

City Atty
8-15-84fm/bs
16A1
9-21-84 (Rev.)
9-26-84 (Rev.)

C O N C E S S I O N A G R E E M E N T

THIS CONCESSION AGREEMENT is made and entered into this 8th day of October, 1984, by and between the CITY OF ALHAMBRA, a Municipal corporation of the State of California, hereinafter called CITY, and the ALHAMBRA RESTAURANT CORPORATION, a California corporation, hereinafter called CONCESSIONAIRE.

W I T N E S S E T H :

For and in consideration of the premises and of the mutual covenants and agreements herein contained, said parties hereby agree as follows:

1. RECITALS. This Concession Agreement is made and entered into with respect to the following facts:

- (a) That CITY has, or is in the process of, constructing a Clubhouse Facility, hereinafter called FACILITY, as the final phase of its Alhambra Municipal Golf Course Expansion and Improvement Project; and,
- (b) That a restaurant, offering coffee shop and banquet services, is planned as part of that FACILITY; and,
- (c) That CITY does not have personnel with the expertise to properly and successfully operate such a restaurant; and, therefore, it is necessary for the CITY to retain the professional services of a qualified concessionaire to operate the same; and,
- (d) That CONCESSIONAIRE is highly qualified to operate said clubhouse restaurant concession; and,
- (e) That the Alhambra CITY Council has elected to grant CONCESSIONAIRE the exclusive right and privilege to operate and maintain said clubhouse restaurant concession upon the terms and conditions as hereinafter set forth.

2. DEFINITIONS. For the purpose of this Concession Agreement, the following words and phrases shall, when used herein, have the meanings respectively ascribed to them by this paragraph:

- (a) "CITY" shall mean the CITY of Alhambra, acting by and through its CITY Council.
- (b) "CITY MANAGER" shall mean the CITY Manager of the CITY of Alhambra, California, or his authorized representative, acting as an Agent of CITY.
All actions of the CITY Manager under this

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Concession Agreement shall be subject to review at the pleasure of the CITY Council.

- (c) "CONCESSION" shall mean the right and privilege to operate and maintain the clubhouse restaurant concession, including sale of beer, wine and liquor, banquet services, bar, quick service golfer's coffee shop, and related video/vending machines at Alhambra Municipal Golf Course, 630 South Almansor, Alhambra, California.
- (d) "CONCESSION MANAGER" shall mean the manager of the concession and the person with whom the CITY deals on a daily basis regarding the subject concession.

3. CONCESSION GRANTED. CITY hereby grants to the CONCESSIONAIRE the right and privilege to operate and maintain the clubhouse restaurant concession, including the sale of beer, wine and liquor, banquet services, bar, quick service golfers' coffee shop, and related video/vending machines at Alhambra Municipal Golf Course, 630 South Almansor, Alhambra, California.

These rights shall be granted to the CONCESSIONAIRE exclusively, and CITY shall not grant additional Concession Agreements for the same purposes at the Alhambra Municipal Golf Course. The right to operate shall be limited to the above location and CONCESSIONAIRE shall not operate on the premises any business not specified in this Concession Agreement.

4. PREMISES. The concession premises are located in the FACILITY at the Alhambra Municipal Golf Course and include, except for the Golf Pro Shop and the Golf Cart Storage Area, all those improvements described and/or set forth in Exhibits "A" and "B", which Exhibits are more particularly described in Paragraph 16 of this Concession Agreement.

5. OPERATING RESPONSIBILITIES.

- (a) Cleanliness. CONCESSIONAIRE shall clean all food preparation equipment daily. Walls, ceilings, and floors shall be kept free of grease and dirt and shall be cleaned regularly. Windows shall be washed regularly. Counter tops and tables shall be kept clean and dry at all times. All dirty dishes shall be removed and stacked out of sight from public view. Grease shall not be poured down drains but shall be disposed of in containers. All utensils, dishes, cups, bowls and glasses shall be spotless and dry when served to patrons.

CONCESSIONAIRE shall keep the concession premises clean and sanitary at all times. No offensive refuse matter nor any substances constituting an unnecessary, unreasonable or unlawful fire hazard, or material detrimental to the public health, shall be permitted or remain thereon, and CONCESSIONAIRE shall prevent any such matter or material from being or accumulating upon said premises.

CONCESSIONAIRE shall see that all garbage or refuse is collected as often as necessary and in no case less than twice a week, and shall pay any charges which may be made for the removal of refuse or garbage. He shall furnish

all equipment and materials necessary therefor, including trash receptacles of a size, type, and number approved by CITY Manager for use by the public.

- (b) Standard of Quality and Service. CONCESSIONAIRE shall maintain a standard of quality and service at least equal to that maintained by similar businesses in the San Gabriel Valley area of the County of Los Angeles.

CONCESSIONAIRE shall at all times conduct his business in a quiet and orderly manner to the satisfaction of the CITY Manager.

- (c) Disorderly Persons. CONCESSIONAIRE shall use his best efforts to permit no intoxicated person or persons, profane or indecent language, or boisterous or loud contact in or about the concession premises and will call upon the aid of peace officers to assist in maintaining peaceful conditions. He shall not knowingly permit the use or possession of narcotics on the concession premises.

- (d) Employee Performance Standards. Persons employed by CONCESSIONAIRE shall be satisfactory to the CITY Manager as to their personal conduct, honesty, courtesy, health, personal appearance and ability. In the event an employee is not satisfactory to the CITY, the CITY Manager shall have the right to direct the CONCESSIONAIRE to require the employee to correct the cause of dissatisfaction or to discharge such employee.

Every employee involved in the sale of foods and refreshments shall wear at all times while on the concession premises clean uniforms, unless a written exception to this requirement is first obtained from the CITY Manager.

CONCESSIONAIRE shall provide the CITY Manager with certificates on each employee indicating freedom from communicable tuberculosis as required by Section 5163 of the Public Resources Code of the State of California.

- (e) Merchandise. CONCESSIONAIRE shall be required to offer the public a varied selection of breakfast, lunch, dinner and banquet items and beverages, including beer, wine and liquor. All merchandise sold or kept for sale by CONCESSIONAIRE shall be first-class in quality and shall conform to all Federal, State and Municipal laws, ordinances and regulations in every respect. No imitation, adulterated, misbranded or impure articles shall be sold or kept for sale by CONCESSIONAIRE, and all edible merchandise kept on hand shall be stored and handled with due regard for sanitation. In addition, no substitutes, fillers, dilutants, nor reduction in size or standard of manufactured or processed food products shall be permitted. All merchandise kept for sale by the CONCESSIONAIRE shall be kept subject to the approval or rejection of the CITY Manager, and CONCESSIONAIRE shall remove from the premises any article which may be rejected and shall not again offer it for sale without the approval of the CITY Manager.

CONCESSIONAIRE shall minimize the paper items (straw covers, serving cartons, etc.) distributed with take-out concession projects. CONCESSIONAIRE shall not sell,

give away or otherwise dispose of any commodity which, in the opinion of the CITY Manager, will cause undue litter. Further, CONCESSIONAIRE shall cooperate fully with the CITY in its ecological and environmental improvement programs.

- (f) Hours/Days of Operation. CONCESSIONAIRE shall open the coffee shop for business each and every day, provided the golf course is open for play, no later than thirty (30) minutes before the first golfer begins play. The coffee shop shall be kept open throughout the day and shall be closed no sooner than dusk.

CONCESSIONAIRE shall have the right, at his own discretion, to operate the concession at such additional times which may be allowed by law, subject to the approval of the CITY Manager. CONCESSIONAIRE shall have the discretion to close or reduce the hours of operation and/or level of service on any given day due to inclement weather causing reduced play at the golf course.

- (g) Equipment, Furnishings and Expendables. CITY shall, at no cost to CONCESSIONAIRE, provide certain furnishings and items of equipment. Specifically, CITY shall provide all those items listed in the "Schedule of City-Owned Equipment", which is attached hereto as said Exhibit "B". All items provided by CITY shall remain the property of CITY subject to the CONCESSIONAIRE's right to use and maintain the same in accordance with the maintenance provisions of this Concession Agreement. If, through reasonable wear and tear the equipment owned by CITY deteriorates to the point that it must be replaced, CONCESSIONAIRE shall first notify CITY Manager who, in turn, shall notify him in writing as to how the CITY wishes to dispose of same. After said notification by CITY, CONCESSIONAIRE shall replace, at his sole expense and at no cost to CITY, said equipment with new equipment of similar quality, title to which shall then vest in CITY.

CONCESSIONAIRE shall provide all other items necessary for the proper and efficient operation of the concession. Title to any and all expendables and additional equipment provided by CONCESSIONAIRE at his sole expense and at no cost to CITY shall remain vested in CONCESSIONAIRE; provided, however, the same are not affixed to the building, in which event they shall be deemed fixtures and shall become the property of CITY.

Upon termination of this Concession Agreement, CITY may put the Concession Agreement out to public bid. CONCESSIONAIRE shall have the right to submit a proposal, which will be considered along with the proposals of other qualified prospective concessionaires. If CITY does not award CONCESSIONAIRE a new Concession Agreement, CONCESSIONAIRE shall have the right to negotiate with the new CONCESSIONAIRE for the sale of his assets, including permanent improvements, or shall be granted a period of thirty (30) days to remove said assets. If not so removed within said thirty-day period, said assets shall become, and be, the property of CITY.

CONCESSIONAIRE may provide equipment, approved by the CITY, which will assist in protecting the premises from theft, burglary or vandalism.

- (h) Maintenance and Replacement of Equipment. CONCESSIONAIRE shall provide all preventive and routine maintenance, repair and service required on all equipment used in the concession, whether CONCESSIONAIRE- or CITY-owned, and shall replace the same at his sole expense and at no cost to the CITY if it should become necessary to do so; EXCEPTING, however, with respect to the air-conditioning and heating equipment, CITY shall perform any and all major repairs and shall replace the same if it becomes necessary to do so at its sole expense and at no cost to CONCESSIONAIRE.
- (i) Maintenance of Premises. CONCESSIONAIRE shall maintain and repair all interior areas and surfaces of the subject premises. Common passageways leading to other concession facilities or offices maintained by CITY which also lead to the concession premises shall not be considered under the control of CONCESSIONAIRE for purposes of this subparagraph (i). CONCESSIONAIRE'S duties shall include all sweeping, washing, servicing, repairing, cleaning, replacing of worn carpeting and interior painting that may be required to properly maintain the concession premises in a safe, clean, wholesome, sanitary, orderly and attractive condition. He shall also be responsible for electrical, mechanical and plumbing maintenance in the interior of the concession premises; such as, light fixtures, toilets and faucets; however, CITY shall be responsible for maintenance of utility lines within the walls of the concession premises. CITY shall maintain the exterior of all buildings and shall perform all exterior repairs occasioned by normal wear and tear, vandalism, and the elements.

CONCESSIONAIRE shall flush all sink drains with hot water at least once each week. Floor sweepings, grease or debris of any sort shall not be directed down floor sinks. Caustic drain cleaners shall not be used.

CITY will remove drain blockages; however, if, in the CITY Manager's opinion, said blockage was caused by CONCESSIONAIRE's failure to observe the above regulations, the CITY Manager may make a demand for arbitration in accordance with Paragraph 6 of this Agreement.

- (j) Permits and Licenses. CONCESSIONAIRE shall obtain at his sole expense any and all permits or licenses that may be required in connection with the operation of the concession. CONCESSIONAIRE shall apply to the Alcoholic Beverage Control Board for a license for the on-premise sale of beer, wine and liquor. Such license shall not be transferable to any other location during the period of time this Concession Agreement is in effect, or any continuation thereof. CITY shall not be a licensee of any alcoholic beverage control license, but shall assist CONCESSIONAIRE in an appropriate manner in its application to the Alcoholic Beverage Control Board for the said license. In the event the CONCESSIONAIRE is granted a license by the Alcoholic Beverage Control Board with the assistance of the CITY, the license at the expiration of this Concession Agreement, or any extension thereof, shall remain with the Concession and may be purchased by any subsequent Concessionaire for the same amount of money that CONCESSIONAIRE originally paid for the said license.

- (k) Personal Attention. The Concession Manager is the person with whom the CITY Manager may deal on a daily basis regarding the subject concession. The Concession Manager shall be designated by the CONCESSIONAIRE.

The Concession Manager shall devote the greater part of his personal time and attention to the operation of the concession and shall promote, increase and develop the business and render every possible service and convenience to the public. If he is not himself the CONCESSIONAIRE, the Concession Manager shall be fully acquainted with CONCESSIONAIRE's operations and contract obligations, and authorized by CONCESSIONAIRE to act in his behalf and fulfill his obligations in the day-to-day operation of the said concession. During the days and hours established for the operation of the said concession, the Concession Manager's personal attention shall not be directed toward the operation of any other business activity.

- (l) Signs and Advertisements. No signs of any kind shall be displayed unless approved by the CITY Manager who may require removal or refurbishment of any sign previously approved.

CONCESSIONAIRE shall not permit vendors to display wares inside or outside the building or on said property unless written permission is secured from the CITY Manager, and such permission shall be subject to revocation at any time.

- (m) Taxes. CONCESSIONAIRE shall pay all taxes on personal property and improvements located on said concession premises, and all sales and other taxes, including but not limited to, possessory interest tax levied against the operation of said business or other taxes assessed to him. By executing this Concession Agreement and accepting the benefits thereof, a property interest may be created known as "possessory interest" and such property interest may be subject to property taxation. CONCESSIONAIRE, as the party in whom the possessory interest is vested, shall be subject to the payment of property taxes levied upon such interest.
- (n) Use of Area. CONCESSIONAIRE shall not interfere with the public's enjoyment and use of the concession premises or surrounding public property for the purposes for which they were intended. He shall not use the concession premises for any purpose which is not essential to the concession operations. He shall not rent, sell, lease or offer any space for storing of any article or articles whatsoever within or on the concession premises other than his own equipment, without the written consent of the CITY Manager.
- (o) Utilities. CONCESSIONAIRE shall pay all charges for fuel, gas, electricity, cable television, water and telephone necessary to carry on all operations of the concession premises. CITY and CONCESSIONAIRE'S telephone number shall be placed in the name of the facility and shall not be transferable to any other location.
- (p) Vending and Video Machines. CONCESSIONAIRE shall first receive written approval from the CITY Manager

before installing or permitting vending and/or video machines to be installed. The CITY Manager shall have the right to order removal of any and all vending and/or video machines upon thirty (30) days notice in writing.

- (q) Safety. CONCESSIONAIRE shall correct deficiencies and violations of safety practices immediately and shall cooperate fully with CITY in the investigation of accidents occurring on the concession premises. In the event of injury to a patron or customer, CONCESSIONAIRE shall insure that the injured person receives prompt and qualified medical attention, and as soon as possible thereafter, he shall submit a CITY "Accident Report" to the CITY Attorney.

6. ARBITRATION. All disputes, claims and questions regarding the rights and obligations of the parties hereto arising under the provisions of Paragraph 5 only of this Concession Agreement shall be subject to arbitration. In case of such dispute, either party may make a demand for arbitration by filing such demand in writing with the party. The demand shall be made within ten (10) days after a dispute first arises.

Except as is expressly provided to the contrary in these provisions on arbitration, the arbitration shall be in conformity with and subject to applicable rules and procedures of the American Arbitration Association. If the American Arbitration Association is not then in existence or for any reason fails or refuses to act, the arbitration shall be in conformity with and subject to the provisions of California Code of Civil Procedure relating to arbitration at the time of notice. The arbitrators shall be bound by the applicable terms and provisions of this Concession Agreement. The prevailing party shall be entitled to recover its costs of arbitration, including but not limited to reasonable attorneys' fees.

There shall be three arbitrators appointed as follows:

- (a) Within ten (10) days after arbitration notice, each party shall appoint one arbitrator and give notice of the appointment to the other party; and,
- (b) The two (2) arbitrators so selected, shall choose a third arbitrator within ten (10) days after the appointment of a second arbitrator; and,
- (c) If either party fails to appoint an arbitrator, or if the two (2) arbitrators fail to choose a third, such appointment shall be made a judge of the Superior Court of Los Angeles County acting in his official capacity on the application of either party and on ten (10) days notice to the other party; provided however, that either party may, on notice given before commencement of the arbitration hearing, consent to arbitration by one (1) arbitrator mutually agreed upon; in such event, no further appointments of arbitrators shall be made and other arbitrators previously appointed shall be dismissed.

No one shall act as an arbitrator who is in any way financially interested in the work or in the business affairs of the CONCESSIONAIRE or of the CITY.

7. TERM. Except as provided in Paragraphs 6 and 12, the term of the Concession Agreement shall be twenty-five (25)

- (2) All refunds made to customers, guests and patrons;
- (3) Gratuities to employees of CONCESSIONAIRE, paid or agreed to be paid by patrons of CONCESSIONAIRE: and,
- (4) Those management, employee and customer meals and beverages for which a bill is prepared but for which no attempt is made to collect.

In the case of vending and video machines, Gross Receipts shall be the net amount received by the CONCESSIONAIRE from the operation of the vending and video machines.

CONCESSIONAIRE shall transmit with his rental payment a Monthly Gross Receipts and Rent Report for the month for which rent is submitted. The CITY Manager shall provide a form for this purpose, and the completed form shall include a statement of the Gross Receipts by source of sales, and such other information as the CITY Manager may properly require. The rental payment shall be addressed to:

Director of Finance
City of Alhambra
111 South First Street
Alhambra, California 91801

In the event CONCESSIONAIRE fails to submit his rental payment on or before the date it is due, an additional payment of two percent (2%) of the amount due shall be paid by CONCESSIONAIRE to CITY for each month, or fraction thereof, that the payment is due. Such additional payment charge is intended to, and shall, compensate CITY for additional accounting and administrative costs.

9. IMPROVEMENTS. CITY shall provide the improvements shown on said Exhibits "A" and "B".

10. RIGHT OF ENTRY. Upon request by CONCESSIONAIRE, CITY shall permit CONCESSIONAIRE to enter the premises prior to the effective date of this Concession Agreement as described in Paragraph 7 hereof. The right of entry shall be in writing and shall contain such conditions, including conditions related to liability insurance and workers' compensation coverage, as are appropriate to protect the CITY's interest and insure against liability during the period of time the CONCESSIONAIRE enters onto the said property under any such permission granted by the CITY to CONCESSIONAIRE to enter the property.

11. LIABILITY.

(a) Indemnification. CONCESSIONAIRE hereby agrees to, and shall, hold CITY, its elective and appointive boards, officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from CONCESSIONAIRE's operations under this Concession Agreement, whether such operations be by CONCESSIONAIRE or by any one or more persons directly or indirectly employed by, or acting as agent for, CONCESSIONAIRE. CONCESSIONAIRE agrees to, and shall, defend CITY and its elective and appointive boards, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations; provided

- (a) That CITY does not, and shall not, waive any rights against CONCESSIONAIRE which it may have by reason of the aforesaid hold-harmless agreement

because of the acceptance by CITY, or the deposit with CITY by CONCESSIONAIRE, of any of the insurance policies hereinafter described in this Concession Agreement.

- (b) That the aforesaid hold-harmless agreement by CONCESSIONAIRE shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations of CONCESSIONAIRE regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

In addition to the foregoing, CONCESSIONAIRE expressly waives any and all claims for compensation and hereby releases and discharges CITY and its elective and appointive boards, officers, agents and employees from any and all demands, claims, actions and/or causes of action arising from any and all losses or impairments of the water supply system, drainage system, heating system, gas mains, electrical apparatus or wire furnished for the concession premises which may occur from time to time from any cause or for any loss resulting from fire, water, tornado, civil commotion, riot, windstorm, earthquake or act of God.

- (b) Insurance. CONCESSIONAIRE shall file with CITY two (2) copies of the CITY'S insurance endorsement form which verify comprehensive general and automobile liability insurance coverage (including owned, hired and nonowned automobiles) including, but not limited, to claims arising from premises, operations, products, contractual liability (including this contract), broad form property damage, acts of independent contractors and personal injury in an at least an amount equal to TWO MILLION DOLLARS (\$2,000,000) combined single limits and which meets the following requirements:

- (1) No "Deductible" clause is permitted as pertains to CITY as additional insured.
- (2) Provides coverage for "all operations of the insured conducted on CITY property" and contains a description of the work performed by the insured. (This may require policy or policies covering premises occupied, products sold, amusement liability, or automobiles used).
- (3) All signatures must be handwritten in ink on any policy, certificate, or endorsement; rubber stamp signatures are not acceptable.
- (4) The City of Alhambra shall be named as an "additional insured" with respect to all operations of the CONCESSIONAIRE under this Concession Agreement.
- (5) Said policy shall contain a cancellation clause reading in substance as the following approved notice:

"It is agreed that this policy shall not be canceled nor the amounts of coverage provided herein reduced until thirty (30) days after the CITY Clerk, City of Alhambra, California, 91801, shall have received written notice of such cancellation or reduction, as evidenced by return receipt of registered mail.

- (6) No policy shall be acceptable unless first approved by the CITY Attorney and must be at least with a Best-rated A+ XIII or A XIII insurance company.
- (7) Insurance Binders shall not be accepted by the CITY as proof of insurance coverage.
- (8) Insurance coverage must be in effect and approved by the City Attorney prior to commencement of the the term of the Concession Agreement.
- (9) The liability insurance policy shall contain a cross-liability clause.
- (10) The right to subrogation against the CITY shall be specifically waived under the property insurance policy.

All policies, certificates and endorsements shall be sent in duplicate to the Office of the City Clerk, City of Alhambra, 111 South First Street, Alhambra, California, 91801.

The CITY reserves the right to increase the amount of the coverage required hereunder during the term of this Concession Agreement, or any extension thereof, in the event any unforeseeable circumstance should arise; however, any increase in the amount of coverage required shall be reasonable and shall be limited to increases in exposure to public liability by the CITY. Upon receipt of a thirty (30) day written notice from CITY Manager to so increase, CONCESSIONAIRE, at his sole expense and at no cost to CITY, shall furnish CITY Manager with evidence of such additional coverage. In the event of a disagreement between the CITY and the CONCESSIONAIRE as to the amount of coverage so required, that disagreement shall be subject to arbitration as provided in Paragraph 6 hereof.

- (c) Worker's Compensation. CONCESSIONAIRE shall at all times during the term of this Concession Agreement subscribe to and comply with the Workers' Compensation Laws of the State of California and pay such premiums as may be required thereunder and hold CITY harmless from any and all liability arising from or under such act. At the request of the CITY Manager, CONCESSIONAIRE shall furnish a copy of the official certificate or receipt indicating such insurance coverage. The right of subrogation against the CITY shall be specifically waived under the worker's compensation insurance policy.

12. DEFAULT. In the event CONCESSIONAIRE defaults in the payment of rentals required by Paragraph 8, CITY shall have the following options without any further notice or authorization from CONCESSIONAIRE, and its choice of any option shall in no way waive its right to select any other option at any time:

- (a) CITY may give CONCESSIONAIRE written notice of such default. If the CONCESSIONAIRE does not cure said default within thirty (30) days after it was first discovered, CITY may terminate this Concession Agreement, assume the operation of the concession, and exclude CONCESSIONAIRE from the premises; and/or,

- (b) CITY may retain any of CONCESSIONAIRE'S property on the premises and apply same to the payment of any and all claims which may be due CITY; and/or,
- (c) CITY may recover at law any and all claims which may be due CITY.

The acceptance of all or part of a rental payment by CITY for any period after a default shall not be deemed a waiver of any of these options, nor a waiver of the default or any subsequent default of the same or any other term, covenant and condition. Any waiver by CITY of a default on the part of the CONCESSIONAIRE shall not be construed as, or constitute a waiver of, any subsequent default of the same or any other term, covenant or condition.

13. ASSIGNMENT, SUBLEASE, BANKRUPTCY. CONCESSIONAIRE shall not underlet or sublet the said premises, or any part thereof, or allow the same to be used or occupied by any other person or for any other use than herein specified, nor assign this Concession Agreement nor transfer, assign, or in any manner convey any of the rights or privileges granted herein without the written consent of CITY. Neither this Concession Agreement nor the rights granted herein shall be assignable or transferable by any process or proceedings in any court, or by attachment, execution, proceedings in insolvency or bankruptcy either voluntary or involuntary, or receivership proceedings.

One or more of the principal operator(s) who originally execute(s) this Concession Agreement shall, and must, remain in control of the enterprise throughout the term unless an assignment or other transfer of majority control is approved by the CITY Council.

14. BUSINESS RECORDS. CONCESSIONAIRE shall keep true and correct records of its gross receipts. CITY expressly reserves the right hereunder to examine financial books, records and statements of CONCESSIONAIRE, at any reasonable time in order to ascertain and/or verify the sums due CITY as compensation pursuant to this Concession Agreement. CONCESSIONAIRE shall be required to retain guest checks for a one (1) year period only. All other records shall be retained for a period of two (2) years.

All information obtained in connection with CITY'S inspections of records or audits shall be received and maintained in confidence by the CITY Attorney and shall not be disclosed to anyone not directly connected with the official business of CITY, except as such information or documents may be or become subject to public inspection and/or reproduction as public records.

15. REGULATIONS, INSPECTION, AND DIRECTIVES.

- (a) Laws and Ordinances. CONCESSIONAIRE shall conduct his business in accordance with all the laws, ordinances, rules and regulations applicable to such business as set forth by the City, County, State and the Federal Governments.
- (b) Permissions. Any permission required by this Concession Agreement shall be secured in writing by CONCESSIONAIRE from CITY or the CITY Manager and any errors or omissions therefrom shall not relieve CONCESSIONAIRE of his obligations to faithfully perform the conditions herein. CONCESSIONAIRE shall immediately comply with any written request in compliance with this Concession Agreement submitted by the CITY Manager.

(c) Right of Inspection. CITY and the CITY Manager, their authorized representatives, agents and employees, shall have the right to enter upon the concession premises at any and all reasonable times for the purpose of inspection and observation of CONCESSIONAIRE'S operations. During these inspections, they shall have the right to utilize photographic devices and other instruments for recording conditions and events taking place upon the concession premises. Said inspections may be made by persons identified to CONCESSIONAIRE as CITY employees, or may be made by independent contractors engaged by CITY. Inspections may be made for the purposes set forth hereinbelow; however, such enumerations shall not be construed to limit CITY's right of inspection for any purpose incidental to the rights of CITY.

- (1) To determine compliance with the terms and conditions of this Concession Agreement.
- (2) To observe transactions between CONCESSIONAIRE and patrons in order to evaluate the quality and quantities of foods or drinks or other items sold or dispensed, the courtesy extended to and method of dealing with the public, the performance and caliber of CONCESSION'S employees, and the methods for recording receipts.

The information gathered on these inspections shall be used to evaluate CONCESSIONAIRE in order to provide a basis for an action by the CITY for the renewal or denial of renewal of the concession.

(d) Name of Concession. The name of the concession, as it appears in this Concession Agreement for said concession, shall not be used by CONCESSIONAIRE in conjunction with any other business venture during or after the term of this Concession Agreement.

16. SURRENDER OF PREMISES. Upon termination of this Concession Agreement, or any extension thereof, CONCESSIONAIRE shall quit and surrender possession of said concession premises and its appurtenances to CITY in as good condition as reasonable use and wear will permit, damage by natural elements or other casualty excepted.

17. EXHIBITS TO CONCESSION AGREEMENT. The following documents are attached hereto as Exhibits "A" and "B", respectively, and by this reference incorporated herein and made a part hereof as though fully set forth herein.

Exhibit "A" - Alhambra Municipal Golf Course Clubhouse architectural plans, construction drawings and bid specifications.

Exhibit "B" - Schedule of City-Owned Furnishings, fixtures and equipment.

18. EQUAL OPPORTUNITY CLAUSE. CONCESSIONAIRE shall not discriminate in his recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age or physical handicap

in the performance of this Concession Agreement and shall comply with the provisions of the State Fair Employment Practices Act as forth in Part 4.5 of Division 2 of the California Labor Code; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352 and all amendments thereto; Executive Order 11246; and all administrative rules and regulations issued pursuant to such acts and order.

19. INDEPENDENT CONTRACTOR. In the furnishing of the services provided for herein, CONCESSIONAIRE is acting as an independent contractor and is to furnish such services in his own manner and method and is in no respect to be considered an employee of CITY.

20. BENEFITS AND OBLIGATIONS. Each and all of the conditions, covenants and agreements contained herein shall, in accordance with the context, inure to the benefit of CITY and apply to and bind CONCESSIONAIRE, his successors, assigns, and any person who may come into possession of said concession premises, or any part hereof, in any manner whatsoever.

21. COSTS OF SUIT. If either party prevails in any suit or action brought by it under this Concession Agreement, the other party hereby agrees to pay to the prevailing party reasonable attorney's fees and court costs incurred.

22. WAIVER. CITY may from time to time, at its option, exercise all rights or remedies which it may have either at law or in equity and nothing contained herein shall be construed as in any way abridging or waiving any such rights or remedies; and, consent, waiver or compromise by CITY of or under any of the provisions of this Concession Agreement, or as to any breach or default hereunder by CONCESSIONAIRE shall not constitute or be construed as a waiver of CITY's right to enforce strict interpretation and performance of the conditions and terms hereof by CONCESSIONAIRE at all other times as to the same and all other matters contained herein.

IN WITNESS WHEREOF, the parties hereto have caused this Concession Agreement to be executed on the date first written by their respective officers authorized in that behalf.

CITY OF ALHAMBRA, a Municipal corporation

ATTEST:

Nancy Cutwater
City Clerk

Edw. J. Duke
Mayor
CITY

ALHAMBRA RESTAURANT CORPORATION,
a California corporation

by Don Penn
President

by J. A. Davis
Vice President

by Paula
Secretary

APPROVED AS TO FORM:

Leland C. Dolley
LELAND C. DOLLEY, Alhambra City
Attorney

CONCESSIONAIRE