to the Radius Group upon verification that the liquor license has been obtained.

5. OBLIGATION TO CONSTRUCT IMPROVEMENTS

- A. **Tenant Improvements.** Tenant hereby covenants to construct and maintain the Tenant Improvements. The construction of the Tenant Improvements shall be in accordance with the procedure established in Article 21, "Alterations and Improvements" and all applicable building and safety codes and all rules, regulations and requirements of the appropriate regulatory authorities, including, but not limited to, the City's Planning and Building & Safety Departments. Upon completion of the Tenant Improvements, Tenant shall submit to the Airport Director complete "as built" architectural plans for the Tenant Improvements, which plans shall be prepared in a manner acceptable to the Airport Director. Tenant shall be solely responsible to obtain and maintain all required permits from all applicable governmental jurisdictions. Upon written request, City, as property owner, will sign applications, as necessary but will otherwise have no responsibility or liability for the building or construction activity associated with the Tenant Improvements. Tenant shall at all times maintain the required insurance as specified in Article 12 herein.

- B. **City Improvements.** The City shall undertake construction of the City Improvements.

6. OWNERSHIP OF PREMISES IMPROVEMENTS

- A. **Ownership During Term.** All Tenant Improvements to the Premises constructed by Tenant during the License period as permitted or required by this Lease shall, during Lease Term, be and remain the property of Tenant, provided however, that Tenant shall have no right to waste, destroy, demolish or remove the Tenant Improvements, and provided, further, that Tenant's rights and powers with respect to the Tenant Improvements are subject to the terms and limitations of this Lease.

- B. **Maintenance and Repair of Premises and Tenant Improvements.** Subject to the provisions of this Agreement concerning alterations and improvements, including completion of the City Improvements, Tenant agrees to assume full responsibility for maintenance of the Premises and Tenant Improvements, including all fixtures and furnishings thereon or therein throughout the term of this agreement, without expense to City, and to perform all repairs and replacements necessary to maintain and preserve the Premises and Tenant Improvements, including fixtures and furnishings, in a decent, safe and sanitary condition consistent with good practices and in compliance with all applicable laws. Tenant agrees that City shall not be required to perform any maintenance,

repairs or service, or to assume any expense not specifically assumed in Article 15, "Maintenance of Leased Premises", herein, in connection with the Premises or any improvements thereon unless specifically required under the terms of this Agreement.

The condition of the Premises or the Tenant Improvements required to be maintained hereunder upon completion of the work of maintenance or repair shall be equal in value, quality and use to the condition of the Premises or of such Tenant Improvements before the event giving rise to the work.

C. Ownership at Termination:

(1) **Property of City.** At the expiration or earlier termination of this Agreement, all City Improvements and Tenant Improvements constructed during the License period which constitute or are a part of the Premises shall, at City's sole option, become the property of City, free and clear of all claims and encumbrances on such City Improvements and Tenant Improvements by Tenant, and anyone claiming under or through Tenant. Tenant agrees to and shall defend, indemnify and hold City harmless from and against all liability and loss which may arise from the assertion by a third party of any such claims and any encumbrances by or through Tenant on such City Improvements and Tenant Improvements or the Premises.

(2) **Removal by Tenant.** At the expiration or sooner termination of this Lease Term, City may, at City's election, demand the removal from the Premises, at Tenant's sole cost and expense, of all improvements, fixtures and/or furnishings, or of certain improvements, fixtures and or furnishings, as specified in the notice provided for below. A demand to take effect at the normal expiration of the term shall be effected by notice given at least sixty (60) days before the expiration date. A demand to take effect on any other termination of this Lease shall be effectuated by notice given concurrently with notice of such termination or within ten (10) days after such termination.

Upon the removal of such property as is authorized to be removed by Tenant by the terms of this Lease, whether such removal be upon termination of this Lease or at any time prior thereto, the Tenant shall at Tenant's own cost and expense, (a) repair all damage to the Premises caused by the addition or removal of such property by the Tenant, and (b) restore the Premises to the same condition of good order and repair as said Premises were in at the commencement date of said term, reasonable use and wear thereof and damage by act of God and the elements being excepted therefrom.

Unless City elects to require Tenant to remove improvements and clear the Premises, Tenant shall not be required or permitted to remove any

improvements, or any portion of them, prior to the expiration or sooner termination of this agreement; provided, however, that, within thirty (30) days following the expiration or sooner termination of the Term, Tenant may remove all personal property, furniture, and equipment. Upon demand by City made prior to the expiration or sooner termination, Tenant shall remove such personal property, furnishings and equipment, or any portion thereof designated by City prior to the expiration of such thirty (30) day period.

Any personal property, furnishings or equipment not removed by Tenant within thirty (30) days after the expiration or sooner termination of this agreement, shall without compensation to Tenant, become City's property, free and clear of all claims to or against them by Tenant or any third person, firm or entity.

7. **TERM**

- A. **Lease Term.** The initial term of this Lease shall be for a period of ten (10) years commencing on the Lease Commencement Date (as defined in Article 8) and ending on a date ten (10) years later unless sooner terminated by the City as provided herein (hereinafter referred to as the "Lease Term").
- B. **Options.** The City hereby grants to Tenant the option to renew this Lease for three (3) additional five (5)-year terms. In order to exercise the option, Tenant must be in good standing under the terms of this Lease, in compliance with all terms and conditions hereof, and not in default under any provision at the time of the exercise of the option. Tenant shall give written notice to City of Tenant's election to exercise said option no less than one hundred eighty (180) days prior to the expiration of the then existing term. In the event Tenant does not give timely written notice, the right to the option shall be null and void.

8. **RENTAL**

- A. **Advance Rent.** Tenant shall pay to City, upon execution of this Agreement, the sum equal to the first month's rent (\$12,694) as rent for the first month in which rent is due ("Tenant Advance Rent").
- B. **Rental Commencement Date.** Tenant's obligation to commence rental payments to City, as set forth herein, shall begin on the "Rental Commencement Date," which is defined as the date which is six (6) months after the Lease Commencement Date. For example, if the Lease Commencement Date is August 1, 2015, the Rent Commencement Date would be February 1, 2016.

As rental for the Premises during the term of the Lease, Tenant shall pay to City, in advance on or before the first day of each calendar month, exclusive of utilities, a monthly rental, as follows:

Initial Term

Years 1-3 \$1.46 per square foot per month or \$12,694

Years 4-5 \$1.61 per square foot per month or \$13,999

Years 6-8 \$1.71 per square foot per month or \$14,868

Years 9-10 \$1.81 per square foot per month or \$15,737

C. **Option Period Market Rate Adjustment.** On the tenth (10th) anniversary of the Rental Commencement Date, and at the beginning of each five-year option thereafter (each a "Five year Adjustment Date"), there will be a rental adjustment to "Fair Market Rent." Fair Market Rent shall mean the adjusted monthly rental amount that is determined pursuant to one of the following methods:

(1) Agreement by City and Tenant. During the first sixty (60) days of the one hundred eighty (180) day period preceding each Five Year Adjustment Date, the City and Tenant shall attempt to agree, in good faith, upon the amount of the Market Rate Monthly Base Rent and, if they are able to agree, they shall each execute a written amendment to this Lease, setting forth the agreed amount of the Market Rate Monthly Base Rent. Agreement by City and Tenant or appointment of qualified appraiser(s). During the first sixty (60) days of the one hundred eighty (180) day period preceding each Five Year Adjustment Date, the City and Tenant shall attempt to agree, in good faith, upon the amount of the Market Rate Monthly Base Rent and, if they are able to agree, they shall each execute a written amendment to this Lease, setting forth the agreed amount of the Market Rate Monthly Base Rent. Determination by qualified appraiser(s).

(2) If City and Tenant are unable to agree upon the amount of the Fair Market Rent within such sixty (60) days, then during the next thirty (30) days of the one hundred eighty (180) day period, City and Tenant shall each select an appraiser, who shall be an independent real property appraiser having experience appraising airport property, California commercial and industrial experience preferred, and who shall be a member of a professional organization such as the American Institute of Appraisers or the Society of Industrial Real Estate Appraisers or their professional equivalent (a "Qualified Appraiser"). The two (2) designated Qualified Appraisers shall designate a third Qualified Appraiser within fifteen (15) days of the later of their respective designations. If either City or Tenant shall fail to designate timely a Qualified Appraiser, then the Qualified Appraiser designated by the other shall act as a single Qualified Appraiser. City and Tenant may shorten or extend any of the time periods described in this Section C. by mutual written consent. Each of City and Tenant shall pay all fees

and costs of their appointed Qualified Appraiser and shall split the fees and costs of the third Qualified Appraiser in determining Fair Market Rent.

(3) Determination of Fair Market Rent. Within thirty (30) days of the designation of either a single Qualified Appraiser or of the third Qualified Appraiser pursuant to Section (2), the Qualified Appraiser or Qualified Appraisers shall each make a determination in writing of the Fair Market Rent. If three Qualified Appraisers have been designated, the Fair Market Rent shall be the arithmetic average of the two (2) out of three (3) determinations of Fair Market Rent which are closest in amount, and the remaining determination shall be disregarded. If the high and low determinations of Fair Market Rent are equidistant in amount from the middle appraisal, the amount of the middle appraisal shall be the Fair Market Rent. Upon determination of the Fair Market Rent, the Market Rate Monthly Base Rent on said Five Year Adjustment Date shall be adjusted to equal the Fair Market Rent so determined, subject to future adjustments as provided in this Article 8. City shall give written notice to Tenant of the Market Rate Monthly Base Rent.

(4) At no time shall the Fair Market Rent so determined be less than the rent for the previous year's rent.

9. UTILITIES

Tenant hereby acknowledges the satisfactory provision of public utilities to the Premises for Tenant's anticipated and allowed use of the Premises. The City, through Airport service, shall provide to Tenant water and sewer service at the current minimum rate or the metered amount whichever is greater for water, and sewer, per month paid to Airport by Tenant. Said charges shall be paid monthly with monthly rental payments. The charges specified herein will be adjusted annually on July 1st by the Airport Director to reflect any increase in costs of providing these services. Said charges will be computed in conformity with the calculations for other similarly situated tenants at the Airport and shall be supported by documentation, which will be made available to Tenant upon Tenant's Request.

Tenant shall contract directly with public utilities for the provision of all other utility services and shall pay all charges associated those utility services received by Tenant.

Any changes, alterations or improvements to the utilities on the Premises in connection with the construction or installation of any improvements to the Premises by Tenant shall be made at Tenant's sole cost and expense.

10. DEPOSIT

Upon execution of this Agreement, Tenant shall deposit with City a security deposit in the form of cash, check, money order, cashier's check, or irrevocable letter of credit in favor of the City, by a financial institution acceptable to the City, where the form and

terms of such an irrevocable letter of credit is issued prior to the City's execution of this Agreement, in the amount of one month's rent (\$12,694), as security for Tenant's faithful performance of its obligations under this Agreement (the "Security Deposit"). If Tenant fails to pay rent, or otherwise defaults under this Agreement, City may use, apply or retain all or any portion of the Security Deposit for the payment of any amount due City or to reimburse or compensate City for any liability, expense, loss or damage which City may suffer or incur by reason thereof. If City uses or applies all or any portion of the Security Deposit, Tenant shall, within ten (10) business days after written request therefore, deposit monies with City sufficient to restore the Security Deposit to the full amount required by this Agreement.

If the rent increases during the term of this Agreement, Tenant shall, upon written request from City, deposit additional monies with City so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased rent as the initial Security Deposit bore to the initial rent. Should the agreed use be amended to accommodate a material change in the business of Tenant or to accommodate a subtenant or assignee, City shall have the right to increase the Security Deposit to the extent necessary, in City's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof.

If a change in control of Tenant occurs during this Agreement and if following the change the financial condition of Tenant is, in City's reasonable judgment, significantly reduced, Tenant shall deposit such additional monies with City as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on the change in Tenant's financial condition.

City shall not be required to keep the Security Deposit separate from its general accounts. Within thirty (30) days, after the Premises have been vacated by Tenant, City shall return that portion of the Security deposit not used or applied by City and shall provide Tenant with an itemized accounting of all amount used or applied by City. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be a prepayment of any monies to be paid by Tenant under this Agreement.

11. CHARGE FOR LATE PAYMENT (LIQUIDATED DAMAGES)

Tenant hereby acknowledges that the late payment of fees or any other sums due hereunder will cause City to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs and expenses will include but are not limited to internal administrative processing, accounting, and review.

Accordingly, if any rental payments as specified in Article 8, "RENTAL" of this Agreement or any other sum due City is not received by City within five (5) days of the due date, a late charge of one and one-half percent (1.5%) of the payment due shall be added to the payment, and the total sum shall become immediately due and payable to

City. An additional charge of one and one-half percent (1.5%) of said payment, exclusive of late charges, shall be added for each additional month or portion thereof that said payment remains unpaid.

Tenant and City hereby agree that such late charges represent a fair and reasonable estimate of the costs that City will incur by reason of Tenant's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by City shall not constitute a waiver of Tenant's default with respect to such overdue payment, or prevent City from exercising any of the other rights and remedies granted hereunder.

12. INSURANCE, INDEMNIFICATION, AND DAMAGE OR DESTRUCTION

As part of the consideration of this Agreement, Tenant agrees to purchase and maintain at its sole cost and expense during the life of this agreement insurance coverage against claims for injuries to persons or damages to property which may arise from or in connection with the Tenant's operation and use of the premises by the Tenant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF TENANT'S INSURANCE

A. Coverage shall be at least as broad as:

- (1) Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations with limits of no less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If a general aggregate limit applies, either the aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit.
- (2) Automobile Liability: Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), or if Tenant has no owned autos, Code 8 (hired) and Code 9 (non-owned), with limits of no less than One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (3) Workers' Compensation: In accordance with the provisions of the California Labor Code, Tenant is required to be insured against liability for Workers' Compensation or to undertake self-insurance. Statutory Workers' Compensation and Employers' Liability of at least \$1,000,000 shall cover all Tenant's staff while performing any work incidental to the performance of this agreement.
- (4) Property insurance: against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision. The policy shall include business interruption coverage, with adequate limits to cover the term of this agreement.

If the Tenant maintains higher coverage limits than the amounts shown above, then the City requires and shall be entitled to coverage for the higher coverage limits maintained by the Tenant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

B. Other Insurance Provisions:

Each insurance policy shall contain, or be endorsed to contain, the following five (5) provisions:

- (1) Additional Insured Status: The City of Santa Barbara, its officers, employees, and agents, shall be covered as additional insureds on the Commercial General Liability and the Automobile Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Tenant including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Tenant. Additional Insured coverage shall be provided in the form of an endorsement to the Tenant's insurance (at least as broad as Insurance Services Office Form CG 20 10 11 85). A copy of the endorsement evidencing that the City of Santa Barbara has been added as an additional insured on the policy, must be attached to the certificate of insurance.
- (2) Subcontractors: Tenant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Tenant shall ensure that the City is an additional insured on insurance required from subcontractors. For Commercial General Liability coverage subcontractors shall provide coverage with a format at least as broad as Insurance Services Office form CG 20 38 04 13.
- (3) Notice of Cancellation: A provision that coverage will not be cancelled or subject to reduction without written notice given to the City Clerk, addressed to P.O. Box 1990, Santa Barbara, California 93102-1990.
- (4) Primary Coverage: For any claims related to this contract, the Tenant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be excess of the Tenant's insurance and shall not contribute with it.

Waiver of Subrogation: Tenant hereby agrees to waive rights of subrogation which any insurer of Tenant may acquire from Tenant by virtue of the payment of any loss. Tenant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. Tenant agrees to obtain any endorsement that may be necessary to affect

this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Tenant, its employees, agents and subcontractors.

C. Acceptability of Insurers:

All insurance coverage shall be placed with insurers that have a current rating from AM Best of no less than A: VII; and are admitted insurance companies in the State of California. All other insurers require prior approval of the City.

D. Coverage Limits Specifications:

Approval of the insurance by City or acceptance of the certificate of insurance by City shall not relieve or decrease the extent to which the Tenant may be held responsible for payment of damages resulting from Tenant's services or operation pursuant to this Agreement, nor shall it be deemed a waiver of City's rights to insurance coverage hereunder.

If, for any reason, Tenant fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. City, at its sole option, may terminate this Agreement and obtain damages from the Tenant resulting from said breach. Alternately, City may purchase such required insurance coverage, and without further notice to Tenant, City may deduct from sums due to Tenant any premium costs advanced by City for such insurance.

E. Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the Tenant shall cause the insurer to reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Tenant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

F. Evidence of Coverage:

Tenant must provide evidence that it has secured the required insurance coverage before execution of this agreement. A Certificate of Insurance supplied by the City or the appropriate ACORD and Insurance Services Office forms evidencing the above shall be completed by Tenant's insurer or its agent and submitted to the City prior to execution of this Agreement by the City.

Tenant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Tenant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

- G. **Indemnification.** Tenant shall, to the extent permitted by law, investigate, defend, indemnify and hold harmless the City, its officers, agents and employees from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges, and expenses (including reasonable attorney's fees) and causes of action of whatsoever character which City may incur, sustain, or be subjected to on account of loss or damage to property or loss of use thereof, or for bodily injury to or death of any persons (including but not limited to property, employees, subcontractors, agents, and invitees of each party hereto) arising out of or in any way connected with Tenant's use or possession of the Premises.

H. **Damage or Destruction**

If during the term of this Agreement the Premises is:

- (1) **Destroyed**, then this Agreement shall cease and terminate. The term "Destroyed" is defined as the destruction of the safe, tenantable use or occupancy of the Premises.
- (2) **Damaged in excess of forty percent (40%)**, then City or Tenant may elect to terminate this Agreement. City or Tenant shall exercise this election within thirty (30) days of the event of damage by delivering written notice of the election to the other party. If either City or Tenant elect to terminate this Agreement, this Agreement shall cease and terminate as of the effective date of the notice as established by Article 30, "NOTICES". Tenant shall surrender the Premises within ten (10) days from the effective date of the termination.

The term "Damaged in excess of forty percent (40%)" is defined as damage to the Premises, including improvements, (excluding damage solely by water used in extinguishing fire) that will require an expenditure in excess of forty percent (40%) of the market value of the Premises (measured prior to the damage) in order to make the necessary repairs.

(3) **Damages to an extent less than forty percent (40%)**, or in excess of forty percent (40%) and neither City nor Tenant exercise their option to terminate this Agreement, then City shall:

a) Repair the Premises with due diligence, and this Agreement shall continue to full force and effect subject only to a reduction in rental from the date of the damage and until the repairs have been completed. The reduced rent shall be based upon the proportion of the Premises which Tenant shall be reasonably able to use in continuing Tenant's business during the time the repairs are being made; or

b) Elect not to repair the improvement and amend the Lease to remove that portion of the Premises which Tenant will no longer be able to use for its leased purposes and proportionally reduce the rent.

13. **ASSUMPTION OF RISKS**

Tenant represents that Tenant has inspected the condition and location of the Premises. Tenant hereby accepts the condition of the Premises and all improvements thereon and fully assumes all risks incidental to the use thereof, including any risks associated with the location of the Premises being in a Flood Plain and in close proximity to a working commercial airport. City shall not be liable to Tenant for any damages or injuries to the property or person, or to the agents, employees or business visitors of Tenant, which may result from hidden, latent or other dangerous conditions upon the Premises, or which may result from the negligence of the City, its agents, officers or employees, or which may result from any condition of fire, earthquake, flood, rainfall, or escape of water from any channel, regardless of the cause thereof.

14. **GENERAL**

- A. **Compliance with Law.** Tenant shall comply with all applicable statutes, ordinances, orders, laws, rules and regulations, and the requirements of all federal, state and municipal governments and appropriate departments, commissions, boards and offices thereof in Tenant's use of the Premises.
- B. **City Business License.** Tenant shall obtain, and maintain throughout the term of this Agreement, a valid City Business License and pay all taxes and fees required. Failure to possess a current City Business License and pay all required fees and taxes shall be a material breach of this Agreement.
- C. **Possessory Interest/Taxes.** Pursuant to Section 107.6 of the California Revenue and Taxation Code, City states that Tenant's leasehold interest in the Premises may be subject to property taxation on the possessory interest created by this Agreement. Tenant agrees to pay, before delinquency, all lawful taxes, assessments or charges,

including taxes on Tenant's possessory interest, which, during the term hereof, may be or become a lien or may be levied upon the real property, improvements or personal property situated upon the Premises, or upon the subject matter of this Agreement.

Tenant shall be solely responsible for payment of possessory interest tax beginning the six months preceding the Rent Commencement Date and for the remainder of the term of this agreement and option periods. (Tenant shall verify the amount of the possessory interest tax).

The amount of Possessory Interest Tax may be verified by contacting the Santa Barbara County Clerk, Recorder and Assessor at (805) 568-2562, emailing the Appraisal Division Manager at taylor@co.sana-barbara.ca.us, or in person at the County Tax Assessor's office at 105. E. Anapamu St., 2nd Floor, Santa Barbara, CA 93101.

- D. **Nondiscrimination.** Tenant agrees to comply with all the terms of the Tenant's Obligation for Nondiscrimination Certificate attached hereto as Exhibit D and incorporated herein.
- E. **No Animals.** No animals are allowed or permitted on the Premises unless expressly authorized in writing by the Airport Director.
- F. **Time.** Time is of the essence of this Agreement and all of the terms and covenants hereof are conditions.
- G. **Captions.** The title or headings to the Sections and the Table of Contents of this Agreement are for convenience only and are not a part of this Agreement, and shall have no effect upon the construction or interpretation of any part hereof.
- H. **Governing Law.** This Agreement shall be interpreted in accordance with and governed by the laws of the State of California. The language in all parts of this Agreement shall be, in all cases, construed according to its fair meaning and not strictly for or against City or Tenant.
- I. **Vehicle Parking.** So long as Tenant is not in default, and subject to the parking rules and regulations included herein, and as established by City from time to time, Tenant shall be entitled and authorized to use the ninety-eight (98) designated parking spaces adjacent to the Premises.
 - (1) City will not be responsible for any damage to vehicles, injury to persons or loss of property, all of which risks are assumed by the party using the parking area. Tenant shall post and distribute sufficient references to these conditions of use as necessary to provide reasonable notice.

(2) Tenant shall be responsible for seeing that all of its employees, agents, and invitees comply with the applicable parking requirements, laws and agreements. If Tenant commits, permits or allows any of the prohibited activities described in this Section I., or other violation of these rules, then City shall have the right without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Tenant, which cost shall be immediately payable upon demand by City. Tenant shall post reasonable notice of such provision.

(3) All parking use shall be subject to the following rules:

(a) Tenant shall not park or store motor homes, campers, trailers, non-operational vehicles, boats or any vehicle not directly related to Tenant's activities on the Premises.

(b) Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's employees, suppliers, shippers, customers, or invitees to be loaded, unloaded, or parked in areas other than those designated by City for that particular activity.

(c) Users of the parking area will observe all posted signs and park only in the areas designated for vehicle parking.

(d) The maintenance, washing, waxing or cleaning of vehicles on the Premises is prohibited.

City reserves the right to modify these requirements and/or adopt such other reasonable requirements as the Airport Director may determine to be necessary for the proper operation of the parking area and the Airport.

15. MAINTENANCE OF LEASED PREMISES

A. Tenant shall, at Tenant's own cost and expense, maintain the Premises and every part thereof, in good order and repair, except as such maintenance obligations are expressly assumed by City in Section E below.

B. Any repairs made by Tenant are to be made by craftsmen skilled in work done and performing such work regularly as a trade. Any tenant specific structural improvements shall require prior written consent of the Airport Director as specified in Article 21, "ALTERATIONS AND IMPROVEMENTS."

C. In the event the Tenant fails, and after five (5) days' notice in writing from the Airport Director, continues to fail to provide the maintenance required in Section D. of this

Article 15, "MAINTENANCE OF LEASED PREMISES," the Airport Director may, without thereby waiving or otherwise excluding or limiting any other remedy of the City for such failure to perform, make repairs to the Premises with private personnel or City's personnel. If City causes the work to be performed, the cost of the work will be billed to Tenant.

D. Tenant's Responsibility: Upon completion of the City Improvements, Tenant's maintenance responsibility shall include, but not be limited to, performance of the following:

- (1) Supplying janitorial services, and restocking of janitorial supplies;
- (2) Washing windows;
- (3) Clearing stoppages in interior plumbing fixtures and drain lines caused by Tenant's use of the Premises to the first manhole or cleanout outside the building;
- (4) Cleaning of floor coverings;
- (5) Repairing or replacing all electrical, mechanical, or plumbing improvements, including HVAC.
- (6) Maintaining electrical loads within the designed capacity of the electrical system. Any increase in the electrical load that will exceed the system's capacity shall require prior written consent of the Airport Director.
- (7) Providing and maintaining ABC rated fire extinguishers appropriately sized to the Premises.
- (8) Contracting with a licensed contractor to empty and service the grease traps monthly at Tenant's sole cost and expense. Tenant is responsible for maintenance, repair or replacement of the grease traps as necessary to ensure proper operation.
- (9) Assisting the Airport in determining the cause, in the event of damage to Airport property, including: building structure, equipment, streets lighting system or utilities.
- (10) Reimbursing the City for repair or replacement of any exterior or interior surface or fixture determined to have been damaged as a result of any act or omission of Tenant.

- E. City's Responsibility: City's maintenance responsibility shall be limited to maintaining the building exterior, including the foundation, exterior walls, roof, and any structural components of the building. In addition, City shall maintain all common areas.

16. CLEANLINESS AND LANDSCAPING

- A. Tenant shall keep the Premises free and clear of all litter, garbage, debris and refuse and shall keep the Premises in an orderly and sanitary condition at all times. Tenant's responsibility shall include:
 - (1) Trash removal – the regular removal of useless materials and equipment.
 - (2) Recycling – recycling all eligible materials under the City of Santa Barbara Solid Waste Program.
 - (3) Containers – maintaining, for the temporary storage of garbage, refuse or recycling, bins and/or containers of a type and at a location approved by the Airport Director.
- B. In the event the Tenant fails, and after five (5) days' notice in writing from the Airport Director, continues to fail to provide the cleanliness required in Section A. of this Article 16, "CLEANLINESS AND LANDSCAPING" the Airport Director may, without thereby waiving or otherwise excluding or limiting any other remedy of the City for such failure to perform, clean the Premises with private personnel or City's personnel. If City causes the work to be performed, the cost of the work will be billed to Tenant.
- C. Landscaping – Tenant will, at its sole cost and expense, maintain the landscaping as approved by the City of Santa Barbara Architectural Board of Review, including the maintenance and repair of the irrigation system.

17. STORMWATER POLLUTION PREVENTION

The City of Santa Barbara, Airport Department complies with the federal Clean Water Act and must maintain a General Industrial Permit and General Municipal Separate Storm Sewer System (MS4) Permit. These permits are implemented through a Storm Water Pollution Prevention Plan (SWPPP) and a pending Storm Water Management Plan (SWWP). These plans identify specific best management practices the Airport and tenants must employ to prevent storm water pollution.

- A. Tenant shall prevent degradation of storm water quality and reduce non-storm water discharges to the maximum extent practicable. Examples of storm water best management practices to prevent storm water pollution may include:

- (1) Inspecting vehicles and any equipment stored outside the Premises, for leaks frequently – repair leaks promptly;
- (2) Cleaning up and properly disposing of spills – notifying Airport Director immediately of any spills of Hazardous materials; and
- (3) Educating employees in the reduction of storm water pollution by sound environmental practices as required by this Article 17.

B. The following practices are prohibited on Airport property:

- (1) Hosing down any exterior area where wash water will discharge to a storm drain or conveyance ditch; and
- (2) Washing, waxing, cleaning or repairing vehicles on the Premises.

C. **Storm Water Pollution Prevention Plan.** Tenant shall provide, upon request, a Stormwater Pollution Prevention Plan (SWPPP) specific to the Tenant's use of the Premises. Such plan will include: A set of written site, or activity specific best management practices developed to eliminate non-storm water discharges. The SWPPP must eliminate non-storm water discharges to the maximum extent possible or control discharges using the best available control technology. Non-storm water discharges include discharge of any material other than clean storm water that will lead to pollutants, including sediments, entering the Airport storm water collection system.

18. RESTRICTION ON USE OF PREMISES

Tenant shall not discharge into the sewer system any substances, of whatever nature, that may prove harmful to the sewage system or require any abnormal treatment by the sewage treatment plant. City reserves the right to enter upon the Premises to take samples and to examine the discharge into the sewer system. If harmful or clogging substances are being discharged, Tenant hereby agrees to install and operate the treatment facilities necessary for the business, including maintenance and repair of the existing grease trap.

City reserves the right to make rules regulating type and character of sewage that will be deposited in the system, such rules to be in conformity with usual practices.

No flammable liquids or gases shall be stored in the Premises in quantities aggregating more than thirty-five (35) gallons, and said storage shall be in metal cabinets. Oil in sealed containers or in drums with hand operating dispensing pumps shall not be deemed to be flammable liquids.

19. STORAGE AND DISCHARGE OF HAZARDOUS MATERIALS

- A. **Legal Compliance.** Tenant shall comply with all municipal, state and federal laws, rules and regulations concerning the storage, use, manufacture, disposal, transportation or release of Hazardous Materials on the Premises.
- B. **Definition.** The term "Hazardous Materials" as used in this Agreement shall mean any product, substance or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of City to any governmental agency or third party under any applicable statute or common law theory. Hazardous Materials shall include, but not be limited to, all materials so defined by Title 22 of the California Code of Regulations, any federal law, and, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof.
- C. **Consent Required.** Tenant shall not cause, permit or suffer the storage, use, manufacture or transport of any Hazardous Material on the Premises without the express prior written consent of the City, which consent shall not be unreasonably withheld. Before taking possession of the Premises, Tenant shall provide the City with a business plan describing Tenant's intended use of the Premises and any Hazardous Materials associated with Tenant's intended use of the Premises. City may condition its consent to store, use, manufacture or transport any Hazardous Material on the Premises upon receiving such additional assurances from Tenant as City reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability including, but not limited to, the procurement of environmental insurance coverage in a form acceptable to City and naming the City as an additional insured, the installation (and removal on or before Agreement expiration or termination) of protective modifications (such as impervious encasements), periodic inspections by City officials or agents to inspect for the presence of Hazardous Materials and to verify compliance with any municipal, state and federal laws, rules and regulations concerning the storage, use, manufacture, disposal of, transport, or release any Hazardous Material on the Premises and/or increasing the security deposit. Any inspection conducted by City or City's agents pursuant to this Agreement shall be for the benefit of City in its proprietary capacity and shall not establish Tenant's compliance with any government rule, regulation or provision of law or estop City from later asserting or enforcing any right or obligation under this Agreement. City may charge Tenant for the reasonable cost of conducting such inspections.

- D. **Notice.** If Tenant knows or has reasonable cause to believe, that a Hazardous Material has come to be located in, on, under or about the Premises, other than as previously consented by City, Tenant shall immediately give written notice of such fact to City, and provide City with a copy of any report, notice, claim or other documentation which Tenant has concerning the presence of such Hazardous Material. Tenant shall provide City with copies of all inspection reports and correspondence by or from all local, state or federal licensing, permitting or regulatory agencies.
- E. **Investigation and Remediation.** Tenant shall not cause or permit any Hazardous Material to be spilled or released in, on, under, or about the Premises (including though the plumbing or sanitary sewer system) and shall immediately, at Tenant's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Tenant, or pertaining to or involving any Hazardous Material spilled or released onto the Premises during the term of this agreement, by Tenant or any third party. In the course of any recommended or required remediation, Tenant shall properly dispose of any contaminated soil or other material under its own invoice and provide City with a copy of such invoice indicating the proper disposal of such contaminated soil or material.
- F. **Indemnity.** Tenant shall indemnify, defend and hold City, its officers, employees and agents harmless from and against any and all loss, damages, liabilities, judgments, claims, expenses, penalties, costs and attorneys' and consultants' fees arising out of or involving any Hazardous Material stored, used manufactured, disposed of, transported, or released on the Premises during the term of this Agreement by Tenant or any third party_(provided, however, Tenant shall have no liability under this Agreement with respect to underground migration of any Hazardous Material under the Premises from an identified location on a property adjacent to the Premises). Tenant's obligations hereunder shall include, but not be limited to, the effects of any contamination or injury to any person, property or the environment created or suffered by Tenant, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Agreement. No termination, cancellation or release agreement entered into by City and Tenant shall release Tenant from its obligations under this Agreement with respect to Hazardous Materials, unless specifically agreed to by City in writing at the time of such agreement.
- G. **Final Report.** Upon the expiration or termination of this Agreement or Tenant's possession and occupancy of the Premises for any reason, the City may require Tenant to provide to City, at Tenant's sole cost and expense, a Phase I Environmental Site Assessment in conformance with a protocol recommended by the

American Society for Testing and Materials (ASTM) or an equivalent organization and approved by City and conducted by a licensed professional approved by City. If the Phase I Assessment identifies any "Recognized Environmental Conditions" (as defined by ASTM E-1527 or an equivalent protocol) that developed during the term of this Agreement, Tenant shall pay for and provide to City a Phase II Environmental Site Assessment in conformance with a protocol recommended by ASTM or an equivalent organization and approved by City and conducted by a licensed professional approved by City. If the Phase II Environmental Site Assessment identifies soil and/or ground water in, on or under the Premises that contains Hazardous Materials at levels requiring remediation under any municipal, state or federal law, rule or regulation, Tenant shall undertake, at Tenant's sole cost and expense, any and all actions reasonably recommended, whether or not formally ordered, for the cleanup of said contamination and for the maintenance, security and/or monitoring of the Premises or neighboring properties arising out of or involving any Hazardous Material stored, used, manufactured, disposed of, transported or released on the Premises during the term of this Agreement.

20. **INSPECTION**

City's officers, employees and agents, shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after providing twenty-four (24) hours' notice to Tenant, for the purpose of inspecting the condition of the Premises and for verifying compliance of Tenant with this Agreement.

Tenant shall not re-key the Premises. Should re-keying of the Premises become necessary due to lost keys or employee turnover, Airport maintenance will provide such services at a nominal cost to Tenant.

21. **ALTERATIONS AND IMPROVEMENTS**

Tenant shall make no structural alterations, additions or improvements during the term of this Lease upon the said Premises, without the prior written consent of City, such consent not to be unreasonably withheld. Any alterations, additions or improvements shall be at the sole cost and expense of Tenant. To prevent voiding roof warranties or guarantees and to maintain correct records by the Airport, any penetration of the roof shall be considered a structural change requiring prior written consent of the Airport Director.

- A. **Ownership:** All alterations, additions or improvements to the Premises made by Tenant shall be the property of Tenant, but considered part of the Premises. Unless otherwise instructed by City, all alterations, additions or improvements shall, at the expiration or termination of this Agreement, become the property of City and shall be surrendered by Tenant with the Premises.

B. **Removal:** City shall not require Tenant to remove any alterations, additions or improvements that Tenant made to the Premises by the expiration or termination of this Agreement that were approved by City (Tenant's initial improvement work is noted in Exhibit B). City may require the removal at any time of all or any part of any alterations, additions or improvements made to the Premises by Tenant without the required consent.

C. **Surrender:** Tenant shall surrender the Premises with all improvements, parts and surfaces broom clean and free of debris, and in good operating order, condition and repair, ordinary wear and tear excepted. Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by good maintenance practice. Tenant shall repair any damage occasioned by Tenant's installation, maintenance or removal or any alterations, additions, improvements or equipment on the Premises. Trade fixtures shall remain the property of Tenant and shall be removed by Tenant.

22. ADVERTISING AND SIGNAGE

Tenant may install and operate, at its own expense, only such signs and advertising materials on the Premises as shall be expressly approved by the Airport Director, such approval not to be unreasonably withheld. The Airport Director shall review signs and advertising materials for size, design, color, quality, number, location, content and general conformity with the architectural and general character of the Airport. All signs and advertising materials must comply with all applicable laws, rules, and regulations.

23. SUBLETTING AND ASSIGNMENT

A. **Assignment During Lease Term.** Tenant shall not assign its interest in the Agreement either voluntarily or by operation of law all or any part of the Premises or allow any other person or entity (except Tenant's authorized representatives or employees) to occupy or use all or any part of the Premises without the prior written consent of the City.

In giving its consent pursuant to the above paragraph, City shall, in addition to any other requirements or conditions, require compliance with the following:

- (1) Any proposed assignee or transferee shall have the qualifications necessary and adequate to fulfill the obligations undertaken in the Agreement by Tenant;
- (2) Any proposed assignee or transferee, by instrument in writing, shall, for itself and its successors and assignees, and expressly for the benefit of City, has expressly assumed all of the obligations of Tenant under the Agreement and agreed to be subject to all of the conditions and restrictions to which Tenant is subject; including, but not limited to, providing the City with a personal or corporate

guarantee (as the case may be) letter of credit, or other form of leasehold performance security acceptable to the City; provided, however, that the fact that any assignee or transferee of the Agreement (or any other successor in interest whatsoever to the Agreement whatsoever the reason) shall not have expressly assumed such obligations, shall not relieve such transferee from such obligations, conditions or restrictions or deprive or limit City with respect to any rights or remedies or controls with respect to the Agreement, the Premises or the construction of any required improvements. It is the intent of the Agreement, to the fullest extent permitted by law and equity (specifically, Calif. Civil Code Sections 1995.010 et seq.), and excepting only in the manner and to the extent specifically provided otherwise in this Agreement, that no assignment or transfer of this Agreement, or any interest herein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Premises and the construction of necessary improvements that City would have had, had there been no such transfer or change;

- (3) There has been submitted to City for review, and the City has approved, all instruments and other legal documents involved in effecting the transfer and paid to the City a processing or transfer fee of \$3,000 to reimburse the City for its time (including legal expenses) in reviewing and approving or disapproving the assignment documents.
- (4) Any assignment agreements between Tenant and a proposed new operator shall be in form and substance satisfactory to City; provided, however, that in the absence of specific written agreement by City to the contrary, no such transfer or approval by City thereof shall be deemed to relieve Tenant or any other party bound in any way by the Agreement or otherwise with respect to any term, covenant and condition of this Agreement, including, but not limited to, the construction, maintenance, and reconstruction of any required improvements, or any of its obligations with respect thereto.

B. Transfers By Operation of Law. If, notwithstanding the provisions of this Section, the Agreement is assigned by operation of law in connection with any proceedings under state or federal insolvency or bankruptcy law, or any comparable law, whether for liquidation or reorganization, City shall have a right of first refusal to purchase the Agreement. If any trustee or debtor in possession (collectively "trustee") receives an offer to purchase this Agreement, such trustee shall notify City in writing of the terms of such offer. If City, within thirty (30) days after receipt of such notice indicates in writing its agreement to purchase the Agreement on the terms stated, the trustee shall sell and convey the Agreement to City on the terms stated in the notice. If the City does not indicate its agreement within thirty (30) days, the trustee shall thereafter have the right to assign the Agreement to the party making the offer on the

terms of such offer. If such offeror does not purchase the Agreement on such terms and conditions, City shall have a right of first refusal to purchase the Agreement in the event of any later offer for the purchase of this Agreement. If an offeror purchases the Agreement in connection with any proceedings under state or federal insolvency or bankruptcy law, or any comparable law, whether for liquidation or reorganization, City shall have the option to purchase the Agreement from such party for an amount equal to the amount such party paid for the Agreement (as the case may be), at any time within one (1) year from the date of such offeror's purchase thereof.

- C. **Transfers of Control.** If Tenant is (a) a corporation the stock of which is not publicly traded over a national exchange or (b) an unincorporated association, limited liability company, or partnership, then the transfer, assignment or hypothecation of any stock or ownership interest in such corporation, association, limited liability company or partnership in the aggregate in excess of fifty percent (50%), whether in one or in multiple transactions, shall be deemed an assignment for purposes of this Article 23 which requires the prior written approval of the City, which approval shall be granted upon the same terms and conditions as set forth in Section B of this Article 23.
- D. **General Provisions.** No assignment of any interest in the Agreement made with City's consent, or as herein otherwise permitted, shall be effective until there shall have been delivered to City an executed counterpart of such assignment containing an agreement, in recordable form, executed by the assignor and the proposed assignee, wherein and whereby such assignee assumes due performance of the obligations on the assignor's part to be performed under the Agreement to the end of the term hereof.

The consent by City to an assignment hereunder shall not in any way be construed to relieve Tenant, or an approved assignee, from obtaining the express consent in writing of City to any further assignment.

Notwithstanding an assignment by Tenant hereunder to which City has consented, Tenant shall remain liable for all liabilities and obligations hereunder.

- E. **Subleases.** Tenant covenants not to sublet the premises or any part thereof, nor to grant any concession to be operated on the premises, nor to assign this Agreement, or any portion of the premises without first obtained the written consent of City, which consent shall not be unreasonably withheld.

24. **WAIVER OF BREACH**

No waiver by City of any default or breach of any term, covenant or condition on the part of Tenant shall be construed as a waiver of any other term, covenant or condition or of any subsequent default or breach of the same or any other term, covenant or condition;

nor shall any custom or practice, which may develop between the parties in the course of administering this instrument, be construed so as to waive or to lessen the right of City to insist upon the performance by Tenant of any term, covenant or condition hereof, or to exercise any rights given them on account of any default.

25. DEFAULT, REMEDIES, BREACH

A. **Default; Breach.** A "Default" is defined as a failure by Tenant to comply with or perform any of the terms, covenants, conditions or rules under this Agreement. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Tenant to cure such Default within any applicable grace period.

- (1) The abandonment of the Premises.
- (2) The failure of Tenant to fulfill any obligation under this Agreement which endangers or threatens life or property, where such failure continues for a period of three (3) business days following written notice to Tenant.
- (3) The failure of Tenant to make any payment of rent or any other amount required under this Agreement where such failure continues for a period of five (5) days following written notice to Tenant.
- (4) The failure of Tenant to observe and comply with any of the terms, covenants or provisions of this Agreement, except those terms, covenants and conditions covered in Subsections 1-4 of this Section A or any applicable laws, covenants or restrictions of record, building codes, regulations and ordinances in the occupancy and use of the Premises where the failure continues for a period of more than ten (10) days following written notice to Tenant; provided, however, if the nature of the Default is such that more than ten (10) days is reasonably required for its cure, then it shall not be deemed to be a Breach if Tenant commences such cure within the ten (10) day period and thereafter diligently prosecutes the cure to completion.
- (5) The occurrence of any of the following events: (a) the making of any general arrangement or assignment for the benefit of creditors; (b) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto; (c) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or Tenant's interest in this Agreement, where possession is not restored to Tenant within thirty (30) days; the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or Tenant's interest in this Agreement, where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law,

such provision shall be of no force or effect and shall not affect the validity of the remaining provisions.

B. Remedies.

(1) **Termination Upon Two or More Defaults.** In the event City issues two (2) or more notices of Default due to failure to pay rent, as required under Article 8, "Rental", to Tenant in any twelve (12) month period, City may terminate Tenant's right to possession of the Premises by any lawful means, in which case this Agreement and term hereof shall terminate and Tenant shall immediately surrender possession of the Premises to City. In such event, City shall be entitled to recover from Tenant:

(a) The worth at the time of award of any unpaid rent and other charges which had been earned at the time of such termination; and

(b) Any other amount necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform its obligations under this Agreement or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses incurred by City in maintaining or preserving the Premises after such default, preparing the Premises for re-letting to a new Tenant and any repairs or alterations to the Premises.

(2) **Breach.** In the event of a Breach of this Agreement by Tenant, with or without further notice or demand, and without limiting City in the exercise of any right or remedy which City may have by reason of such Breach, City may:

(a) Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Agreement and the term hereof shall terminate and Tenant shall immediately surrender possession of the Premises to City. In such event, City shall be entitled to recover from Tenant:

(i) The worth at the time of award of any unpaid rent and other charges which had been earned at the time of such termination; and

(ii) Any other amount necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform its obligations under this Agreement or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses incurred by City in maintaining or preserving the Premises after such default.

preparing the Premises for re-letting to a new Tenant and any repairs or alterations to the Premises.

- (3) **Performance by City on Tenant's Behalf.** If Tenant fails to perform any affirmative duty or obligation of Tenant under this Agreement, within the grace period assigned above (or in the case of an emergency without notice). City may at its option (but without obligation to do so), perform such duty or obligation on Tenant's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by City shall be due and payable by Tenant to City upon invoice therefore. If any check given to City by Tenant or any permitted transferee shall not be honored by the bank upon which it is drawn, City, at its own option, may require all future payments to be made under this Agreement by Tenant or any permitted transferee to be made only by cashier's check.
- (4) **Remedies Not Exclusive.** No right or remedy herein conferred upon or reserved to City or Tenant is intended to be exclusive of any other right or remedy, except as expressly stated herein, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing at law or in equity or by statute, except such rights or remedies as are expressly limited herein.
- (5) **Waiver of Rights of Redemption.** Tenant hereby waives for itself and all those claiming under it all rights which it may have under any present or future constitution, statute or rule of law (a) to redeem the Premises after termination of Tenant's right of occupancy by order or judgment of any court or by any legal process or writ or (b) which exempts property from liability for debt or for distress for rent.

C. **Default by City.** In the event City shall fail to perform or observe any of the covenants or provision contained in this Agreement on the part of City to be performed or observed within thirty (30) days after written notice from Tenant to City specifying the particulars of such default or breach of performance, or if more than thirty (30) days shall be reasonably required because of the nature of the default, if City shall fail to proceed diligently to cure such default after such notice, then in that event, Tenant shall have all rights and remedies provided by law.

26. **SURRENDER; HOLDING OVER**

- A. **Surrender of the Premises.** At the end of the term or other sooner termination of this Agreement, Tenant shall surrender possession of the Premises to City.

B. **Holding Over.** Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Agreement. In the event that Tenant holds over, then the rent shall be increased to one hundred fifty percent (150%) of the rent applicable during the month immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by City to any holding over by Tenant.

27. **PEACEABLE POSSESSION**

City agrees that Tenant, paying the rental and performing the covenants herein contained on Tenant's part to be paid, observed, kept and performed, Tenant shall and may, peaceably and quietly have, hold and enjoy said Premises during the term aforesaid. Tenant, in turn, agrees to quit and deliver up possession of said Premises peaceably and quietly at the expiration of said term, or any sooner termination as contained within this Agreement.

28. **REPRESENTATION**

Tenant hereby affirms that this Agreement is entered into upon the sole reliance of Tenant's own observations and not because of any influence or representation of City or any other person.

29. **SUCCESSORS**

This Agreement is intended to and does bind and shall inure to the benefit of all the parties hereto, and their respective heirs, executors, administrators, successors and assigns.

30. **NOTICES**

All notices required or permitted by this Agreement shall be in writing and may be delivered in person (by hand or by messenger or courier service) or may be sent by regular, certified or registered mail with the U.S. Postal Service, with postage prepaid, and shall be deemed sufficiently given if served in the manner specified herein. If such notice is intended for City it shall be addressed to:

Airport Director,
Airport Department
601 Norman Firestone Road
Santa Barbara, CA 93117

and if intended for Tenant it shall be addressed to:

High Sierra Grill Santa Barbara, Inc.
521 Norman Firestone Road
Santa Barbara, CA 93117

or to such other address as either party may have furnished to the other in writing as a place for the service of notice. Notices sent by regular mail shall be deemed given forty-eight (48) hours after the date of deposit in the United States Postal service and mailed postage prepaid. Notices sent by overnight courier services that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the courier. If notice is received on Saturday, Sunday or a legal holiday, it shall be deemed received on the next business day.

31. FORCE MAJEURE

Any prevention, delay, nonperformance or stoppage in performing under this Agreement by either party, or any performance under the Agreement for which either party is obligated, due to any of the following causes shall be excused: any regulation, order, act, restriction or requirement or limitation imposed by any federal, state, municipal or foreign government or any department or agency thereof or civil or military authority; acts of God; acts or omissions of the party entitled to enforce the performance, or its agents or employees; fire, explosion, unusually severe weather or floods; epidemics, quarantine restrictions, strikes, moratoria, walkouts or inability to obtain materials; war, riots, acts of terrorism, sabotage or civil insurrection; discovery of unanticipated conditions on the Agency Property or Owner's Property including, without limitation, Hazardous Materials or archaeological conditions or any other causes beyond the reasonable control of Owner or Agency, as the case may be.

No prevention, delay, or stoppage of performance shall be excused unless:

- A. The party obligated to perform notifies the other party within fifteen (15) days of such prevention, delay or stoppage that it is claiming excuse of its obligations under this Article 31; and
- B. The party obligated to perform makes reasonable efforts to remove or address the prevention, delay or stoppage of performance.

32. COMPLETE UNDERSTANDING AND AMENDMENTS

This Agreement sets forth all of the agreements and understandings of the parties and any modification must be written and properly executed by both parties.

33. CONSTRUCTION DURING TERM

It is understood by Tenant that dirt and dust will be created from time to time by the maintenance or construction of an airline terminal and associated facilities. Due to the

close proximity of the Premises to said maintenance or construction, the Premises and any vehicles parked in the designated area adjacent to the Premises may be subject to dirt and dust. Tenant accepts this condition without reservation as part of this Agreement and as such, shall not be entitled to a reduction in its fees to City as a result of any dirt and dust landing on Tenant's office space or vehicles.

Tenant further understands that construction may cause inconvenience and disruption of business. Tenant accepts this condition without reservation as part of this Agreement and as such, shall not be allowed any compensation or reduction in its fees to City for losses suffered as a result of said construction.

34. CORPORATE AUTHORITY

If Tenant signs as a corporation, Tenant covenants that each of the persons executing this Agreement on behalf of Tenant is a duly authorized and existing officer of the corporation, that Tenant has, is and shall remain during the term of this Agreement qualified to do business in the State of California, that the corporation has full right and authority to enter into this Agreement and that each, both or all of the persons signing on behalf of the corporation were authorized to do so. Upon City's request, Tenant shall provide City with evidence reasonably satisfactory to City confirming the foregoing covenants and warranties.

35. NO JOINT VENTURE

It is agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture between City and Tenant or between City and any other party or cause City to be responsible in any way for the debts or obligations of Tenant or any other party.

36. PERSONAL GUARANTY

Performance of and compliance with all of the terms and conditions of this Agreement, particularly, but not limited to, those relating to the prompt payment of rent to the City shall be personally guaranteed to the City by Mario Medina, Manuel Perales, and Paul Ybarra, in the form of guarantees attached hereto as Exhibits D, E, and F.

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

CITY OF SANTA BARBARA,
a Municipal Corporation

HIGH SIERRA GRILL
SANTA BARBARA, INC.
a California Corporation,

Hazel Johns
Hazel Johns
Airport Director

[Signature]
Signature

ATTEST:

Manuel Perales
Type or Print

Gwendolynn Peirce
Gwendolynn Peirce
City Clerk Services Manager

President
Title

APPROVED AS TO FORM:

By Ariel Calonne
Ariel Calonne
City Attorney

Redacted
Address

BUSINESS TAX COMPLIANCE:
Certificate No. 982513

Redacted
City State Zip

By J. [Signature]

Redacted
Phone Number

APPROVED AS TO INSURANCE:

[Signature]
Risk Manager

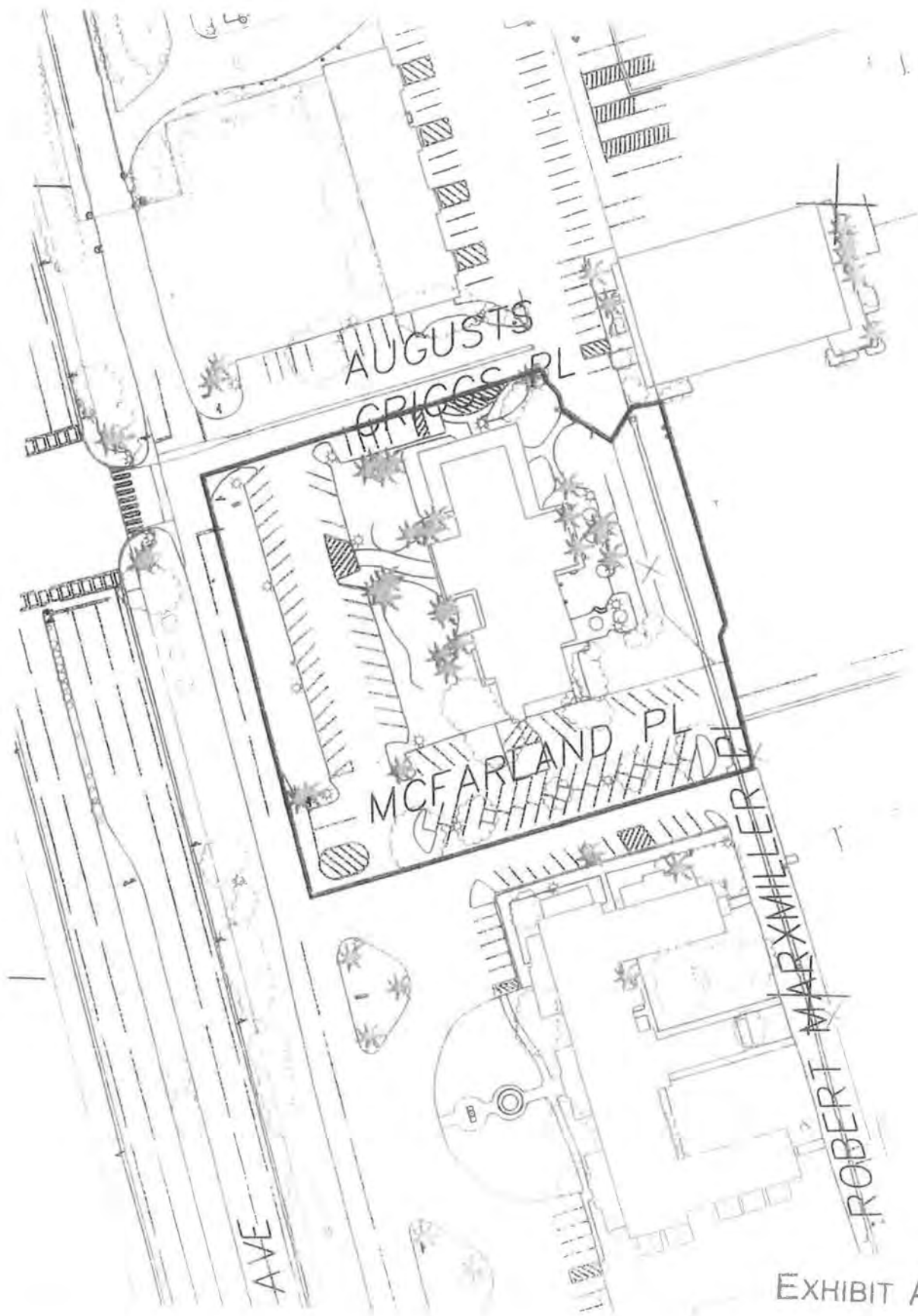


EXHIBIT A

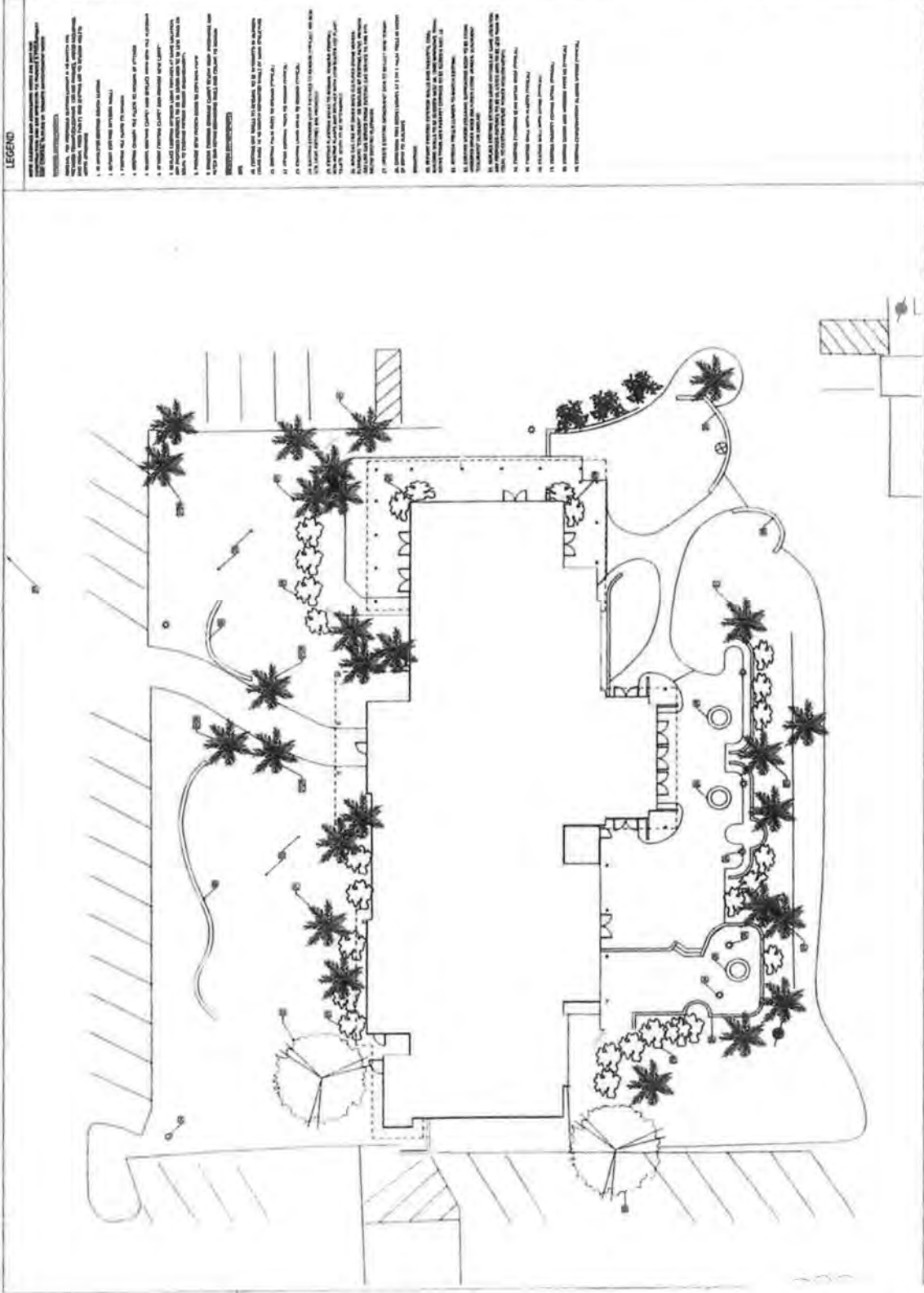


EXHIBIT B-1

GEN

NOTE: DRAWINGS AND ASSOCIATED NOTES ARE NOT FOR CONSTRUCTION AND ARE INTENDED TO PROVIDE A PRELIMINARY AND GENERAL OUTLINE OF TENANTS IMPROVEMENT WORK

INTERIOR IMPROVEMENTS:

GENERAL: THE PROPOSED SEATING LAYOUT IS TO MATCH THE PREVIOUS TENANT/OCCUPANT CEILING FINISHES, WOOD MOLDINGS AND TRIMS, FIXED TABLES AND SEATING ARE TO REMAIN UNLESS NOTED OTHERWISE

- 1 RE-UPOLSTER EXISTING BOOTH SEATING
- 2 REPAINT EXISTING INTERIOR WALLS
- 3 EXISTING TILE FLOOR TO REMAIN
- 4 EXISTING QUARRY TILE FLOOR TO REMAIN AT KITCHEN
- 5 REMOVE EXISTING CARPET AND REPLACE WITH NEW TILE FLOORING
- 6. REMOVE EXISTING CARPET AND PROVIDE NEW CARPET
- 7. REPLACE EXISTING INTERIOR LIGHT FIXTURES AT SAME LOCATION ANY PROPOSED FIXTURES TO BE UL LISTED AND TO BE LESS THAN OR EQUAL TO EXISTING FIXTURE POWER REQUIREMENTS.
- 8. PROVIDE NEW FRENCH DOOR TO EXTERIOR PATIO
- 9. REMOVE EXISTING STORAGE CLOSET BELOW ROOF OVERHANG AND PATCH AND REPAIR REMAINING WALLS AND CEILING TO REMAIN

EXTERIOR IMPROVEMENTS:

SITE:

- 20. EXISTING SITE WALLS TO REMAIN TO BE REPAINTED IN GLIDDEN COLOR MO2-36 TO MATCH REPAINTED WALLS OF MAIN STRUCTURE
- 21. EXISTING PALM TREES TO REMAIN (TYPICAL)
- 22. OTHER EXISTING TREES TO REMAIN (TYPICAL)
- 23. EXISTING LAWN AREAS TO REMAIN (TYPICAL)
- 24. EXISTING EXTERIOR LIGHT FIXTURES TO REMAIN (TYPICAL). NO NEW SITE LIGHT FIXTURES ARE PROPOSED
- 25. EXISTING PLANTING AREAS TO REMAIN. REMOVE EXISTING NON-NATIVE PLANTS AND REPLACE WITH LOW-WATER-USE PLANT PALATE. SCOPE TO BE DETERMINED
- 26. NEW GAS FIRE PIT (RIVER ROCK CULTURED STONE VENEER-ELDORADO "COLORADO" OR SIMILAR) AT EXISTING PATIO. PROVIDE GAS LINE GAS SERVICE FROM EXISTING GAS SERVICE TO FIRE PITS BELOW EXISTING FLATWORK.
- 27. UPDATE EXISTING MONUMENT SIGN TO REFLECT NEW TENANT
- 28. CHRISTMAS TREE (ROPE) LIGHTS AT 3 OR 4 PALM TREES IN FRONT OF ENTRY TO BUILDING

STRUCTURE:

- 30. REPAINT EXISTING EXTERIOR WALLS AND PARAPETS (20A) BUILDING WALLS TO BE GLIDDEN MO2-36; (20B) WINDOWS, TRIMS, SIDING TRIMS AND PARAPET COPINGS TO BE GLIDDEN MO1-16.
- 31. REFINISH TRELLIS LUMBER TO MATCH EXISTING
- 32. EXISTING WOOD COLUMNS SUPPORTING ROOF TO BE STONE VENEERED (RIVER ROCK CULTURED STONE VENEER- ELDORADO "COLORADO" OR SIMILAR)
- 33. REPLACE EXISTING EXTERIOR LIGHT FIXTURES AT SAME LOCATION ANY PROPOSED FIXTURES TO BE UL LISTED AND TO BE LESS THAN OR EQUAL TO EXISTING FIXTURE POWER REQUIREMENTS
- 34. EXISTING STANDING SEAM METAL ROOF (TYPICAL)
- 35. EXISTING WALL WITH PLASTER (TYPICAL)
- 36. EXISTING WALL WITH SIDING (TYPICAL)
- 37. EXISTING PARAPET COPING DETAIL (TYPICAL)
- 38. EXISTING DOORS AND WINDOW SYSTEMS (TYPICAL)
- 39. EXISTING CONSERVATORY GLAZING SYSTEM (TYPICAL)

**Jochhauser
Blatter**



**ARCHITECTURE
AND PLANNING**

122 E. ARRELLAGA
SANTA BARBARA
CALIFORNIA 93101
805 962 2746

HIGH SIERRA TENANT IMPORMENT

521 Firestone Road, Goleta, CA, 93117

As-Built plan

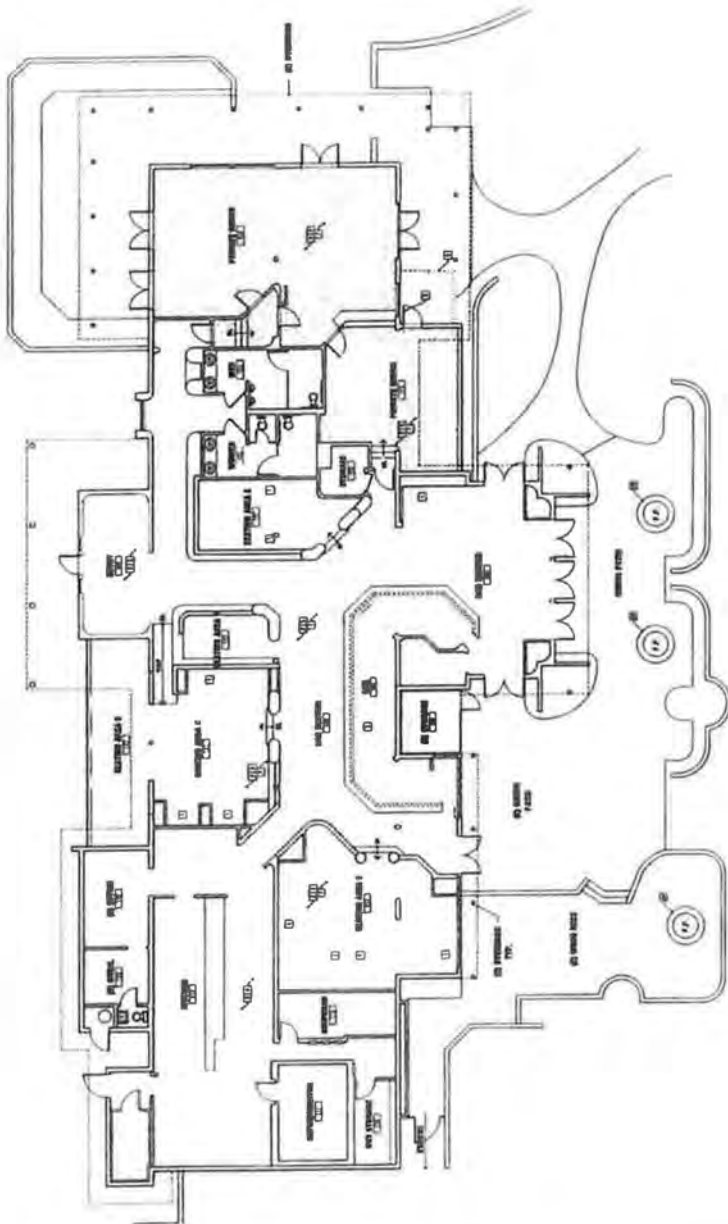
DATE	ISSUANCE OR REVISION
12/10/2014	OUTLINE T.I. WORK

DETAIL FROM
SHEET A-1
ENLARGED LIST
OF IMPROVEM'G'S

EXHIBIT B-1

LEGEND

- 1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
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- 50. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.



BLDG. GROSS 8,695 S.F.

EXHIBIT B-2

NO. _____	DATE _____
DESCRIPTION _____	BY _____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PROJECT NO. _____
SHEET NO. _____
DATE _____

LEGEND

1. EXTERIOR WALLS AND ROOFING SHALL BE CONCRETE WITH AN ALUMINUM FINISH. ROOFING SHALL BE AS SHOWN OR EQUIVALENT.
2. INTERIOR WALLS SHALL BE GYPSONUM BOARD FINISHED WITH VINYL WALLCOVERING.
3. INTERIOR CEILING SHALL BE GYPSONUM BOARD FINISHED WITH POP COATING.
4. INTERIOR FLOORING SHALL BE POLISHED CONCRETE WITH AN ALUMINUM FINISH.
5. INTERIOR DOORS SHALL BE 1-1/2" THICK SOLID CORE WITH AN ALUMINUM FINISH.
6. INTERIOR WINDOWS SHALL BE 1/2" THICK ALUMINUM FINISH WITH AN ALUMINUM FINISH.
7. INTERIOR STAIRS SHALL BE 1/2" THICK ALUMINUM FINISH WITH AN ALUMINUM FINISH.
8. INTERIOR RAILINGS SHALL BE 1/2" THICK ALUMINUM FINISH WITH AN ALUMINUM FINISH.
9. INTERIOR LIGHTING SHALL BE AS SHOWN OR EQUIVALENT.
10. INTERIOR PAINT SHALL BE AS SHOWN OR EQUIVALENT.
11. INTERIOR PLUMBING SHALL BE AS SHOWN OR EQUIVALENT.
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13. INTERIOR MECHANICAL SHALL BE AS SHOWN OR EQUIVALENT.
14. INTERIOR FINISHES SHALL BE AS SHOWN OR EQUIVALENT.
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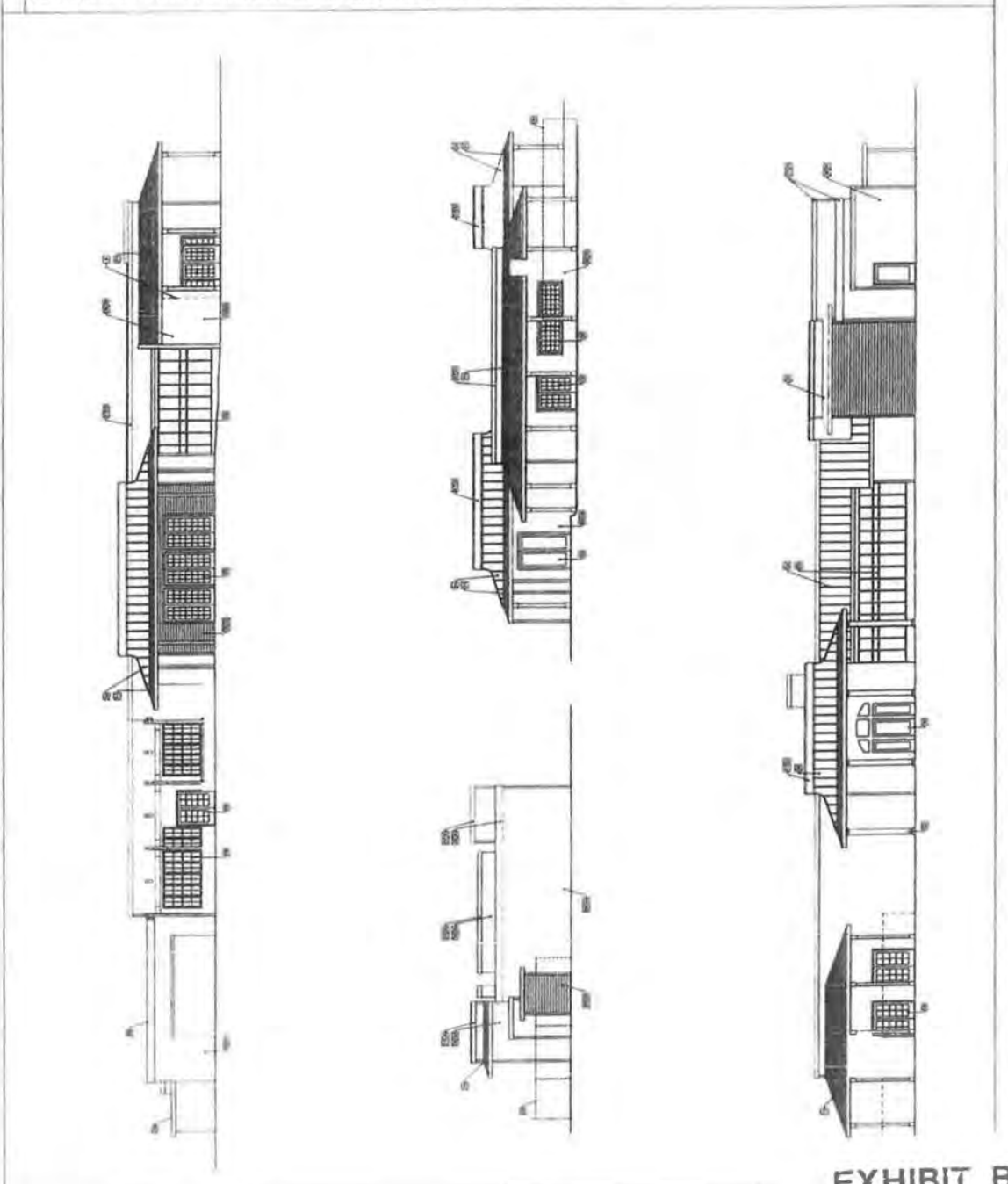


EXHIBIT B-3

EXHIBIT "C"
CITY IMPROVEMENTS

The City shall deliver the Premises in a clean condition with a watertight roof, and with all electrical, HVAC, lighting and plumbing in good working order.

In addition, City shall provide the following improvements to the Premises (collectively, the "City Improvements):


1. **Roofing.** City will replace the entire roof system down to the wood deck. This includes removal of the duct system, all equipment, and perimeter wall. City will repair all dry rot wood decking and any dry rotted wood to the parapet wall and other areas of deterioration for the new roofing assembly. A mechanically fastened, title 24 compliant, 60 mil welded single ply PVC membrane will be installed.
2. **Electrical.** Electrical system deficiencies noted in the December 3, 2013 Independent Building Inspection Report including code violations within the building and in the crawl space will be corrected by City. City will remove all electrical conduit and wiring to equipment on the roof, and rewire with new conduit roof supports.
3. **Sewer / Plumbing.** City will install new waste lines in the kitchen and rear restroom. There will be two separate lines, one for grease waste and one for non-grease waste. City will replace existing floor sink and floor drains. City will run an in-line camera down other lines not being replaced and all exterior waste lines to ensure the lines are clear of any debris and have not failed. Any lines with debris or failure will be repaired/replaced if required. City will take extra care to ensure condition of current cast iron plumbing and in the event it needs to be replaced this gets done. In the event the cast iron plumbing fails during the term the lease or any option periods and the ground needs to be broken to service said issue, it shall be City's responsibility to pay for that plumbing cost as well as any cost associated with fixing floor damage to access said plumbing.
4. **HVAC.** All roof top heating ductwork and registers will be replaced. Additionally, all electrical roof connections will be replaced. Both air conditioning systems will be replaced in their entirety, including all ductwork and the air handling system. The two makeup fans in the kitchen will be replaced. The heating system will be evaluated when the gas is turned on and repaired/replaced if required.
5. **Carpentry.** The City will replace all exterior carpentry that is damaged by dry rot or termites. This will include the following: The exterior patio deck is corroded. The exterior windows, and doors have French style windows that have weather and termite damage. These will be replaced / fixed as appropriate by City. All carpentry on the roof perimeter and screen walls will also be replaced.

6. **Termite Tenting.** The City will fumigate the entire building.
7. **ADA.** The City will perform the following ADA upgrades which shall be coordinated in conjunction with the Tenants Tenant Improvement Plans and the Preliminary Accessibility Survey completed by Central Coast Access Specialists dated December 1, 2014, attached.
- The City will bring the parking lot and main restrooms into full compliance with current ADA standards, including parking lot striping and signage.
 - The City will remove improvements (booths, tables, etc.) in raised floor areas within the space and set them aside for tenant use if they wish. The City will lower these raised floor areas to match the finish floor elevation of the remainder of the building, with the exception of the area of the building that has a depressed floor elevation.
 - The area of the building with the depressed floor elevation does not currently meet code due to the existing ramp being too steep and too narrow. The City will replace this ramp and handrail with an ADA compliant ramp and handrail.
 - The City will install a ramp into the east wing of the building in order to make it accessible.
 - The City will ensure ADA compliance of the exterior deck by installing a new ramp from the deck to the patio.
 - The City will ensure ADA compliance of the exterior concrete patio by filling and or grinding cracks and gaps.
 - The City will ensure ADA compliance of all doors and thresholds.
 - City to provide tenant with plans for ADA barrier removal when submitted to the City of Santa Barbara for approval.
 - The City will not be providing finishes (for example, paint, tile, carpet) in areas of barrier removal.
8. **Fire Suppression System.** No sprinkler system is required in the building unless a remodel encompassing more than 50% of the existing square footage is proposed. If a new fire sprinkler system is required, City will pay for the cost, except for the kitchen area which shall be paid for by the Tenant.
9. **Landscape / Irrigation System / Building Damage from Landscaping and Irrigation..** All existing irrigation systems that support exterior landscaping shall be delivered in good working order. The large saga palm on the south side has corrosion and will fall very soon. This is a major liability. As such the City should remove the tree. The landscape that is up against the exterior building has caused water damage and corrosion. Damage to the building caused by this will be repaired by the City. Additionally a water resistant liner will be installed between the building and dirt so there are no future problems. This along with the damage to the room on the S/E side (little room) shall be repaired by the City at the City's cost.
10. **Roof Lighting / Parking Lot Lamps.** To be delivered in good working order

11. Mold and Lead Inspections. City to order and pay for a mold and lead inspection. If any issues are identified they will be remedied at City's cost.

12. Floors and Foundation. Tenant has noticed that the floor is not level in some areas of the building indicating the possibility that floor or foundation would will need to be redone to put Premises in "good working order." In the event it is discovered the floor and or foundation needs to be replaced the cost of said replacement will be the responsibility of City. Areas of particular concern are in the kitchen area (specifically):

- a) Small area on west side of the cooks line
- b) Area in front of ice machine
- c) Area in front of cooks line on west side

	Preliminary Accessibility Survey	PO BOX 1843 Santa Ynez, CA 93460 805-705-8846
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The following report is based on inspecting the property referenced below for accessibility "barriers" using Chapter 11B of the 2013 California Building Code (CBC). This inspection does not constitute a "CASp" report as identified in California Civil Code Sections 55.51 through 55.545 and does not include research into available records for determining permitted configuration, non-permitted work, or any possible existing code enforcement issues.

This report does not contain discussions about the technical requirements found in the 2010 American with Disabilities Standards (2010 ADAS), nor the ICC/ANSI A117.1, nor is it intended to be used for determining "readily achievable barrier removal" or for purposes of defending a federal accessibility lawsuit brought against this facility.

This report is strictly a comparison of the physical construction on the date of the survey at the indicated property address with the accessibility requirements of the 2013 CBC for the Client's use prior to leasing the facility or in planning future alterations to the facility to aid in determining required "path of travel" upgrades.

The following pages list areas where the existing conditions do not meet current State or Federal construction-related accessibility standards. While these conditions may be called "barriers", this report is for the purpose of identifying non-compliant accessibility features for the client to use in managing their facility.

It should not be interpreted that each item listed is a "violation", nor does this report intend to imply that all items listed are required by state or federal laws to be upgraded.

Facility Inspected: Elephant Bar, 521 Firestone Rd, Goleta, CA

Date of Inspection: 12/1/2014

Contact Information: Leif Reynolds, Project Engineer, City of Santa Barbara

Surveyed by: Chris Hansen, CASp #270

EXHIBIT "D"

TENANT'S OBLIGATION FOR NONDISCRIMINATION CERTIFICATE

S.B.M.C. 9.130.020

The "Tenant's obligation for non-discrimination" is as follows:

- a) Tenant in the use of the property which is the subject of this lease agreement or in the operations to be conducted pursuant to the provisions of this lease agreement, will not discriminate or permit discrimination against any person or class of persons by reason of race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act - Government Code Sections 12900 - 12996) except where such discrimination is related to bona fide occupational qualification.
- b) Tenant shall furnish its accommodations and services on a fair, equal and nondiscriminatory basis to all users thereof and Tenant shall only charge fair, reasonable and nondiscriminatory prices for each unit of service.

Tenant may make reasonable and non-discriminatory rebates, discounts or other similar price reductions to volume purchasers to the extent permitted by law.

- c) Tenant shall make its accommodations and services available to the public on fair and reasonable terms without discrimination on the basis of race, creed, color, national origin, ancestry, sexual orientation, political affiliations or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act - Government Code Sections 12900 - 12996) except where such discrimination is related to bona fide occupational qualification.
- d) Tenant shall not discriminate or allow discrimination either directly or indirectly, in hiring or employing persons to work on the premises.
- e) Tenant agrees that it shall insert the above articles in any lease agreement by which said Tenant transfers any interest herein or grants a right or privilege to any person, firm or corporation to use the premises or to render accommodations and services to the public on the premises.
- f) Non-compliance with provisions a), b), c), d), and e) above shall constitute a material breach hereof and in addition to any other remedies provided by law or this lease agreement, in the event of such non-compliance the City shall have the right to terminate this lease agreement and the interest hereby created without liability therefore, or at the election of the City, the City shall have the right to enforce judicially said provisions a), b), c), d), and e).

In the event the Tenant is found to have failed to comply with the provisions of articles a), b), c), d), and e) and notwithstanding any other remedy pursued by City, the Tenant shall pay to the City the sum of \$25.00 per day each incident of a failure to comply.

EXHIBIT "E"

GUARANTY

THIS GUARANTY ("Guaranty"), dated _____, 2014 is made by Mario Medina, ("Guarantor") in favor of the City of Santa Barbara, a municipal corporation ("City). High Sierra Grill Santa Barbara, Inc., a California Corporation, and City are parties to a lease, dated _____, 2014, as amended, modified, renewed or extended from time to time (the "Lease"). Guarantor has agreed to guarantee the indebtedness and other obligations of Lessee to City under or in connection with the Lease as set forth herein (the "Obligations"). Guarantor will derive substantial direct and indirect benefits from the lease, which benefits are hereby acknowledged by the Guarantor. Accordingly, to induce the City to enter the Lease with Lessee and in consideration thereof, Guarantor hereby agrees as follows:

1. *Guaranty.* Guarantor hereby unconditionally and irrevocably guarantees to City the full and prompt payment when due (whether at stated maturity, declaration, acceleration, demand or otherwise) and performance of the indebtedness, liabilities and other obligations of Lessee to City under or in connection with the Lease and any and all other documents and instruments executed or delivered in connection therewith (each a "Lease Document" and, collectively, the "Lease Documents"), or otherwise, including all unpaid principal, all interest accrued thereon, all fees due to City and all other amounts payable by Lessee to City thereunder or in connection therewith. The terms "indebtedness," "liabilities" and "obligations" are used herein in their most comprehensive sense and include any and all advances, debts, obligations and liabilities, now existing or hereafter arising, regardless what instrument, agreement, contract or entry in City's accounts they may be evidenced, or whether evidenced by any instrument, agreement, contract or entry in City's accounts, whether voluntary or involuntary and whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether recovery upon such indebtedness, liabilities and obligations may be or hereafter become unenforceable under the Bankruptcy Reform Act of 1978 (the "Bankruptcy Code") or other applicable law. The foregoing indebtedness, liabilities and other obligations of Lessee, and all other indebtedness, liabilities and obligations to be paid or performed by Guarantor in connection with this Guaranty shall be collectively referenced herein as the "Obligations."

2. *Liability of Guarantor.* The liability of Guarantor under this Guaranty shall be irrevocable, absolute, independent and unconditional, and shall not be affected by any circumstance that might constitute a discharge of a surety or guarantor other than the indefeasible payment and performance in full of all the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees as follows: (i) Guarantor's liability hereunder shall be the immediate, direct, and primary obligation of Guarantor and shall not be contingent upon City's exercise or enforcement of any remedy it may have against Lessee or any other person or entity ("Person"), or against any collateral for any of the Obligations; (ii) this Guaranty is a guaranty of payment when due and not of collectability; (iii) City may enforce this Guaranty upon the occurrence of a Default (as defined below) notwithstanding any dispute between City and Lessee with respect to the existence of such Default; (iv) Guarantor's payment of a portion, but not all, of the

Obligations shall in no way limit, affect, modify or abridge Guarantor's liability for any portion of the Obligations remaining unsatisfied; and (v) Guarantor's liability with respect to the Obligations shall remain in full force and effect without regard to, and shall not be impaired or affected by, nor shall Guarantor be exonerated or discharged by, (A) any insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, assignment for the benefit of creditors, liquidation, winding up or dissolution of Lessee, Guarantor, any other guarantor or any other Person; (B) any limitation, discharge, or cessation of the liability of Lessee, Guarantor, any other guarantor or any other Person for any of the Obligations due to any statute, regulation or rule of law, or any invalidity or unenforceability in whole or in part of any of the Obligations; (C) any merger, acquisition, consolidation or change in structure of Lessee, Guarantor or any other guarantor or Person, or any sale, lease, transfer or other disposition of any or all of the assets or shares of Lessee, Guarantor, any other guarantor or other Person; (D) any assignment or other transfer, in whole or in part, of City's interests in and rights under this Guaranty, including City's right to receive payment of the Obligations, or any assignment or other transfer, in whole or in part, of City's interests in and to any collateral securing the Obligations; (E) any claim, defense, counterclaim or setoff, other than that of prior performance, that Lessee, Guarantor, any other guarantor or other Person may have or assert, including any defense of incapacity or lack of corporate or other authority to execute or deliver any Contract or this Guaranty or any other document related thereto; (F) any direction of application of payment to Lessee, Guarantor, any other guarantor or other Person; and (G) City's vote, claim, distribution, election, acceptance, action or inaction in any bankruptcy case related to the Obligations.

3. *Consents.* Guarantor hereby consents and agrees that, without notice to or further assent from Guarantor: (i) the time, manner, place or terms of any payment under any Lease Document may be extended or changed, including by an increase or decrease in the interest rate on any of the Obligations or any fee or other amount payable under such Lease Document, by a modification or renewal of any Lease Document or otherwise; (ii) the time for Lessee's performance of or compliance with any term, covenant or agreement on its part to be performed or observed under any Lease Document may be extended, or such performance or compliance waived, or failure in or departure from such performance or compliance consented to, all in such manner and upon such terms as City may deem proper; (iii) City may discharge or release, in whole or in part, any other guarantor or any other Person liable for the payment and performance of all or any part of the Obligations, and may permit or consent to any such action or any result of such action, nor shall City be liable to Guarantor for any failure to collect or enforce payment of the Obligations; (iv) City may take and hold security of any kind, at any time, as collateral for the Obligations, and may, from time to time, in whole or in part, exchange, sell, surrender, release, subordinate, modify, waive, rescind, compromise or extend such security and may permit or consent to any such action or the result of any such action, and may apply such security and direct the order or manner of sale thereof; (v) City may request and accept other guaranties of the Obligations and may, from time to time, in whole or in part, surrender, release, subordinate, modify, waive, rescind, compromise or extend any such guaranty and may permit or consent to any such action or the result of any such action; and (vi) City may exercise, or waive or otherwise refrain from exercising, any other right, remedy, power or privilege granted by any Lease Document, or otherwise available to City, with respect to the Obligations and any collateral therefore, even if the exercise of such right, remedy, power or privilege affects or eliminates any right of subrogation or any other right of Guarantor against Lessee; all as City may deem advisable, and all without impairing, abridging, releasing or affecting this Guaranty.

4. *Waivers.* (a) Guarantor waives and agrees not to assert: (i) any right to require City to proceed against Lessee, any other guarantor or any other Person, to proceed against or exhaust any collateral or other security held for the Obligations (except to the extent required by applicable law), to give notice of or institute any public or private sale, foreclosure, or other disposition of any collateral or security for the Obligations, including, without limitation, to comply with applicable provisions of the California Uniform Commercial Code ("UCC") or any equivalent provision of any other applicable law in connection with the sale, foreclosure, or other disposition of any collateral or to pursue any other right, remedy, power or privilege of City whatsoever; (ii) the defense of the statute of limitations in any action hereunder or for the collection or performance of the Obligations; (iii) any defense arising by reason of any lack of corporate or other authority or any other defense of Lessee, Guarantor or any other Person; (iv) any defense based upon City's errors or omissions in the administration of the Obligations; (v) any rights to set-offs and counterclaims; (vi) any and all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the Guarantor's rights of subrogation and reimbursement against the principal by the operation of section 580d of the California Code of Civil Procedure or otherwise; and (viii) without limiting the generality of the foregoing, to the fullest extent permitted by law, any other defenses or benefits that may be derived from or afforded by applicable law limiting the liability of or exonerating guarantors or sureties, or which may conflict with the terms of this Guaranty, including, without limitation, any and all benefits that otherwise might be available to Guarantor under sections 1432, 2809, 2810, 2815, 2819, 2839, 2845, 2848, 2849, 2850, 2899, and 3433 of the California Civil Code and sections 350a, 580a, 580b, 580d, and 726 of the California Code of Civil Procedure.

(b) Guarantor waives any and all notice of the acceptance of this Guaranty, and any and all notice of the creation, renewal, modification, extension or accrual of the Obligations, or the reliance by City upon this Guaranty, or the exercise of any right, power or privilege hereunder. The Obligations shall conclusively be deemed to have been created, contracted, incurred and permitted to exist in reliance upon this Guaranty. Guarantor waives promptness, diligence, presentment, protest, demand for payment, notice of default, dishonor or nonpayment and all other notices to or upon Lessee, Guarantor or any other Person with respect to the Obligations.

(c) The obligations of Guarantor hereunder are independent of and separate from the obligations of Lessee and any other guarantor and upon the occurrence and during the continuance of any Default, a separate action or actions may be brought against Guarantor, whether or not Lessee or any such other guarantor is joined therein or a separate action or actions are brought against Lessee or any such other guarantor.

(d) Guarantor shall not have any right to require City to obtain or disclose any information with respect to (i) the financial condition or character of Lessee or the ability of Lessee to pay and perform the Obligations; (ii) the Obligations; (iii) any collateral or other security for any or all of the Obligations; (iv) the existence or nonexistence of any other guarantees of all or any part of the Obligations; (v) any action or inaction on the part of City or any other Person; or (vi) any other matter, fact or occurrence whatsoever.

5. *Subrogation.* Until the Obligations shall be satisfied in full, Guarantor shall not have, and shall not directly or indirectly exercise: (i) any rights that it may acquire by way of subrogation under this Guaranty, by any payment hereunder or otherwise; (ii) any rights of

contribution, indemnification, reimbursement or similar suretyship claims arising out of this Guaranty; or (iii) any other right which it might otherwise have or acquire (in any way whatsoever) which could entitle it at any time to share or participate in any right, remedy or security of the City as against Lessee or other guarantors, whether in connection with this Guaranty or otherwise. If any amount shall be paid to Guarantor on account of the foregoing rights at any time when any of the Obligations are outstanding, such amount shall be held in trust for the benefit of City and shall forthwith be paid to City to be credited and applied to the Obligations.

6. *Continuing Guaranty.* Guarantor agrees that this Guaranty is a continuing guaranty relating to any of the Obligations, including the Obligations that may exist continuously or may arise from time to time and Guarantor expressly acknowledges that this Guaranty shall remain in full force and effect notwithstanding that there may be periods in which no obligations exist. This Guaranty shall continue to be effective or shall be reinstated and revived, as the case may be, if, for any reason, any payment of the Obligations by or on behalf of Lessee shall be rescinded or must otherwise be restored by City, whether as a result of proceedings in bankruptcy or reorganization or otherwise. To the extent any payment is rescinded or restored, the Obligations shall be revived in full force and effect without reduction or discharge for such payment.

7. *Payments.* Guarantor hereby agrees, in furtherance of the foregoing provisions of this Guaranty and not in limitation of any other right which City or any other Person may have against Guarantor by virtue hereof, that upon any Default Guarantor shall forthwith pay, or cause to be paid, in cash, to City an amount equal to the amount of the Obligations then due and unpaid (including interest which, but for the filing of a petition in bankruptcy with respect to Lessee, would have accrued on the Obligations, whether or not a claim is allowed against Lessee for such interest in any such bankruptcy proceeding.) All payments made by Guarantor hereunder may be applied in such order as City shall elect. Guarantor shall make each payment hereunder, without deduction (whether for taxes or otherwise), set-off or counterclaim, on the day when due in same day or immediately available funds, and in U.S. dollars. As used anywhere in this Guaranty, "Default" means any of the following: (i) Lessee shall fail to pay when due (whether at stated maturity, declaration, acceleration, demand or otherwise) any of the Obligations; (ii) Guarantor shall fail in any material respect to perform or observe any term, covenant or agreement contained in this Guaranty on its/his/her part to be performed or observed; or (iii) (A) Lessee or Guarantor shall admit in writing its/his/her inability to, or shall fail generally or be generally unable to, pay its/his/her debts as they become due, or shall make a general assignment for the benefit of creditors, or shall file a voluntary petition in bankruptcy or a petition or answer seeking reorganization, to effect a plan or other arrangement with creditors or any other relief under the Bankruptcy Code or under any other state or federal law relating to bankruptcy or reorganization granting relief to debtors, whether now or hereafter in effect (collectively, "Bankruptcy Laws"); (B) Lessee or Guarantor shall be adjudicated a bankrupt, or shall make an assignment for the benefit of creditors, or shall apply for or consent to the appointment of any custodian, receiver or trustee for all or any substantial part of Lessee's or Guarantor's property, or shall take any action to authorize any of the actions set forth above in this clause; or (C) an involuntary petition seeking any of the relief specified in this clause shall be filed against Lessee or Guarantor, or any order for relief shall be entered against Lessee or Guarantor in any involuntary proceeding under any Bankruptcy Laws.

8. *Representations and Covenants.* (a) Guarantor represents and warrants to City that (i) Guarantor possesses directly or indirectly at least 50% of the voting control of

the capital stock or other ownership interests of Lessee; (ii) the execution, delivery and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action of Guarantor, and do not and will not result in a breach of or constitute a default under any material agreement, lease or instrument to which Guarantor is a party or by which it or its properties may be bound or affected, or violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree or the like binding on or affecting Guarantor; (iii) this Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms; and (iv) no authorization, consent, approval, license, exemption of, or filing or registration with, any governmental agency or authority is required for the due execution, delivery or performance by Guarantor of this Guaranty; (b) So long as this Guaranty shall be in effect, Guarantor will (i) possess directly or indirectly at all times voting control of at least 50% of the capital stock or other ownership interests of Lessee; (ii) will not, and will not permit Lessee to, liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), merge with or consolidate into, or acquire all or substantially all of the assets of, any Person, or sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets, except that Guarantor may merge with or consolidate into any other Person or sell, transfer, lease or otherwise dispose of all or substantially all of its assets to another Person, provided that the surviving entity or such Person shall expressly assume by an amendment hereto all of the obligations of Guarantor hereunder and no Default exists; and (iii) furnish to City from time to time such information respecting Guarantor's financial condition as City may from time to time reasonably request and will execute, acknowledge, deliver, file, notarize and register at its own expense all such further agreements, instruments, certificates, documents and assurances and perform such acts as City shall deem necessary or appropriate to effectuate the purposes of this Guaranty and shall reasonably request.

9. *Notices.* All notices and other communications provided for hereunder shall, unless otherwise stated herein, be in writing (including by facsimile) and shall be mailed, sent or delivered: if to the City, to the City Attorney's Office, attn. City Attorney, P.O. Box 1990, Santa Barbara, CA 93102-1990, fax (805) 897-2532; if to Guarantor, to or at its address or facsimile number set forth below its name on the signature page hereof; or at or to such other address or facsimile number as such party shall have designated in a written notice to the other party. All such notices and communications shall be effective upon receipt.

10. *No Waiver.* No failure on the part of City to exercise, and no delay in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights and remedies under this Guaranty are cumulative and not exclusive of any rights, remedies, powers and privileges that may otherwise be available to City.

11. *Binding Effect; Entire Agreement; Amendments.* This Guaranty shall be binding upon Guarantor and its successors and assigns, and inure to the benefit of and be enforceable by City and its successors, endorsees, transferees and assigns. Guarantor shall not have the right to assign or transfer its/his/her rights and obligations or the Obligations hereunder without the prior written consent of City. This Guaranty constitutes the entire agreement of Guarantor with respect to the matters set forth herein and supersedes any prior agreements, commitments, discussions and understandings, oral or

written, with respect thereto. There are no conditions to the full effectiveness of this Guaranty. This Guaranty may not be amended except by a writing signed by Guarantor and City. No waiver of any rights of City under any provision of this Guaranty or consent to any departure by Guarantor therefrom shall be effective unless in writing and signed by City. Any such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

12. *Knowing and Explicit Waivers.* Guarantor acknowledges having either obtained the advice of legal counsel or having had the opportunity to obtain such advice in connection with the terms and provisions of this Guaranty. Guarantor acknowledges and agrees that each of the waivers and consents set forth herein, including, without limitation, those contained in Sections Two through Four, are made with full knowledge of their significance and consequences. Additionally, Guarantor acknowledges and agrees that executing this Guaranty waives certain rights, benefits, protections and defenses to which it/he/she may otherwise be entitled under applicable law, including, without limitation, under the provisions of the California Civil Code and California Code of Civil Procedure referenced in Section Four, and that all such waivers herein are explicit, knowing waivers. Guarantor further acknowledges and agrees that City relies on such waivers in creating the Obligations and that such waivers are a material part of the consideration City receives for creating the Obligations.

13. *Severability.* Whenever possible, each provision of the Guaranty shall be interpreted in such manner as to be effective and valid under all applicable laws and regulations. If, however, any provision of this Guaranty shall be prohibited by or invalid under any such law or regulation, it shall be deemed modified to conform to the minimum requirements of such law or regulation, or, if for any reason it is not deemed so modified, it shall be ineffective and invalid only to the extent of such prohibition or invalidity without affecting the remaining provisions of this Guaranty.

14. *Governing Law and Submission to Jurisdiction.* This Guaranty shall be governed by and construed in accordance with California law. Guarantor hereby (i) submits to the non-exclusive jurisdiction of the courts of the State of California and the federal courts of the United States sitting in the State of California for the purpose of any action or proceeding arising out of or relating to this Guaranty, (ii) agrees that all claims in respect of any such action or proceeding may be heard and determined in such courts, (iii) irrevocably waives (to the extent permitted by applicable law) any objection which it now or hereafter may have to the laying of venue of any such action or proceeding brought in any of the foregoing courts in and of the State of California, and any objection on the ground that any such action or proceeding in any such court has been brought in an inconvenient forum, and (iv) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or other lawful manner.

15. *Multiple Guarantors and Joint and Several Liability.* When this Guaranty is executed by more than one Guarantor, the word "Guarantor" shall mean all and any one or more of them, and the obligations of all Persons signing this Guaranty shall be joint and several.

IN WITNESS WHEREOF, Guarantor has executed and delivered this Guaranty, as of the date first above written.

By: 

Print Name: Manuel Perales

Title: President

Address **Redacted**

Redacted
City State Zip

EXHIBIT "F"

GUARANTY

THIS GUARANTY ("Guaranty"), dated _____, 2014 is made by Manuel Perales, ("Guarantor") in favor of the City of Santa Barbara, a municipal corporation ("City). High Sierra Grill Santa Barbara, Inc., a California Corporation, and City are parties to a lease, dated _____, 2014, as amended, modified, renewed or extended from time to time (the "Lease"). Guarantor has agreed to guarantee the indebtedness and other obligations of Lessee to City under or in connection with the Lease as set forth herein (the "Obligations"). Guarantor will derive substantial direct and indirect benefits from the lease, which benefits are hereby acknowledged by the Guarantor. Accordingly, to induce the City to enter the Lease with Lessee and in consideration thereof, Guarantor hereby agrees as follows:

1. *Guaranty.* Guarantor hereby unconditionally and irrevocably guarantees to City the full and prompt payment when due (whether at stated maturity, declaration, acceleration, demand or otherwise) and performance of the indebtedness, liabilities and other obligations of Lessee to City under or in connection with the Lease and any and all other documents and instruments executed or delivered in connection therewith (each a "Lease Document" and, collectively, the "Lease Documents"), or otherwise, including all unpaid principal, all interest accrued thereon, all fees due to City and all other amounts payable by Lessee to City thereunder or in connection therewith. The terms "indebtedness," "liabilities" and "obligations" are used herein in their most comprehensive sense and include any and all advances, debts, obligations and liabilities, now existing or hereafter arising, regardless what instrument, agreement, contract or entry in City's accounts they may be evidenced, or whether evidenced by any instrument, agreement, contract or entry in City's accounts, whether voluntary or involuntary and whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether recovery upon such indebtedness, liabilities and obligations may be or hereafter become unenforceable under the Bankruptcy Reform Act of 1978 (the "Bankruptcy Code") or other applicable law. The foregoing indebtedness, liabilities and other obligations of Lessee, and all other indebtedness, liabilities and obligations to be paid or performed by Guarantor in connection with this Guaranty shall be collectively referenced herein as the "Obligations."

2. *Liability of Guarantor.* The liability of Guarantor under this Guaranty shall be irrevocable, absolute, independent and unconditional, and shall not be affected by any circumstance that might constitute a discharge of a surety or guarantor other than the indefeasible payment and performance in full of all the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees as follows: (i) Guarantor's liability hereunder shall be the immediate, direct, and primary obligation of Guarantor and shall not be contingent upon City's exercise or enforcement of any remedy it may have against Lessee or any other person or entity ("Person"), or against any collateral for any of the Obligations; (ii) this Guaranty is a guaranty of payment when due and not of collectability; (iii) City may enforce this Guaranty upon the occurrence of a Default (as defined below) notwithstanding any dispute between City and Lessee with respect to the existence of such Default; (iv) Guarantor's payment of a portion, but not all, of the Obligations shall in no way limit, affect, modify or abridge Guarantor's liability for any portion

of the Obligations remaining unsatisfied; and (v) Guarantor's liability with respect to the Obligations shall remain in full force and effect without regard to, and shall not be impaired or affected by, nor shall Guarantor be exonerated or discharged by, (A) any insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, assignment for the benefit of creditors, liquidation, winding up or dissolution of Lessee, Guarantor, any other guarantor or any other Person; (B) any limitation, discharge, or cessation of the liability of Lessee, Guarantor, any other guarantor or any other Person for any of the Obligations due to any statute, regulation or rule of law, or any invalidity or unenforceability in whole or in part of any of the Obligations; (C) any merger, acquisition, consolidation or change in structure of Lessee, Guarantor or any other guarantor or Person, or any sale, lease, transfer or other disposition of any or all of the assets or shares of Lessee, Guarantor, any other guarantor or other Person; (D) any assignment or other transfer, in whole or in part, of City's interests in and rights under this Guaranty, including City's right to receive payment of the Obligations, or any assignment or other transfer, in whole or in part, of City's interests in and to any collateral securing the Obligations; (E) any claim, defense, counterclaim or setoff, other than that of prior performance, that Lessee, Guarantor, any other guarantor or other Person may have or assert, including any defense of incapacity or lack of corporate or other authority to execute or deliver any Contract or this Guaranty or any other document related thereto; (F) any direction of application of payment to Lessee, Guarantor, any other guarantor or other Person; and (G) City's vote, claim, distribution, election, acceptance, action or inaction in any bankruptcy case related to the Obligations.

3. *Consents.* Guarantor hereby consents and agrees that, without notice to or further assent from Guarantor: (i) the time, manner, place or terms of any payment under any Lease Document may be extended or changed, including by an increase or decrease in the interest rate on any of the Obligations or any fee or other amount payable under such Lease Document, by a modification or renewal of any Lease Document or otherwise; (ii) the time for Lessee's performance of or compliance with any term, covenant or agreement on its part to be performed or observed under any Lease Document may be extended, or such performance or compliance waived, or failure in or departure from such performance or compliance consented to, all in such manner and upon such terms as City may deem proper; (iii) City may discharge or release, in whole or in part, any other guarantor or any other Person liable for the payment and performance of all or any part of the Obligations, and may permit or consent to any such action or any result of such action, nor shall City be liable to Guarantor for any failure to collect or enforce payment of the Obligations; (iv) City may take and hold security of any kind, at any time, as collateral for the Obligations, and may, from time to time, in whole or in part, exchange, sell, surrender, release, subordinate, modify, waive, rescind, compromise or extend such security and may permit or consent to any such action or the result of any such action, and may apply such security and direct the order or manner of sale thereof; (v) City may request and accept other guaranties of the Obligations and may, from time to time, in whole or in part, surrender, release, subordinate, modify, waive, rescind, compromise or extend any such guaranty and may permit or consent to any such action or the result of any such action; and (vi) City may exercise, or waive or otherwise refrain from exercising, any other right, remedy, power or privilege granted by any Lease Document, or otherwise available to City, with respect to the Obligations and any collateral therefore, even if the exercise of such right, remedy, power or privilege affects or eliminates any right of subrogation or any other right of Guarantor against Lessee; all as City may deem advisable, and all without impairing, abridging, releasing or affecting this Guaranty.

4. *Waivers.* (a) Guarantor waives and agrees not to assert: (i) any right to require City to proceed against Lessee, any other guarantor or any other Person, to proceed against or exhaust any collateral or other security held for the Obligations (except to the extent required by applicable law), to give notice of or institute any public or private sale, foreclosure, or other disposition of any collateral or security for the Obligations, including, without limitation, to comply with applicable provisions of the California Uniform Commercial Code ("UCC") or any equivalent provision of any other applicable law in connection with the sale, foreclosure, or other disposition of any collateral or to pursue any other right, remedy, power or privilege of City whatsoever; (ii) the defense of the statute of limitations in any action hereunder or for the collection or performance of the Obligations; (iii) any defense arising by reason of any lack of corporate or other authority or any other defense of Lessee, Guarantor or any other Person; (iv) any defense based upon City's errors or omissions in the administration of the Obligations; (v) any rights to set-offs and counterclaims; (vi) any and all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the Guarantor's rights of subrogation and reimbursement against the principal by the operation of section 580d of the California Code of Civil Procedure or otherwise; and (viii) without limiting the generality of the foregoing, to the fullest extent permitted by law, any other defenses or benefits that may be derived from or afforded by applicable law limiting the liability of or exonerating guarantors or sureties, or which may conflict with the terms of this Guaranty, including, without limitation, any and all benefits that otherwise might be available to Guarantor under sections 1432, 2809, 2810, 2815, 2819, 2839, 2845, 2848, 2849, 2850, 2899, and 3433 of the California Civil Code and sections 350a, 580a, 580b, 580d, and 726 of the California Code of Civil Procedure.

(b) Guarantor waives any and all notice of the acceptance of this Guaranty, and any and all notice of the creation, renewal, modification, extension or accrual of the Obligations, or the reliance by City upon this Guaranty, or the exercise of any right, power or privilege hereunder. The Obligations shall conclusively be deemed to have been created, contracted, incurred and permitted to exist in reliance upon this Guaranty. Guarantor waives promptness, diligence, presentment, protest, demand for payment, notice of default, dishonor or nonpayment and all other notices to or upon Lessee, Guarantor or any other Person with respect to the Obligations.

(c) The obligations of Guarantor hereunder are independent of and separate from the obligations of Lessee and any other guarantor and upon the occurrence and during the continuance of any Default, a separate action or actions may be brought against Guarantor, whether or not Lessee or any such other guarantor is joined therein or a separate action or actions are brought against Lessee or any such other guarantor.

(d) Guarantor shall not have any right to require City to obtain or disclose any information with respect to (i) the financial condition or character of Lessee or the ability of Lessee to pay and perform the Obligations; (ii) the Obligations; (iii) any collateral or other security for any or all of the Obligations; (iv) the existence or nonexistence of any other guarantees of all or any part of the Obligations; (v) any action or inaction on the part of City or any other Person; or (vi) any other matter, fact or occurrence whatsoever.

5. *Subrogation.* Until the Obligations shall be satisfied in full, Guarantor shall not have, and shall not directly or indirectly exercise: (i) any rights that it may acquire by way of subrogation under this Guaranty, by any payment hereunder or otherwise; (ii) any

rights of contribution, indemnification, reimbursement or similar suretyship claims arising out of this Guaranty; or (iii) any other right which it might otherwise have or acquire (in any way whatsoever) which could entitle it at any time to share or participate in any right, remedy or security of the City as against Lessee or other guarantors, whether in connection with this Guaranty or otherwise. If any amount shall be paid to Guarantor on account of the foregoing rights at any time when any of the Obligations are outstanding, such amount shall be held in trust for the benefit of City and shall forthwith be paid to City to be credited and applied to the Obligations.

6. *Continuing Guaranty.* Guarantor agrees that this Guaranty is a continuing guaranty relating to any of the Obligations, including the Obligations that may exist continuously or may arise from time to time and Guarantor expressly acknowledges that this Guaranty shall remain in full force and effect notwithstanding that there may be periods in which no obligations exist. This Guaranty shall continue to be effective or shall be reinstated and revived, as the case may be, if, for any reason, any payment of the Obligations by or on behalf of Lessee shall be rescinded or must otherwise be restored by City, whether as a result of proceedings in bankruptcy or reorganization or otherwise. To the extent any payment is rescinded or restored, the Obligations shall be revived in full force and effect without reduction or discharge for such payment.

7. *Payments.* Guarantor hereby agrees, in furtherance of the foregoing provisions of this Guaranty and not in limitation of any other right which City or any other Person may have against Guarantor by virtue hereof, that upon any Default Guarantor shall forthwith pay, or cause to be paid, in cash, to City an amount equal to the amount of the Obligations then due and unpaid (including interest which, but for the filing of a petition in bankruptcy with respect to Lessee, would have accrued on the Obligations, whether or not a claim is allowed against Lessee for such interest in any such bankruptcy proceeding.) All payments made by Guarantor hereunder may be applied in such order as City shall elect. Guarantor shall make each payment hereunder, without deduction (whether for taxes or otherwise), set-off or counterclaim, on the day when due in same day or immediately available funds, and in U.S. dollars. As used anywhere in this Guaranty, "Default" means any of the following: (i) Lessee shall fail to pay when due (whether at stated maturity, declaration, acceleration, demand or otherwise) any of the Obligations; (ii) Guarantor shall fail in any material respect to perform or observe any term, covenant or agreement contained in this Guaranty on its/his/her part to be performed or observed; or (iii) (A) Lessee or Guarantor shall admit in writing its/his/her inability to, or shall fail generally or be generally unable to, pay its/his/her debts as they become due, or shall make a general assignment for the benefit of creditors, or shall file a voluntary petition in bankruptcy or a petition or answer seeking reorganization, to effect a plan or other arrangement with creditors or any other relief under the Bankruptcy Code or under any other state or federal law relating to bankruptcy or reorganization granting relief to debtors, whether now or hereafter in effect (collectively, "Bankruptcy Laws"); (B) Lessee or Guarantor shall be adjudicated a bankrupt, or shall make an assignment for the benefit of creditors, or shall apply for or consent to the appointment of any custodian, receiver or trustee for all or any substantial part of Lessee's or Guarantor's property, or shall take any action to authorize any of the actions set forth above in this clause; or (C) an involuntary petition seeking any of the relief specified in this clause shall be filed against Lessee or Guarantor, or any order for relief shall be entered against Lessee or Guarantor in any involuntary proceeding under any Bankruptcy Laws.

8. *Representations and Covenants.* (a) Guarantor represents and warrants to City that (i) Guarantor possesses directly or indirectly at least 50% of the voting control of

the capital stock or other ownership interests of Lessee; (ii) the execution, delivery and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action of Guarantor, and do not and will not result in a breach of or constitute a default under any material agreement, lease or instrument to which Guarantor is a party or by which it or its properties may be bound or affected, or violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree or the like binding on or affecting Guarantor; (iii) this Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms; and (iv) no authorization, consent, approval, license, exemption of, or filing or registration with, any governmental agency or authority is required for the due execution, delivery or performance by Guarantor of this Guaranty; (b) So long as this Guaranty shall be in effect, Guarantor will (i) possess directly or indirectly at all times voting control of at least 50% of the capital stock or other ownership interests of Lessee; (ii) will not, and will not permit Lessee to, liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), merge with or consolidate into, or acquire all or substantially all of the assets of, any Person, or sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets, except that Guarantor may merge with or consolidate into any other Person or sell, transfer, lease or otherwise dispose of all or substantially all of its assets to another Person, provided that the surviving entity or such Person shall expressly assume by an amendment hereto all of the obligations of Guarantor hereunder and no Default exists; and (iii) furnish to City from time to time such information respecting Guarantor's financial condition as City may from time to time reasonably request and will execute, acknowledge, deliver, file, notarize and register at its own expense all such further agreements; instruments, certificates, documents and assurances and perform such acts as City shall deem necessary or appropriate to effectuate the purposes of this Guaranty and shall reasonably request.

9. *Notices.* All notices and other communications provided for hereunder shall, unless otherwise stated herein, be in writing (including by facsimile) and shall be mailed, sent or delivered: if to the City, to the City Attorney's Office, attn. City Attorney, P.O. Box 1990, Santa Barbara, CA 93102-1990, fax (805) 897-2532; if to Guarantor, to or at its address or facsimile number set forth below its name on the signature page hereof; or at or to such other address or facsimile number as such party shall have designated in a written notice to the other party. All such notices and communications shall be effective upon receipt.

10. *No Waiver.* No failure on the part of City to exercise, and no delay in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights and remedies under this Guaranty are cumulative and not exclusive of any rights, remedies, powers and privileges that may otherwise be available to City.

11. *Binding Effect; Entire Agreement; Amendments.* This Guaranty shall be binding upon Guarantor and its successors and assigns, and inure to the benefit of and be enforceable by City and its successors, endorsees, transferees and assigns. Guarantor shall not have the right to assign or transfer its/his/her rights and obligations or the Obligations hereunder without the prior written consent of City. This Guaranty constitutes the entire agreement of Guarantor with respect to the matters set forth herein and supersedes any prior agreements, commitments, discussions and understandings, oral or

written, with respect thereto. There are no conditions to the full effectiveness of this Guaranty. This Guaranty may not be amended except by a writing signed by Guarantor and City. No waiver of any rights of City under any provision of this Guaranty or consent to any departure by Guarantor therefrom shall be effective unless in writing and signed by City. Any such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

12. *Knowing and Explicit Waivers.* Guarantor acknowledges having either obtained the advice of legal counsel or having had the opportunity to obtain such advice in connection with the terms and provisions of this Guaranty. Guarantor acknowledges and agrees that each of the waivers and consents set forth herein, including, without limitation, those contained in Sections Two through Four, are made with full knowledge of their significance and consequences. Additionally, Guarantor acknowledges and agrees that executing this Guaranty waives certain rights, benefits, protections and defenses to which it/he/she may otherwise be entitled under applicable law, including, without limitation, under the provisions of the California Civil Code and California Code of Civil Procedure referenced in Section Four, and that all such waivers herein are explicit, knowing waivers. Guarantor further acknowledges and agrees that City relies on such waivers in creating the Obligations and that such waivers are a material part of the consideration City receives for creating the Obligations.

13. *Severability.* Whenever possible, each provision of the Guaranty shall be interpreted in such manner as to be effective and valid under all applicable laws and regulations. If, however, any provision of this Guaranty shall be prohibited by or invalid under any such law or regulation, it shall be deemed modified to conform to the minimum requirements of such law or regulation, or, if for any reason it is not deemed so modified, it shall be ineffective and invalid only to the extent of such prohibition or invalidity without affecting the remaining provisions of this Guaranty.

14. *Governing Law and Submission to Jurisdiction.* This Guaranty shall be governed by and construed in accordance with California law. Guarantor hereby (i) submits to the non-exclusive jurisdiction of the courts of the State of California and the federal courts of the United States sitting in the State of California for the purpose of any action or proceeding arising out of or relating to this Guaranty, (ii) agrees that all claims in respect of any such action or proceeding may be heard and determined in such courts, (iii) irrevocably waives (to the extent permitted by applicable law) any objection which it now or hereafter may have to the laying of venue of any such action or proceeding brought in any of the foregoing courts in and of the State of California, and any objection on the ground that any such action or proceeding in any such court has been brought in an inconvenient forum, and (iv) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or other lawful manner.

15. *Multiple Guarantors and Joint and Several Liability.* When this Guaranty is executed by more than one Guarantor, the word "Guarantor" shall mean all and any one or more of them, and the obligations of all Persons signing this Guaranty shall be joint and several.

IN WITNESS WHEREOF, Guarantor has executed and delivered this Guaranty, as of the date first above written.

By: 

Print Name: Mario Medina

Title: V-President / CFO

Address: 


City State Zip

EXHIBIT "G"

GUARANTY

THIS GUARANTY ("Guaranty"), dated _____, 2014 is made by Paul Ybarra, ("Guarantor") in favor of the City of Santa Barbara, a municipal corporation ("City). High Sierra Grill Santa Barbara, Inc., a California Corporation, and City are parties to a lease, dated _____, 2014, as amended, modified, renewed or extended from time to time (the "Lease"). Guarantor has agreed to guarantee the indebtedness and other obligations of Lessee to City under or in connection with the Lease as set forth herein (the "Obligations"). Guarantor will derive substantial direct and indirect benefits from the lease, which benefits are hereby acknowledged by the Guarantor. Accordingly, to induce the City to enter the Lease with Lessee and in consideration thereof, Guarantor hereby agrees as follows:

1. *Guaranty.* Guarantor hereby unconditionally and irrevocably guarantees to City the full and prompt payment when due (whether at stated maturity, declaration, acceleration, demand or otherwise) and performance of the indebtedness, liabilities and other obligations of Lessee to City under or in connection with the Lease and any and all other documents and instruments executed or delivered in connection therewith (each a "Lease Document" and, collectively, the "Lease Documents"), or otherwise, including all unpaid principal, all interest accrued thereon, all fees due to City and all other amounts payable by Lessee to City thereunder or in connection therewith. The terms "indebtedness," "liabilities" and "obligations" are used herein in their most comprehensive sense and include any and all advances, debts, obligations and liabilities, now existing or hereafter arising, regardless what instrument, agreement, contract or entry in City's accounts they may be evidenced, or whether evidenced by any instrument, agreement, contract or entry in City's accounts, whether voluntary or involuntary and whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether recovery upon such indebtedness, liabilities and obligations may be or hereafter become unenforceable under the Bankruptcy Reform Act of 1978 (the "Bankruptcy Code") or other applicable law. The foregoing indebtedness, liabilities and other obligations of Lessee, and all other indebtedness, liabilities and obligations to be paid or performed by Guarantor in connection with this Guaranty shall be collectively referenced herein as the "Obligations."

2. *Liability of Guarantor.* The liability of Guarantor under this Guaranty shall be irrevocable, absolute, independent and unconditional, and shall not be affected by any circumstance that might constitute a discharge of a surety or guarantor other than the indefeasible payment and performance in full of all the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees as follows: (i) Guarantor's liability hereunder shall be the immediate, direct, and primary obligation of Guarantor and shall not be contingent upon City's exercise or enforcement of any remedy it may have against Lessee or any other person or entity ("Person"), or against any collateral for any of the Obligations; (ii) this Guaranty is a guaranty of payment when due and not of collectibility; (iii) City may enforce this Guaranty upon the occurrence of a Default (as defined below) notwithstanding any dispute between City and Lessee with respect to the existence of such Default; (iv) Guarantor's payment of a portion, but not all, of the Obligations shall in no way limit, affect, modify or abridge Guarantor's liability for any portion of the Obligations remaining unsatisfied; and (v) Guarantor's liability with respect to the

Obligations shall remain in full force and effect without regard to, and shall not be impaired or affected by, nor shall Guarantor be exonerated or discharged by, (A) any insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, assignment for the benefit of creditors, liquidation, winding up or dissolution of Lessee, Guarantor, any other guarantor or any other Person; (B) any limitation, discharge, or cessation of the liability of Lessee, Guarantor, any other guarantor or any other Person for any of the Obligations due to any statute, regulation or rule of law, or any invalidity or unenforceability in whole or in part of any of the Obligations; (C) any merger, acquisition, consolidation or change in structure of Lessee, Guarantor or any other guarantor or Person, or any sale, lease, transfer or other disposition of any or all of the assets or shares of Lessee, Guarantor, any other guarantor or other Person; (D) any assignment or other transfer, in whole or in part, of City's interests in and rights under this Guaranty, including City's right to receive payment of the Obligations, or any assignment or other transfer, in whole or in part, of City's interests in and to any collateral securing the Obligations; (E) any claim, defense, counterclaim or setoff, other than that of prior performance, that Lessee, Guarantor, any other guarantor or other Person may have or assert, including any defense of incapacity or lack of corporate or other authority to execute or deliver any Contract or this Guaranty or any other document related thereto; (F) any direction of application of payment to Lessee, Guarantor, any other guarantor or other Person; and (G) City's vote, claim, distribution, election, acceptance, action or inaction in any bankruptcy case related to the Obligations.

3. *Consents.* Guarantor hereby consents and agrees that, without notice to or further assent from Guarantor: (i) the time, manner, place or terms of any payment under any Lease Document may be extended or changed, including by an increase or decrease in the interest rate on any of the Obligations or any fee or other amount payable under such Lease Document, by a modification or renewal of any Lease Document or otherwise; (ii) the time for Lessee's performance of or compliance with any term, covenant or agreement on its part to be performed or observed under any Lease Document may be extended, or such performance or compliance waived, or failure in or departure from such performance or compliance consented to, all in such manner and upon such terms as City may deem proper; (iii) City may discharge or release, in whole or in part, any other guarantor or any other Person liable for the payment and performance of all or any part of the Obligations, and may permit or consent to any such action or any result of such action, nor shall City be liable to Guarantor for any failure to collect or enforce payment of the Obligations; (iv) City may take and hold security of any kind, at any time, as collateral for the Obligations, and may, from time to time, in whole or in part, exchange, sell, surrender, release, subordinate, modify, waive, rescind, compromise or extend such security and may permit or consent to any such action or the result of any such action, and may apply such security and direct the order or manner of sale thereof; (v) City may request and accept other guaranties of the Obligations and may, from time to time, in whole or in part, surrender, release, subordinate, modify, waive, rescind, compromise or extend any such guaranty and may permit or consent to any such action or the result of any such action; and (vi) City may exercise, or waive or otherwise refrain from exercising, any other right, remedy, power or privilege granted by any Lease Document, or otherwise available to City, with respect to the Obligations and any collateral therefore, even if the exercise of such right, remedy, power or privilege affects or eliminates any right of subrogation or any other right of Guarantor against Lessee; all as City may deem advisable, and all without impairing, abridging, releasing or affecting this Guaranty.

4. *Waivers.* (a) Guarantor waives and agrees not to assert: (i) any right to require City to proceed against Lessee, any other guarantor or any other Person, to proceed against or exhaust any collateral or other security held for the Obligations (except to the extent required by applicable law), to give notice of or institute any public or private sale, foreclosure, or other disposition of any collateral or security for the Obligations, including, without limitation, to comply with applicable provisions of the California Uniform Commercial Code ("UCC") or any equivalent provision of any other applicable law in connection with the sale, foreclosure, or other disposition of any collateral or to pursue any other right, remedy, power or privilege of City whatsoever; (ii) the defense of the statute of limitations in any action hereunder or for the collection or performance of the Obligations; (iii) any defense arising by reason of any lack of corporate or other authority or any other defense of Lessee, Guarantor or any other Person; (iv) any defense based upon City's errors or omissions in the administration of the Obligations; (v) any rights to set-offs and counterclaims; (vi) any and all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the Guarantor's rights of subrogation and reimbursement against the principal by the operation of section 580d of the California Code of Civil Procedure or otherwise; and (viii) without limiting the generality of the foregoing, to the fullest extent permitted by law, any other defenses or benefits that may be derived from or afforded by applicable law limiting the liability of or exonerating guarantors or sureties, or which may conflict with the terms of this Guaranty, including, without limitation, any and all benefits that otherwise might be available to Guarantor under sections 1432, 2809, 2810, 2815, 2819, 2839, 2845, 2848, 2849, 2850, 2899, and 3433 of the California Civil Code and sections 350a, 580a, 580b, 580d, and 726 of the California Code of Civil Procedure.

(b) Guarantor waives any and all notice of the acceptance of this Guaranty, and any and all notice of the creation, renewal, modification, extension or accrual of the Obligations, or the reliance by City upon this Guaranty, or the exercise of any right, power or privilege hereunder. The Obligations shall conclusively be deemed to have been created, contracted, incurred and permitted to exist in reliance upon this Guaranty. Guarantor waives promptness, diligence, presentment, protest, demand for payment, notice of default, dishonor or nonpayment and all other notices to or upon Lessee, Guarantor or any other Person with respect to the Obligations.

(c) The obligations of Guarantor hereunder are independent of and separate from the obligations of Lessee and any other guarantor and upon the occurrence and during the continuance of any Default, a separate action or actions may be brought against Guarantor, whether or not Lessee or any such other guarantor is joined therein or a separate action or actions are brought against Lessee or any such other guarantor.

(d) Guarantor shall not have any right to require City to obtain or disclose any information with respect to (i) the financial condition or character of Lessee or the ability of Lessee to pay and perform the Obligations; (ii) the Obligations; (iii) any collateral or other security for any or all of the Obligations; (iv) the existence or nonexistence of any other guarantees of all or any part of the Obligations; (v) any action or inaction on the part of City or any other Person; or (vi) any other matter, fact or occurrence whatsoever.

5. *Subrogation.* Until the Obligations shall be satisfied in full, Guarantor shall not have, and shall not directly or indirectly exercise: (i) any rights that it may acquire by way of subrogation under this Guaranty, by any payment hereunder or otherwise; (ii) any rights of contribution, indemnification, reimbursement or similar suretyship claims arising out of this

Guaranty; or (iii) any other right which it might otherwise have or acquire (in any way whatsoever) which could entitle it at any time to share or participate in any right, remedy or security of the City as against Lessee or other guarantors, whether in connection with this Guaranty or otherwise. If any amount shall be paid to Guarantor on account of the foregoing rights at any time when any of the Obligations are outstanding, such amount shall be held in trust for the benefit of City and shall forthwith be paid to City to be credited and applied to the Obligations.

6. *Continuing Guaranty.* Guarantor agrees that this Guaranty is a continuing guaranty relating to any of the Obligations, including the Obligations that may exist continuously or may arise from time to time and Guarantor expressly acknowledges that this Guaranty shall remain in full force and effect notwithstanding that there may be periods in which no obligations exist. This Guaranty shall continue to be effective or shall be reinstated and revived, as the case may be, if, for any reason, any payment of the Obligations by or on behalf of Lessee shall be rescinded or must otherwise be restored by City, whether as a result of proceedings in bankruptcy or reorganization or otherwise. To the extent any payment is rescinded or restored, the Obligations shall be revived in full force and effect without reduction or discharge for such payment.

7. *Payments.* Guarantor hereby agrees, in furtherance of the foregoing provisions of this Guaranty and not in limitation of any other right which City or any other Person may have against Guarantor by virtue hereof, that upon any Default Guarantor shall forthwith pay, or cause to be paid, in cash, to City an amount equal to the amount of the Obligations then due and unpaid (including interest which, but for the filing of a petition in bankruptcy with respect to Lessee, would have accrued on the Obligations, whether or not a claim is allowed against Lessee for such interest in any such bankruptcy proceeding.) All payments made by Guarantor hereunder may be applied in such order as City shall elect. Guarantor shall make each payment hereunder, without deduction (whether for taxes or otherwise), set-off or counterclaim, on the day when due in same day or immediately available funds, and in U.S. dollars. As used anywhere in this Guaranty, "Default" means any of the following: (i) Lessee shall fail to pay when due (whether at stated maturity, declaration, acceleration, demand or otherwise) any of the Obligations; (ii) Guarantor shall fail in any material respect to perform or observe any term, covenant or agreement contained in this Guaranty on its/his/her part to be performed or observed; or (iii) (A) Lessee or Guarantor shall admit in writing its/his/her inability to, or shall fail generally or be generally unable to, pay its/his/her debts as they become due, or shall make a general assignment for the benefit of creditors, or shall file a voluntary petition in bankruptcy or a petition or answer seeking reorganization, to effect a plan or other arrangement with creditors or any other relief under the Bankruptcy Code or under any other state or federal law relating to bankruptcy or reorganization granting relief to debtors, whether now or hereafter in effect (collectively, "Bankruptcy Laws"); (B) Lessee or Guarantor shall be adjudicated a bankrupt, or shall make an assignment for the benefit of creditors, or shall apply for or consent to the appointment of any custodian, receiver or trustee for all or any substantial part of Lessee's or Guarantor's property, or shall take any action to authorize any of the actions set forth above in this clause; or (C) an involuntary petition seeking any of the relief specified in this clause shall be filed against Lessee or Guarantor, or any order for relief shall be entered against Lessee or Guarantor in any involuntary proceeding under any Bankruptcy Laws.

8. *Representations and Covenants.* (a) Guarantor represents and warrants to City that (i) Guarantor possesses directly or indirectly at least 50% of the voting control of the capital stock or other ownership interests of Lessee; (ii) the execution, delivery and

performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action of Guarantor, and do not and will not result in a breach of or constitute a default under any material agreement, lease or instrument to which Guarantor is a party or by which it or its properties may be bound or affected, or violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree or the like binding on or affecting Guarantor; (iii) this Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms; and (iv) no authorization, consent, approval, license, exemption of, or filing or registration with, any governmental agency or authority is required for the due execution, delivery or performance by Guarantor of this Guaranty; (b) So long as this Guaranty shall be in effect, Guarantor will (i) possess directly or indirectly at all times voting control of at least 50% of the capital stock or other ownership interests of Lessee; (ii) will not, and will not permit Lessee to, liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), merge with or consolidate into, or acquire all or substantially all of the assets of, any Person, or sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets, except that Guarantor may merge with or consolidate into any other Person or sell, transfer, lease or otherwise dispose of all or substantially all of its assets to another Person, provided that the surviving entity or such Person shall expressly assume by an amendment hereto all of the obligations of Guarantor hereunder and no Default exists; and (iii) furnish to City from time to time such information respecting Guarantor's financial condition as City may from time to time reasonably request and will execute, acknowledge, deliver, file, notarize and register at its own expense all such further agreements, instruments, certificates, documents and assurances and perform such acts as City shall deem necessary or appropriate to effectuate the purposes of this Guaranty and shall reasonably request.

9. *Notices.* All notices and other communications provided for hereunder shall, unless otherwise stated herein, be in writing (including by facsimile) and shall be mailed, sent or delivered: if to the City, to the City Attorney's Office, attn. City Attorney, P.O. Box 1990, Santa Barbara, CA 93102-1990, fax (805) 897-2532; if to Guarantor, to or at its address or facsimile number set forth below its name on the signature page hereof; or at or to such other address or facsimile number as such party shall have designated in a written notice to the other party. All such notices and communications shall be effective upon receipt.

10. *No Waiver.* No failure on the part of City to exercise, and no delay in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights and remedies under this Guaranty are cumulative and not exclusive of any rights, remedies, powers and privileges that may otherwise be available to City.

11. *Binding Effect; Entire Agreement; Amendments.* This Guaranty shall be binding upon Guarantor and its successors and assigns, and inure to the benefit of and be enforceable by City and its successors, endorsees, transferees and assigns. Guarantor shall not have the right to assign or transfer its/his/her rights and obligations or the Obligations hereunder without the prior written consent of City. This Guaranty constitutes the entire agreement of Guarantor with respect to the matters set forth herein and supersedes any prior agreements, commitments, discussions and understandings, oral or written, with respect thereto. There are no conditions to the full effectiveness of this

Guaranty. This Guaranty may not be amended except by a writing signed by Guarantor and City. No waiver of any rights of City under any provision of this Guaranty or consent to any departure by Guarantor therefrom shall be effective unless in writing and signed by City. Any such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

12. *Knowing and Explicit Waivers.* Guarantor acknowledges having either obtained the advice of legal counsel or having had the opportunity to obtain such advice in connection with the terms and provisions of this Guaranty. Guarantor acknowledges and agrees that each of the waivers and consents set forth herein, including, without limitation, those contained in Sections Two through Four, are made with full knowledge of their significance and consequences. Additionally, Guarantor acknowledges and agrees that executing this Guaranty waives certain rights, benefits, protections and defenses to which it/he/she may otherwise be entitled under applicable law, including, without limitation, under the provisions of the California Civil Code and California Code of Civil Procedure referenced in Section Four, and that all such waivers herein are explicit, knowing waivers. Guarantor further acknowledges and agrees that City relies on such waivers in creating the Obligations and that such waivers are a material part of the consideration City receives for creating the Obligations.

13. *Severability.* Whenever possible, each provision of the Guaranty shall be interpreted in such manner as to be effective and valid under all applicable laws and regulations. If, however, any provision of this Guaranty shall be prohibited by or invalid under any such law or regulation, it shall be deemed modified to conform to the minimum requirements of such law or regulation, or, if for any reason it is not deemed so modified, it shall be ineffective and invalid only to the extent of such prohibition or invalidity without affecting the remaining provisions of this Guaranty.

14. *Governing Law and Submission to Jurisdiction.* This Guaranty shall be governed by and construed in accordance with California law. Guarantor hereby (i) submits to the non-exclusive jurisdiction of the courts of the State of California and the federal courts of the United States sitting in the State of California for the purpose of any action or proceeding arising out of or relating to this Guaranty, (ii) agrees that all claims in respect of any such action or proceeding may be heard and determined in such courts, (iii) irrevocably waives (to the extent permitted by applicable law) any objection which it now or hereafter may have to the laying of venue of any such action or proceeding brought in any of the foregoing courts in and of the State of California, and any objection on the ground that any such action or proceeding in any such court has been brought in an inconvenient forum, and (iv) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or other lawful manner.

15. *Multiple Guarantors and Joint and Several Liability.* When this Guaranty is executed by more than one Guarantor, the word "Guarantor" shall mean all and any one or more of them, and the obligations of all Persons signing this Guaranty shall be joint and several.

IN WITNESS WHEREOF, Guarantor has executed and delivered this Guaranty, as of the date first above written.

By *Paul Ybarra*

Paul Ybarra
Print Name

Secretary
Title

Redacted

Address

Redacted

City State Zip