

CITY COUNCIL REPORT



Meeting Date: December 10, 2013
 General Plan Element: *Community and Economic Development*
 General Plan Goal: *Sustain Scottsdale as a tourist destination*

ACTION

WestWorld Food and Alcohol License and Marketing Agreement, together with the related Monterra Food and Alcohol License Agreement Approval. Adopt Resolution No. 9584 authorizing and directing the Mayor to execute Contract 2013-186-COS, a license agreement to direct food service and marketing services at Westworld, between the city and National Western Capital Corporation ("NWCC") and Contract 2013-191-COS, a license agreement to direct food service at Monterra at Westworld between the city and NWCC.

Request authorization for a \$200,000 Fiscal Year 2013-14 General Fund Operating Budget contingency transfer to the WestWorld operating budget or a \$200,000 Fiscal Year 2013-14 General Fund Operating Budget appropriation contingency transfer to the WestWorld operating budget to be funded by the Tourism Development Fund.

BACKGROUND

The purpose of this action is to authorize the execution of Contract 2013-186-COS between the city and North Western Capital Corporation. This contract presents a new commitment to comprehensive marketing and food services for the expanded and improved Tony Nelssen Equestrian Center event venues at WestWorld ("WW"). The marketing component is new, whereas the food, beverage, and alcohol service is a consolidation, expansion, and adjustment of current food, beverage, and alcohol service commitments at WW.

In anticipation of the WW expansion, representatives from the Big 3 event producers – Barrett Jackson Auto Auction, Arizona Quarter Horse Association/Sun Country, and Arizona Arabian Horse Association -- the Tourism Development Commission, the Scottsdale Convention and Visitors Bureau, and several city departments helped develop an RFP seeking interest in providing event sales and marketing services to add new events at expanded WW facility (#13RP002). The RFP was issued in 2012, two submittals were received. One was deemed non-responsive and one respondent team was invited to present. The interview panel with the same representatives evaluated the proposal and presentation and decided against choosing to go forward with a recommendation noting the fees, costs, and exception to a city condition contained in the RFP. Ultimately, the RFP was cancelled and both proposals were rejected.

The city has an existing contract with NWCC which allows NWCC to contract directly with event producers to schedule events in Monterra. All food, beverage, and alcohol service for these events is provided directly by NWCC through the Monterra kitchen. In the past, events in Monterra have ranged in size from 10 to 2,000 participants, with indoor accommodations for approximately 500 persons. These include meetings, weddings, concerts, holiday and specialty parties, fundraisers, company picnics, and festivals. NWCC also holds the liquor license for all WestWorld property.

NWCC has been the city's Licensee since 2002. In June 2013, NWCC changed operators to M Culinary Concepts (MCC) to provide food, beverage, and alcohol service to events at Monterra, and by invitation to other events at WestWorld. MCC is also a caterer to two of the largest events at WW produced by Barrett Jackson Auto Auction and Arizona Arabian Horse Association independent of NWCC's Monterra Catering and Concession Agreement.

Food, beverage, and alcohol service is provided to events elsewhere on WW when asked by WW staff. In light of this existing contract city staff then evaluated NWCC as a single source for WW food, beverage, and alcohol service, plus the addition of marketing services to include all facilities at WW. Staff evaluated the logistics and efficiencies of the current Monterra food and beverage service and investigated scenarios for food and beverage services within the expanded WestWorld event venues, using the five new kitchen shells within new Tony Nelssen Equestrian Center (TNEC) buildings ready for equipping in early in 2014. Staff concluded that NWCC is in position to serve as a single source for expanded and comprehensive event venue food, beverage, and alcohol service. This single source has been approved by the Purchasing Department.

However, the existing Monterra facility Amended and Restated Restaurant and Catering Concession Agreement (960214A as amended), first executed in 1996 and minimally updated since that time, is not a sufficient template to accommodate the consolidation and expansion of food and beverage services at WestWorld. A new contract is necessary accordingly; Contract 2013-191-COS is attached.

Given the evolution of efforts to direct the best possible outcome for the city in securing marketing and food/beverage/alcohol services, staff has prepared a license agreement with NWCC to combine WestWorld food, beverage, and alcohol service plus marketing.

Both license agreements require approval by Bureau of Reclamation staff as a requirement of the Cost Sharing and Use Agreement 1988-052-COS as amended, between the United States of America acting through the Bureau of Reclamation and the city.

ANALYSIS & ASSESSMENT

Recent Council and Staff Action

Staff has negotiated the WestWorld Food and Alcohol License and Marketing Agreement with NWCC that includes the following key provisions (1) Marketing services and staff to book events to Westworld facilities, based on Annual Marketing Strategy and Annual Marketing Task. Initial strategies and tasks incorporated into the license agreement will include creation of new WW

marketing website, printed marketing material, and staff hired to market and seek out new events. (2) Contractual target goals for new show revenues have been set -- FY 2013/14 -- \$3.2million, FY 2014/15 -- \$4million and FY 2015/16 -- \$5.2million. Beginning in FY 2016/17 the target will increase by 4% annually thereafter.

(3) Build out and equip five new kitchens in the Tony Nelssen Equestrian Center, one immediately and the balance over time.

(4) NWCC, both currently and in the future, will pay the city commission on gross sales for food, beverage, and alcoholic beverages it serves at WW.

In return the city will pay NWCC a (1) \$200,000 Annual Base Fee with 4% annual escalation rate beginning in FY 2016/17. (2) The city will pay NWCC Percentage of Gross New Event Bookings (0% for revenue under \$3.2million, 10% for revenue between \$3.2million and \$4.2million and 15% for revenue in excess of \$4.2million.

Other key provisions include (1) Term – 10 years, with two 5-year extensions, (2) The agreement is subject to the termination language in the Bureau of Reclamation Cost Sharing and Land Use Agreement, (3) Food, beverage, and alcohol service under the agreement will exclude three existing contracted events (Barrett Jackson Auto Auction, Arabian Horse Association of Arizona, and Arizona Quarter Horse Association) since they already have direct contracts, (4) City has sole discretion to approve events and sign contracts.

Valuation Analysis

- 1) Value of city commitment: The proposal includes a commitment for NWCC to initiate WestWorld marketing efforts immediately after city and BOR approvals, and receive an annual fee plus commission based on volume of new event bookings generated.
- 2) The city will receive substantial direct benefits as a result of the proposed terms. The city will receive value in gross revenues for new paid events scheduled as well as the city's commission share of food, beverage, and alcohol service for existing/new events. The agreement contains a requirement to create and submit Annual Marketing Strategy and Annual Marketing Tasks to be accomplished by NWCC, as well as annual/regular review provisions that will evaluate the completeness of the marketing efforts.

RESOURCE IMPACTS

Available Funding

This report and resolution request funding through one of two options (1) a \$200,000 Fiscal Year 2013/14 General Fund Operating Budget contingency transfer to the WestWorld operating budget or (2) a \$200,000 Fiscal Year 2013/14 General Fund Operating Budget appropriation contingency transfer to the WestWorld operating budget to be funded with the Tourism Development Fund.

Staffing, Work Load Impact

Westworld staff will perform overall administration of the license contract.

Maintenance Requirements

WestWorld staff and contractors will continue to be responsible for WestWorld facility maintenance, subject to the availability of annually budgeted operating funds.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution No. 9584 authorizing and directing the Mayor to execute Contract 2013-186-COS and Contract 2013-191-COS between the city and NWCC.

Proposed Next Steps

If this action is approved, NWCC will commence marketing services and catering activities in accordance with the new license agreement.

RESPONSIBLE DEPARTMENT(S)

WestWorld

STAFF CONTACTS (S)

Brian Dygert, WestWorld General Manager

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APPROVED BY



Brian Dygert, WestWorld General Manager

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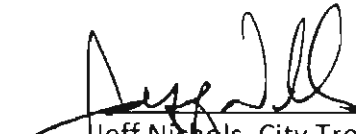
12/9/2013
Date



Paul T. Katsenes, Executive Director, Community & Economic Development

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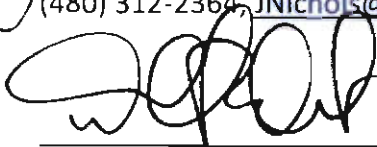
12-9-13
Date



Jeff Nichols, City Treasurer

(480) 312-2364, JNichols@scottsdaleaz.gov

12/9/13
Date



Daniel Worth, Executive Director, Public Works

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Fritz Behring, City Manager

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12.9.13
Date

ATTACHMENTS

1. Contract # 2013-186-COS
2. Contract # 2013-191-COS
3. Resolution # 9584

WESTWORLD FOOD AND ALCOHOL LICENSE AND MARKETING AGREEMENT

THIS WESTWORLD FOOD AND ALCOHOL LICENSE AND MARKETING AGREEMENT (the "Agreement") is made this ____ day of _____, 20____, by and between the City of Scottsdale, an Arizona municipal corporation ("Operator"), and National Western Capital Corporation, an Arizona corporation ("Vendor").

RECITALS

A. Operator is the operator of the Westworld recreational facility (the "Westworld Facility") located northeast of the intersection of Pima Road and the Central Arizona Project Canal in Maricopa County, Arizona.

B. Operator operates the Westworld Facility pursuant to an agreement (the "BOR Agreement" with the United States Bureau of Reclamation ("BOR") and various other recorded and unrecorded documents governing use of the Westworld Facility (collectively the "Site Documents").

C. The Westworld Facility is depicted on the drawing (the "Map") attached hereto as Exhibit "A".

D. The Westworld Facility is currently improved with exhibit halls, equestrian arenas, a polo field and related recreation improvements. Included among the Westworld Facility improvements are:

1. A large climate controlled building known as the Tony Nelssen Equestrian center, which among other things houses an indoor exhibit hall (the "North Hall") and an indoor equestrian arena (the "Equidome").

2. A smaller climate controlled building (the "Monterra Building").

3. Parking areas, arenas, landscaping and related improvements.

E. This Agreement concerns the North Hall and the Equidome. Operator and Vendor are entering into a separate agreement (the "Monterra Agreement") relating to the Monterra Building.

F. Within the Equidome and the North Hall are five (5) walled interior areas (the "Kitchens") that are suitable for preparation of food for persons attending events at the Westworld Facility ("Kitchen 1" through "Kitchen 5").

G. The Kitchens in the North Hall and the Equidome are currently completed with stubbed out utilities and heating, ventilation and air conditioning.

H. Vendor proposes to supply the Kitchens in the North Hall and the Equidome with Kitchen and food serving equipment (the "New Kitchen Equipment").

I. Vendor proposes to install the New Kitchen Equipment in the Kitchens in the North Hall and the Equidome and to provide all other construction, work, materials and improvements (the "Project") that may be necessary to cause the Kitchens in the North Hall and the Equidome to be suitable for convenient and efficient food and alcohol service in the North Hall and the Equidome and throughout the Westworld Facility. The Project is general depicted in the drawing attached hereto as **Exhibit "B"** (the "Kitchen Work Plan").

J. Operator desires to license to Vendor the Kitchens and certain related areas (collectively the "Use Areas") for the preparation at the Use Area of food and alcohol for immediate consumption at the Westworld Facility and the serving of such food and alcohol at the Westworld Facility (the "Permitted Uses"). The Permitted Uses exclude preparation or serving of food or alcohol for consumption off of the Westworld Facility. The Permitted Uses are divided into the following two (2) exhaustive and mutually exclusive categories:

1. Preparing and serving of food (which includes bottled water, soft drinks and other non-alcoholic drinks, and also candy and gum) at organized events at the Westworld Facility for immediate consumption at the Westworld Facility (the "Food Service").

2. Preparing and serving of alcohol at organized events at the Westworld Facility for immediate consumption at the Westworld Facility (the "Alcohol Service").

K. Vendor shall complete the Project as to Kitchen 5 and begin operating Kitchen 5 no later than June 30, 2014 (the "First Completion Deadline") and shall complete the remainder of the Project and begin operating the remainder of the Project no later than June 30, 2016 (the "Second Completion Deadline").

L. Operator desires to reserve rights to construct and use and allow others to construct and use all manner of additional improvements upon the Use Areas and the remainder of the Westworld Facility subject to the requirements of this Agreement.

M. Operator and Vendor also desire to pursue certain objectives (the "Marketing Objectives") to enhance and promote the Westworld Facility as a venue for events. The Marketing Objectives are:

1. Increase event bookings at the Westworld Facility.
2. Attract new events to the Westworld Facility and Scottsdale.
3. Increase the number of contracts (the "Event Contracts") between Operator and event producers that require event producers to conduct their events at the Westworld Facility.
4. Generate increased economic activity in Scottsdale through the effective marketing of the Westworld Facility as a venue for events.
5. Increase national and international exposure of the Westworld Facility and Scottsdale.

6. Respond to information requests from event producers and others who influence events.

7. Increase group and individual tour business at the Westworld Facility and Scottsdale through solicitation and servicing.

N. Certain tourist-oriented events (the "Tourism Events") are particularly important to the Westworld Facility and the Marketing Objectives. Tourism Events are major tourist-oriented shows, festivals, competitions and other events that are oriented toward out-of-town tourists. Out-of-town tourists are people who reside outside of Maricopa County who visit Scottsdale and stay overnight in Scottsdale hotels specifically to attend the event.

O. Operator and Vendor desire that Vendor conduct certain activities (the "Marketing Activities") to market the Westworld Facility to Tourism Event producers and other event producers and to otherwise advance the Marketing Objectives.

P. This Agreement and Vendor's performances hereunder will provide direct benefit to Operator and to the general public by increased use of the Westworld Facility and enhancement of the economic and tourism climate of the City of Scottsdale and its environs.

NOW, THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Vendor and Operator, and the covenants and agreements contained herein to be kept and performed by Vendor and Operator, and other good and valuable consideration, Operator and Vendor agree as follows:

I. PREMISES

1. Use Areas. Vendor's use of the Use Areas shall be as follows:

1.1 Use Areas. The Use Areas include the Kitchens as follows:

1.1.1 Kitchen 1 is comprised of approximately Six Hundred twenty-four (624) square feet of gross floor area ("Kitchen 1") located inside and toward the northwest end of the North Hall consisting of enclosed building space constructed for food preparation and service. Such area is limited to the area depicted as "Kitchen 1" on the Map.

1.1.2 Kitchen 2 is comprised of approximately Six Hundred seventy-two (672) square feet of gross floor area ("Kitchen 2") located inside and toward the northeast end of the North Hall consisting of enclosed building space constructed for food preparation and service. Such area is limited to the area depicted as "Kitchen 2" on the Map.

1.1.3 Kitchen 3 is comprised of approximately Seven Hundred eighty-four (784) square feet of gross floor area ("Kitchen 3") located inside and toward the south center end of the North Hall consisting of enclosed building space constructed for food preparation and service. Such area is limited to the area depicted as "Kitchen 3" on the Map.

1.1.4 Kitchen 4 is comprised of approximately Nine Hundred sixty (960) square feet of gross floor area ("Kitchen 4") located inside and toward the northwest end of the Equidome

consisting of enclosed building space constructed for food preparation and service. Such area is limited to the area depicted as "Kitchen 4" on the Map.

1.1.5 Kitchen 5 is comprised of approximately Eight Hundred sixty-four (864) square feet of gross floor area ("Kitchen 5") located inside and toward the southwest end of the Equidome consisting of enclosed building space constructed for food preparation and service. Such area is limited to the area depicted as "Kitchen 5" on the Map.

1.2 Remote Serving Spaces and Aprons. The Use Areas are limited to the Kitchens and the following two additional areas at the Westworld Facility:

1.2.1 Vendor shall temporarily use certain other areas (the "Remote Serving Spaces") designated by Operator at the Westworld Facility to provide Food Service and Alcohol Service at particular events. Operator shall identify the Remote Serving Spaces from time to time for events at which Vendor will provide Food Service or Alcohol Service. Such uses are limited to times when Vendor is actually providing Food Service or Alcohol Service to an event then being conducted at the Westworld Facility pursuant to an Event Contract, is preparing to do so, or is cleaning up and exiting the Remote Serving Space after having done so.

1.2.2 Vendor shall also temporarily use certain areas (the "Aprons") adjacent to the Kitchens and the Remote Serving Spaces to provide Food Service and Alcohol Service at particular events pursuant to Event Contracts. The Aprons include such areas as may be open to the public or event producers from time to time within thirty (30) feet of a Kitchen or a Remote Serving Space. Operator shall have the right to relocate and expand or contract the size of Aprons from time to time.

1.3 Variation in Area. If the Use Areas, the Westworld Facility or any improvements consist of more or less than any stated area, this Agreement shall nevertheless continue and Vendor's obligations hereunder shall not be increased or diminished.

1.4 Reservations. Notwithstanding anything in this Agreement to the contrary, Operator specifically reserves to itself and excludes from this Agreement a non-exclusive delegable right (the "Reserved Right") over the Use Areas and the entire Westworld Facility as follows:

1.4.1 The Reserved Right is for the exercise of all of Operator's rights under this Agreement and for any and all purposes that do not in Operator's reasonable discretion materially and substantially interfere with Vendor's lawful conduct of the Permitted Uses under this Agreement. Without limitation, the Reserved Right includes:

1.4.1.1 The right to permit all manner of contractors, vendors, business prospects, event producers and other persons to enter the Use Areas and the entire Westworld Facility for the purposes of construction, inspection, evaluation, planning, reconstruction, maintenance, repair or service of any improvements or facilities located within or without the Use Areas from time-to-time. Except in an emergency, any such entry by third parties into the Kitchens shall be made only at reasonable times after reasonable notice to Vendor. Any damage or injury to the Kitchens resulting from such entry shall be promptly repaired at the sole expense of the person so entering.

1.4.1.2 The unilateral right to construct, reconfigure, demolish, remove and otherwise modify all buildings, arenas, utilities, lots, bams, roads and other existing or future improvements or other features of every description at the Westworld Facility from time-to-time. All new or modified improvements or equipment constructed or installed by Operator shall be for Operator's exclusive, delegable use. Notwithstanding the preceding sentence, Operator shall not substantially alter the interior of the Kitchens in a manner that reduces their size or that interferes with their use by Vendor for providing Food Service or Alcohol Service to an event at the Westworld Facility.

1.4.2 Vendor shall actively cooperate with Operator to facilitate Operator's exercise of the Reserved Right.

1.4.3 Operator's Reserved Right is in addition to any other rights this Agreement provides for Operator.

1.5 Right of Inspection. Operator shall be entitled to inspect all construction, reconstruction or installation work and to make such tests as it deems necessary to ensure compliance with the terms of this Agreement. All Operator plans reviews, inspections, standards and other rights and actions with relation to Vendor's Improvements are for Operator's sole and exclusive benefit and neither Vendor nor any other person shall rely thereon or have any rights related thereto.

1.6 Condition of Title. Vendor's rights hereunder are subject to the BOR Agreement and all other recorded or unrecorded matters or conditions of title to or agreements or documents regarding the Use Areas and the Westworld Facility and all amendments to any such matters (collectively the "Site Documents"). Vendor's rights to use the Use Areas and the Westworld Facility under this Agreement are limited to a subset of the interests held by Operator under the Site Documents. Vendor shall not violate the Site Documents. Operator does not warrant its own, Vendor's or any other person's title to or right to use the Use Areas, the Westworld Facility or any other property. Vendor shall communicate with BOR only through Operator unless specifically authorized in advance in writing by Operator, which separate authorization shall be required for each instance of direct communication by Vendor.

1.7 Grandfathered Events. Notwithstanding anything in this Agreement to the contrary, Vendor's rights under this Agreement shall not interfere with rights related to certain events (the "Grandfathered Events") at the Westworld Facility. The Grandfathered Events are:

1.7.1 Barrett-Jackson car auction ("Barrett-Jackson").

1.7.2 AZQHA Sun Country horse show ("AZQHA").

1.7.3 Arabian Horse Association of Arizona show ("AHAA").

1.7.4 Any extension, expansion or rescheduling or any of such events. For example, if Barrett-Jackson were to move its auction to the fall and add three days to the length of the auction, then the Grandfathered Events would include the entire auction in the fall. But, if Barrett-Jackson were to add a completely separate summer auction, then the summer auction would not be a Grandfathered Event.

1.8 Reconfiguration. Operator shall have the unilateral right to temporarily or permanently augment, abandon, expand, contract, reduce, convey or otherwise modify the configuration of the Westworld Facility or any part of it from time to time during the term of this Agreement. Operator may also unilaterally regulate, reroute, close and otherwise alter pedestrian and vehicular traffic access to the Use Areas and travel within any area of the Westworld Facility. Nevertheless, Operator shall provide adequate access to the Use Areas that Vendor may carry out its duties under this Agreement. If a reconfiguration changes the Map, then Operator shall provide Vendor an updated Map.

1.9 Condition of Use Areas. Having previously provided food service throughout the Westworld Facility and having inspected the Kitchens and their environs and the rest of the Westworld Facility, Vendor is familiar with their condition, and all other property associated with this Agreement and its environs. Operator makes such property available in an "as is" condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to their condition or fitness for any use. Vendor has obtained such information and professional advice as Vendor has determined to be necessary related to this Agreement and this transaction.

1.10 Operator's Fixtures and Personality. Operator is not obligated to provide to Vendor any fixtures or personal property at the Westworld Facility. Upon the earlier of Operator's request or at termination of this Agreement, Vendor shall return to Operator in good working condition any and all of Operator's property as may come into Vendor's possession or be used by Vendor. Vendor shall maintain such items in good repair upon the Use Areas at its own expense in good working condition from time to time and replaced by them at Vendor's expense when worn out. All such personal property is provided "as is". Vendor accepts all responsibility for such property's condition and shall thoroughly inspect it before use. Without Operator's prior written consent, Vendor shall not remove, alter or damage in any way any improvements or fixtures upon the Use Areas or elsewhere at the Westworld Facility (whether installed by Vendor, Operator or otherwise).

1.11 No Real Property Interest. Vendor's occupancy rights are limited to the Use Areas, and Vendor's occupancy rights in the Use Areas are limited to the specific limited license rights created by this Agreement. Operator and Vendor do not by this instrument intend to create a lease, easement or other real property interest. Vendor shall have no real property interest in the Use Areas or any part of the Westworld Facility.

II. TERM OF AGREEMENT

2. Term of Agreement. Operator hereby grants to Vendor a license to use the Use Areas subject to and conditioned upon Vendor's full, timely, complete and faithful performance of all performances and things to be performed or done hereunder by Vendor, and Vendor hereby accepts the Use Areas and this Agreement.

2.1 Original Term. The original term of this Agreement shall commence on the date of this Agreement and end on June 30, 2024 unless sooner terminated as set forth in this Agreement.

2.2 Years. A "year" under this Agreement shall begin at 12:01 a.m. on July 1 and shall end at 11:59 p.m. on the following June 30. Without limitation, the preceding sentence applies to all references to quarterly, annual, yearly or similar periods and to all anniversaries and similar dates

under this Agreement. For example, if this Agreement refers to the last quarter of a year, it is referring to April, May and June.

2.3 Extensions. The term of this Agreement may be extended at Vendor's election for two (2) additional five (5) year periods, subject to the following:

2.3.1 No extension shall be effective without the consent of both Operator and Vendor.

2.3.2 Both Operator and Vendor may withhold their consent to an extension in their sole and absolute discretion for any reason.

2.3.3 Both Operator and Vendor shall indicate whether or not they consent to an extension by giving notice of consent to the other not more than Three Hundred Sixty Five (365) days nor less than One Hundred Eighty (180) days prior to the end of the initial term (or, in the case of the second extension, the first extension).

2.3.4 Either party's failure to timely give an extension notice shall be deemed an election to not consent to the extension.

2.4 Holding Over. In any circumstance whereby the parties continue performing this Agreement after the expiration of this Agreement, such holding over shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a use right from month to month that may be terminated at any time by Operator upon thirty (30) days notice to Vendor, or by Vendor upon sixty (60) days notice to Operator.

2.5 Conditions to Agreement. This Agreement shall not be effective unless and until Operator and Vendor enter into the Monterra Agreement and BOR gives Operator written notice that BOR consents to this Agreement. If those conditions are not satisfied prior to February 1, 2014, then this Agreement shall automatically terminate.

2.6 Event Invoice Threshold. This Agreement is predicated on the Westworld Facility achieving certain annual revenue targets (the "Event Invoice Threshold") as follows:

2.6.1 The Event Invoice Threshold for each year shall be as stated on **Exhibit "C"** attached hereto.

2.6.2 Operator shall have the unilateral right to elect whether or not to terminate this Agreement if either of the following is true:

2.6.2.1 Starting July 1, 2016, if certain revenue (the "Event Invoice Revenue") does not exceed the Event Invoice Threshold during any year of this Agreement.

2.6.2.2 If, as of January 1 preceding any year, event producers have not entered into Event Contracts that require the event producers to pay to Operator in the year Event Invoice Revenue in excess of eighty percent (80%) of the Event Invoice Threshold. The preceding sentence does not apply until January 1, 2016.

2.7 Consumer Price Index Adjustment. Certain amounts shall be adjusted upward (the CPI Adjustment") on the basis of changes in the United States Consumer Price Index for all Urban Consumers (CPI-U), U.S. City average, all items, published by the United States Bureau of Labor Statistics as of the date three (3) months prior to the adjustment date (the "Cost of Living Index"). The amount to be adjusted (the "Adjustment Amount") (represented by the letter "R" in the formula set forth below) shall be equal to the then current Cost of Living Index number as of the date three (3) months before the adjustment (represented by the letter "C" in the formula set forth below) divided by the Cost of Living Index number as of the date three (3) months before the date of this Agreement (represented by the letter "M" in the formula set forth below), and multiplied by the unadjusted Adjustment Amount (represented by the "\$" symbol in the formula set forth below). This computation is expressed by the following formula:

$$R = \frac{C}{M} \times \$$$

provided, that in no event shall the Adjustment Amount be adjusted downward from any previous period. If the Cost of Living Index shall no longer be published at the adjustment date, then Vendor shall choose another similar index published by any Federal agency or an index formula or table accepted generally by the real estate profession, or an index formula or table accepted generally by the real estate profession.

2.8 CPI Adjustment Timing. The CPI Adjustment shall occur on each July 1.

2.9 CPI Adjustment Applicability. Except as expressly stated otherwise, the CPI Adjustment shall apply to all fixed dollar amounts (such as fixed periodic payment amounts by both Operator and Vendor, insurance limits, and assignment fees) in this Agreement. The CPI Adjustment shall not apply to the Event Invoice Threshold.

2.10 Adjustment Effectiveness. All CPI Adjustments shall be retroactive to the first day of the year in which the adjustment occurs (or should have occurred, in the case of any delayed adjustment). Any correction due to an error in Operator's estimate or for any other reason shall be paid by Operator to Vendor (or by Vendor to Operator, as the case may be) within thirty (30) days after notice of the correction by either party to the other that the Cost of Living index has been published. The Adjustment Amounts shall not be adjusted downward or otherwise reduced for any reason. All applicable adjustments shall be applied cumulatively.

2.11 Delayed or Estimated Adjustments. If an amount is not known in advance, Operator shall have the right to estimate the amount, with an adjustment to be made within sixty (60) days after the actual amount becomes known.

2.12 Westworld Facility Closure. Operator does not warrant that the Westworld Facility will remain open during the entire term of this Agreement, but Operator does not presently have intentions to close the Westworld Facility. If the BOR Agreement is no longer in effect or if Westworld Facility is closed for any reason, then this Agreement shall terminate.

2.13 Limited Date Extension Authority. Operator's city manager shall have authority to extend time periods in this Agreement up to ninety (90) days in his sole and absolute discretion.

III. VENDOR'S AND OPERATOR'S PAYMENTS

3. Vendor's and Operator's Payments. Vendor and Operator shall make payments to each other as follows:

3.1 Vendor's Food and Alcohol Payments. Vendor shall make payments to Operator as follows:

3.1.1 Use Fee Categories. Vendor shall pay to Operator each of the following separate and cumulative amounts (collectively the "Use Fee"):

3.1.1.1 An amount (the "Percentage Use Fee") comprising a percentage of certain Vendor revenues (the "Gross Food Sales").

3.1.1.2 An amount (the "Violation Use Fee") based on certain breaches by Vendor of this Agreement as set out below.

3.1.1.3 All other amounts required by this Agreement.

3.1.2 Percentage Use Fee Amount. The amount of Percentage Use Fee shall be a percentage of all revenues and other proceeds (collectively the "Gross Food Sales") from Vendor's use of the Westworld Facility as follows:

3.1.2.1 Applicable Percentage. The percentage used to calculate Percentage Use Fee shall be as follows:

3.1.2.1.1 For Gross Food Sales arising from Food Service, the Percentage Use Fee shall be ten percent (10%) of all Gross Food Sales, if the people who consume the food and beverage, as a group, order the food and beverages in advance as a single order, are served the food and beverages together as a single group under Vendor's supervision, and pay for the food and beverages as a group pursuant to a single payment or billing. This would include, for example, provision of typical food and alcohol for a wedding or a banquet held by a civic organization.

3.1.2.1.2 For Gross Food Sales arising from all other Food Service, the Percentage Use Fee shall be twenty percent (20%) of all Gross Food Sales. This would include, for example, provision of food or beverages to individual members of the public at a rodeo.

3.1.2.1.3 For Gross Food Sales arising from Alcohol Service, the Percentage Use Fee shall be thirty percent (30%) of all Gross Food Sales.

3.1.2.1.4 For purposes of determining Percentage Use Fee, all Permitted Uses occurring between midnight and 4:00 a.m. shall be deemed to have occurred during the preceding day.

3.1.3 Gross Food Sales. Gross Food Sales shall be calculated as follows:

3.1.3.1 Gross Food Sales in General. Gross Food Sales means any and all receipts, rents, credits, payments in kind, amounts collected, amounts rebated to Vendor and other amounts of every description or sources of revenue or other rights or benefits of every description received directly or indirectly from Food Service, Alcohol Service and any and all other transactions, business or activity conducted at or from the Use Areas by Vendor or any sublessee or other person using the Use Areas during the term of this Agreement. Gross Food Sales excludes sales, transaction privilege or similar taxes. Gross Food Sales excludes complimentary goods or services provided if no direct or indirect payment or other quid pro quo is requested or given.

3.1.3.2 Non-cash Sales. Any non-cash items shall be deemed to have been received by Vendor in cash in an amount equal to the greater of the fair market value of the item received or the fair market value of the item for which it was given.

3.1.3.3 Double Counting. No amount shall be counted twice (or excluded twice) in calculating Gross Food Sales.

3.1.4 Violation Use Fee Amount. In lieu of certain money damages (the "Inconvenience Costs") set out below, the following shall apply to Vendor's violation of certain limited requirements of this Agreement (the "Violation Fee Provisions"):

3.1.4.1 The Inconvenience Costs are the money damages that Operator suffers in the form of administrative cost and inconvenience, disharmony among Westworld Facility users, and general inconvenience in Westworld Facility use by Operator, other Westworld Facility Users and the public when Vendor fails to comply with the Violation Fee Provisions.

3.1.4.2 Vendor's failure to comply with Violation Fee Provisions will result in Inconvenience Costs in an amount that is and will be impracticable to determine. Therefore, the parties have agreed that, in lieu of Vendor paying to Operator as damages the actual amount of the Inconvenience Costs for violating the Violation Fee Provisions, Vendor shall pay Violation Use Fee.

3.1.4.3 Violation Use Fee is only intended to remedy Inconvenience Costs that Operator suffers because of Vendor's breach of the Violation Fee Provisions. Vendor's payment of Violation Use Fee does not in any way excuse any breach by Vendor of this Agreement or limit in any way Operator's obtaining any other legal or equitable remedy provided by this Agreement or otherwise for any such breach. For example, Vendor's obligation to pay Violation Use Fee does not in any way detract from Vendor's indemnity and insurance obligations under this Agreement, which shall apply according to their terms in addition to Vendor's obligation to pay Violation Use Fee.

3.1.4.4 The Violation Fee Provisions and the amount of the Violation Use Fee per day or part thereof are as follows:

3.1.4.4.1 The amount of Two Hundred Fifty and No/100 Dollars (\$250.00) for each hour or portion of an hour when this Agreement requires Vendor to provide food service and Vendor does not provide Food Service.

3.1.4.4.2 The amount of Two Hundred Fifty and No/100 Dollars (\$250.00) for each hour or portion of an hour when this Agreement requires Vendor to provide alcohol service and Vendor does not provide Alcohol Service.

3.1.4.4.3 The amount of Two Hundred Fifty and No/100 Dollars (\$250.00) for each storage of materials or garbage or other obstruction of areas outside the Kitchens, parking or storage of vehicles, failure to secure the Westworld Facility or Use Areas, or misuse of utilities.

3.1.4.4.4 The amount of Fifty and No/100 Dollars (\$50.00) for each violation of the parking requirements of this Agreement.

3.1.4.4.5 The amount of Two Hundred Fifty and No/100 Dollars (\$250.00) per day for each failure to make Vendor's books and records available as required by this Agreement.

3.1.4.5 Violation Use Fees shall be assessed as follows:

3.1.4.5.1 If Operator determines that Vendor is liable for Violation Use Fee, then Operator shall issue to Vendor a notice of Operator's assessing a Violation Use Fee. The notice shall set forth the nature of the violation and the amount of the assessment.

3.1.4.5.2 Vendor shall pay the Violation Use Fee within ten (10) days after Operator's notice. However, if the Violation Use Fee amount exceeds One Thousand and No/100 Dollars (\$1,000.00) in any month, then the following shall apply:

3.1.4.5.2.1 Vendor shall have thirty (30) days after the notice to pay the Violation Use Fee or give Operator notice contesting the assertion of noncompliance.

3.1.4.5.2.2 If Vendor fails to respond to the notice, Vendor shall pay the Violation Use Fee. Otherwise, Operator shall schedule a public hearing before the city manager or designee to investigate whether the Violation Use Fee is properly assessed. Operator shall provide Vendor at least ten (10) days notice of such hearing, which shall specify the time, place and purpose of the hearing. At the hearing, Vendor shall be provided an opportunity to be heard and present evidence. If the result of the hearing is that Vendor is liable for Violation Use Fee, then the Violation Use Fee is due ten (10) days after the hearing decision is announced.

3.1.4.5.3 Vendor may appeal the outcome of the hearing to an appropriate court, which shall have the power to review Operator's decision "de novo". Such appeal to the appropriate court must be taken within thirty (30) days after the issuance of Operator's determination. Otherwise, the outcome of the hearing shall be final and conclusive.

3.1.5 Payments Cumulative. All categories of Use Fee and all amounts payable by Vendor hereunder or under any tax, assessment, fee or other existing or future ordinance or other law of the City of Scottsdale or the State of Arizona shall be cumulative and payable in addition to each other, and such amounts shall not be credited toward, substituted for, or set off against each other in any manner

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3.1.6 Use Fee Payment Schedule. Vendor shall pay Use Fee to Operator on the following schedule:

3.1.6.1 Vendor shall report Percentage Use Fee each month no later than the tenth (10th) day of the following month and shall pay Percentage Use Fee once each quarter thirty (30) days after the end of the quarter. Vendor shall pay Violation Use Fee at the times provided above. All other Use Fee shall be payable on the tenth (10th) day of the month after the month in which it accrued. For example, other Use Fee that accrues in September shall be payable on or before October 10. If an amount is not known in advance, Operator shall have the right to estimate the amount, with an adjustment to be made within thirty (30) days after the actual amount becomes known.

3.1.6.2 Each installment shall include all Use Fee then accrued.

3.1.6.3 Any correction due to an error in Operator's estimate or for any other reason shall be paid by Vendor to Operator (or by Operator to Vendor, as the case may be) within thirty (30) days after notice of the correction by either party to the other.

3.1.7 Use Fee Amount Report. Vendor shall provide with each installment of Use Fee and at such other times as this Agreement may provide a report showing the manner in which each category and component of Use Fee was calculated. The report shall itemize the transactions giving rise to the Use Fee. When Operator requests from time to time, Vendor shall provide with the report dated and signed journal entries, cash register tapes and other documentation substantiating Gross Food Sales and other amounts. A sample report is attached as **Exhibit "D"**. Vendor shall print such number and the contract number given at the top right corner of the first page of this Agreement on each check.

3.1.8 Place of Payment. Unless and until Operator gives notice otherwise, Vendor shall deliver all Use Fee Payments to Operator's remittance processor at Suite 215, 7447 East Indian School Road, Scottsdale, Arizona 85251.

3.1.9 Security Deposit. Upon execution of this Agreement, Vendor shall provide to Operator, and maintain with Operator at all times during the term of this Agreement, a cash security deposit in the amount equal to Fifty Thousand and No/100 Dollars (\$50,000.00) to guarantee the faithful performance of this Agreement. The same cash deposit also serves as the security deposit under the New Monterra Agreement and shall not be returned until it no longer so serves. Any prepaid Use Fee or other funds or property of Vendor held by or available to Operator or any issuer of a letter of credit, receiver, escrow agent or other third party under or related to this Agreement shall also stand as a security deposit guaranteeing Vendor's faithful performance of this Agreement. Any portion of any security deposit to which Vendor may then be entitled, net of any setoff or other obligation of Vendor, shall be paid to Vendor without interest by the holder of Operator's rights under the BOR Agreement within sixty (60) days after the later of termination of this Agreement and completion of all of Vendor's obligations related to this Agreement.

3.1.10 Late Fees. Use Fee is deemed paid only when Operator actually receives good cash payment or a check that is honored when first presented by Operator for payment. Should Operator not receive any Use Fee on or before the date due, a late fee shall be added to the amount due in the amount of the greater of ten percent (10%) of the amount due, or

One Hundred Dollars (\$100.00). Any Use Fee that is not timely paid shall also accrue simple interest at the rate of one and one-half percent (1 ½ %) per month from the date the amount first came due until paid. Vendor expressly agrees that the foregoing represent fair and reasonable estimates by Operator and Vendor of Operator's costs (such as accounting, administrative, legal and processing costs, etc.) if there is a delay in payment of Use Fee. Operator shall have the right to allocate payments received from Vendor among Vendor's obligations.

3.1.11 Duty to Maximize Use Fee. Subject to the requirements of this Agreement, Vendor shall occupy, operate and conduct its business under this Agreement so as to maximize the Percentage Use Fee payable hereunder.

3.1.12 Misreported Gross Food Sales. For all Gross Food Sales not properly and timely reported by Vendor as required by this Agreement, the percentage used to calculate Percentage Use Fee otherwise payable hereunder shall be increased by ten percent (10%) more than the percentage of Gross Food Sales otherwise payable. For example, if the rate applicable to certain Gross Food Sales were otherwise twenty percent (20%), then, in the event of Vendor's failure to properly and timely report, the rate would be thirty percent (30%). This increase is in addition to any and all other rights or remedies Operator may have related to Vendor's failure to properly report Gross Food Sales or timely pay Use Fee. Vendor agrees that this payment is a fair and reasonable way of compensating Operator for Operator's cost of investigating and administering underreported Gross Food Sales. Operator's contract administrator shall have authority to elect not to apply this paragraph from time to time.

3.1.13 Holdover Use Fee. If there is a holdover, all Use Fee, and every element thereof, shall be increased by an additional fifty percent (50%) over the amount of Use Fee that would otherwise be payable under this Agreement.

3.1.14 No Use Fee Refunds. Operator shall own all Use Fee as soon as it is paid or delivered. Use Fee is not refundable for any reason.

3.2 Operator's Payments. Operator shall make payments to Vendor as follows:

3.2.1 Marketing Fee Categories. Operator shall pay to Vendor each of the following separate and cumulative amounts (collectively the "Marketing Fee"):

3.2.1.1 A fixed annual amount (the "Base Marketing Fee").

3.2.1.2 An amount (the "Percentage Marketing Fee") comprising a percentage of the Event Invoice Revenue.

3.2.2 Base Marketing Fee Amount. The amount of Base Marketing Fee per year (the "Annual Equivalent Amount") shall be as stated on **Exhibit "E"** attached hereto. The Base Marketing Fee is payable in installments at the beginning of certain periods (the "Installment Periods") as hereafter provided. The CPI Adjustment shall not apply to the Base Marketing Fee.

3.2.3 Percentage Marketing Fee Amount. The amount of Percentage Marketing Fee for the first partial year of this Agreement is Zero Dollars (\$0.00). The amount of Percentage Marketing Fee for following years shall be a percentage of Event Invoice Revenue from use of the Westworld Facility as follows:

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3.2.3.1 Applicable Percentage. The percentage used to calculate Percentage Marketing Fee for a year shall be as follows:

3.2.3.1.1 For Event Invoice Revenue up to Three Million Two Hundred Thousand and No/100 Dollars (\$3,200,000.00) the percentage shall be zero percent (0%).

3.2.3.1.2 For the next One Million and No/100 Dollars (\$1,000,000.00) in Event Invoice Revenue the percentage shall be ten percent (10%).

3.2.3.1.3 For Event Invoice Revenue in excess of the foregoing amounts the percentage shall be fifteen percent (15%).

3.2.3.2 Event Invoice Revenue. Event Invoice Revenue shall be calculated as follows:

3.2.3.2.1 Event Invoice Revenue In General. Event Invoice Revenue shall mean the sum of the following cash payments actually received by Operator from a producer pursuant to Operator's invoice to the producer under an Event Contract for an event held at the Westworld Facility:

3.2.3.2.1.1 Amounts that Operator directly charges a producer for the producer's basic use of specific areas and improvements at the Westworld Facility for the event.

3.2.3.2.1.2 Amounts that Operator directly charges a producer for the privilege of offering souvenirs, programs, novelties, pedicures and similar goods and services to persons attending events.

3.2.3.2.1.3 Amounts that Operator directly charges a producer for animal feed and bedding purchased in bulk by the producer and charged by Operator to the producer as part of the event invoice and paid to Operator pursuant to the invoice.

3.2.3.2.1.4 Amounts that Operator directly charges a producer for use of permanent or portable animal stalls.

3.2.3.2.1.5 Amounts that Operator directly charges a producer for tent or RV camping that is inside the event and does not go through Operator's tent or RV camping reservation system.

3.2.3.2.1.6 Amounts that Operator directly charges a producer for electricity, water, gas or sewer that is not separately metered and billed by amounts used.

3.2.3.2.1.7 Amounts that Operator directly charges a producer for arena water and drag, miscellaneous tractor work and similar incidental work for an event and for equipment rental for an event.

3.2.3.3 Double Counting. No amount shall be included twice (or excluded twice) in calculating Event Invoice Revenue.

3.2.4 Cash Basis. Percentage Marketing Fee shall be calculated and paid strictly on a cash basis as Operator receives the Event Invoice Revenue, all according to the formulas, schedules and other provisions of this article of this Agreement and regardless of when an Event Contract is signed, the event occurs, etc.

3.2.5 Marketing Fee Payment Schedule. Operator shall pay to Vendor all Marketing Fee on the following schedule:

3.2.5.1 Operator shall pay the entire first partial year's Annual Equivalent Amount to Vendor within fourteen (14) days after the date of this Agreement. Operator shall pay the entire Annual Equivalent Amount for the year that begins July 1, 2014 at the beginning of that year. Operator shall pay the entire Annual Equivalent Amount for the year that begins July 1, 2015 at the beginning of that year.

3.2.5.2 Beginning in the year that begins July 1, 2016, Operator shall pay to Vendor installments of Base Marketing Fee in advance five (5) days before the beginning of each Installment Period. An Installment Period begins on the first day of each quarter and ends on the last day of such quarter.

3.2.5.3 The amount of each installment of Base Marketing Fee shall be the Annual Equivalent Amount that is in effect at the time the installment becomes payable divided by the number of Installment Periods in a year.

3.2.5.4 Each installment of Base Marketing Fee shall include all percentage Marketing Fee accrued as of the first day of the month in which Operator makes the payment.

3.2.5.5 Operator shall report Percentage Marketing Fee each month no later than the tenth (10th) day of the following month and shall pay Percentage Marketing Fee once each quarter ten (10) days after the end of the quarter.

3.2.5.6 Any correction to Marketing Fee payment amounts shall be paid by Operator to Vendor (or by Vendor to Operator, as the case may be) within thirty (30) days after notice of the correction by either party to the other.

3.2.6 Marketing Fee Amount Report. Operator shall provide with each installment of Marketing Fee a report showing the manner in which each category and component of Marketing Fee was calculated. The report shall itemize the transactions giving rise to the Marketing Fee.

3.2.7 End of Marketing Fee Payments. Ninety (90) days after termination of this Agreement, Operator shall pay to Vendor a final payment of the Percentage Marketing Fee, if any, that may have accrued as of the termination. Operator otherwise has no obligation to pay any Marketing Fee Payment or other amounts to Vendor after termination or expiration of this Agreement.

IV. OPERATIONS AND MARKETING

4. Operations and Marketing. Vendor's use and occupation of the Use Areas and the entire Westworld Facility shall in all respects conform to all and each of the following cumulative provisions (collectively the "Restrictions"):

4.1 Permitted Uses. Vendor shall use the Use Areas solely for the Permitted Uses and shall conduct no other activity at or from the Use Areas. Except as expressly permitted by this Agreement, Vendor shall confine its activities at the Westworld Facility to the Use Areas. The Permitted Uses are limited to the following:

4.1.1 The following uses in the Kitchens:

4.1.1.1 Food preparation and serving.

4.1.1.2 Alcohol preparation and serving.

4.1.1.3 Receiving and storage of food and alcohol prior to its consumption at the Westworld Facility.

4.1.1.4 Storage of supplies and equipment for Food Service and Alcohol Service at the Westworld Facility.

4.1.1.5 Staging for Food Service and Alcohol Service at the Westworld Facility.

4.1.2 The following uses at the Remote Serving Spaces:

4.1.2.1 Food preparation and serving.

4.1.2.2 Alcohol preparation and serving.

4.1.3 The following uses at the Aprons: trash cans, condiment stations and like food service and sanitary equipment.

4.1.4 Such additional related uses to which Operator may give or retract consent from time to time. Such additional uses may only be conducted following Operator's giving to Vendor notice of such consent. Operator may terminate or impose conditions and limitations on such consent from time-to-time in Operator's sole and absolute discretion.

4.2 Prohibited Uses. Without limitation, the following uses are prohibited at or from the Use Areas and elsewhere at Westworld Facility:

4.2.1 Preparation, storage, or other activity for food or alcohol that will not be served at the Westworld Facility.

4.2.2 Preparation, storing, staging or otherwise supporting any event or activity outside the Westworld Facility.

4.2.3 Vending machines, pinball games, video games, amusement devices, pay telephones, ATMs or similar devices.

4.2.4 Sale of film, suntan lotion, lip gloss, sunglasses, souvenirs, tobacco, alcohol, literature, clothing or other items that are not food or alcohol. The preceding sentence does not apply to ordinary incidental sales of food or alcohol related consumables necessary for ordinary food and alcohol service, such as paper cups and napkins, toothpicks and disposable tablecloths.

4.2.5 Gambling activities of any sort whatsoever.

4.2.6 Tobacco or similar substances.

4.2.7 All uses not specifically authorized by this Agreement.

4.3 Actions by Others. Vendor shall be responsible to ensure compliance with this Agreement by all persons using the Westworld Facility claiming through or under Vendor or this Agreement. Vendor shall cause all such persons to not do anything that this Agreement prohibits Vendor from doing. The Restrictions do not apply to Operator.

4.4 Relationship to Monterra Agreement. The Monterra Building is completely excluded from this Agreement. This Agreement does not give Vendor any right to use the kitchen at the Monterra Building or any other part of the Monterra Building. However, while the Monterra Agreement is in effect, Vendor may use the kitchen at the Monterra Building as needed to help Vendor meet its obligations under this Agreement to provide Food Service and Alcohol Service to events at the Westworld Facility, subject to compliance with the Monterra Agreement. Food Service and Alcohol Service that Vendor provides from the Monterra Building kitchen while the Kitchen Agreement is in effect shall be governed by this Agreement. For example, Vendor shall pay Percentage use Fee under this Agreement with respect to such Food Service and Alcohol Service and shall not pay "Percentage Use Fee" under the Monterra Agreement. If the Monterra Agreement is not in effect for any reason, then at Operator's election Vendor's obligations relating to Food Service and Alcohol Service shall include the Monterra Building.

4.5 Relationship to Event Contracts This Agreement governs Food Service, Alcohol Service and the Marketing Activities. The conduct of events at the Westworld Facility is governed by the Event Contracts. For example, whether a casino night is allowed at an event, whether signage is allowed at an event (including without limitation signage advertising Vendor or Vendor's suppliers), and all other questions about the planning, conduct, equipping, promotion or other aspects of an event and the experience of those attending an event will be determined by the Event Contracts and not by this Agreement. This Agreement does not prohibit Vendor from contracting with event producers to provide ancillary services (such as chair and table rentals or ticket printing) or to purchase services from event producers (such as advertising at an event) but such services are not within the scope of this Agreement or included in the Permitted Uses. This Agreement does not grant to Vendor any rights related to any of the issues described in this paragraph.

4.6 Vendor Events. This Agreement does not allow Vendor to produce any events at the Westworld Facility. Any Vendor produced event at the Westworld Facility would be

pursuant to a separate Event Contract. Neither Vendor nor Operator is obligated to enter into any Event Contract for any Vendor produced event.

4.7 Damage to Operator's Property. If any damage to Operator's equipment, improvements or other property occurs related in any way to Vendor's use of the Westworld Facility, then:

4.7.1 Vendor shall immediately notify Operator by telephone and shall cause the vicinity of the damage to be secured.

4.7.2 Operator shall decide whether Operator shall repair the damage or Vendor shall repair the damage. In either case, the repair shall be at Vendor's expense. If Operator directs Vendor to repair the damage, then Vendor shall cause the damage to be repaired within seventy two (72) hours or within such longer period as may be necessary to complete the work. Vendor's work shall not be deemed complete until Vendor accompanies Operator to inspect the work and Operator determines after such inspection that the work is properly completed.

4.8 Signs. All signage visible from outside the interior of the Kitchens is prohibited except in compliance with the following requirements:

4.8.1 Signs Required. Vendor shall install and maintain any signage Operator may request directing Vendor's staff, visitors, parking, deliveries and other vehicles and other users to comply with this Agreement.

4.8.2 Sign Approval. Signs shall be designed and operated as follows:

4.8.2.1 Vendor shall not erect, install, apply for a permit for, or display any sign until Vendor has submitted written request, together with descriptions and drawings showing the intended locations, size, style and colors of such signs to Operator, and has received notice of Operator's approval of the sign. Vendor signs shall be subject to the same plans review and other requirements that apply to other construction work by Vendor under this Agreement.

4.8.2.2 Vendor shall bear all costs pertaining to the erection, installation, operation, maintenance, replacement and removal of all signs including, but not limited to, the application for and obtaining of any required building or other permits regardless of the reason for any such activity, even if such activity is required by Operator pursuant to this Agreement.

4.8.3 Signs Affected. The requirements of this paragraph apply to all signs, designs, monuments, decals, graphics, posters, banners, markings, and other manner of signage visible outside the Kitchens.

4.9 Lighting. Vendor shall turn off all lighting not then being used to light a specific activity then occurring. Vendor shall not use more lighting than reasonably necessary for any activity.

4.10 Noise. Noise in connection with the Permitted Uses is subject to the following limitations:

4.10.1 Except for kitchen timers, burglar alarms and other safety devices, audio speakers, sirens or other devices for making noise are prohibited.

4.10.2 All equipment must be equipped with appropriate mufflers and other sound control devices.

4.10.3 Vendor shall comply with all Westworld staff instructions concerning noise.

4.11 Video Equipment. Vendor shall not use at the Westworld Facility televisions, computer monitors, video screens, video displays, video projectors or other equipment for displaying video images, signals or patterns. Vendor shall not use the Use Areas for viewing video images, signals or patterns. Operator may elect to temporarily suspend this paragraph in whole or in part from time to time subject to such conditions or requirements as Operator may desire from time to time. This paragraph does not prohibit the following:

4.11.1 Incidental use of cell telephones, tablet computers, laptop computers and similar personal electronic devices by individuals for their own personal viewing.

4.11.2 Fixed image video display boards showing the items for sale at the Kitchens or Remote Serving Spaces and the prices of such items. Such boards shall be subject to the sign requirements of this Agreement.

4.11.3 Use of a tablet computer or a similar device by Vendor's staff to take orders and otherwise conduct business if the device has a screen less than twelve inches (12") measured diagonally.

4.11.4 Video displays that are not visible outside the Kitchens.

4.12 Outdoor Uses. All uses other than parking, pedestrian access, and similar incidental uses are confined to the interior of the Kitchens. During events, Vendor may use Remote Serving Spaces and Aprons as permitted by this Agreement.

4.13 Vendor's Agent. Vendor shall at all times when Vendor is conducting any activities at the Westworld Facility retain on call available to Operator at the Westworld Facility an active, qualified, competent and experienced person to supervise all activities at the Westworld Facility and who shall be authorized to represent and act for Vendor in matters pertaining to all emergencies and the day-to-day operation of the Permitted Uses and all other matters affecting this Agreement. Vendor shall also provide notice to Operator of the name, street address, electronic mail address, and regular and after hours telephone and telefax numbers of a person to handle Vendor's affairs and emergencies at the Westworld Facility. Any change shall be given in writing hand-delivered to Operator's on-site Westworld Facility manager as well as in the manner stated for notices under this Agreement.

4.14 Identification. All Vendor employees, contractors and subcontractors shall wear a uniform or shall wear on their clothing a clearly visible identification card bearing their name and photograph and Vendor's logo or name.

4.15 Coordination Meetings. Vendor shall meet with Operator and other Westworld Facility users from time to time as requested by Operator to coordinate and plan

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operation of the Westworld Facility and all matters affected by this Agreement. Vendor must comply with (and train and cause its personnel to comply with) security, alcohol, safety and emergency programs established by Operator from time to time.

4.16 Fixtures and Personality. Vendor shall from time to time commencing with the Completion Deadline provide to and maintain at the Use Areas all equipment and other items necessary for the Use Areas to be conveniently used for the Permitted Uses. Without in any way limiting the foregoing, Vendor shall provide to, and maintain in good repair upon the Use Areas at its own expense all of the items listed on **Exhibit "F"** attached hereto.

4.17 Operation Details. Operator and Vendor shall comply with the requirements of **Exhibit "G"** attached hereto.

4.18 Obstructing Traffic. Vendor shall not obstruct or interfere with the use of any walkways, driveways, vehicle lanes or other areas at the Westworld Facility and shall at all times maintain safe, convenient and free pedestrian and vehicular access at the Westworld Facility as determined by Operator from time to time.

4.19 Loading and Delivery Vehicles. Delivery vehicles shall use locations specified by Operator and shall not park longer than Operator may elect to permit from time to time.

4.20 Vehicle Size. Vehicle size, weight and height shall be limited to the engineering design limits of the improvements to various portions of the Westworld Facility.

4.21 Keys. Vendor shall not allow any person other than a bona-fide employee of Vendor to possess, have custody of, hold or use any key, access code or other actuator (collectively "Keys") to any lock, door, gate or other control point, equipment or other device at the Westworld Facility. Vendor shall keep detailed records of access to Keys and immediately report to Operator any loss of or improper use of or access to any Key. Operator shall provide to Vendor a Key to the exterior door to each Kitchen and a Key to the North Hall for Vendor to have access to Kitchen 3. Vendor shall participate in and comply with Westworld access control and safety programs from time to time.

4.22 Operator Access. Vendor shall admit authorized Operator staff members to all parts of the Use Areas at all times upon demand upon the presentation of Operator real estate administration or staff identification cards.

4.23 Access and Similar Areas. Vendor shall not obstruct any portion of the sidewalks, entries, passages, vestibules, utility routes, halls, doors, skylights, stairways, windows or other openings, hallways, corridors, passageways, radiators and hour-lighting attachments, or ways of access at the Westworld Facility, nor use them for any purpose other than ingress and egress to and from the Facilities. Vendor shall not use the water closets and water apparatus for any purpose other than for which they were constructed, and shall not place in them any sweepings, rubbish, rags, papers or other substances.

4.24 Common Areas. Subject to current and future regulations and policies governing the use of, and access to the Westworld Facility, Vendor, its officers, employees, agents, patrons and invitees, and its suppliers of services and furnishers of materials shall have the right of

ingress to and egress from the Use Areas through such portions of the Westworld Facility as are reasonably necessary for Vendor to perform this Agreement. Such right is strictly limited to ingress and egress over areas that are designated by Operator for that purpose from time to time. Such right is strictly limited to ingress and egress.

4.25 Parking Rules. Parking shall be subject to current and future regulations and limitations governing parking at the Westworld Facility. Vendor shall cause its employees and all other persons and vehicles at the Westworld Facility related to this Agreement to park in employee parking areas as designated by Operator from time to time. Parking includes all manner of vehicles, trailers, storage pods and other portable equipment. Vendor shall pay applicable charges for overnight parking.

4.26 Fuels. No filling of flammable gas, flammable liquid or other fuel tanks is allowed at the Westworld Facility.

4.27 Pests. Vendor shall maintain the Use Areas free of mosquitoes, rats and other insect and pest infestations and free of standing water, mold and other biological hazards.

4.28 Prohibited Names. The name of Vendor's business operations conducted at the Westworld Facility shall comply with the following:

4.28.1 Unless Operator first gives Vendor notice of Operator's consent otherwise in Operator's sole and absolute discretion, Vendor shall operate the Permitted Uses under Vendor's actual legal name as stated at the beginning of this Agreement.

4.28.2 The use of any other name in connection with Vendor's operations at the Westworld Facility under this Agreement is subject to Operator approval at Operator's sole and absolute discretion as to name, payments for naming rights, payment of all or a portion of naming rights, payments to Operator, and all other matters.

4.28.3 Vendor shall not use or allow others to use in connection with any Vendor's operations at the Westworld Facility any name that directly or indirectly refers to or contains any part of Operator's name or the Westworld Facility's name or otherwise suggests a connection between Operator and Vendor or Vendor's activities.

4.28.4 Vendor shall not use in connection with its operations at the Westworld Facility any name associated with products or purveyors of any sort of alcohol, tobacco, adult entertainment or gambling related products or services.

4.28.5 Following termination of this Agreement for any reason, Operator shall have the exclusive right to use or allow others to use any name used to identify Vendor's business at the Westworld Facility, so long as Operator does not use Vendor's name as stated at the beginning of this Agreement or use a name that Vendor is then actively using and continues to use for event food and alcohol service at other locations in the United States of America.

4.29 Governmental and Neighborhood Relations. Vendor shall conduct its activities in coordination with Operator as necessary to maintain good relations with all governmental and other entities having jurisdiction over the Use Areas, all other occupants of the Westworld Facility, and the occupants of surrounding real property. Vendor shall immediately give to Operator notice of

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any actual or threatened dispute, violation or other disagreement relating to the Westworld Facility. Vendor is not an agent for Operator. Without limitation, such entities (none of whom are third party beneficiaries to this Agreement) include:

4.29.1 Arizona Department of Liquor Licenses and Control.

4.29.2 Arizona Water Conservation District

4.29.3 Bureau of Reclamation

4.29.4 Central Arizona Water Conservation District

4.30 Hazardous Substances. Vendor's activities upon or about the Westworld Facility shall be subject to the following regarding any hazardous or toxic substances, waste or materials, or any substance now or hereafter subject to regulation under the Comprehensive Environmental Response and Liability Act, 42 U.S.C. §§ 9601, et seq., the Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., or the Toxic Substances Control Act, 15 U.S.C. 2601, et seq., or any other federal, state, county, or local law pertaining to hazardous substances, waste or toxic substances and their reporting requirements (collectively "Toxic Substances"):

4.30.1 Vendor shall not produce, dispose, transport, treat, use or store any Toxic Substances upon or about the Westworld Facility. The prohibitions of the preceding sentence only shall not apply to janitorial supplies and similar ordinary chemicals necessary for ordinary use in conducting the Permitted Uses. Such materials must be properly and lawfully contained and labeled in proper tanks and receptacles.

4.30.2 Vendor shall dispose of any materials as required by law and as reasonably required by Operator.

4.30.3 Vendor shall not use the Westworld Facility in a manner inconsistent with regulations issued by the Arizona Department of Environmental Quality, or in a manner that would require a permit or approval from the Arizona Department of Environmental Quality or any other governmental agency.

4.30.4 In addition to and without limitation of any other indemnities or obligations, Vendor shall pay, indemnify, defend and hold Operator harmless against any loss or liability incurred by reason of any Toxic Substance on or affecting the Westworld Facility attributable to or caused by Vendor or anyone using the Use Areas or the Westworld Facility under this Agreement or acting or claiming under Vendor or this Agreement or otherwise relating to this Agreement.

4.30.5 Vendor shall prevent third parties from having access to Vendor's Toxic Substances or other hazardous material at the Westworld Facility.

4.30.6 Vendor shall immediately notify Operator of any Toxic Substance at any time discovered or existing upon the Westworld Facility.

4.30.7 Within twenty-four (24) hours after any violation by Vendor of this Agreement pertaining to Toxic Substances, Vendor shall give Operator notice reporting such violation.

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4.31 Quality Service. In entering into this Agreement, Operator and Vendor have foremost in mind providing the public with food and alcohol service and facilities of the highest quality in a family atmosphere. Without limitation, Vendor shall do the following:

4.31.1 Vendor shall operate the Use Areas in a first-class manner; shall furnish prompt, clean and courteous service; and shall keep the Use Areas attractively maintained, orderly, clean, sanitary and in an inviting and safe condition at all times and meeting or exceeding the standards of comparable first class facilities in the western United States all to Operator's reasonable satisfaction. For purposes of the preceding sentence, the facilities listed on **Exhibit "H"** attached hereto (the "Comparison Facilities") shall be deemed to be similar facilities. Operator shall have the right by written notice from time to time in its reasonable discretion to designate other public event facilities in the United States as additional or replacement Comparison Facilities.

4.31.2 Vendor shall not allow any person or persons in or about the Westworld Facility related to Vendor's operations who shall fail to be clean, courteous, efficient and neat in appearance or who shall use improper, profane, obnoxious or rude language or act in a loud or boisterous or otherwise improper manner.

4.32 Limited Exclusive Use. Vendor has no exclusive rights except as set out in this paragraph. Operator shall not offer or grant to any other entity or person a right to offer Food Service or Alcohol Service for compensation to the public at the Westworld Facility. Such exclusivity is limited by the following:

4.32.1 The exclusivity does not apply to Food Service or Alcohol Service for Barrett-Jackson.

4.32.2 The exclusivity does not apply to Food Service or Alcohol Service for AZQHA.

4.32.3 The exclusivity does not apply to Food Service for AHAA.

4.32.4 The exclusivity does not apply to Operator's own events or to informal food and alcohol use by RV occupants, tent campers or other informal visitors at the Westworld Facility.

4.32.5 The exclusivity does not apply to gum or candy.

4.33 Main Location of Permitted Uses. The Kitchens are intended to be the main location for preparation and staging of Food Service and Alcohol Service at the Westworld Facility. All receiving, storage, staging and food preparation for the Permitted Uses shall occur at the Kitchens except to the extent the Kitchens are inadequate to meet the demand for Food Service and Alcohol Service at the Westworld Facility.

4.34 Operating Requirement. Vendor shall provide Food Service and Alcohol Service at all events at the Westworld Facility where Food Service or Alcohol Service are requested as follows:

4.34.1 Vendor's obligation applies immediately, even before the Project is completed and the New Kitchen Equipment is installed.

4.34.2 Vendor shall provide Food Service and Alcohol Service with adequate resources to meet demand. The preceding sentence applies to adequate food, alcohol, equipment, supplies, staff, management and all other resources necessary for efficient, orderly, abundant, high-quality, timely Food Service and Alcohol Service.

4.34.3 Vendor's obligation applies regardless of whether the Kitchens are unavailable for any reason whatsoever or do not have the capacity to meet demand.

4.34.4 Vendor shall work closely with event producers in advance of events and during events to ensure that Vendor is able to perform its obligations.

4.34.5 Vendor's obligation applies regardless of the size of the event.

4.34.6 Unless otherwise directed by Operator, Vendor shall provide Food Service and Alcohol Service at all times that each event is open to the public.

4.34.7 Unless otherwise directed by Operator, Vendor may elect to provide Food Service and Alcohol Service on event move-in days and move-out days.

4.34.8 Operator shall specify the means, level, schedule, location and other details of Food Service and Alcohol Service for each event at least seven (7) days before the first day of the event.

4.34.9 Vendor shall supplement its resources from time to time as may be necessary to provide Food Service and Alcohol Service as described in this Agreement.

4.34.10 Operator is entitled to rely on information provided by event producers and other information.

4.34.11 Vendor shall timely open for service. Without Operator's consent, Vendor shall not close Food Service and Alcohol Service before the time specified by Operator.

4.34.12 Vendor shall provide Food Service and Alcohol Service on a non-discriminatory basis.

4.35 Required Annual Food Plan. Vendor shall provide Food Service and Alcohol Service according to an annual operations plan (the "Annual Food Plan") as follows:

4.35.1 Annual Food Plan Contents. The Annual Food Plan shall contain historic information, along with future projections and plans for the coming year regarding the following matters:

4.35.1.1 Proposed Food Service and Alcohol Service menus, pricing, quality, portions and other characteristics.

4.35.1.2 Anticipated event schedule, attendance, Food Service and Alcohol Service requirements and revenues.

4.35.1.3 Financial.

- 4.35.1.4 Food, equipment; staffing and other resources.
- 4.35.1.5 Operating tasks and expenses.
- 4.35.1.6 Maintenance, repair and other work to the Use Areas and all equipment.
- 4.35.1.7 Space usage.
- 4.35.1.8 Managing compliance with alcohol laws and rules at the Westworld Facility.
- 4.35.1.9 Other matters relevant to this Agreement or the Westworld Facility as requested by Operator.
- 4.35.1.10 Preliminary projections and plans regarding all such matters for the subsequent five (5) years.

4.35.2 Annual Food Plan Process. Vendor shall each year prepare a proposed Annual Food Plan as follows:

4.35.2.1 Annual Food Plan Approval. No later than January 1 of each year during the term of this Agreement (including the last year), Vendor shall deliver to Operator a proposed Annual Food Plan for the subsequent year. Operator's contract administrator shall review the proposed Annual Food Plan as to whether it projects financially sound, specific, measurable, realistic, achievable and sustainable performance measures and timely compliance with this Agreement. Operator may take into account the Comparison Facilities. If Operator's contract administrator approves the proposed new Annual Food Plan prior to the end of such year, and if this Agreement will be in effect in the subsequent year, then the proposed new Annual Plan shall be the Annual Food Plan under this Agreement during the subsequent year. Otherwise this Agreement shall terminate at the end of the year in which Vendor delivers the proposed Annual Food Plan.

4.35.2.2 Initial Annual Food Plan. Operator approves the proposed Annual Food Plan attached hereto as **Exhibit "I"** as the Annual Food Plan for first partial year of this Agreement. The attached summary exhibit was created solely to govern the startup of this Agreement and future Annual Food Plans shall be more comprehensive as set out in this Agreement.

4.35.2.3 Annual Food Plan Changes. Changes to the Annual Food Plan shall require Operator's contract administrator's approval.

4.35.3 Compliance with Annual Food Plan. Vendor shall provide Food Service and Alcohol Service in compliance with the Annual Food Plan.

4.35.4 Annual Food Plan Review. In January and July of each year, Operator and Vendor shall review the objectives, expenditure estimates, estimated effects and other aspects of the Annual Food Plan and determine steps for Vendor to achieve the objectives.

4.36 Liquor License. Vendor shall provide Liquor Service as follows:

4.36.1 Vendor or its sublessee shall at all times maintain appropriate liquor licenses and similar permissions (collectively the "Liquor License") permitting all Alcohol Service that Vendor provides under this Agreement, regardless of location at the Westworld Facility. The boundaries of the Liquor License as of the date of this Agreement are as depicted on **Exhibit "J"**. Vendor shall cause the Liquor License boundaries to temporarily or permanently expand or contract at the Westworld Facility to accommodate Grandfathered Events, reconfiguration of the Westworld Facility, use of parking lots for events and other circumstances, all as Operator may direct from time to time. Vendor shall, upon Operator's request, remove the Liquor License from areas where Vendor is not providing Alcohol Service.

4.36.2 Vendor shall maintain a single Liquor License for both the Monterra Agreement and this Agreement.

4.36.3 Upon termination of this Agreement for any reason, Vendor shall at Operator's request cause the Liquor License to be removed, canceled or transferred to another location. The preceding sentence does not apply to a liquor license to the extent the liquor license is necessary for Vendor's compliance with the Monterra Agreement.

4.36.4 Vendor must meet all necessary requirements for the Liquor License and is responsible for obtaining, dispensing, and handling any alcohol, including, but not limited to, hiring qualified personnel to serve the alcohol and ensuring general compliance with the Liquor License and related laws and regulations.

4.36.5 Operator shall include in Event Contracts a requirement that event producers cooperate in ensuring compliance with applicable alcohol laws and Westworld alcohol policies. Vendor shall challenge persons improperly using or in possession of alcohol at the Westworld Facility. If the person fails to immediately come into compliance, then Vendor shall immediately report the offender to Operator. Operator and Vendor shall meet as needed to refine procedures for alcohol compliance.

4.37 Food Pricing. Vendor shall serve and dispense only high quality food and alcohol, with service, portions and prices at least comparable to, or more favorable to the customer than, those maintained at the Comparable Facilities, all as reasonably determined by Operator. Vendor's menu, price, quality and portion schedules will be subject to approval by Operator. Operator may, at any time, review Vendor's menu, price, quality and portion schedules then in effect and may require that Vendor revise them to comply with this Agreement.

4.38 Drainage Operations. Vendor's use of the Westworld Facility shall be subject and subordinate to use of the Westworld Facility as a drainage and flood control facility that will necessarily directly and indirectly affect Vendor, the Permitted Uses, and the Use Areas. Operator's rights under this paragraph limit Vendor's rights under all other provisions of this Agreement. Vendor's use of the Use Areas or the remainder of the Westworld Facility shall not be permitted by Vendor to in any way adversely affect Operator's use or operation of the Westworld Facility as a flood control facility.

4.38.1 Operator reserves the right to further develop or improve the Westworld Facility as a flood control facility as it sees fit, regardless of the desires or views of Vendor, and without interference or hindrance.

4.38.2 Operator reserves the right, but shall not be obligated to Vendor to maintain and keep in repair the Westworld Facility as a flood control facility, together with the right to direct and control all activities of Vendor in this regard.

4.38.3 There is hereby reserved to Operator, its successors and assigns a right of use of the entire Westworld Facility as a flood control facility. This right shall include the right to cause in the Westworld Facility such construction, earthmoving, maintenance, inspection, repair, replacement, operations, and other activity inherent in the use of the Westworld Facility as a flood control facility.

4.38.4 Vendor shall not be entitled to any damages or other remedy arising out of any use of the Westworld Facility for flood control purposes or for any interruption of Vendor's business, use, construction, repair or operation related thereto.

4.38.5 Vendor shall not make use of the Use Areas or the remainder of the Westworld Facility in any manner that might interfere with the use of the Use Areas or the remainder of the Westworld Facility as a flood control facility. Whether any particular conduct complies with the foregoing shall be determined by Operator.

4.38.6 Operator's rights under this paragraph are delegable and are assignable.

4.39 Required Marketing Activities. Vendor shall carry out the Marketing Activities at Vendor's expense in pursuance of the Marketing Objectives, giving particular concentration to the attraction of new Tourism Events to the Westworld Facility and in compliance with the following:

4.39.1 Purpose of Marketing Activities. The purpose of Vendor performing the Marketing Activities is to increase the number of Event Contracts and to otherwise advance the Marketing Objectives.

4.39.2 Event Marketing. Vendor shall promote the Westworld Facility as a travel destination for Tourism Events and other events.

4.39.3 Communications. Vendor shall carry out marketing communications that generate leisure and business travel from individual, meeting, and leisure group markets. Marketing Activities shall include advertising; event and consumer promotions; database relationship marketing; public relations; web site maintenance, enhancements, and development; and on-line marketing programs and promotions. Operator has no responsibility for errors in marketing materials, even if Operator reviewed or approved marketing materials.

4.39.4 Tourism Industry Sales. Vendor shall target Marketing Activities toward the multi-day event industry serving target markets identified by Vendor in order to promote Tourism Events and other events at the Westworld Facility and general tourism visitation to Scottsdale.

4.39.5 Advice. Vendor shall advise Operator on how various activities or plans may affect marketing of events at the Westworld Facility and the other Marketing Objectives.

4.39.6 Annual Marketing Strategy. Vendor shall each year prepare a marketing strategy plan (the "Annual Marketing Strategy") for the coming year as follows:

4.39.6.1 Initial Annual Marketing Strategy. Operator approves the proposed Annual Marketing Strategy attached hereto as **Exhibit "K"** as the Annual Marketing Strategy for the first partial year and the first full year of this Agreement. The attached summary exhibit was created solely to govern the startup of this Agreement and future Annual Marketing Strategy shall be more comprehensive as set out in this Agreement.

4.39.6.2 Annual Marketing Strategy Approval. No later than March 1 of each year during the term of this Agreement (including the last year, but excluding March 1, 2014), Vendor shall deliver to Operator a proposed Annual Marketing Strategy for the subsequent year. If Operator approves the proposed new Annual Marketing Strategy prior to the end of such year, and if this Agreement will be in effect in the subsequent year, then the proposed new Annual Marketing Strategy shall be the Annual Marketing Strategy under this Agreement during the subsequent year. Otherwise this Agreement shall terminate at the end of the year in which Vendor delivers the proposed Annual Marketing Strategy.

4.39.6.3 Annual Marketing Strategy Review. Operator and Vendor shall conduct quarterly reviews of the Marketing Objectives and the objectives, expenditure estimates, estimated effects and other aspects of the Annual Marketing Strategy.

4.39.6.4 Annual Marketing Strategy Changes. Changes to the Annual Marketing Strategy shall require Operator's contract administrator's approval.

4.39.7 Annual Marketing Tasks. Vendor shall each year prepare a list of specific performances (the "Annual Marketing Tasks") for the coming years as follows:

4.39.7.1 Initial Annual Marketing Tasks. Operator approves the proposed Annual Marketing Tasks attached hereto as **Exhibit "L"** as the Annual Marketing Tasks for the first partial year and the first full year of this Agreement. The attached summary exhibit was created solely to govern the startup of this Agreement and future Annual Marketing Tasks shall be more comprehensive as set out in this Agreement.

4.39.7.2 Annual Marketing Tasks Approval. No later than March 1 of each year during the term of this Agreement (including the last year, but excluding March 1, 2014), Vendor shall deliver to Operator its proposed Annual Marketing Tasks for the subsequent year. If Operator approves the proposed new Annual Marketing Tasks prior to the end of such year, and if this Agreement will be in effect in the subsequent year, then the proposed new Annual Marketing Tasks shall be the Annual Marketing Tasks under this Agreement during the subsequent year. Otherwise this Agreement shall terminate at the end of the year in which Vendor delivers the proposed Annual Marketing Tasks.

4.39.7.3 Annual Marketing Tasks Review. Operator and Vendor shall conduct semi-annual reviews of the Marketing Objectives and the objectives, expenditure estimates, estimated effects and other aspects of the Annual Marketing Tasks.

4.39.7.4 Annual Marketing Tasks Changes. Changes to the Annual Marketing Tasks shall require Operator's contract administrator's approval.

4.39.8 Annual Marketing Program. Vendor shall use the Base Marketing Fee and such Vendor funds as may be necessary to perform the Annual Marketing Strategy and Annual Marketing Tasks.

4.39.9 Compliance with Annual Marketing Strategy and Annual Marketing Tasks. Vendor shall conduct the Marketing Activities in conformance with the Annual Marketing Strategy, the Annual Marketing Tasks, the Marketing Objectives and the remainder of this Agreement.

4.39.10 Vendor Marketing Contracts with Others. Vendor shall not provide marketing or related services of any kind for any other event facility of any description.

4.40 Limits on Vendor's Authority. Vendor shall solicit proposals from Tourism Event producers and other event producers to use the Westworld Facility for their events. However, Vendor shall have no authority to enter into an Event Contract or to otherwise commit use of any part of the Westworld Facility for any events or otherwise. Without limitation, Operator and not Vendor shall perform and manage all of the following, all pursuant to Operator practices as they may exist from time to time:

4.40.1 Final Event Contract negotiations.

4.40.2 Scheduling.

4.40.3 Preparation, finalization, approval and execution of Event Contracts.

4.40.4 All other decisions regarding Event Contracts that are reserved to Operator under this Agreement or that are not specifically granted to Vendor in this Agreement.

4.41 Operator Control of the Westworld Facility. Operator shall have full freedom to operate the Westworld Facility in the manner that Operator views to be in the general best interests of Operator, the Westworld Facility and the public, taking into account any factor that Operator may consider to be relevant from time to time. Without limitation:

4.41.1 For purposes of this paragraph, operation of the Westworld Facility includes all decisions about the following:

4.41.1.1 Construction, operation, maintenance, repair and all other factors influencing the physical condition of the Westworld Facility and its suitability for any event or use.

4.41.1.2 Selection of events to occur at the Westworld Facility, including without limitation, the terms upon which events may occur at the Westworld Facility, and

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favoring or disfavoring events in any respect, such as willingness to host the event, as well as assignment of dates or facilities, etc.

4.41.1.3 Establishment, administration, imposition or collection of charges for use of the Westworld Facility or otherwise related to the event.

4.41.1.4 Exercise of Operator's rights under this Agreement.

4.41.2 Operator has no duty to operate the Westworld Facility in a manner that maximizes Gross Food Sales, Event Invoice Revenue, or other amounts.

4.41.3 In selecting events to occur at the Westworld Facility and otherwise dealing with events and proposed events, in addition to any other factors that Operator may consider to be relevant, Operator may take into account any of the following:

4.41.3.1 Whether the event is a Tourism Event.

4.41.3.2 The amount of tourism, economic activity, tax and other benefits the event may generate for the Westworld Facility and Operator generally at the Westworld Facility and elsewhere.

4.41.3.3 Noise, light, traffic and any other consequence or influence on the Westworld Facility, nearby lands, and throughout the City of Scottsdale generally.

4.41.3.4 The amount, certainty and long term duration of financial, advertising, community, and resource commitments the event is willing to make to the Westworld Facility and the Scottsdale community.

4.41.3.5 The work, time and expense to prepare, process and enter into a contract for the event.

4.41.3.6 The amount of time, facilities and other resources the event may request at the Westworld Facility and elsewhere, such as move-in time and move-out time.

4.41.3.7 Effect on generating full use of the Westworld Facility during the low season (April through September).

4.41.3.8 The event's ability to strengthen the City of Scottsdale's image and success as a high-end first class tourism destination, including in relation to competing tourism destinations.

4.41.3.9 The duration, stability, strength and potential of the event.

4.41.3.10 The nature, reputation, theme, industry and demographics of the event and its participants and attendees, and how they reflect on the Westworld Facility, Operator and its officials and citizens.

4.41.3.11 The event's management, business history and reputation.

4.41.3.12 Ticket prices and other direct or indirect costs of attending all or part of the event.

4.41.3.13 The level or other characteristics of any discount or other financial or other local resources the event may request.

4.41.3.14 The event's possible effects on other existing or potential events to be held at the Westworld Facility or elsewhere.

4.41.3.14.1 The amounts that the event will pay to Operator for use of the Westworld Facility.

4.41.4 Whether or not listed above, Operator shall have no duty to Vendor regarding its decisions about how to operate the Westworld Facility and shall not be accountable to Vendor in any way for its decisions about how to operate the Westworld Facility.

4.42 Operator's Financing. Notwithstanding anything in this Agreement to the contrary, the Permitted Uses and Vendor's other rights and obligations are hereby further restricted to the extent Operator may elect from time to time to prohibit any activity or circumstance that would cause or result in (or that in Operator's view creates a material risk of causing or resulting in) any of the following:

4.42.1 Violation of any existing or future indebtedness, bond or other documents or obligations (collectively the "Financing Documents") related to the Westworld Facility.

4.42.2 Unfavorable tax treatment or other consequences for any person relating to the Financing Documents.

V. IMPROVEMENTS BY OPERATOR

5. Improvements by Operator. Operator has not promised to and is not obligated in any manner to make any improvements or perform any other construction at the Use Areas or the Westworld Facility or to nearby lands, except that, no later than June 30, 2016 Operator shall complete the work described on **Exhibit "M"**.

VI. VENDOR'S IMPROVEMENTS GENERALLY

6. Vendor's Improvements Generally. All of Vendor's improvements and other construction work to the Westworld Facility (collectively "Vendor's Improvements") shall comply with the following:

6.1 Vendor's Improvements. Vendor's Improvements include, without limitation all construction, installation, alteration, modification, replacement, repair, grading, removal, demolition or other cumulatively significant construction or similar work of any description to existing or future improvements upon or related to the Westworld Facility or environs whether or not specifically described herein, including without limitation the structure, grounds, improvements, utility, lighting, plumbing, sewer, and other aspects and components of the Use Areas and the Westworld Facility.

6.2 Zoning and Similar Approval Process. The zoning processes, building permit processes, and similar regulatory requirements that apply to Vendor's Improvements are completely separate from the plans approval processes under this Agreement. Vendor's satisfaction of any requirement of this Agreement does not count toward any compliance with any regulatory requirement. Vendor's satisfaction of any regulatory requirement does not count toward compliance with any requirement of this Agreement. Vendor must make all submittals and communications regarding the requirements of this Agreement through Operator's contract administrator for this Agreement, and not through planning, zoning, building safety or other staff. Vendor must make all submittals and communications regarding planning, zoning, building safety, and other regulatory requirements through planning, zoning, building safety or other applicable staff and not through Operator's contract administrator for this Agreement. Vendor shall be responsible to directly obtain all necessary permits and approvals from any and all governmental or other entities having standing or jurisdiction over the Westworld Facility. Vendor bears sole responsibility to comply with all stipulations and conditions that are required in order to secure such rezoning and other approvals.

6.3 Relationship of Plans Approval to Regulatory Processes. Vendor's submission of plans under this Agreement, Operator's approval of plans for purposes of this Agreement, and the plans approval process under this Agreement shall all be separate and independent of all development, zoning, design review and other regulatory or similar plans submittal and approval processes, all of which shall continue to apply in addition to the requirements of this Agreement and its approvals. BUILDING PERMITS, ZONING CLEARANCES, OR ANY OTHER GOVERNMENTAL REVIEWS OR ACTIONS DO NOT CONSTITUTE APPROVAL OF ANY PLANS FOR PURPOSES OF THIS AGREEMENT.

6.4 Design Requirements. All Vendor's Improvements shall comply with the following design requirements:

6.4.1 All Vendor's Improvements shall conform to the standards of the Maricopa Association of Governments and of the City of Scottsdale Design Standards and Practices Manual, as may be amended from time to time.

6.4.2 All Vendor's Improvements shall be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other buildings and improvements located at the Westworld Facility.

6.4.3 Vendor shall perform any and all construction work in a workman-like manner as reasonably determined by Operator and in conformance with all building codes and similar rules.

6.4.4 Vendor's construction work must not interfere with normal operation of the Westworld Facility. In any event, Vendor must leave the Use Areas and the Westworld Facility in as good or better condition as they may be on the date of this Agreement, or such better condition as the Use Areas and the Westworld Facility may hereafter be placed.

6.4.5 Except as Operator may expressly allow, all Vendor's Improvements shall be contained entirely within the Kitchens and without any encroachment or dependence upon any

other property. All of Vendor's construction and other obligations shall apply to any such encroachment or dependence.

6.4.6 Any changes to utility facilities shall be strictly limited to the Use Areas, shall not affect utilities outside the Kitchens, and shall be undertaken by Vendor at its sole cost and expense.

6.5 Approval Required. Vendor shall not perform any Vendor's Improvements construction work requiring a building permit (including work on adjacent public lands, if applicable) without having first received written plans approval from Operator. Operator may withhold approval in Operator's sole and absolute discretion. Such consent requirement shall apply to design, aesthetics, functionality, land use for all improvements, furnishings, furniture, equipment, carpeting, fixtures, paint, wall treatments, utilities of every description, communications cabling, decorations, lighting and other construction work of any description as described in all plans heretofore or hereafter delivered by Vendor to Operator.

6.6 Effect of Plans Approval. Operator's approval of plans submitted shall be for purposes of this Agreement only and shall constitute irrevocable approval (but only at the level of detail of the applicable stage of the review process) of the matters plainly shown on the plans approved. Operator shall not reject subsequent plans to the extent the matter to which Operator objects was plainly shown on plans previously approved by Operator. However, Operator is not precluded from objecting to matters not previously approved, matters not previously plainly disclosed on approved plans, changes to plans, or refinements or implementation of matters previously approved.

6.7 Plans Required. Vendor's design of all Vendor's Improvements shall occur in three stages culminating in final working construction documents for the Vendor's Improvements (the "Final Plans"). The three stages are, in order of submission and in increasing order of detail, as follows:

6.7.1 Conceptual plans showing the general layout, locations, elevations, configuration, and capacities of all significant improvements, walls, passageways, doors, windows, utilities, water systems, and other features significantly affecting the appearance, design, function or operation of each element of Vendor's Improvements. The conceptual plans must also show general locations and dimensions of all rooms, hallways and other areas together with the number of square feet of building and other areas that all significant uses and facilities will respectively occupy.

6.7.2 Preliminary plans showing all surface finishes and treatments, finished elevations, general internal and external building design and decoration schemes (including without limitation colors, textures and materials), mechanical, communications, electrical, plumbing and other systems, building materials, landscaping and all other elements necessary prior to preparation of final working construction documents and showing compliance with all requirements of this Agreement. The preliminary plans shall show all detail necessary prior to preparation of Final Plans.

6.7.3 Final Plans.

6.8 Approval Process. The following procedure shall govern Vendor's submission to Operator of all plans for Vendor's Improvements, including any proposed changes by Vendor to previously approved plans:

6.8.1 All plans Vendor submits under this Agreement shall show design, appearance, capacity, views, and other information reasonably deemed necessary by Operator for a complete understanding of the work proposed, all in detail reasonably deemed appropriate by Operator for the level of plans required by this Agreement.

6.8.2 All plans must comply with all requirements of law, any applicable insurance policies, all Site Documents, and this Agreement.

6.8.3 Vendor shall deliver all plans submissions for non-regulatory approvals under this Agreement directly to Operator's contract administrator and shall clearly label the submissions to indicate that they are submitted pursuant to this Agreement and not for building permits, zoning or other approvals. Vendor shall submit for Operator's review five (5) complete sets of the plans on paper, and, if Operator requests, one (1) copy of the plans in an electronic form.

6.8.4 Within ninety (90) days after completion of any Vendor's Improvements, Vendor shall deliver to Operator one (1) copy of "as-built" plans for the Vendor's Improvements on paper and one (1) copy in electronic form showing that the construction is completed according to the approved plans.

6.8.5 All plans in electronic form shall include vector line drawings of the improvements and such other information as this Agreement requires, all in a machine readable and manipulable form. The format of electronic data and the media upon which such data is supplied shall be such then reasonably common data format and media as Operator may specify from time to time.

6.8.6 Vendor shall resolve significant design issues with Operator prior to preparing plans to be submitted.

6.8.7 In addition to other submissions required under this Agreement, Vendor shall simultaneously deliver to Operator's contract administrator copies of all applications and approvals and supplemental, supporting and related materials for all zoning, development review, building permits, and similar processes for the Vendor's Improvements.

6.8.8 Construction plans for Vendor's Improvements shall be prepared by qualified registered engineers acceptable to Operator.

6.8.9 All construction and plans preparation for Vendor's Improvements from initial proposals through final construction documents and completion of construction shall be performed by professionals selected and paid by Vendor. All of Vendor's design and construction contractors shall have substantial experience in timely and successfully constructing projects similar to Vendor's Improvements.

6.8.10 The engineer shall place these words on each sheet of engineering work for Vendor's Improvements: "The engineer has performed this work for the benefit and reliance of the City of Scottsdale and assures the City of Scottsdale that the engineer's work is properly performed
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and that it complies with any engineering requirements set out in Food and Alcohol License and Marketing Agreement (No. 2013-186-COS).

6.8.11 All Operator plans reviews, inspections, standards and other rights and actions with relation to Vendor's Improvements are for Operator's sole and exclusive benefit and neither Vendor nor any other person shall rely thereon or have any rights related thereto.

6.8.12 All BOR approvals are in addition to all of Operator's approval rights hereunder. Responsibility for approval of plans by BOR shall in all events remain with Vendor.

6.8.13 Submission dates shall be such dates as are necessary for Vendor to timely obtain the approvals required by this Agreement. Vendor is responsible to allow adequate time for all communications and plans revisions necessary to obtain approvals and shall schedule its performances hereunder and revise its plans as necessary to timely obtain all approvals.

6.8.14 No plans shall be deemed approved by Operator for purposes of this agreement until Operator's contract administrator stamps them "APPROVED ONLY FOR PURPOSES OF THE PLANS APPROVED REQUIREMENTS OF ARTICLE 6 OF FOOD AND ALCOHOL LICENSE AND MARKETING AGREEMENT NO. 2013-186-COS", and Operator's contract administrator initials and dates the stamp (collectively "Stamped").

6.8.15 Within thirty (30) days after Operator receives plans from Vendor, Operator shall make available to Vendor one (1) copy of such plans either Stamped or marked to indicate the reasons that Operator does not approve the plans.

6.8.16 If changes are required, Vendor shall revise the plans incorporating the changes requested by Operator and shall within thirty (30) days after Operator returns the marked up plans to Vendor submit revised plans to Operator. Within twenty-one (21) days after Operator's receipt of the revised plans, Operator shall make available to Vendor one (1) copy of the revised plans either Stamped or marked to indicate the reasons that Operator does not approve the plans.

6.8.17 Final decision authority regarding all design and construction issues shall rest with Operator.

6.9 Cost of Vendor Improvements. All Vendor's Improvements shall be designed and constructed by Vendor at Vendor's sole cost and expense. In no event, including without limitation termination of this Agreement for any reason, shall Operator be obligated to compensate Vendor in any manner for any of Vendor's Improvements or other work provided by Vendor during or related to this Agreement. Vendor shall timely pay for all labor, materials, work, and all professional and other services related thereto and shall pay, protect, indemnify, defend and hold harmless Operator, Operator's employees, officer's, contractors and agents and the Westworld Facility against all claims related thereto. Vendor shall bear the cost of all work required from time to time to cause the Use Areas and other nearby property owned by Operator to comply with local zoning rules, the Americans with Disabilities Act, building codes and all similar rules, regulations and other laws. Vendor shall also bear the cost of all work required from time to time to cause any nearby property owned by Operator to comply with all such laws if such work is required because of work performed by Vendor, by Vendor's use of the Use Areas, or by any exercise of the rights granted to Vendor under this Agreement.

6.10 Improvement Quality. Vendor shall perform and diligently pursue to completion any and all work in a workman-like manner as reasonably determined by Operator and in conformance with all building codes and similar rules. All of Vendor's Improvements shall be high quality, safe, fire resistant, modern in design, and attractive in appearance, all as approved by Operator through the plans approval processes described in this Agreement in addition to any zoning, building code or other regulatory processes that may apply.

6.11 Ownership of Vendor's Improvements. All permanent Vendor's Improvements shall be and become part of the real property of Operator as constructed or installed.

6.12 Damage During Removal. Upon removal of any item installed in or attached to the Use Areas at any time (including without limitation, upon termination of this Agreement if applicable), Vendor shall simultaneously restore the Use Areas to their prior condition, or to a condition matching Operator's surrounding improvements, as directed by Operator, and repair any holes, mounting surfaces or other damage whatsoever to the Use Areas. All such work shall be subject to the plans approval and other requirements of this Agreement. Vendor shall not remove any item at any time without first submitting to Operator at least fourteen (14) days in advance a notice describing the item to be removed. Said notice shall describe the work to be done to restore the Use Areas and be accompanied by a cash bond in an amount determined by Operator to completely protect Operator and the Use Areas from any failure by Vendor to fully and timely perform its obligations under this Agreement relating to said items or their removal.

6.13 Disturbance of Toxic Substances. Prior to undertaking any construction or other significant work, Vendor shall cause the Use Areas to be inspected to prevent disturbance of potential asbestos or other Toxic Substances. Prior to any work of any description that bears a material risk of disturbing potential asbestos or other Toxic Substances, Vendor shall cause the contractor or other person performing such work to give to Operator notice by the method described in this Agreement to the effect that the person will inspect for such materials, will not disturb such materials, and will indemnify, defend and hold Operator harmless against any disturbance in such materials in the course of the contractor's or other person's work. Vendor shall cause any on-site or off-site storage, inspection, treatment, transportation, disposal, handling, or other work involving Toxic Substances by Vendor in connection with the Use Areas to be performed by persons, equipment, facilities and other resources who are at all times properly and lawfully trained, authorized, licensed, permitted and otherwise qualified to perform such services. Vendor shall promptly deliver to Operator copies of all reports or other information regarding Toxic Substances.

6.14 Contract Administrators. Upon execution of this Agreement, Operator and Vendor shall each designate a contract administrator to coordinate the respective party's participation in designing and constructing the Project and otherwise administering this Agreement. Each contract administrator shall devote such time and effort to the Project as may be necessary for timely and convenient coordination among the parties and their representatives involved with the Project and compliance with this Agreement. Operator's contract administrator will not be exclusively assigned to this Agreement or the Vendor's Improvements.

6.15 Operator's Contract Administrator. Operator's contract administrator's authority with respect to the Use Areas is limited to the administration of the requirements of this Agreement. Without limitation:

6.15.1 No approval, consent or direction by Operator's contract administrator or other persons affiliated with Operator inconsistent with this Agreement shall be binding upon Operator.

6.15.2 Vendor shall be responsible for securing all zoning approvals, development review, and other governmental approvals and for satisfying all governmental requirements pertaining to the Project and all other activities related to the Use Areas and shall not rely on Operator or Operator's contract administrator for any of the same.

6.15.3 Unless otherwise specified by Operator's city manager, Operator's initial contract administrator shall be Brian Dygert, General Manager, Westworld.

6.16 Time for Completion. Vendor shall diligently and expeditiously pursue to completion the construction of all approved Vendor's Improvements. Vendor shall complete initial construction of the Project no later than the First Completion Deadline and the Second Completion Deadline, as applicable. Vendor shall complete construction of all of other Vendor's Improvements no later than the earlier of i) (90) days after the date of plans approval, or ii) any earlier date required by this Agreement. The time period for completing restoration work in the event of damage to the Use Areas is the time reasonably necessary to complete the work, but in no event longer than ninety (90) days after the damage.

6.17 Worksite Safety. Vendor shall cause all construction and similar work related to this Agreement to be conducted in a safe and cautious manner. Without limitation, Vendor shall cause such work to be conducted in compliance with established industry safety standards and practices.

6.18 Construction Reports. Vendor shall provide to Operator a monthly notice containing a narrative report of the progress of design and construction of Vendor's Improvements.

6.19 Work Time and Manner Restrictions. All installation, construction, maintenance, inspection, repair and other work of any kind shall be done in a manner that does not disrupt traffic or nearby land uses. Without limitation, such work shall be done in compliance with applicable Operator policies and directions from time to time, taking into account the various sensitivities of traffic, tourism, events, adjoining land uses, other Westworld Facility uses, and all other needs and concerns that could be affected by Vendor's work. All construction by Vendor must comply with applicable Westworld noise, light, timing, event planning, dust and other policies in effect from time to time.

6.20 Construction Assurances. In addition to any other payment or performance required under this Agreement, at Operator's exclusive option, Vendor shall, prior to any construction work by Vendor at the Use Areas, provide to Operator bonds, letters of credit, or other assurances ("Improvement Assurances") acceptable to Operator in Operator's sole and absolute discretion that the contractor will properly and timely complete the work and that Vendor will pay for the work. Vendor shall deliver directly to Operator's legal department (together with a copy to

Operator as provided for notices under this Agreement) a full and complete draft of all Improvement Assurances and all related and supporting documentation at least thirty (30) days prior to the date the Improvement Assurance is required.

VII. VENDOR'S INITIAL PROJECT CONSTRUCTION

7. Vendor's Initial Project Construction. Vendor shall complete construction of the Project in accordance with all requirements of this Agreement, including without limitation those governing Vendor's Improvements, and the following:

7.1 Initial Plans Approved. By entering into this Agreement, Operator approves only for purposes of Vendor's initial Project construction under this Agreement the design of Vendor's Improvements comprising the Project to the extent set forth in the Kitchen Work Plan and other exhibits to this Agreement. To that extent, said approval partially satisfies the requirement under this Agreement that Vendor obtain Operator's approval of plans. However, changes, modifications, refinements and particular implementations of any proposed Vendor's Improvements and all other matters not shown on the Kitchen Work Plan and other exhibits, are subject to this Agreement's requirement that Vendor obtain Operator's approval for all Vendor's Improvements.

7.2 Project Definition. As of the date of this Agreement, the Project is only designed to the extent depicted in the Kitchen Work Plan. The Project shall conform to the Kitchen Work Plan and to all other requirements of this Agreement.

7.3 Project Construction Schedule. Vendor shall design and construct the entire Project according to the following schedule:

7.3.1 Vendor shall complete the Project as to Kitchen 5 and commence providing Food Service and Alcohol Service from Kitchen 5 no later than the First Completion Deadline.

7.3.2 Vendor shall complete the remainder of the Project and commence providing Food Service and Alcohol Service from the remainder of the Kitchens in the manner contemplated by this Agreement prior to the Second Completion Deadline.

VIII. MAINTENANCE AND UTILITIES

8. Maintenance and Utilities. Maintenance and utilities for the Use Areas shall be provided as follows:

8.1 Maintenance. Maintenance shall be provided for the Use Areas as follows:

8.1.1 Maintenance, repairs and replacement. Except as specifically stated otherwise, the duty to maintain any item includes the duty to repair and replace the item.

8.1.2 Maintenance by Vendor. Vendor shall perform certain maintenance work (the "Vendor Maintenance Work"). The Vendor Maintenance Work is the items listed on Exhibit "N" attached hereto.

8.1.3 Maintenance by Operator. Operator shall perform certain maintenance work (the "Operator Maintenance Work"). The Operator Maintenance Work is the items listed on Exhibit " O " attached hereto.

8.2 Utilities. Utilities shall be provided for the Use Areas as follows:

8.2.1 Utilities by Vendor. Vendor may elect to separately contract with telephone and telecommunication providers for telephone and telecommunication services at its own expense.

8.2.2 Utilities by Operator. Operator shall provide certain utilities (the "Operator Utilities") as follows:

8.2.2.1 The Operator Utilities are limited to the following:

8.2.2.1.1 Electricity through utility facilities as they exist on the date of this Agreement.

8.2.2.1.2 Gas through utility facilities as they exist on the date of this Agreement.

8.2.2.1.3 Water through utility facilities as they exist on the date of this Agreement.

8.2.2.1.4 Wastewater through utility facilities as they exist on the date of this Agreement.

8.2.2.2 Vendor shall pay for all Operator Utilities.

8.2.3 Vendor shall not use more utilities than Operator determines can be safely delivered using the existing utility facilities serving the Use Areas. In making such determination, Operator shall have the right to take into account the needs and anticipated needs of other existing or proposed users of such facilities. Vendor shall limit utility usage as much as reasonably possible.

8.2.4 Operator is not obligated to provide heat or air conditioning to the Use Areas unless Operator is already providing heat or air conditioning to the portion of the building in which the Use Areas are located.

8.2.5 Utility Work. All plumbing, electrical, or other utility work needed or requested by Vendor shall be done or furnished by Operator or an Operator-approved contractor. Vendor shall pay Operator or the Operator-approved contractor for these services according to the current schedule of rates on file at Westworld.

8.3 Utility Interruptions. Operator is not responsible for any interruption of utilities to or upon the Use Areas or other difficulties related to utilities at the Use Areas or the Westworld Facility. Without limitation:

8.3.1 Operator is not responsible for utility interruptions caused inside or outside the Use Areas.

8.3.2 Operator is not responsible for utility interruptions not caused directly by Operator's sole gross negligence.

8.3.3 Operator is not responsible for the acts, breach, errors or omissions of any provider or consumer of electrical service or other utilities to the Westworld Facility.

IX. BREACH BY VENDOR

9. Breach by Vendor. Vendor shall comply with, perform and do each performance and provision required of Vendor herein and shall cause all persons using the Westworld Facility or claiming through or under Vendor or this Agreement to do the same. Vendor's failure to do so shall be a material breach by Vendor of this Agreement.

9.1 Events of Default. This entire Agreement is made upon the condition that each and every one of the following events shall be deemed an "Event of Default" by Vendor of Vendor's material obligations under this Agreement:

9.1.1 If Vendor shall be in arrears in the payment of Use Fee and shall not cure such arrearage within ten (10) days after Operator has given Vendor notice of such arrearage.

9.1.2 If Vendor shall fail to operate the facilities (except during specific periods expressly excused by this Agreement) for a total of two (2) days within any twelve (12) month period.

9.1.3 If Vendor shall abandon the Use Areas or the Westworld Facility or cease to conduct business at the Use Areas or the Westworld Facility.

9.1.4 If any environmental, health or similar inspector issues any formal notice of investigation or violation of health, environmental or similar regulations in connection with Vendor's use of the Westworld Facility or determines during any two or more consecutive inspections that the same deficiency has been repeated or that the overall operation falls materially below standards for first rate well operated similar facilities in Maricopa County.

9.1.5 If Vendor or any other person or entity having liability for all or part of Vendor's obligations under this Agreement shall be the subject of a voluntary or involuntary bankruptcy, receivership, insolvency or similar proceeding, or if any assignment of any of Vendor's or such other persons' property shall be made for the benefit of creditors or if Vendor or such other person is not regularly paying its debts as they come due (collectively a "Vendor Insolvency").

9.1.6 If any circumstance, occurrence, action or inaction by Vendor shall occur contrary to the provisions of the Site Documents. Notwithstanding the preceding sentence, Vendor shall not be in default if all of the following are true:

9.1.6.1 An applicable cure period (the "Site Document Cure Period") is specifically provided in the applicable Site Document.

9.1.6.2 Vendor is able to cure not later than a date (the "Cutoff Date") far enough in advance of the end of the Site Document Cure Period that Operator would have adequate time during the same cure period for Operator to cure should Vendor fail to cure.

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9.1.6.3 Vendor immediately gives Operator notice of Vendor's promise to cure before the Cutoff Date.

9.1.6.4 Vendor diligently prosecutes the cure to completion before the Cutoff Date.

9.1.6.5 Prior to the Cutoff Date, Vendor gives Operator notice that such completion has been fully accomplished.

9.1.7 If Vendor does not commence and diligently pursue to completion each required stage of construction of the Project within the times required by this Agreement. The times specified for concluding each stage of required construction have been established far enough in advance, have taken into account the likelihood of construction delays so that no cure period is provided.

9.1.8 If the issuer of any guaranty, letter of credit, bond, insurance policy or similar instrument shall fail for any reason to timely and fully honor any request by Operator for funds or other performance under the instrument within ten (10) days after Operator gives notice to Vendor of such failure.

9.1.9 If Vendor shall engage in a pattern of repeated failure (or neglect) to timely do or perform or observe any provision contained herein. After Operator has once given notice of any failure by Vendor to comply with any provision of this Agreement, the following shall constitute a repeated failure by Vendor to comply with such provision:

9.1.9.1 Another failure to comply with the provision during the following thirty (30) day period.

9.1.9.2 Three (3) or more failures to comply with the provision during any ninety (90) day period.

9.1.9.3 Six (6) or more failures to comply with any provision of this Agreement during any twelve (12) month period.

9.1.10 If Vendor shall fail to or neglect to timely and completely do or perform or observe any other provision contained herein and such failure or neglect shall continue for a period of thirty (30) days after Operator has given Vendor notice of such failure or neglect.

9.2 Operator's Remedies. Upon the occurrence of any Event of Default or at any time thereafter, Operator may, at its option and from time to time, without further demand or notice, exercise at Vendor's expense any or all or any combination of the following cumulative remedies in any order and repetitively at Operator's option:

9.2.1 Terminate this Agreement.

9.2.2 Terminate or suspend any and all of Vendor's rights under this Agreement.

9.2.3 Enter into and upon all or part of the Use Areas and repossess the same, and expel Vendor and those claiming by, through or under it, and remove their effects, if any, forcibly if necessary, without being deemed guilty of trespass and without prejudice to any other remedy.

9.2.4 Reuse or relet all or part of the Use Areas or otherwise use, manage, operate or allow another party to use, manage or operate all or part of the Use Areas and undertake at Vendor's expense any construction, legal, re-leasing, brokerage, advertising, remodeling or other work or preparations of any description related thereto.

9.2.5 Accelerate all Use Fee that this Agreement requires Vendor to pay during the remaining term of this Agreement.

9.2.6 Enforce a lien (which Vendor hereby grants to Operator in addition to any statutory or other lien that may exist) upon all of Vendor's real or personal property now or at any time hereafter at or pertaining or related to the Use Areas securing all of Vendor's obligations hereunder. Operator's lien pursuant to the preceding sentence is junior in priority to any permitted purchase money lien Vendor grants in order to acquire such personal property. Vendor appoints Operator as its agent to execute and file any instrument Operator deems necessary to perfect said interest.

9.2.7 Cause a receiver to be appointed for all or part of the Use Areas and for the continuing performance of Vendor's obligations at the Use Areas and operation of Vendor's business thereon.

9.2.8 Pay or perform, for Vendor's account, in Vendor's name, and at Vendor's expense, any or all payments or performances required hereunder to be paid or performed by Vendor.

9.2.9 Abate at Vendor's expense any violation of this Agreement.

9.2.10 Notwithstanding anything in this Agreement to the contrary, unilaterally and without Vendor's or any other person's consent or approval, draw upon, withdraw or otherwise realize upon or obtain the value of any letter-of-credit, escrowed funds, insurance policies, or other deposits, sureties, bonds or other funds or security held or obligated by Vendor, Operator or any third party pursuant to this Agreement (whether or not specifically mentioned herein) and use the proceeds for any remedy permitted by this Agreement. Vendor hereby irrevocably grants to Operator a power of attorney coupled with an interest to act for Vendor in all respects with respect to any of the foregoing.

9.2.11 Be excused without any liability to Vendor therefor from further performance of any or all obligations under this Agreement.

9.2.12 Require increased or additional security deposits, letters of credit or other security to protect Operator and the Property.

9.2.13 Insist upon Vendor's full and faithful performance under this Agreement and upon Vendor's full and timely payment of all amounts during the entire remaining term of this Agreement.

9.2.14 Assert, exercise or otherwise pursue at Vendor's expense any and all other rights or remedies, legal or equitable, to which Operator may be entitled.

9.3 Power of Attorney. For the purpose of exercising any of Operator's rights or remedies hereunder, Vendor hereby irrevocably appoints Operator as Vendor's true and lawful attorney in fact, and such power of attorney shall be deemed to be a power coupled with an interest that cannot be revoked for any reason, to pay or perform at any time, for Vendor's account and at Vendor's expense, any or all payments or performances required hereunder to be paid or performed by Vendor, to terminate of record this Agreement, to enter into and upon the Use Areas or any part thereof, and to perform any act upon the Use Areas or otherwise deemed necessary by Operator to exercise its rights under this Agreement.

9.4 Notice of Vendor's Breach. Vendor shall promptly give notice to Operator of any event or circumstance, that is (or that with the passing of time or the giving of notice or both will become) an Event of Default under this Agreement. Vendor shall also promptly give to Operator notice of any notice or claim given by any third party alleging that an event or circumstance has occurred that is (or that with the passing of time or the giving of notice or both will become) an Event of Default under this Agreement.

9.5 Non-waiver. Vendor acknowledges Vendor's unconditional obligation to comply with this Agreement. No failure by Operator to demand any performance required of Vendor under this Agreement, and no acceptance by Operator of any imperfect or partial performances under this Agreement, shall excuse such performance or impair in any way Operator's ability to insist, prospectively and retroactively, upon full compliance with this Agreement. No acceptance by Operator of Use Fee payments or other performances hereunder shall be deemed a compromise or settlement of any right Operator may have for additional, different or further payments or performances. Any waiver by Operator of any breach of condition or covenant herein contained to be kept and performed by Vendor shall not be deemed or considered as a continuing waiver and shall not operate to bar or otherwise prevent Operator from declaring a default for any breach or succeeding or continuing breach either of the same condition or covenant or otherwise. No statement, bill or notice by Operator or Vendor concerning payments or other performances due hereunder, or failure by Operator to demand any performance hereunder, shall excuse Vendor from compliance with this Agreement nor estop Operator (or otherwise impair Operator's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this Agreement. No waiver of any description (INCLUDING ANY WAIVER OF THIS SENTENCE OR PARAGRAPH) shall be effective against Operator unless made in writing by a duly authorized representative of Operator specifically identifying the particular provision being waived and specifically stating the scope of the waiver. VENDOR EXPRESSLY DISCLAIMS AND SHALL NOT HAVE THE RIGHT TO RELY ON ANY SUPPOSED WAIVER OR OTHER CHANGE OR MODIFICATION, WHETHER BY WORD OR CONDUCT OR OTHERWISE, NOT CONFORMING TO THIS PARAGRAPH.

9.6 Reimbursement of Operator's Expenses. Vendor shall pay to Operator upon demand any and all amounts expended or incurred by Operator in performing Vendor's obligations together with interest thereon at the rate of ten percent (10%) per annum from the date expended or incurred by Operator.

9.7 Inspection. Operator shall have access to all portions of the Use Areas at all times for the purpose of examining, inspecting, evaluating, planning, repairing, designing, maintaining or showing the Use Areas or exercising Operator's other rights hereunder. Vendor shall promptly undertake appropriate action to rectify any deficiency (identified by Operator during such inspections or otherwise) in Vendor's compliance with this Agreement. This paragraph does not limit Operator's other rights of access to the Use Areas elsewhere in this Agreement or otherwise. This right of access is in addition to access rights for Operator inspectors or other employees and officers acting within their legal authority. Vendor shall make enclosed areas available for inspection by Operator upon reasonable notice.

9.8 Breach by Operator. Notwithstanding anything in this Agreement to the contrary, if Operator at any time is required to pay to Vendor any amount or render any performance, such amount or performance is not due until thirty (30) days after notice by Vendor to Operator that the amount has become payable or that the performance is due. If a cure cannot be effected during that period, Operator shall not be in default so long as Operator commences cure during the period and diligently prosecutes the cure to completion provided such cure must be completed within thirty (30) days after the notice. To the extent permitted by law, Vendor expressly waives any right pursuant to any law now existing or which may be effective during the term hereof to make repairs at Operator's expense.

9.9 Right to Set off and Credit. In addition to its other rights and remedies under this Agreement, Operator shall have the right to set off and credit, from time to time and at any time, any and all amounts due to Vendor and affiliates from Operator, pursuant to this Agreement or otherwise, against any sum that may be due to Operator from Vendor and affiliates pursuant to this Agreement or otherwise.

9.10 Vendor Grants Contract Lien and Security Interest. To secure the payment and performance of Vendor's obligations (including, without limitation, the payment of Use Fee), Vendor hereby grants to Operator an express lien and security interest as follows:

9.10.1 Collateral. The lien covers all New Kitchen Equipment and other personal property (including, without limitation, equipment, furniture, inventory, merchandise, fixtures, and improvements) now or hereafter located at the Westworld Facility, and all proceeds and accounts receivable therefrom (the "Collateral").

9.10.2 Vendor Waives Exemptions. Vendor hereby waives exemption laws relating to such lien.

9.10.3 Removal of Property Barred. Vendor shall not remove the Collateral from the Use Areas except for the sale during the term of this Agreement of inventory or merchandise during the ordinary course of business and the removal of an item of worn out Collateral in the ordinary course of business when the Vendor is replacing the item.

9.10.4 Statutory Lien. This lien is given in addition to any landlord's statutory or other lien.

9.10.5 Vendor's Financing Statement. Contemporaneously with Vendor's execution of this Agreement, Vendor shall execute and deliver to Operator and file Uniform

Commercial Code financing statements in form and substance sufficient (upon proper filing) to perfect the lien.

9.10.6 Operator Appointed as Attorney-in-Fact. Vendor hereby appoints Operator its true and lawful attorney-in-fact in its name or otherwise to execute and file any financing statements or continuation statements on Vendor's behalf if Vendor fails to do so promptly and to do any and all acts to execute and file any and all documents that may be necessary to realize, perfect, continue, preserve, and protect the security interest upon the Collateral.

9.10.7 Collateral Remedies. In addition to any other remedies provided herein, upon the occurrence of any event of default, Operator shall be entitled to exercise all of the rights and remedies of a secured party under the Uniform Commercial Code (which rights may include Operator's right to enter the Use Areas and to take possession of any and all Collateral without liability for trespass or conversion). Operator may sell Collateral at a public or private sale, with or without having the Collateral at the sale, after giving Vendor reasonable notice as to the time and place of the sale. At such sale, Operator or its assignees may purchase the Collateral unless such purchase is otherwise prohibited by law. Unless otherwise provided by law, the requirement of reasonable notice shall be met if such notice shall be given to Vendor at the Use Areas at least fifteen (15) days prior to the date of the sale.

9.10.8 Proceeds Applied to Vendor's Debt. The proceeds of such disposition, less all expense connected with the taking of possession and the sale of the Collateral (including reasonable attorney's fees), shall be applied as a credit against the indebtedness secured by the lien. Any surplus shall be paid to Vendor. Vendor shall pay any deficiencies upon demand.

9.10.9 Attorney's Fees Included. Reasonable attorney's fees and other amounts incurred by Operator in enforcing any right or exercising any remedy pursuant to this Agreement shall be deemed part of the obligation secured by the lien.

9.10.10 City Manager's Lien Authority. Upon Vendor's request, Operator's city manager shall have authority to foreclose, enforce, release, substitute collateral for or subordinate the Lien, subject to payment of such amounts as the city manager may determine to provide Operator equivalent or better security.

X. TERMINATION

10. Rights at Termination. The following provisions shall apply at the expiration of the term hereof or upon any other termination of this Agreement:

10.1 Delivery of Possession. Vendor and all persons using the Westworld Facility under contracts with Vendor or otherwise claiming under this Agreement shall cease using or occupying the Westworld Facility. Vendor shall without demand, peaceably and quietly quit and deliver up the Use Areas to Operator.

10.2 Surviving Obligations. Termination of this Agreement in any manner or for any reason (including without limitation by expiration, or termination of this Agreement by either party under any termination right provided herein) does not terminate Vendor's obligations existing

or arising prior to or simultaneous with, or attributable to, the termination or events leading to or occurring before termination. In addition, Vendor's insurance, indemnity and other obligations shall continue in effect until Vendor and its property have actually vacated the Westworld Facility.

10.3 Removal Work. All construction and other work by Vendor to remove any item from the Westworld Facility before or after termination of this Agreement shall be subject to the plans approval and other requirements of this Agreement.

10.4 Continuation of Business. Upon termination of this Agreement, through passage of time or otherwise, Vendor shall aid Operator, unless directed otherwise by Operator, in all ways in continuing uninterrupted the business of operating the Use Areas for Food Service and Alcohol Service as herein described. If requested by Operator, Vendor shall continue providing Food Service and Alcohol Service (either alone or if requested by Operator in cooperation with Operator or a new user) for a period not to exceed ninety (90) days after the date of termination of this Agreement. The preceding sentence applies only to operational employees and personal property. Operator shall pay to Vendor Vendor's reasonable actual cost of providing such employees and personal property.

10.5 Items at the Use Areas. All personal property owned or used by Vendor at the Use Areas under this Agreement shall be divided into categories as follows:

10.5.1 Category Priority. When an item fits the description of more than one category, then the item shall be included only in the one of the categories that is listed first in this Agreement. The listing of a category is not necessarily an indication that there will or will not be items in the category. Each category includes all operating manuals, warranties and similar materials relating to the items in the category.

10.5.2 Operator Items. Certain items (the "Operator Items") that Operator paid for or brought to the Use Areas, or that this Agreement provides for Operator to own (e.g., Keys, Operator's equipment, things constructed by Operator).

10.5.3 Building Items. Certain items (the "Building Items") that are incorporated into the building or attached to other improvements or cannot be removed without damaging the building or other improvement or the item (such as walls, windows and carpet).

10.5.4 Attached Items. Certain items (the "Attached Items") that are attached to the building or attached to other improvements or a fixed location and typically remain at a fixed location for their useful life (e.g., water heaters, window coverings, plumbing fixtures, telecommunication wiring).

10.5.5 Specialty Items. Certain items (the "Specialty Items") that are specialized items specifically suited to providing the specific Permitted Uses under this Agreement (e.g., the New Kitchen Equipment and other items specifically suited to Food Service and Alcohol Service). The Specialty Items specifically include easily removable walk-in freezers.

10.5.6 Unattached Items. Certain items (the "Unattached Items") that are items of general utility that are not attached to the Use Areas that could likely be useful to a person

occupying the Use Areas for uses other than the Permitted Uses (e.g., desktop computers, office chairs and portable office fans).

10.5.7 Financial Items. Certain items (the "Financial Items") that are money and business records to which Operator has no claim.

10.5.8 Personal Items. Certain items (the "Personal Items") that are household items owned by Vendor's employees (e.g., family photographs, personal umbrellas and personal portable music players).

10.5.9 Miscellaneous Items. All other equipment and personal property of every description at the Use Areas.

10.6 Equipment Inventories. Vendor shall deliver inventories (the "Equipment Inventories") to Operator as follows:

10.6.1 Vendor shall deliver Equipment Inventories each July 1 during this Agreement, within ten (10) days after termination of this Agreement for any reason, and within twenty (20) days after any request by Operator (such requests not to be made without cause more often than once each year).

10.6.2 Equipment Inventories shall cover the following:

10.6.2.1 The Attached Items.

10.6.2.2 The Specialty Items.

10.6.2.3 The Unattached Items.

10.6.2.4 The Miscellaneous Items.

10.6.3 Equipment Inventories shall include the following:

10.6.3.1 Vendor's signature

10.6.3.2 The date of the Equipment Inventory.

10.6.3.3 A list of the items.

10.6.3.4 The following detail for each item listed:

10.6.3.4.1 The date of acquisition.

10.6.3.4.2 The initial purchase cost if installed new or the actual retail value of the property at the time of installation.

10.6.3.4.3 The depreciated book cost and the actual retail value at the date of transfer of any used item already owned by Vendor and transferred from another location to the Use Areas.

10.6.3.4.4 Delivery and installation charges.

10.6.3.4.5 The condition of the item as of the time of delivery or installation at the Use Areas.

10.6.3.4.6 The estimated current value of each item.

10.6.3.4.7 The category of the item (e.g., Specialty Items).

10.7 Operator shall be unconditionally entitled to rely upon any Equipment Inventory.

10.8 Any items of any description not listed on any Equipment Inventory shall be conclusively deemed to be Attached Items.

10.9 Ownership of Items at Termination. Upon termination of this Agreement for any reason, Operator shall decide whether to become the owner or reject becoming the owner of any of the Operator Items, Building Items, Attached Items, Specialty Items and Miscellaneous Items that Operator does not already own. Vendor shall not remove items from the Westworld Facility that Operator owns or has an interest in, but shall remove all other items of every category and description. Such ownership shall occur without requirement of any deed, conveyance, or bill of sale. However, if Operator shall request any documents in confirmation thereof, Vendor shall promptly execute, acknowledge and deliver the same.

10.10 Payment for Work and Items at Termination. Operator is not obligated to pay Vendor for any work or items at termination except as follows:

10.10.1 Operator shall pay to Vendor for any Specialty Items that Operator chooses to retain.

10.10.2 The price of such Specialty Items shall be the fair market value of such items "as is" and "where is" at the Use Areas for sale to a third party to use elsewhere as determined by an actual appraisal by an independent appraiser selected by Vendor from a list of three (3) unrelated appraisers nominated by Operator. The appraisal shall include consideration of the cost, condition, age, and other factors affecting value of the items appraised. The amount of any outstanding lien or other obligation regarding any items shall be subtracted from the overall purchase price.

10.11 Abandoned Property. Any personal or other property of Vendor or persons claiming through Vendor that may be located at the Use Areas at the end of this Agreement shall be deemed to be abandoned and shall automatically become the property of Operator. Operator shall have the right to reject ownership and require Vendor to remove and be accountable for such property. Operator shall be free to use, sell or otherwise dispose of such property at Operator's discretion without accounting to Vendor or any other person.

10.12 Confirmation of Termination. Upon expiration or termination of this Agreement for any reason, Vendor shall provide to Operator upon demand confirmations of termination covering the Use Areas executed and acknowledged by Vendor and by all persons who claim that they have been received from or through Vendor any interest in or right to use the Use Areas.

10.13 Cleaning. Vendor shall vacate the Use Areas leaving the Use Areas thoroughly cleaned, in good repair, and with all utilities operating, with the Use Areas maintained and repaired and also in as good order and condition, reasonable use and wear excepted, as the Premise now are or in such better condition as the Use Areas may hereafter be placed.

10.14 Environmental Report. Prior to vacating the Kitchens, Vendor shall provide to Operator a phase 1 environmental survey showing that no environmental contamination has occurred to the Kitchens during the period the Kitchens have been available to Vendor.

XI. INSURANCE AND INDEMNITY

11. Insurance and Indemnity. During the entire term of this Agreement, Vendor shall insure the Use Areas and activities at and about the Westworld Facility and provide indemnification as follows:

11.1 Insurance Required. Prior to entering, occupying or using the Use Areas in any way, and in any event not later than the date ten (10) days after the date of this Agreement and at all times thereafter when this Agreement is in effect or Vendor is occupying or using the Use Areas in any way, Vendor shall obtain and cause to be in force and effect the following insurance:

11.1.1 Commercial General Liability. Commercial general liability insurance with a limit of Five Million Dollars (\$5,000,000.00) for each occurrence, a limit of Five Million Dollars (\$5,000,000.00) for products and completed operations annual aggregate, and a limit of Five Million Dollars (\$5,000,000.00) general aggregate limit per policy year. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, bodily injury, advertising injury, and liability assumed under an "insured contract" including this Agreement. The policy shall contain a "separation of insureds" clause.

11.1.2 Liquor Liability. Liquor liability insurance in an amount not less than Five Million Dollars (\$5,000,000.00) for each claim and Five Million Dollars (\$5,000,000.00) for all claims in the aggregate. This coverage is required at all times when alcohol is being consumed, sold, or served at the Westworld Facility, or when Vendor holds any type of liquor license for the Westworld Facility, or when any liquor license otherwise exists with respect to the Use Areas.

11.1.3 Automobile Liability. Automobile liability insurance with a combined single limit of One Million Dollars (\$1,000,000.00) for each accident covering any and all owned, hired, and non-owned vehicles assigned to or used in any way in connection with Vendor's use of the Westworld Facility. Without limitation, such insurance shall cover hazards of motor vehicle use for loading and unloading.

11.1.4 Workers' Compensation. Such workers' compensation and similar insurance as is required by law and employer's liability insurance with a minimum limit of One Hundred Thousand Dollars (\$100,000.00) for each accident, One Hundred Thousand Dollars (\$100,000.00) disease for each employee, Five Hundred Thousand Dollars (\$500,000) policy limit for disease. All contractors and subcontractors must provide like insurance.

11.1.5 Employee Fidelity/Crime. Crime/Fidelity coverage, including but not limited to, the perils of employee dishonesty, robbery, theft, and disappearance or destruction of

money and securities in performance of their duties under this Agreement. The coverage limit shall be not less than Ten Thousand and No/100 Dollars (\$10,000.00) per loss.

11.1.6 Special Risk Property. Unless waived by Operator in writing, all risk property insurance covering damage to or destruction of all buildings and other improvements to the Use Areas, including without limitation, all improvements existing upon the Use Areas prior to this Agreement or hereafter constructed in an amount equal to full replacement cost of all such improvements. Such insurance shall be special causes of loss policy form (minimally including perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, riot, civil commotion, theft, vandalism, malicious mischief, collapse and flood).

11.1.7 Personal Property. Vendor shall maintain special causes of loss personal property coverage, as defined by Insurance Services Office, Inc., in an amount per occurrence equal to full replacement cost of all personal property used in connection with the Westworld Facility.

11.1.8 Boiler and Machinery Insurance. Boiler and machinery insurance in the amount of the full replacement cost of all machinery and mechanical equipment.

11.1.9 Builder's Risk Property Insurance. Builder's risk insurance in the amount of the entire cost of any construction as well as subsequent modifications thereto. Such builders risk insurance shall be maintained until final payment has been made or until no person or entity other than Operator and Vendor has an insurable interest in the Use Areas, whichever is earlier. This insurance shall include interests of Operator, Vendor and all subcontractors and sub-subcontractors involved in the work during the life of the course of any construction, and shall continue until all work is completed and accepted by Operator and Vendor. Vendor bears full responsibility for loss or damage to all work being performed and to the buildings under construction. Builders' risk insurance shall be on all-risk policy form and shall also cover false work and temporary buildings and shall insure against risks of direct physical loss or damage from external causes including debris removal, demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for architect's service and expenses required as a result of such insured loss and other "soft costs". Builders' risk insurance must provide coverage from the time any covered property comes under Vendor's control and/or responsibility, and continue without interruption during construction or renovation or installation, including any time during which the covered property is being transported to the construction installation site, and while on the construction or installation site awaiting installation. The policy will provide coverage while the covered Use Areas or any part thereof are occupied. Builders' risk insurance shall be primary and not contributory.

11.1.10 Other Insurance. Any other insurance Operator may require for the protection of Operator and Operator's employees, officials, representatives, officers and agents (all of whom, including Operator, are collectively "Additional Insureds"), the Use Areas, the Westworld Facility, surrounding property, Vendor, or the activities carried on or about the Use Areas. Such insurance shall be limited to insurance a reasonable person owning, leasing, designing, constructing, occupying or operating similar facilities could reasonably purchase.

11.2 Policy Limit Escalation. Not more than once in any ten (10) year period, Operator may elect on not less than thirty (30) days notice to Vendor to increase the amount or

type of any insurance to account for inflation, changes in risk, or any other factor that Operator reasonably determines to affect the prudent amount of insurance to be provided. In addition, the policy limits of all liability insurance policies that have an initial limit herein stated to be One Million Dollars (\$1,000,000.00) or more shall be automatically adjusted on each five (5) year annual anniversary of this Agreement by the CPI Adjustment (unless otherwise mutually agreed upon) and in accordance with the following rules:

11.2.1 The resulting limit shall be rounded up to the nearest One Million Dollar (\$1,000,000.00) increment.

11.2.2 If the policy limit was increased for any reason in the preceding five (5) years, then the adjustment formula shall assume that the increased policy limit was in effect at the beginning of the five (5) year period.

11.3 Form of All Insurance. All insurance provided by Vendor with respect to the Use Areas, whether required by this Agreement or not, and all insurance provided by third parties under this Agreement, shall meet the following requirements:

11.3.1 "Occurrence" coverage is required except for directors' and officers' liability. "Claims made" insurance is not otherwise permitted.

11.3.2 If Vendor uses any excess insurance then such excess insurance shall be "follow form" equal to or broader in coverage than the underlying insurance.

11.3.3 Policies must also cover and insure Vendor's activities relating to the business operations and activities conducted away from the Use Areas.

11.3.4 Upon Operator's request, Vendor shall provide to Operator copies of actual insurance policies.

11.3.5 Vendor's insurance shall be primary insurance as to the risks it covers.

11.3.6 All policies, including workers' compensation shall waive transfer rights of recovery (subrogation) against Operator and the other Additional Insureds.

11.3.7 All deductibles, retentions or "self-insured" amounts are subject to the following:

11.3.7.1 Vendor shall be solely responsible for all such amounts.

11.3.7.2 No such amount shall be applicable to coverage provided to Operator.

11.3.7.3 No such amount for any policy during any year may exceed Ten Thousand and No/100 Dollars (\$10,000.00).

11.3.7.4 Such amounts shall not exceed in total Ten Thousand and No/100 Dollars (\$10,000.00) per loss.

11.3.8 All policies shall contain provisions that neither Vendor's breach of a policy requirement or warranty, nor failure to follow claims reporting procedures, shall affect coverage provided to Operator.

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11.3.9 All liability insurance must name Operator and the other Additional Insureds as additional insureds. Vendor shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement.

11.3.10 All applicable policies must list Operator as a loss payee as respects proceeds relating to the Use Areas.

11.3.11 All policies must require the insurer to provide Operator with at least thirty (30) days prior notice of any cancellation, reduction or other change in coverage. The insurer's duty to notify Operator of changes in coverage shall not include phrases such as "endeavor to" or "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives."

11.3.12 All policies shall require that notices be given to Operator in the manner specified for notices to Operator under this Agreement.

11.3.13 Vendor may elect to use excess insurance to meet the insurance requirements of this Agreement, but such excess insurance shall be "follow form" equal to or broader in coverage than the underlying insurance.

11.4 Insurance Coverage. The insurance required by this Agreement shall cover all of the Westworld Facility.

11.5 Evidence of Insurance. Vendor shall provide evidence of all insurance as follows:

11.5.1 Certificates must be in ACORD form or equivalent acceptable to Operator.

11.5.2 Vendor shall provide to Operator certificates of insurance annually and at the time of each change in coverage. Vendor shall provide certificates at other times at Operator's request.

11.5.3 Certificates must evidence that the policy described by the certificate is in full force and effect and that the policy satisfies each requirement of this Agreement applicable to the policy. For example, certificates must evidence that Operator and the other Additional Insureds are additional insureds.

11.5.4 Each insurance certificate provided to Operator constitutes a warranty and representation by Vendor to Operator that policies, coverages and other matters are actually in effect as described in the certificate.

11.6 Acceptable Insurers. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurer) by the State of Arizona Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++ 6.

11.7 Operator's Election to Provide Insurance. Operator is not required to carry any insurance covering or affecting the Use Areas or use of Operator's property related to this Agreement. Operator may elect to acquire all or any part of the insurance required by this Agreement (with or without any other real property Operator may own, or control) and Vendor shall pay to Operator the costs of such insurance as reasonably determined by Operator. Vendor shall

provide all required insurance not so provided by Operator. Any insurance or self-insurance maintained by Operator shall not contribute to Vendor's insurance.

11.8 No Representation of Coverage Adequacy. By requiring insurance, Operator does not represent that coverage or limits will be adequate to protect Operator, Vendor or others. Operator's failure to demand evidence of compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Vendor from Vendor's obligation to maintain required insurance.

11.9 Use of Subcontractors. Before Vendor allows any contractor, subcontractor or other person to occupy, use or work on or about the Use Areas pursuant to this Agreement, Vendor shall comply with one of the following:

11.9.1 Vendor shall cause the insurance that Vendor is required to maintain under this Agreement to cover all of the acts of such person. The preceding sentence does not require such persons to provide insurance that merely duplicates insurance Vendor provides.

11.9.2 Vendor shall cause such person to provide to Operator the same insurance with respect to such person's acts that this Agreement requires Vendor to provide to Operator. The preceding sentence does not require such persons to provide insurance that merely duplicates insurance Vendor provides. Vendor shall cause such person to execute in favor of Operator a writing containing the same indemnification requirements set forth herein. Such requirements shall apply to such person whether or not such person signs such a writing.

11.10 Indemnity. In addition to all other indemnities and other obligations hereunder, to the fullest extent permitted by law, throughout the term of this Agreement and until all obligations and performances under or related to this Agreement are satisfied and all matters described in this paragraph are completely resolved, Vendor (and all other persons using, acting, working or claiming through or for Vendor or this Agreement (if they or their subcontractor, employee or other person or entity hired or directed by them participated in any way in causing the claim in question)) shall jointly and severally, indemnify, defend and hold harmless Operator and all other Additional Insureds for, from and against any and all claims or harm related to the Permitted Uses, the Use Areas or this Agreement (the "Indemnity"). Without limitation, the Indemnity shall include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use, financial harm, or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, and the cost of appellate proceedings and all other costs and expenses of litigation or resolving the claim) that may arise in any manner out of any use of the Use Areas or other property related to this Agreement or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to this Agreement, including without limitation any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the Use Areas or surrounding areas related to this Agreement, including without limitation, claims, liability, harm or damages caused in whole or in part by Operator or any other Additional Insured or anyone for whose mistakes, errors, omissions or negligence Vendor or Operator may be liable. As a condition to Operator's executing this Agreement, Vendor specifically agrees that to the extent any provision of this paragraph is not fully enforceable against Vendor for any reason whatsoever, this paragraph shall be deemed automatically reformed to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law. The Indemnity shall

also include and apply to any environmental injury, personal injury or other liability relating to Operator's or Vendor's acquisition, ownership or use of real property developed, operated, owned, used, controlled or possessed by Operator or Vendor under this Agreement. Notwithstanding the foregoing, the Indemnity does not apply to:

11.10.1 Claims arising only from the sole gross negligence of Operator and its employees.

11.10.2 Claims that the law prohibits from being imposed upon the indemnitor.

11.10.3 The "Indemnity" shall not apply to injury or other harm that has nothing to do with and is not caused or exacerbated by this Agreement, or by Vendor's use of the Use Areas or the Westworld Facility.

11.11 Risk of Loss. Vendor assumes the risk of any and all loss, damage or claims to the Use Areas or related to Vendor's use of the Use Areas or other property of Operator, Vendor or third parties. Vendor shall be responsible for any and all damage to its property and equipment related to this Agreement.

11.12 Indemnities and Insurance Cumulative. Vendor's obligations to indemnify do not diminish in any way Vendor's obligations to insure; and Vendor's obligations to insure do not diminish in any way Vendor's obligations to indemnify. Vendor's obligations to indemnify and provide insurance are in addition to, and do not limit, any and all other liabilities or obligations of Vendor under or connected with this Agreement. The amount and type of insurance coverage required by this Agreement do not limit the scope of the indemnities or other requirements of this Agreement.

11.13 Bureau of Reclamation Insurance. To the extent requested by Operator, Vendor shall cause BOR to be an additional insured under insurance required by this Agreement and, to the extent requested by Operator from time to time, Vendor's indemnities shall include BOR.

XII. CONDEMNATION

12. Condemnation. The following shall govern any condemnation of all or any part of or interest in the Westworld Facility:

12.1 Termination by Condemnation. If a total condemnation occurs, then this Agreement shall terminate. If a partial taking occurs, this Agreement shall continue in full force and effect as to the part of the Westworld Facility not taken.

12.2 Condemnation Proceeds. Vendor hereby assigns to Operator Vendor's entire interest in all condemnation damages, interest, severance damages, and any other payments or proceeds of any kind relating to the condemnation (collectively the "Condemnation Proceeds"). Vendor shall execute and deliver to Operator assignments or other instruments requested by Operator confirming such assignment. Vendor shall immediately pay to Operator any Condemnation Proceeds Vendor may receive. The Condemnation Proceeds shall not include relocation benefits, if any, awarded specifically only to Vendor to cover expenses of relocating Vendor's business located at the Use Areas at the time of the condemnation. Such relocation award shall be owned by and paid directly to Vendor only. Any repair, relocation or similar costs to Vendor relating to the condemnation shall be borne by Vendor.

12.3 Power to Condemn. Vendor acknowledges that BOR, Operator and others from time-to-time may use the power to condemn the Use Areas, the Westworld Facility, or any interest therein or rights thereto. Operator has not relinquished any right of condemnation or eminent domain over the Use Areas or the Westworld Facility. Operator does not warrant that Operator will not condemn the Use Areas or the Westworld Facility during the term of this Agreement, but Operator does not presently have intentions to condemn the Use Areas.

XIII. DAMAGE TO OR DESTRUCTION OF WESTWORLD FACILITY

13. Damage to or Destruction of the Westworld Facility. The following shall govern damage to or destruction of the Westworld Facility by fire, explosion, the elements, the public enemy, or other casualty. If Operator estimates that cost to repair a Kitchen is less than One Hundred Thousand and No/100 Dollars (\$100,000.00) then Operator shall repair the Kitchen. If Operator estimates the cost to be higher, then Operator shall inform Vendor whether Operator elects to repair the Kitchen. If Operator elects not to repair a Kitchen, then Vendor shall have a right for thirty (30) days to terminate this Agreement. If other damage occurs to the Westworld Facility, then this Agreement shall remain in place.

XIV. VENDOR'S RECORDS

14. Vendor's Records. Vendor shall keep records and provide information to Operator as follows:

14.1 Scope of Information. Unless otherwise specified, all of Vendor's recordkeeping and disclosure obligations under this article include and are limited to the following cumulative topics as reasonably determined by Operator (collectively the "Covered Information"):

14.1.1 All information about this Agreement.

14.1.2 All information about Operator's and Vendor's rights and obligations under this Agreement.

14.1.3 All information about Gross Food Sales.

14.1.4 The status of the Project.

14.1.5 Business conducted at the Westworld Facility.

14.2 Financial Reports. Vendor shall periodically deliver to Operator reports (the "Financial Reports") as follows:

14.2.1 Vendor shall provide a Financial Report for each quarter beginning with the quarter during which this Agreement is dated.

14.2.2 Vendor shall deliver each Financial Report to Operator as soon as it is available and in any event within thirty (30) days after the end of the quarter.

14.2.3 Each Financial Report shall contain the following in reasonable detail:

14.2.3.1 A balance sheet as of the end of the quarter.

14.2.3.2 A statement of income for the quarter.

14.2.3.3 A statement of changes in financial position for the quarter.

14.2.3.4 Statements comparing all of such information with the comparable information for the corresponding quarter of the previous year.

14.2.4 Financial Reports shall be in reasonable detail.

14.2.5 The Financial Report for the fourth quarter of any year shall cover the fourth quarter and shall also cover the entire preceding year.

14.2.6 Vendor shall deliver the following with each Financial Report:

14.2.6.1 A certificate by an independent certified public accountant acceptable to Operator stating that the accountant has reviewed the Financial Report and that the Financial Report has been prepared in accordance with United States generally accepted accounting principles consistently applied throughout the quarter and prior quarters.

14.2.6.2 A certificate by the individual who is the subject of the Financial Reports, or the chief financial officer or general partner, as the case may be, of the subject of the Financial Report stating that:

14.2.6.2.1 The information provided with the Financial Report and during the period covered by the Financial Report is correct and has been prepared in accordance with United States generally accepted accounting principles consistently applied throughout the quarter and prior quarters.

14.2.6.2.2 There exists no Event of Default and no condition, event or act, which with notice or lapse of time or both, would become an Event of Default or, if any such Event of Default or any such condition, event or act exists, specifying the nature and period of existence thereof and what action Vendor proposes to take with respect thereto.

14.2.6.3 If a Financial Report has been audited, a certificate from the auditor stating that the auditor has reviewed the information in accordance with United States standard auditing practices and that in making the examination necessary for the audit the auditor obtained no knowledge of any Event of Default by Vendor under this Agreement or condition, event or act, which with notice or lapse of time or both would become an Event of Default, or if the auditor has obtained knowledge of any such Event of Default or pending Event of Default, specifying the same. Operator may require that Financial Reports be audited. Vendor shall make available to Operator all work papers and records produced by the auditor pertaining to the audit, or copies thereof, within ten (10) working days after notice by Operator to do so.

14.3 Performance Reports. Within ninety (90) days after the end of each year, Vendor shall provide to Operator a written report. Said report shall include all of the following:

14.3.1 The status of the Project.

14.3.2 Vendor's use of the Use Areas and the Westworld Facility.

14.3.3 Documentation evidencing Vendor's compliance with the terms of this Agreement. Operator may elect to specify forms to be completed by Vendor to document Vendor's performance and the dates for submitting such forms.

14.3.4 Vendor shall participate in any annual performance review of Vendor's performance of the terms of this Agreement. Operator may notice such reviews as public review hearings with the opportunity for public participation.

14.3.5 An analysis of the effectiveness of the Marketing Activities.

14.3.6 Such other Covered Information as Operator may designate.

14.4 Quarterly Marketing Reports. Vendor shall deliver to Operator within thirty (30) days after the end of each quarter a report that shall include a brief narrative of Marketing Activities to date and an outline of Vendor's anticipated Marketing Activities for the ensuing months. Such reports shall be accompanied by a summary of expenditures during the same period. Vendor shall also deliver to Operator copies of reports, promotional literature and communications advertisements and related materials prepared as part of the Marketing Activities.

14.5 Supplemental Reports. Vendor shall deliver to Operator written reports (and, if requested by Operator, a presentation to Operator's governing council or designee) covering such Covered Information as Operator may request from time to time.

14.6 Records Inspection. At Vendor's expense, Vendor shall:

14.6.1 Permit and assist Operator and its representatives at all reasonable times to inspect, audit, and copy Vendor's records of Covered Information.

14.6.2 Make the records of Covered Information (and reasonable accommodations for Operator's audit and inspection) available within five (5) days after this request to Operator at Vendor's offices in Maricopa County, Arizona (or at another location requested by Operator within the corporate limits of the City of Scottsdale).

14.6.3 Cause Vendor's employees, agents, accountants and auditors to give their full cooperation and assistance in connection with Operator access to the Covered Information.

14.7 Presentations. Operator may require Vendor to attend annual performance reviews. Operator may require Vendor to make presentations to Operator's city council or designee with respect to any report or Covered Information. Operator may elect to allow public participation at such reviews and presentations.

14.8 Standards for Records. Vendor shall maintain a standard, modern system of recordkeeping for the Covered Information and shall keep and maintain proper and accurate books and other repositories of information relating to the Covered Information in accordance with United States generally accepted accounting principles applied on a consistent basis. If Operator does not receive Covered Information, Operator shall have the right to estimate the information that is not provided, which estimate shall be binding upon Vendor.

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14.9 Record Retention. Vendor shall preserve records of the Covered Information in a secure place within the City of Scottsdale, Maricopa County, Arizona for a period ending seven (7) years after the time period reported by the records.

14.10 Record Media Included. Operator's and Vendor's rights and obligations regarding the Covered Information encompass media, materials, and data repositories of every kind and character that may contain Covered Information. Such repositories include, without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, computer data, invoices, cash register tapes, contracts, logs, accounts, commitments, arrangements, notes, diaries, ledgers, correspondence, reports, drawings, receipts, vouchers, memoranda and other repositories of Covered Information.

14.11 Costs of Audit. If an audit, inspection or examination discloses underpayments (or other matters adjusted in favor of Operator) of any nature that exceed the lesser of three percent (3%) of any payments or single payment, Vendor shall pay to Operator Operator's actual cost (based on the amount paid by Operator, or based on reasonable charges charged by private auditors and other service providers for comparable work if the examination is performed by Operator's employees) of the examination, together with late fees, interest, and other amounts payable in connection with such adjustments or payments. Any adjustments and/or payments due as a result of any such examination shall be made within a reasonable amount of time (not to exceed 30 days) after Operator gives to Vendor notice of Operator's findings. In lieu of itemizing Operator's audit costs in any particular instance, Operator may elect to require Vendor to pay a flat charge of Five Hundred Dollars (\$500.00) to cover Operator's audit costs, which amount Vendor acknowledges is a fair estimate of the actual minimum cost to Operator to investigate, discover, verify, and otherwise deal with a reporting or payment error by Vendor.

14.12 Applicable to Others. Vendor shall cause all other persons occupying or using the Use Areas or the Westworld Facility under this Agreement to keep records of and report the Covered Information in the manner provided in this article. The preceding sentence does not apply to short time visitors to the Westworld Facility in connection with this Agreement in the ordinary course of business who are not conducting the Permitted Uses or business operations of their own at the Westworld Facility (such as a person merely supplying food or kitchen equipment to Vendor). Without limitation, such persons shall provide Financial Reports and Activity Reports. This article shall be included, and whether or not actually included shall be deemed included, in favor of Operator in each Vendor agreement for use of any portion of the Westworld Facility in connection with this Agreement.

14.13 Access after Termination. Operator's access to Covered Information shall continue for seven (7) years after termination of this Agreement for any reason.

XV. COMPLIANCE WITH LAW

15. Compliance with Law. Vendor shall perform its obligations under this Agreement and all activities at the Use Areas and all activities at the Westworld Facility in accordance with all federal, state, county and local laws, ordinances, regulations or other rules or policies as are now in effect or as may hereafter be adopted or amended. Without limiting in any way the generality of the foregoing, Vendor shall comply with all and each of the following:

15.1 Applicability of Municipal Law. Without limitation, Vendor shall comply with municipal laws as follows:

15.1.1 Vendor acknowledges that this Agreement does not constitute, and Operator has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to Vendor with regard to) any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Scottsdale or any other governmental body upon or affecting Vendor, the Use Areas, the Westworld Facility or Vendor's use of the Use Areas or the Westworld Facility.

15.1.2 All of Vendor's obligations hereunder are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of), all existing or future laws and regulations applicable to Vendor.

15.1.3 This Agreement is not intended to diminish any performances that would be required of Vendor by law if this Agreement had been made between Vendor and a private citizen.

15.1.4 Operator by this Agreement cannot and has not relinquished or limited any right of condemnation or eminent domain over the Use Areas or any other property related to this Agreement or within the Westworld Facility.

15.1.5 This Agreement does not impair the City of Scottsdale's power to enact, apply or enforce any laws or regulations, or exercise any governmental powers affecting in any way Vendor, the Use Areas or the Westworld Facility.

15.1.6 Operator's rights and remedies hereunder for Vendor's failure to comply with all applicable laws supplement and are in addition to and do not replace otherwise existing powers of the City of Scottsdale or any other governmental body.

15.2 Government Property Lease Excise Tax. Vendor shall be responsible for any and all property taxes and all government property lease excise taxes described in A.R.S. § 42-6201 et seq. or similar laws in force from time to time that are lawfully assessed against the Use Areas or against Operator or Vendor with respect to the Use Areas. Pursuant to A.R.S. § 42-6206, failure by Vendor to pay the taxes after notice and an opportunity to cure is an event of default that could result in divesting Vendor of any interest in or right of occupancy of the Use Areas.

15.3 Taxes, Liens and Assessments. In addition to all other amounts herein provided, Vendor shall pay, when the same become due and payable, all ad valorem and other taxes and general and special fees, charges and assessments of every description that during the term of this Agreement may be levied upon or assessed upon or with respect to Vendor's use of the Use Areas or the Westworld Facility, the operations conducted therein, any amounts paid or other performances under this Agreement by either party, and all possessory interest in the Use Areas and improvements and other property thereon, including any interest, penalties and other expenses that may be imposed. Vendor shall pay, indemnify, defend and hold harmless Operator, the Use Areas, the Westworld Facility and all interests therein and improvements thereon from any and all such obligations, and from any lien therefor or sale or other proceedings to enforce payment thereof. Operator shall have the right from time to time to require that all of the foregoing

payments be made by Vendor through Operator. Vendor shall pay all sales, transaction privilege, and other taxes.

15.4 Food Laws. Vendor shall at all times comply with Federal Pure Food and Drug Laws and all other applicable health rules, regulations, standards, laws and ordinances of the United States of America, State of Arizona, County of Maricopa, City of Scottsdale and any other authority lawfully exercising authority over food and alcohol services. Vendor shall at its own expense obtain and maintain all necessary licenses and permits permitting the sale of food and alcohol at the Westworld Facility. Vendor shall conduct the Food Service and Alcohol Service in a manner that achieves and maintains an "Acceptable" rating or such other rating as may be the highest grade of performance issued by applicable food regulatory officials.

XVI. ASSIGNABILITY

16. Assignability. This Agreement is not assignable by Vendor unless the assignment is made in strict compliance with the following:

16.1 Assignments Prohibited. Every assignment of any part of Vendor's interest in the Use Areas or this Agreement or any of Vendor's rights or interests hereunder is prohibited (and any assignment shall be void and vest no rights in the purported assignee) unless Vendor first receives from Operator notice of Operator's consent to the assignment.

16.2 Special Expertise. In making this Agreement, Operator depends upon Vendor's particular capacities, expertise, powers, and good offices, which would not be satisfactorily provided by a third party. No Vendor right or obligation hereunder may in any way whatsoever be assigned or delegated to a third party without Operator's prior express written consent.

16.3 Transactions Included. All references in this Agreement to assignments by Vendor shall be deemed also to apply to all of the following transactions, circumstances and conditions and to all persons claiming pursuant to such transactions, circumstances and conditions:

16.3.1 Any voluntary or involuntary assignment, conveyance, transfer of the right to use the Use Areas or sublicense of the Use Areas or any interest therein or any rights under this Agreement, in whole or in part.

16.3.2 Any voluntary or involuntary pledge, lien, mortgage, security interest, judgment, claim or demand, whether arising from any contract, any agreement, any work of construction, repair, restoration, maintenance or removal, or otherwise affecting the Use Areas (collectively "Liens"). The preceding sentence does not apply to a "twenty day notice" or similar notice of a potential mechanics lien for construction work or materials supplied to the Use Areas for construction permitted by this Agreement so long as no actual mechanic's lien attaches to the Use Areas. In this article, a foreclosure of a Lien means a judicial foreclosure sale, a trustee's sale, or a deed in lieu of foreclosure.

16.3.3 The use, occupation, management, control or operation of the Use Areas or any part thereof by others. The preceding sentence does not apply to Vendor's hiring and discharging of employees.

16.3.4 Any hiring, contracting or other delegation of Vendor's rights or duties under this Agreement including without limitation delegation of Vendor's rights or duties to provide Food Service, Alcohol Service or Marketing Activities. Notwithstanding the preceding sentence, Vendor's hiring of third parties to assist Vendor in carrying out the Marketing Activities is not an assignment so long as Vendor remains actively involved in all aspects of the Marketing Activities. Vendor shall be directly responsible for all Marketing Activities.

16.3.5 Any transaction (or series of related or unrelated transactions) transferring any significant part of the corporate stock (or other evidence of ownership, as applicable), or any other direct or indirect transfer of any significant part of the ownership, management or control of Vendor other than a transfer of a shareholder's or other owner's ownership caused by that shareholder or other owner's death.

16.3.6 Any assignment by Vendor for the benefit of creditors, voluntary or involuntary.

16.3.7 A Vendor Insolvency.

16.3.8 The occurrence of any of the foregoing by operation of law or otherwise.

16.3.9 The occurrence of any of the foregoing with respect to any assignee.

16.3.10 The failure through death, disability, withdrawal, retirement, severance or otherwise of Fred Unger to personally be, remain and act as the chief executive officer and the majority owner of Vendor or to have practical control of the Use Areas (collectively, "Loss of Control").

16.4 Assignment Transactions Excluded. References in this Agreement to assignments by Vendor do not apply to the following transactions:

16.4.1 Vendor's hiring and discharging of employees.

16.4.2 Normal turnover on Vendor's board of directors.

16.5 Pre-approved Assignments. Subject to certain conditions hereafter stated, Operator hereby consents to certain assignments (the "Pre-approved Assignments") so long as they do not result in Loss of Control. The only Pre-approved Assignment is Vendor's engagement of M Culinary Concepts LLC, an Arizona limited liability company to perform on Vendor's behalf Food Service and Alcohol Service that this Agreement requires Vendor to provide.

16.6 Assignment Remedies. In addition to all other remedies under this Agreement, the following shall apply if an assignment occurs without Operator's consent:

16.6.1 Any assignment without Operator's consent shall be void and shall not result in the assignee obtaining any rights or interests in, under or related to this Agreement.

16.6.2 Operator may, in its sole discretion and in addition to all other remedies available to Operator under this Agreement or otherwise, and in any combination, terminate this Agreement, collect Use Fee from the assignee and/or declare the assignment to be void, all without prejudicing any other right or remedy of Operator under this Agreement. No cure or grace periods shall apply to assignments prohibited by this Agreement or to enforcement of any provision of this Agreement against an assignee who did not receive Operator's consent.

16.7 Effect of Assignment. No action or inaction by Operator shall be deemed a waiver of the prohibition on assignments or any other provision of this Agreement, or the acceptance of the assignee, sublessee or occupant as Vendor, or a release of Vendor from the further performance by Vendor of this Agreement. No action or inaction by Operator regarding an assignment shall relieve Vendor from obtaining Operator's consent to any further assignment. No assignment shall release Vendor from any liability hereunder.

16.8 Enforceability after Assignment. No consent by Operator shall be deemed to be a novation. This Agreement shall control any conflict between this Agreement and the terms of any assignment or any document related to any assignment. Operator's consent to any assignment does not in any way expand or modify this Agreement or waive, diminish or modify any of Operator's rights or remedies under this Agreement. Operator shall not be bound by any provision of any instruments relating to any Assignment. This Agreement shall be enforceable personally and in total against Vendor and each successor, partial or total, and regardless of the method of succession to Vendor's interest hereunder. Each successor having actual or constructive notice of this Agreement shall be deemed to have agreed to the preceding sentence

16.9 Grounds for Refusal. Except for the Preapproved Assignments, no assignment of this Agreement by Vendor is contemplated or bargained for. Vendor acknowledges that only Vendor personally can provide to Operator the benefits that induced Operator to enter into this Agreement and that Operator has entered into this Agreement in strict reliance upon Vendor's covenant that only Vendor alone will occupy the Use Areas. Operator has the absolute right for any reason or for no reason in its sole and absolute discretion to give or withhold consent to any Assignment or to impose any financial, operational or other conditions whatsoever upon Operator's consent to any Assignment. The preceding sentence does not apply for the first ten (10) years of this Agreement so long as both of the following are true:

16.9.1 National Western Capital Corporation owns all of Vendor's interests under this Agreement (subject only to the Pre-approved Assignment).

16.9.2 National Western Capital Corporation is entirely owned by Frederick R. Unger, or, if he is deceased, entirely owned by Jennifer Unger and/or the descendants of Frederick R. Unger

16.10 Form of Assignment. Any assignment shall be by document in form and content acceptable to Operator. Without limitation, any assignment shall specify and require that each assignee acquiring any interest under this Agreement shall assume and be bound by, and be obligated to perform the terms and conditions of this Agreement.

16.11 Assignment Fee. Vendor shall pay to Operator in advance the sum of Two Thousand Five Hundred Dollars (\$2,500.00) as a nonrefundable fee for legal, administrative and

other expenses related to every request for consent to an assignment, whether or not Operator grants such request.

16.12 Assignment by Operator. Operator's interests in this Agreement shall be automatically deemed to be assigned to any person who acquires Operator's rights under the BOR Agreement. Upon any such assignment, Operator's or its assigning successor's liability with regard to this Agreement shall terminate.

16.13 Assignment of Monterra Agreement. Vendor's rights and obligations under this Agreement shall be held by the same person or entity that holds the licensee's rights under the Monterra Agreement. In addition:

16.13.1 No assignment or other transfer of any licensee rights under the Monterra Agreement shall occur without a corresponding assignment of Vendor's rights under this Agreement to the assignee and assumption of Vendor's obligations under this Agreement by the assignee.

16.13.2 In addition to all of Operator's other remedies, Operator shall have the right to unilaterally terminate this Agreement if this Agreement is not assigned to and assumed by any assignee of the Monterra Agreement, even if the assignment is prevented by Operator's failure to consent to such assignment.

16.13.3 Vendor shall give Operator thirty (30) days advance notice of any assignment of any licensee rights under the Monterra Agreement.

XVII. MISCELLANEOUS

17. Miscellaneous. The following additional provisions apply to this Agreement:

17.1 Integration. This Amendment constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, proposal, draft agreement, discussion outline, correspondence, memoranda or representation regarding the Use Areas, or the Westworld Facility.

17.2 Severability. If any term, condition, covenant, stipulation, agreement or other provision herein contained is held to be invalid or unenforceable for any reason, the invalidity of such provision shall in no way affect any other provision herein contained. Further, this Agreement shall be deemed automatically reformed to secure to Operator the legal, equitable, practical and other benefits of the provisions of this Agreement as written to the very maximum extent permitted by law.

17.3 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was entered into on the basis that it shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, that might otherwise favor Vendor.

17.4 Paragraph Headings. The paragraph headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.

17.5 Exhibits. All exhibits that are specifically stated to be attached to this Agreement are hereby incorporated into and made an integral part of this Agreement for all purposes.

17.6 Attorneys' Fees. If either party brings any action, suit or other proceeding to collect Use Fee or, to take possession of the Use Areas, or to vindicate, enforce or exercise any rights or remedies under this Agreement, the non-prevailing party shall pay the other party's costs of such proceeding and all expenses of such proceedings together with such sum as the court (and not a jury) may adjudge reasonable as attorneys' fees and all other litigation expenses and costs. If Operator is the prevailing party, then Vendor shall provide evidence to Operator of the rate of payment of Vendor's attorneys' fees to its counsel and Operator shall be entitled to recover payment for attorneys employed by Operator (including attorneys who are regular employees of Operator) at the same rate of payment.

17.7 Choice of Law and Court. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules. Exclusive proper venue for any action regarding this Agreement shall be the Maricopa County Superior Court or the Federal District Court in the District of Arizona sitting in Maricopa County. Operator and Vendor consent to personal jurisdiction in such courts. Operator has not waived its claims procedures as respects this Agreement. Claims by Vendor shall comply with time periods and other requirements of Operator's claims procedures from time to time.

17.8 Time of Essence. Time is of the essence of each and every provision of this Agreement.

17.9 Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.

17.10 Approvals and Inspections. All approvals, reviews and inspections by Operator under this Agreement or otherwise are for Operator's sole benefit and not for the benefit of Vendor, its contractors, engineers or other consultants or agents, or any other person.

17.11 No Partnership. Vendor has no relationship with Operator except as defined by this Agreement. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture, association or similar relationship between the parties.

17.12 Nonliability of Officials and Employees. No official, representative or employee of Operator shall be personally liable or otherwise responsible to any party, or to any successor in interest to any party, for any default or breach by Operator or for any amount or other obligation of Operator or otherwise under the terms of this Agreement or related to this Agreement.

17.13 Notices. Notices under this Agreement shall be given in writing delivered to the other party or mailed by registered or certified mail, return receipt requested, postage prepaid addressed to:

If to Operator: Brian Dygert
Westworld Administrative Office
16601 N. Pima Road
Scottsdale, AZ 85260

Copy to: City Attorney
City of Scottsdale
3939 N. Drinkwater Blvd.
Scottsdale, AZ 85251

If to Vendor: National Western Capital Corporation
Attention: Fred Unger
7134 E. Stetson Drive, Suite 400
Scottsdale, AZ 85151

17.14 By notice from time to time, a person may designate any other street address within Maricopa County, Arizona as its address for giving notice. Notices to Vendor may instead be hand delivered to Vendor's management office at the Use Areas. Service of notice by mail shall be deemed to be complete three (3) days (excluding Saturday, Sunday and legal holidays) after the notice is deposited in the United States mail.

17.15 Amendments. This Agreement may not be amended except by a formal writing executed by all of the parties.

17.16 Funding. This paragraph shall control notwithstanding any provision of this Agreement or any exhibit or other agreement or document related hereto. Operator's provision of funds under this Agreement is in all respects subject to appropriation by the Scottsdale City Council. Operator's entire obligation under this Agreement shall be limited to the amount appropriated. If funds necessary to fulfill Operator's obligations under this Agreement are not appropriated by the Scottsdale City Council, Operator may terminate this Agreement by ninety (90) days notice to Vendor. Termination in accordance with this provision shall not constitute a breach of this Agreement by Operator. No person will be entitled to any compensation, damages or other remedy from Operator if this Agreement is terminated pursuant to the terms of this paragraph or other terms of this Agreement.

17.17 No Recording. This Agreement shall not be recorded.

17.18 Statutory Cancellation Right. In addition to its other rights hereunder, Operator shall have the rights specified in A.R.S. § 38-511.

17.19 Employment of Unauthorized Workers. Vendor shall comply with A.R.S. §23-211, et seq. and all other applicable federal, state and local laws and regulations that relate to Vendor's employees (collectively, the "Unauthorized Worker Laws"). Vendor shall cause each person or entity who provides labor, time or effort to Operator under this Agreement (the

"Contractors") to comply with the Unauthorized Worker Laws as respects the Contractors' employees. Without limitation, Vendor warrants and represents pursuant to A.R.S. §41-4401(A)(1) that Vendor and the Contractors comply with A.R.S. §23-214(A). Pursuant to A.R.S. §41-4401(A)(2), a breach of this paragraph shall be a material breach of this Agreement and an event of default, which shall entitle Operator to exercise any and all remedies described in this Agreement or otherwise available at law or equity, including without limitation termination of this Agreement and the remedies described in A.R.S. §23-214(B). However, pursuant to A.R.S. §41-44-1(C), Vendor shall not be deemed to be in material breach under the previous sentence if Vendor and the Contractors establish that they have complied with the employment verification provisions prescribed by §274A and §274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). Operator shall have the right to inspect the records and papers of Vendor and its employees, and of Contractors and their employees, to ensure that Vendor and the Contractors are in compliance with this paragraph. Vendor shall indemnify, defend and hold Operator harmless from any loss, liability or other harm arising from or relating to Vendor's or the Contractors' failure to comply with this paragraph or the Unauthorized Worker Laws. Each contract that Vendor enters into with a Contractor shall contain a provision binding the Contractor to this paragraph. This paragraph does not limit any of Operator's rights under other laws or under other provisions of this Agreement.

EFFECTIVE AS OF THE DATE FIRST GIVEN ABOVE.

LESSEE: **NATIONAL WESTERN CAPITAL CORPORATION**, an Arizona corporation

By: 

Frederick R. Unger

Its: PRESIDENT

LESSOR: **CITY OF SCOTTSDALE**,
an Arizona municipal corporation

By: _____

W. J. "Jim" Lane, Mayor

ATTEST:

Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

By: 

Bruce Washburn, City Attorney

11466129v17



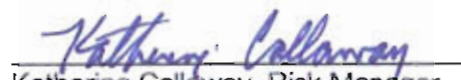
Brian Dygert, Westworld General Manager



Paul T. Katsenes, Executive Director, Community & Economic Development



Dan Worth, Executive Director Public Works

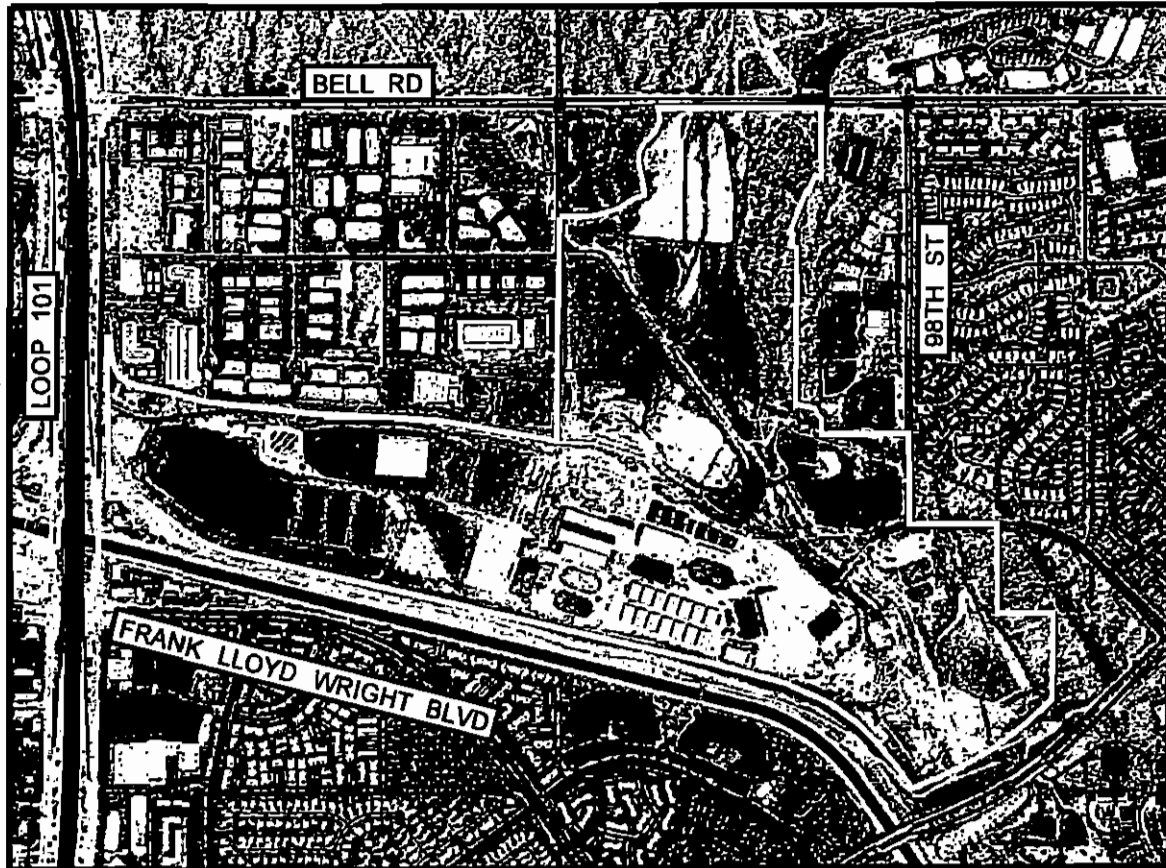


Katherine Callaway, Risk Manager

TABLE OF EXHIBITS TO FOOD AND ALCOHOL LICENSE AND MARKETING AGREEMENT

<u>Exhibit</u>	<u>Paragraph</u>	<u>Description</u>
A	C	The Map.
B	I	Scope of work for all of the kitchens.
C	2.6.1	List of Event Invoice Threshold escalation
D	3.1.7	Sample Use Fee amount report
E	3.2.2	List of Base Marketing Fee escalation
F	4.16	List of required equipment
G	4.16	Operation details
H	4.31.1	List of comparison facilities
I	4.35.2.2	Initial food Plan
J	4.36.1	Initial liquor license boundaries
K	4.39.6.1	Initial marketing strategy
L	4.39.7.1	Initial marketing tasks
M	5	Scope of work by Operator
N	8.1.2	Vendor Maintenance Work
O	8.1.3	Operator Maintenance Work

WEST WORLD FACILITY MAP



WEST WORLD FACILITY



EXCLUSION: LICENSE AREA PURSUANT
TO 2013-191-COS (MONTEIRA)
(CONTAINS KITCHEN #6)

Kitchens

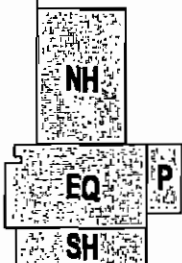
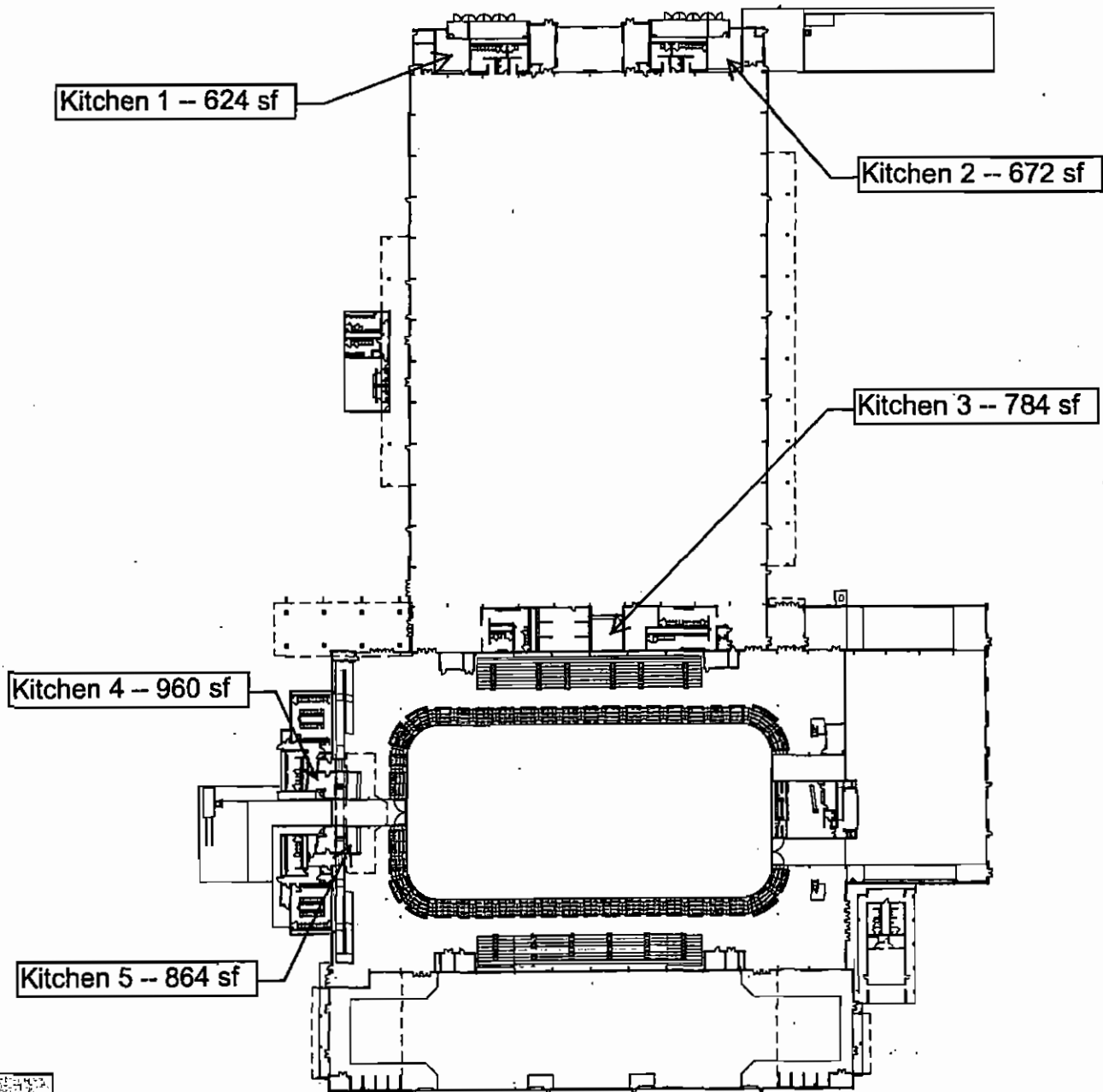


EXHIBIT "A"
Page 2 of 2

Contract No. 2013-186-COS



Kitchen Work Plan – Kitchens 1, 2, 3, & 4

Project details for Kitchens 1, 2, 3, and 4 will be designed and constructed no later than the Second Completion Deadline. A site plan for each kitchen, together with a schedule of equipment/fixtures, shall be provided by Vendor to Operator for approval. These Kitchens are anticipated to contain some or all of the following equipment/fixtures:

<ul style="list-style-type: none">• Air curtain• Walk-in cooler• Cooler evaporator• Cooler remote condensing unit• Mop sink• Service sink faucet• Mop rack• Mobile heated cabinet• Mobile pan racks• Salad top refrigerator• Wall shelves• Reach-in freezer• Work top table• Table mounted shelves with utensil rack• Shelving unit• Trash containers• Pass through window heat strips• Griddle• Refrigerated equipment stand• Fryer bank exhaust hood• Wall flashing• Wall cap• Fire suppression system• Exhaust hood HD Range• Double convection ovens• Refrigerated merchandizer• Popcorn popper• Work top counter• 3-drawer warmers• Hot dog roller	<ul style="list-style-type: none">• Pretzel warmer• Nacho chip warmer• Drop in heated wells• Bag-n-box syrup• Front serving counter• Cash registers• Drop-in soda and ice dispenser• Mobile keg box• Hand sink• Shelving unit• 3-compartment sink• Wall shelf with utensil rack
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Exhibit "B"

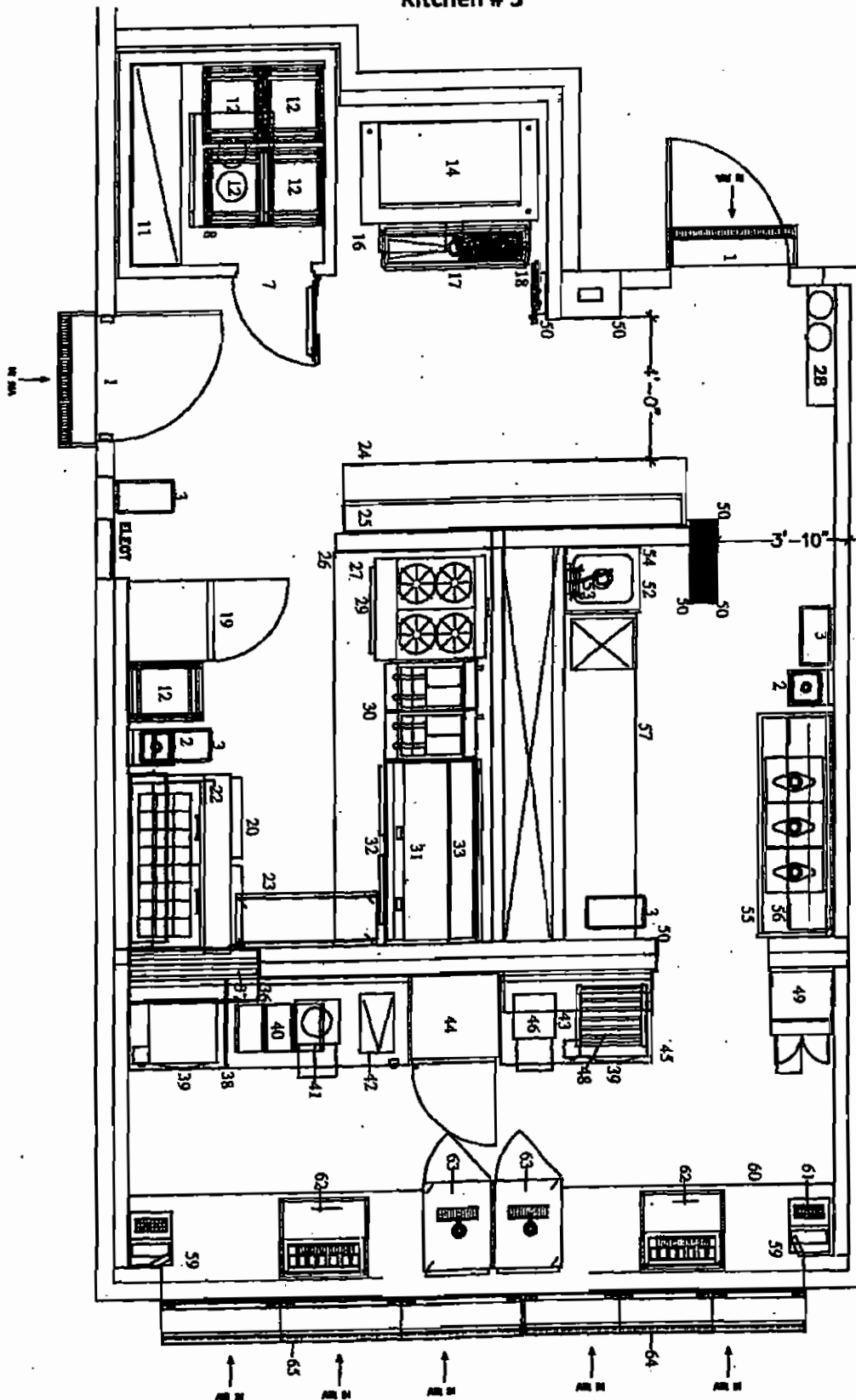
Kitchen Work Plan

Kitchen #5

Equidome South West

QUANTITY	DESCRIPTION	MAKE
2	Air Curtain	Berner
1	Hand Sink	Advance
1	Walk-In Cooler	Kolpak
1	Cooler Evaporator	Kolpak
1	Cooler Condensing Unit	Kolpak
1	Ice Maker	Scotsman
1	Ice Maker Consensing Unit	Scotsman
1	Ice Bin	Scotsman
1	Reach-In Freezer	True
1	Salad Top Refrigerator	True
1	Work Top Table	Stainless Steel
1	Exhaust Hood	Captive Air
1	Fire Suppression System	Ansul
1	4-Burner HD Range	Vulcan
1	2-Fryer Bank	Dean
1	Counter Top Griddle	Vulcan
1	Refrigerated Equipment Stand	True
2	Heat Strips	Hatco
1	Work Top Cabinet	Stainless Steel
2	3-Drawer Warmer	Wells
1	Drop-In Food Warmer	Wells
1	Service Sink Faucet	Fisher
1	Mop Rack	Rubbermaid
1	3-Compartment Sink	Stainless Steel
1	Front Serving Counter	Stainless Steel
1	Air Curtain	Berner
1	Air Curtain	Berner

Kitchen # 5



EVENT INVOICE THRESHOLD TARGET
Annual During Initial Term of Agreement

January 1, 2013 to 6-30-2014 (1 st ½ year)	\$ 3.2 M
7-01-2014 to 6-30-2015	\$ 4.0 M
7-01-2015 to 6-30-2016	\$ 5.2 M
7-01-2016 to 6-30-2017 (4% increase compounded annually begins here)	\$ 5.4 M
7-01-2017 to 6-30-2018	\$ 5.6 M
7-01-2018 to 6-30-2019	\$ 5.8 M
7-01-2019 to 6-30-2020	\$ 6.0 M
7-01-2020 to 6-30-2021	\$ 6.3 M
7-01-2021 to 6-30-2022	\$ 6.6 M
7-01-2022 to 6-30-2023	\$ 6.8 M
7-01-2023 to 6-30-2024	\$ 7.1 M

SAMPLE USE FEE AMOUNT REPORT
CITY OF SCOTTSDALE
LICENSE PAYMENT REPORT

Accounting Department
7447 E. Indian School Road
Suite 215
Scottsdale, AZ 85251
www.ScottsdaleAZ.Gov
480-312-2437

National Western Capital Corporation
7134 E. Stetson Drive, Suite 400
Scottsdale, AZ 85251

Attention: Fred Unger
funger@springcreekdevelopment.com, 480-874-1002, ext. 11

AR ACCOUNT # _____

Please fill out portion below and return with your payment

Lease payment for ____ Quarter 20____ (2013-186-COS)	Amount remitted \$ _____ Date ____/____/2013
---	---

Gross Sales of Food & Beverage CATERING EVENT \$ _____
10% of Food & Beverage Gross Sales CATERING EVENT \$ _____
Attach applicable monthly spreadsheet(s)

Gross Sales of Food & Beverage CONCESSIONS \$ _____
20% of Food & Beverage Gross Sales CONCESSIONS \$ _____
Attach applicable monthly spreadsheet(s)

Gross Sales ALCOHOL \$ _____
30% Gross Sales ALCOHOL \$ _____
Attach applicable monthly spreadsheet(s)

TOTAL AMOUNT DUE BY ____/____/20____ \$ _____
(within 30 days of end of quarter)

Signed _____ DATE _____

REVIEWED BY CITY CONTRACT ADMINISTRATOR	
Signed _____	DATE _____

BASE MARKETING FEE PAYMENT SCHEDULE
During Initial Term of Agreement

14 days after approval of 2013-186-COS	\$200,000
7-01-2014	\$200,000
7-01-2015	\$200,000
7-01-2016	\$108,000 (\$100,000 + 4% of \$200,000)
7-01-2017	\$216,320 (\$208,000 + 4%)
7-01-2018	\$224,973
7-01-2019	\$233,972
7-01-2020	\$243,330
7-01-2021	\$253,064
7-01-2022	\$263,186
7-01-2023	\$273,714

List of Personal Property

- 1) Kitchen Small wares (Pots, Pans, Utensils, ETC.) to service events up to 20,000
- 2) China to accommodate events up to 2,000
- 3) Flat Ware to accommodate events up to 2,000
- 4) Glassware to accommodate events up to 2,000
- 5) Staff Uniforms for all personnel
- 6) 4+ golf carts for event transportation (number of carts dependent on scope)
- 7) Misc. refrigerated trucks to effectively service events
- 8) All Food and Beverage inventories
- 9) Portable propane and electric cooking equipment used to supplement existing concession stands when event scope dictates
- 10) Kitchen equipment trailers used to supplement existing concession stands when even scope dictates
- 11) Portable Generators to power above supplemental equipment
- 12) Hoses, cables, and other equipment required to operate the above supplemental equipment

Operation Details

- 1- Must acceptable inspection reports from Maricopa County Health Department, with no reoccurring violations reported.
- 2- Vendor hours of operation to be set by Operator according to each event contract(s).
 - a. Vendor must be open within 15 minutes prior to the opening of the gate or starting time of the event
 - b. Vendor cannot close prior to the closing of the gate, or closing of the event, without approval provided by event producer and/or operator.
- 3- Vendor's suppliers and staging must be at direction of operator and approval for hours of delivery, door of delivery, method of unload, and time needed.
- 4- Bulk garbage receptacles and placement will be at Operator's direction.
- 5- Garbage cans in and around vendor kitchens are the responsibility of the Vendor to be removed and emptied into the bulk receptacles.
- 6- Food and beverage spillage in the common area will be dealt with by Operator staff or Vendor staff determined by which is closer, and which will provide the most effective response.
- 7- Common area seating and set-up is at the direction of the Operator per each event contract.

Comparable Facilities

1- Oklahoma State Fair Park

Jim Norick Arena

www.okstatefair.com

2- Los Angeles Equestrian Center

Equidome at Griffith Park

www.la-equestriancenter.com

3- South Point Arena and Equestrian Center

www.southpointarena.com

4- National Western Complex

Denver Arena & Coliseum

www.nationalwesterncomplex.com

5- Will Rogers Memorial Center


Will Rogers Coliseum and John Justin Arena

www.fortworthgov.org

INITIAL ANNUAL FOOD PLAN

- 1) Full Service concession service located in permanent facilities (once built out) and temporary locations as required for each event
- 2) Pricing – Reasonably priced creative menu geared towards the varying participants for all scheduled events
- 3) Sponsorships – When event partners are identified that require the use of specific branded products every attempt will be made to accommodate these vendors and event producers by offering and at times featuring these products
- 4) Primary Provider – From time to time M Culinary will function as the sole food provider based on the scope, history and desire of the specific event producers
- 5) Subcontractors – From time to time M Culinary will function as the food service coordinators using various subcontract food service providers based on the scope, history and desire of the specific event producers
- 6) Event Schedules and revenues – Revenue projections will be established once event calendar is finalized
- 7) Food, Beverage and Equipment inventories will be sufficient to support the scope and complexities of each event
- 8) Scheduled facility maintenance – Grease traps and exhaust hoods will be serviced at least semiannually unless additional service is required due to excessive volume or manufacturers recommend more frequent service.
- 9) Menus – Following are sample menus for events in the past and proposed menus for events scheduled in the future.

THE POLO CLUB CAFE

PRESENTED BY  CATERING

Sandwiches

ROASTED TURKEY CLUB	\$9.00
Appleswood Bacon, Butter lettuce, Tomato and Astago Cheese	
GRILLED VEGETABLE WRAP	\$8.00
Herbed Cheese, Zucchini, Bell Peppers and Oven Dried Tomatoes	
ALL-BEEF HOTDOG	\$5.00
HAMBURGER / CHEESBURGER	\$8.00

Salad

SHRIMP AND SOBA NOODLE SALAD	\$10.00
Cucumbers, Miso Cabbage, Miso and Ginger Lime Dressing	
CHEESE AND CRACKERS	\$8.00
Aged Provola, Vermont Cheddar, Whole Wheat Crackers, Grapes	
VEGGIE AND HERB DIP	\$8.00
Cilantro, Cilantro, Potatoes, Cucumbers and Creamy Oil Dip	
TORTILLA CHIPS & SALSA	\$4.00

Snacks

POORE BROTHERS CHIPS	\$2.00
M SIGNATURE SNACKS	\$3.00

Dessert

BERRY SHORTEAKE PARFAIT	\$4.00
Raspberries, Strawberry and Vanilla Cream	

Drinks

BEER	\$6.00	WATER	\$2.00
WINE	\$8.00	SODA	\$3.00

RUSTY SPUR CAFE

presented by  CATERING

SANDWICHES

SOUTHWEST BBQ BRISKET SANDWICH	\$9.00
BEEF BRISKET CHIPOTLE BBQ SAUCE SOFT POTATO BUN SERVED WITH SIDE OF COLESLAW	
ROASTED PULLED PORK SANDWICH	\$9.00
SLOW ROAST PORK BBQ SAUCE SOFT POTATO BUN SERVED WITH SIDE OF COLESLAW	
ROASTED TURKEY WRAP	\$8.00
TURKEY, PROVOLONE CHEESE, PEELED ONIONS, LETTUCE, TOMATO, MAYONNAISE	
ALL-BEEF HOTDOG	\$5.00
HOTDOG KETCHUP PEPPERONI SAUSAGE	

SALAD

COWBOY CHOP SALAD	\$7.00
ICEBERG, 1 GARDEN TOMATOES, 1 SMOKEY BLUE CHEESE GRILLED CORN, CILANTRO DRESSING	

SIDES

WESTERN BEER AND BEAN CHILI	\$4.00
GREEN CHILI MAC AND CHEESE	\$4.00
POORE BROTHERS CHIPS	\$2.00
GRAND BUTTER BEET SANDWICH	\$10.00
TORTILLA CHIPS	\$4.00

WINE	\$8.00
BEER	\$6.00
SODA	\$3.00
WATER	\$2.00
CHIPS	\$2.00
MAC AND CHEESE	\$4.00
CHILI	\$4.00
BEAN CHILI	\$4.00
GRAND BUTTER BEET SANDWICH	\$10.00
TORTILLA CHIPS	\$4.00

Fresh Made Sandwiches

Served Cold

Roasted Turkey	\$8.00
Lettuce, Tomato, Cucumber, Red Onion on Multi grain Bread, with Sun-Dried Tomato Aioli	
Roast Beef	\$8.00
Cheddar, Lettuce, Tomato, Balsamic Onions on Kaiser Roll with Horseradish Aioli	
Veggie Wrap	\$7.00
Roasted Seasonal Vegetable, Red Pepper Hummus in a flour wrap	

Served Hot

Roasted Pork	\$10.00
Slow-Roasted Pork, Cilantro Slaw, Anaheim Chile Aioli	
French Dip	\$10.00
Fontina Cheese, Onion Jus	

Salads

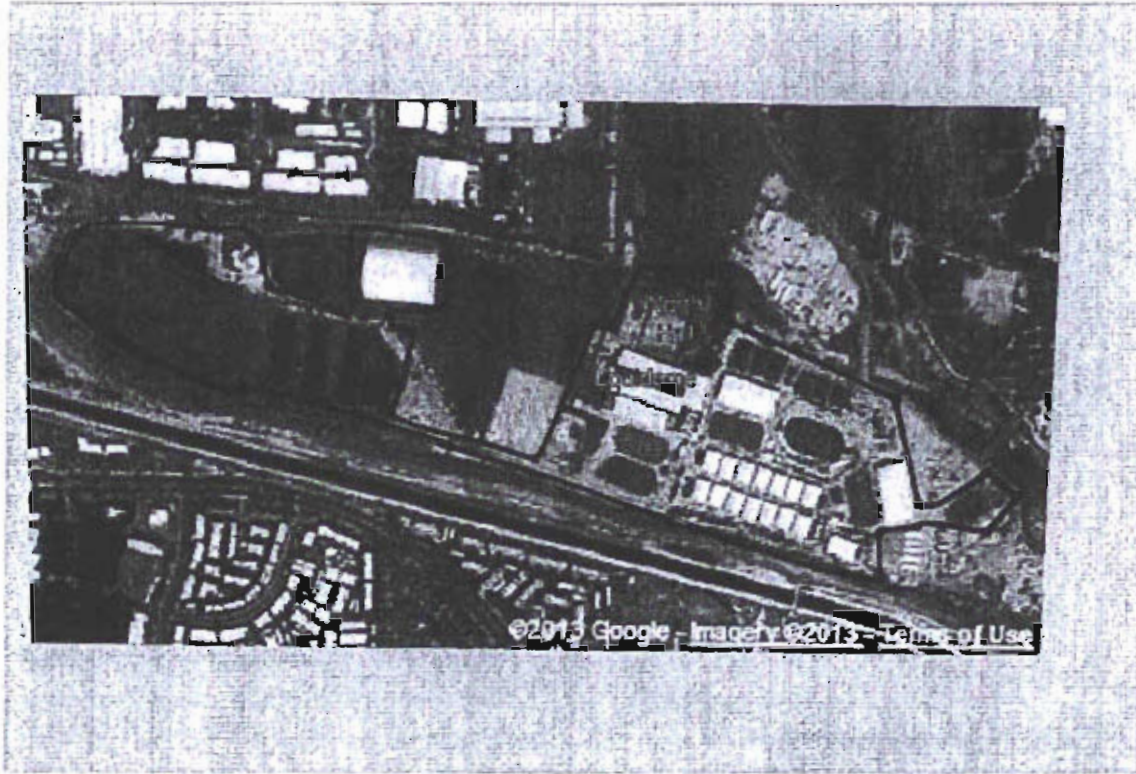
Caesar Salad	\$8.00
Romaine, Croutons, Shaved Parmesan, Caesar Dressing	
Chicken Caesar Salad	\$10.00
Romaine, Marinated Chicken, Croutons, Shaved Parmesan, Caesar Dressing	
Cobb Salad	\$10.00
Mixed Greens, Chicken, Egg, Ham, Crumbled Blue Cheese, Tomato, Blue Cheese Dressing	

Sides

Poore Brother Chips	\$2.00
M Signature Snacks	\$3.00
Cookies, Brownies	\$3.00
Fruit Salad	

Beverages

Brewed Ice Tea 24oz	\$6.00
Fresh Lemonade 24oz	\$6.00
Bottled Water 19.9oz	\$3.00
Coke, Diet Coke, Sprite 12oz can	\$3.00



LIQUOR LICENSE AREA

Initial Annual Marketing Strategy

- Introduce the new and improved WestWorld to event organizers across the county.
- Develop "the WestWorld and Scottsdale story" through electronic and traditional distribution. Create the "why" for event organizers to bring their large groups to the city and facility.
- Focus on attracting events that will maximize all the existing WestWorld assets, (creating more ancillary revenue for the facility and city), including automobile parking, RV along with Food and Beverage.
- Maximize the calendar of events allowing multiple events to be hosted on the same dates.
- Focus marketing and sales efforts on a national level but don't ignore local opportunities. This could be complimentary business in using the facility for short-term events that would improve overall revenue and occupancy of the facility. Identify those local opportunities and craft compelling reason of "why WestWorld".
- Identify the geographic and functional target markets with respect to who wants to come to Scottsdale and focus the Marketing and Sales plan accordingly.

Initial Annual Marketing Tasks

- Hire experienced industry leader who will be responsible for booking new events into the WestWorld facility in conjunction with the strategy defined. We would expect to hire an individual who would join this effort with rich industry relationships that would jump-start our sales cycle.
- Attend and present at strategic trade shows nationwide that will put WestWorld in front of event planners that are securing future sites for their respective trade group or agencies.
- Develop electronic marketing piece including video of WestWorld and amenities in Scottsdale to support The Story.
- Develop a WestWorld focused website.
- Provide support and materials to the existing team within the City of Scottsdale and WestWorld with respect to follow up and securing events that traditionally have been interested in WestWorld, (Equestrian).
- Work directly with event organizers that could bring unique and proprietary events to WestWorld with initial focus on music festivals, food and wine, specific themed outings and youth sports.
- Leverage current resources already deployed by WestWorld and the City of Scottsdale to maximize their return on marketing spend.

Improvements by Operator
Westworld Concession Areas

	Kitchen 1 N-NW	Kitchen 2 N-NE	Kitchen 3 N-SE	Kitchen 4 E-North	Kitchen 5 E-South
Electrical					
Dedicated Electrical Panel for kitchen equipment (only)	X	X	X	X	X
Conduit and Wiring for branch circuiting	X	X	X	X	X
Dedicated AC Unit (unmetered)	X	X	X	X	X
Electrical Outlets	X	X	X	X	X
Overhead Lights	X	X	X	X	X
Light Switches	X	X	X	X	X

Gas

Gas Stub to concession space (above ceiling)	X	X	X	X	X
Dedicated Gas Meter for all 5 concessions spaces	X	X	X	X	X
Dedicated Gas Meter for each concession area					
Gas plumbing to proposed kitchen equipment	X	X	X	X	X

Water

Water Stub to concession space (above ceiling)	X	X	X	X	X
Dedicated Water Meter					
Hot Water Stub or Water Heater	X	X	X	X	X
Water plumbing to proposed kitchen equipment	X	X	X	X	X

Sewer

Sewer drain lines	X	X	X	X	X
Grease Interceptor	X	X	X	X	X
Sewer branches and drain lines to proposed kitchen equipment	X	X	X	X	X

Finishes

Concrete Floor	X	X	X	X	X
Grid Ceiling	X	X	X	X	X
Furred Interior Walls	X	X	X	X	X
Interior Paint					
Stainless Steel Countertop at Service Counter	X	X	X	X	X
Roll up door at Service Counter	X	X	X	X	X
Storefront and Service Window					

Improvements By Operator

Improvements by Operator**Westworld Concession Areas**

	Kitchen 1	Kitchen 2	Kitchen 3	Kitchen 4	Kitchen 5
Other					
Exhaust Fan, Ductwork and Roof Penetration	X	X	X	X	X
Fire Sprinkler Stub	X	X	X	X	X
Fire Hood Suppression System					
Grease Interceptor	X	X	X	X	X
Air Curtain					
Telephone and Data Ports					

X = City to provide

Vendor Maintenance Work

1. Vendor will be responsible for all equipment, installed appliances, cabinets, shelving, etc. within each kitchen area.
2. Vendor shall repair, maintain, and replace kitchen area and facilities at vendor's sole expense in a sound, clean and attractive manner.
3. All custodial and janitorial duties within all kitchen areas are the sole responsibility and expense of the vendor.
4. All grease traps to be serviced at expense of the vendor and service day and time to be coordinated with operator.
5. Vendor is responsible for cleaning and servicing of all utility lines including drains, sewers, and plumbing within the license area to the point of connection with the main system in each kitchen area.
6. Vendor is responsible for interior wall, ceiling, floor and surface cleaning, repainting and replacement for all kitchen areas.

Operator Maintenance Work

Operator will be responsible for WestWorld facility maintenance work to support the kitchens, exclusive of the Vendor Maintenance work identified in Exhibit "N".

MONTERRA FOOD AND ALCOHOL LICENSE AGREEMENT

THIS MONTERRA FOOD AND ALCOHOL LICENSE AGREEMENT (the "Agreement") is made this ____ day of _____, 20____, by and between the City of Scottsdale, an Arizona municipal corporation ("Operator"), and National Western Capital Corporation, an Arizona corporation ("Vendor").

RECITALS

A. Operator is the operator of the Westworld recreational facility (the "Westworld Facility") located northeast of the intersection of Pima Road and the Central Arizona Project Canal in Maricopa County, Arizona.

B. Operator operates the Westworld Facility pursuant to an agreement (the "BOR Agreement") with the United States Bureau of Reclamation ("BOR") and various other recorded and unrecorded documents governing use of the Westworld Facility (collectively the "Site Documents").

C. The Westworld Facility is depicted on the drawing (the "Map") attached hereto as **Exhibit "A"**.

D. The Westworld Facility is currently improved with exhibit halls, equestrian arenas, a polo field and related recreation improvements. Included among the Westworld Facility improvements are:

1. A large climate controlled building known as the Tony Nelssen Equestrian center, which among other things houses an indoor exhibit hall (the "North Hall") and an indoor equestrian arena (the "Equidome").
2. A smaller climate controlled building (the "Monterra Building").
3. Parking areas, arenas, landscaping and related improvements and equipment.

E. This Agreement concerns the Monterra Building. Operator and Vendor are entering into a separate agreement (the "Kitchens Agreement") relating to the North Hall and the Equidome.

F. Operator desires to license to Vendor the Monterra Building and certain related areas (collectively the "Use Areas") for the preparation at the Use Areas of food and alcohol for immediate consumption at the Westworld Facility (the "Permitted Uses"). The Permitted Uses exclude preparation or serving of food or alcohol for consumption off of the Westworld Facility. The Permitted Uses are divided into the following two (2) exhaustive and mutually exclusive categories:

1. Preparing and serving of food (which includes bottled water, soft drinks and other non-alcoholic drinks, and also candy and gum) at organized events at the Westworld Facility for immediate consumption at the Westworld Facility (the "Food Service").

2. Preparing and serving of alcohol at organized events at the Westworld Facility for immediate consumption at the Westworld Facility (the "Alcohol Service").

G. Operator desires to reserve rights to construct and use and allow others to construct and use all manner of additional improvements upon the Use Areas and the remainder of the Westworld Facility subject to the requirements of this Agreement.

H. Operator and Vendor desire to provide means by which Vendor in certain circumstances may in the future provide Food Service and Alcohol Service to event producers who conduct their events at the Westworld Facility pursuant to event contracts (the "Event Contracts" with Operator.

I. This Agreement and Vendor's performances hereunder will provide direct benefit to Operator and to the general public by increased use of the Westworld Facility and enhancement of the economic and tourism climate of the City of Scottsdale and its environs.

NOW, THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Vendor and Operator, and the covenants and agreements contained herein to be kept and performed by Vendor and Operator, and other good and valuable consideration, Operator and Vendor agree as follows:

I. USE AREAS

1. Use Areas. Vendor's use of the Use Areas shall be as follows:

1.1 Use Areas. The Use Areas include the Monterra Building. The Monterra Building is the existing Monterra Building itself comprising about ten thousand (10,000) square feet of interior space together with the landscaped areas and dining areas within the existing low walls surrounding the Monterra Building, and the existing concrete outdoor dining area comprising approximately four thousand five hundred (4,500) square feet at the northwest corner of the Monterra Building. The Monterra Building excludes all other areas of the Westworld Facility, such as the existing polo field, the slope leading down to the existing polo field, and the areas above the slope but outside the low wall surrounding the existing outdoor dining patios south and west of the Monterra Building.

1.2 Remote Serving Spaces and Aprons. The Use Areas are limited to the Monterra Building and the following two additional areas at the Westworld Facility:

1.2.1 Vendor shall temporarily use certain other areas (the "Remote Serving Spaces") designated by Operator at the Westworld Facility to provide Food Service and Alcohol Service at particular events. Operator shall identify the Remote Serving Spaces from time to time for events at which Vendor will provide Food Service or Alcohol Service. Such uses are limited to times when Vendor is actually providing Food Service or Alcohol Service to an event then being conducted at the Westworld Facility pursuant to an Event Contract, is preparing to do so, or is cleaning up and exiting the Remote Serving Space after having done so.

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1.2.2 Vendor shall also temporarily use certain areas (the "Aprons") adjacent to the Remote Serving Spaces to provide Food Service and Alcohol Service at particular events pursuant to Event Contracts. The Aprons include such areas as may be open to the public or event producers from time to time within thirty (30) feet of a Remote Serving Space. Operator shall have the right to relocate and expand or contract the size of Aprons from time to time.

1.3 Variation in Area. If the Use Areas, the Westworld Facility or any improvements consist of more or less than any stated area, this Agreement shall nevertheless continue and Vendor's obligations hereunder shall not be increased or diminished.

1.4 Reservations. Notwithstanding anything in this Agreement to the contrary, Operator specifically reserves to itself and excludes from this Agreement a non-exclusive delegable right (the "Reserved Right") over the Use Areas and the entire Westworld Facility as follows:

1.4.1 The Reserved Right is for the exercise of all of Operator's rights under this Agreement and for any and all purposes that do not in Operator's reasonable discretion materially and substantially interfere with Vendor's lawful conduct of the Permitted Uses under this Agreement. Without limitation, the Reserved Right includes:

1.4.1.1 The right to permit all manner of contractors, vendors, business prospects, event producers and other persons to enter the Use Areas and the entire Westworld Facility for the purposes of construction, inspection, evaluation, planning, reconstruction, maintenance, repair or service of any improvements or facilities located within or without the Use Areas from time-to-time. Except in an emergency, any such entry by third parties into the Monterra Building shall be made only at reasonable times after reasonable notice to Vendor. Any damage or injury to the Monterra Building resulting from such entry shall be promptly repaired at the sole expense of the person so entering.

1.4.1.2 The unilateral right to construct, reconfigure, demolish, remove and otherwise modify all buildings, arenas, utilities, lots, barns, roads and other existing or future improvements or other features of every description at the Westworld Facility from time-to-time. All new or modified improvements or equipment constructed or installed by Operator shall be for Operator's exclusive, delegable use. Notwithstanding the preceding sentence, Operator shall not permanently alter the Monterra Building. Without limitation, Operator reserves from this Agreement the right to repair, replace and maintain any and all pipes, wires, cables or other utilities existing upon the Monterra Building as of the date of this Agreement. In the event of construction work within the Monterra Building related to such utilities, Vendor shall, if requested by Operator, provide access to such utilities.

1.4.2 Vendor shall actively cooperate with Operator to facilitate Operator's exercise of the Reserved Right.

1.4.3 Operator's Reserved Right is in addition to any other rights this Agreement provides for Operator.

1.5 Right of Inspection. Operator shall be entitled to inspect all construction, reconstruction or installation work and to make such tests as it deems necessary to ensure compliance with the terms of this Agreement. All Operator plans reviews, inspections, standards

and other rights and actions with relation to Vendor's Improvements are for Operator's sole and exclusive benefit and neither Vendor nor any other person shall rely thereon or have any rights related thereto.

1.6 Condition of Title. Vendor's rights hereunder are subject to the BOR Agreement and all other recorded or unrecorded matters or conditions of title to or agreements or documents regarding the Use Areas and the Westworld Facility and all amendments to any such matters (collectively the "Site Documents"). Vendor's rights to use the Use Areas and the Westworld Facility under this Agreement are limited to a subset of the interests held by Operator under the Site Documents. Vendor shall not violate the Site Documents. Operator does not warrant its own, Vendor's or any other person's title to or right to use the Use Areas, the Westworld Facility or any other property. Vendor shall communicate with BOR only through Operator unless specifically authorized in advance in writing by Operator, which separate authorization shall be required for each instance of direct communication by Vendor.

1.7 Reconfiguration. Operator shall have the unilateral right to temporarily or permanently augment, abandon, expand, contract, reduce, convey or otherwise modify the configuration of the Westworld Facility or any part of it from time to time during the term of this Agreement. Operator may also unilaterally regulate, reroute, close and otherwise alter pedestrian and vehicular traffic access to the Use Areas and travel within any area of the Westworld Facility. Nevertheless, Operator shall provide adequate access to the Use Areas that Vendor may carry out its duties under this Agreement. If a reconfiguration changes the Map, then Operator shall provide Vendor an updated Map.

1.8 Condition of Use Areas. Having previously provided food service throughout the Westworld Facility and having inspected the Monterra Building and its environs and the rest of the Westworld Facility, Vendor is familiar with their condition, and all other property associated with this Agreement and its environs. Operator makes such property available in an "as is" condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to their condition or fitness for any use. Vendor has obtained such information and professional advice as Vendor has determined to be necessary related to this Agreement and this transaction.

1.9 Operator's Fixtures and Personality. Operator shall provide to Vendor the fixtures and personal property (the "Restaurant Equipment") owned by Licensor upon or within the License Area as listed on **Exhibit "B"** attached hereto and the fixtures and personal property (the "Catering Equipment") owned by Licensor upon or within the License Area as are listed on **Exhibit "C"** attached hereto. Licensee shall make the Catering Equipment available to users of the Westworld Site at rates comparable to or better than the rates charged for comparable services in Maricopa County, Arizona. As of the date of this Agreement, rates and services shall be compared to Tri Rents or Ultimate Events. Operator is not obligated to provide to Vendor any additional fixtures or personal property at the Westworld Facility. Upon the earlier of Operator's request or at termination of this Agreement, Vendor shall return to Operator in good working condition any and all of Operator's property as may come into Vendor's possession or be used by Vendor. Vendor shall maintain such items in good repair upon the Use Areas at its own expense in good working condition from time to time and replaced by them at Vendor's expense when worn out. All such personal property is provided "as is". Vendor accepts all responsibility for such property's condition and shall thoroughly inspect it before use. Without Operator's prior written consent, Vendor shall

not remove, alter or damage in any way any improvements or fixtures upon the Use Areas or elsewhere at the Westworld Facility (whether installed by Vendor, Operator or otherwise).

1.10 No Real Property Interest. Vendor's occupancy rights are limited to the Use Areas, and Vendor's occupancy rights in the Use Areas are limited to the specific limited license rights created by this Agreement. Operator and Vendor do not by this instrument intend to create a lease, easement or other real property interest. Vendor shall have no real property interest in the Use Areas or any part of the Westworld Facility.

II. TERM OF AGREEMENT

2. Term of Agreement. Operator hereby grants to Vendor a license to use the Use Areas subject to and conditioned upon Vendor's full, timely, complete and faithful performance of all performances and things to be performed or done hereunder by Vendor, and Vendor hereby accepts the Use Areas and this Agreement.

2.1 Old Agreement. Operator and Pegasus Restaurant and Catering, Inc., an Arizona corporation ("Original Licensee") were the original parties to that certain First Amended and Restated Restaurant and Catering Concession Agreement dated December 30, 1996 and recorded May 13, 1998 at document No. 98-0398960 of the public records of Maricopa County, Arizona (the "Old Agreement"). The Old Agreement was subsequently amended by that certain First Amendment to First Amended and Restated Restaurant and Catering Concession Agreement (the "First Amendment") dated October 20, 2003 between Licensor and Licensee and recorded November 12, 2003 at document No. 2003-1561377 of the public records of Maricopa County, Arizona. The First Amendment was temporary and is no longer in effect. However, the parties have continued to operate under the First Amendment. Licensor is the licensor and Licensee warrants and represents to Licensor to be the successor to the Original Licensee under the Old Agreement. This Agreement completely terminates and supersedes the Old Agreement as of the date of this Agreement except that Operator and Vendor shall continue to be accountable to each other for their respective compliance with the Old Agreement while it was in effect. Upon commencement of this Agreement Operator and Vendor shall execute the notice of termination attached hereto as **Exhibit "D"** and Vendor shall record said notice in the office of the Maricopa County Recorder. Vendor warrants and represents that Vendor has not assigned to anyone any rights under the Old Agreement and is the sole holder of all rights of the licensee under the Old Agreement except for M Culinary Concepts LLC, an Arizona limited liability company, to whom Vendor shall partially assign its rights under this Agreement as hereafter provided.

2.2 Term. The term of this Agreement shall be for the period of the remaining term of the BOR Agreement unless sooner terminated as set forth in this Agreement. (If the BOR Agreement is terminated prior to its stated expiration date, Vendor agrees to continue to perform the terms of this Agreement with BOR in the place and stead of Operator, as though this Agreement had been originally entered into between Vendor and BOR.) Operator shall use best efforts to keep the BOR Agreement in effect during the term of this Agreement. Operator is not obligated to exercise any extension of the BOR Agreement. However, if the BOR Agreement is extended, then the term of this Agreement shall expire at the end of the BOR Agreement.

2.3 Years. A "year" under this Agreement shall begin at 12:01 a.m. on July 1 and shall end at 11:59 p.m. on the following June 30. Without limitation, the preceding sentence applies to all

references to quarterly, annual, yearly or similar periods and to all anniversaries and similar dates under this Agreement. For example, if this Agreement refers to the last quarter of a year, it is referring to April, May and June.

2.4 Operator's Right to Terminate. This paragraph shall not apply while the Kitchens Agreement is in effect. Operator shall have an irrevocable and unconditional right at any time to terminate this Agreement which right is exercisable in Operator's sole and absolute discretion by giving to Vendor notice of Operator's election to terminate this Agreement. If Operator exercises such election, Operator shall pay to Vendor the amount of Two Million and No/100 Dollars (\$2,000,000.00). Such amount is not subject to the CPI adjustment. Operator shall honor any sublicense of Vendor's rights under this Agreement existing on the date of Operator's notice except that:

2.4.1 Not less than thirty (30) days prior to entering into any new sublicense, Vendor shall give Operator notice that Operator need not honor any sublicense if during said thirty (30) day period Operator gives its notice of election to terminate; and

2.4.2 All sublicenses shall contain a provision stating that the sublicensee will consent to terminate the sublicense without compensation on the fifteenth annual anniversary of the sublicense and on any subsequent fifth annual anniversary of the sublicenses if Operator exercises its election and requests the sublicensee to so terminate. The extension or modification of any sublicense shall be deemed the creation of a new sublicense.

2.5 Holding Over. In any circumstance whereby the parties continue performing this Agreement after the expiration of this Agreement, such holding over shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a use right from month to month that may be terminated at any time by Operator upon thirty (30) days notice to Vendor, or by Vendor upon sixty (60) days notice to Operator.

2.6 Conditions to Agreement. This Agreement shall not be effective unless and until Operator and Vendor enter into the Kitchens Agreement and BOR gives Operator written notice that BOR consents to this Agreement. If Operator does not receive such notice from BOR prior to February 1, 2014, then this Agreement shall automatically terminate and the Old Monterra Agreement shall remain in effect.

2.7 Consumer Price Index Adjustment. Certain amounts shall be adjusted upward (the "CPI Adjustment") on the basis of changes in the United States Consumer Price Index for all Urban Consumers (CPI-U), U.S. City average, all items, published by the United States Bureau of Labor Statistics as of the date three (3) months prior to the adjustment date (the "Cost of Living Index"). The amount to be adjusted (the "Adjustment Amount") (represented by the letter "R" in the formula set forth below) shall be equal to the then current Cost of Living Index number as of the date three (3) months before the adjustment (represented by the letter "C" in the formula set forth below) divided by the Cost of Living Index number as of the date three (3) months before the date of this Agreement (represented by the letter "M" in the formula set forth below), and multiplied by the unadjusted Adjustment Amount (represented by the "\$" symbol in the formula set forth below). This computation is expressed by the following formula:

$$R = \frac{C}{M} \times \$$$

provided, that in no event shall the Adjustment Amount be adjusted downward from any previous period. If the Cost of Living Index shall no longer be published at the adjustment date, then Vendor shall choose another similar index published by any Federal agency or an index formula or table accepted generally by the real estate profession, or an index formula or table accepted generally by the real estate profession.

2.8 CPI Adjustment Timing. The CPI Adjustment shall occur on each July 1.

2.9 CPI Adjustment Applicability. The CPI Adjustment shall apply to all fixed dollar amounts (such as insurance limits, and assignment fees) in this Agreement.

2.10 Adjustment Effectiveness. All CPI Adjustments shall be retroactive to the first day of the year in which the adjustment occurs (or should have occurred, in the case of any delayed adjustment). Any correction due to an error in Operator's estimate or for any other reason shall be paid by Operator to Vendor (or by Vendor to Operator, as the case may be) within thirty (30) days after notice of the correction by either party to the other that the Cost of Living index has been published. The Adjustment Amounts shall not be adjusted downward or otherwise reduced for any reason. All applicable adjustments shall be applied cumulatively.

2.11 Delayed or Estimated Adjustments. If an amount is not known in advance, Operator shall have the right to estimate the amount, with an adjustment to be made within sixty (60) days after the actual amount becomes known.

2.12 Westworld Facility Closure. Operator does not warrant that the Westworld Facility will remain open during the entire term of this Agreement, but Operator does not presently have intentions to close the Westworld Facility. If the BOR Agreement is no longer in effect or if Westworld Facility is closed for any reason, then this Agreement shall terminate.

2.13 Limited Date Extension Authority. Operator's city manager shall have authority to extend time periods in this Agreement up to ninety (90) days in his sole and absolute discretion.

III. VENDOR'S PAYMENTS

3. Vendor's Payments. Vendor shall make payments to Operator as follows:

3.1 Use Fee Categories. Vendor shall pay to Operator each of the following separate and cumulative amounts (collectively the "Use Fee"):

3.1.1 An amount (the "Percentage Use Fee") comprising a percentage of certain Vendor revenues (the "Gross Sales").

3.1.2 An amount (the "Violation Use Fee") based on certain breaches by Lessee of this Agreement as set out below.

3.1.3 All other amounts required by this Agreement.

3.2 Percentage Use Fee Amount. The amount of Percentage Use Fee shall be a percentage of all revenues and other proceeds (collectively the "Gross Sales") from Vendor's use of the Westworld Facility as follows:

3.2.1 Applicable Percentage. The percentage used to calculate Percentage Use Fee shall be as follows:

3.2.1.1 For Gross Sales arising from Food Service at the Monterra Building, the Percentage Use Fee shall be two percent (2%) of all Gross Sales.

3.2.1.2 For Gross Sales arising from Alcohol Service at the Monterra Building, the Percentage Use Fee shall be two percent (2%) of all Gross Alcohol Sales.

3.2.1.3 For Gross Sales arising from Food Service elsewhere at the Westworld Facility, the Percentage Use Fee shall be ten percent (10%) of all Gross Sales, if the people who consume the food and beverage, as a group, order the food and beverages in advance as a single order, are served the food and beverages together as a single group under Vendor's supervision, and pay for the food and beverages as a group pursuant to a single payment or billing. This would include for example, typical food and alcohol service for a wedding or for a banquet held by a civic organization.

3.2.1.4 For Gross Sales arising from all other Food Service elsewhere at the Westworld Facility, the Percentage Use Fee shall be twenty percent (20%) of all Gross Sales. This would include, for example, provision of food or beverages to individual members of the public at a rodeo.

3.2.1.5 For Gross Sales arising from Alcohol Service elsewhere at the Westworld Facility, the Percentage Use Fee shall be thirty percent (30%) of all Gross Alcohol Sales.

3.2.1.6 For purposes of determining Percentage Use Fee, all Permitted Uses occurring between midnight and 4:00 a.m. shall be deemed to have occurred during the preceding day.

3.3 Gross Sales. Gross Sales shall be calculated as follows:

3.3.1 Gross Sales in General. Gross Sales means any and all receipts, receivables, rents, credits, payments in kind, amounts collected, billed or invoiced, accounts receivable, amounts rebated to Vendor and other amounts of every description or sources of revenue or other rights or benefits of every description received directly or indirectly from Food Service, Alcohol Service and any and all other transactions, business or activity conducted at or from the Use Areas by Vendor or any sublessee or other person using the Use Areas during the term of this Agreement. Gross Sales excludes sales, transaction, privilege or similar taxes.

3.3.2 Non-cash Sales. Any non-cash items shall be deemed to have been received by Vendor in cash in an amount equal to the greater of the fair market value of the item received or the fair market value of the item for which it was given.

3.3.3 Double Counting. No amount shall be counted twice (or excluded twice) in calculating Gross Sales.

3.4 Violation Use Fee Amount. In lieu of certain money damages (the "Inconvenience Costs") set out below, the following shall apply to Vendor's violation of certain limited requirements of this Agreement (the "Violation Fee Provisions"):

3.4.1 The Inconvenience Costs are the money damages that Operator suffers in the form of administrative cost and inconvenience, disharmony among Westworld Facility users, and general inconvenience in Westworld Facility use by Operator, other Westworld Facility Users and the public when Vendor fails to comply with the Violation Fee Provisions.

3.4.2 Vendor's failure to comply with Violation Fee Provisions will result in Inconvenience Costs in an amount that is and will be impracticable to determine. Therefore, the parties have agreed that, in lieu of Vendor paying to Operator as damages the actual amount of the Inconvenience Costs for violating the Violation Fee Provisions, Vendor shall pay Violation Use Fee.

3.4.3 Violation Use Fee is only intended to remedy Inconvenience Costs that Operator suffers because of Vendor's breach of the Violation Fee Provisions. Vendor's payment of Violation Use Fee does not in any way excuse any breach by Vendor of this Agreement or limit in any way Operator's obtaining any other legal or equitable remedy provided by this Agreement or otherwise for any such breach. For example, Vendor's obligation to pay Violation Use Fee does not in any way detract from Vendor's indemnity and insurance obligations under this Agreement, which shall apply according to their terms in addition to Vendor's obligation to pay Violation Use Fee.

3.4.4 The Violation Fee Provisions and the amount of the Violation Use Fee per day or part thereof are as follows:

3.4.4.1 The amount of Two Hundred Fifty and No/100 Dollars (\$250.00) for each hour or portion of an hour when this Agreement requires Vendor to provide food service and Vendor does not provide Food Service.

3.4.4.2 The amount of Two Hundred Fifty and No/100 Dollars (\$250.00) for each hour or portion of an hour when this Agreement requires Vendor to provide alcohol service and Vendor does not provide Alcohol Service.

3.4.4.3 The amount of Two Hundred Fifty and No/100 Dollars (\$250.00) for each storage of materials or garbage or other obstruction of areas outside designated trash areas, parking or storage of vehicles, failure to secure the Westworld Facility or Use Areas, or misuse of utilities.

3.4.4.4 The amount of Fifty and No/100 Dollars (\$50.00) for each violation of the parking requirements of this Agreement.

3.4.4.5 The amount of Two Hundred Fifty and No/100 Dollars (\$250.00) per day for each failure to make Vendor's books and records available as required by this Agreement.

3.4.5 Violation Use Fees shall be assessed as follows:

3.4.5.1 If Operator determines that Vendor is liable for Violation Use Fee, then Operator shall issue to Vendor a notice of Operator's assessing a Violation Use Fee. The notice shall set forth the nature of the violation and the amount of the assessment.

3.4.5.2 Vendor shall pay the Violation Use Fee within ten (10) days after Operator's notice. However, if the Violation Use Fee amount exceeds One Thousand and No/100 Dollars (\$1,000.00) in any month, then the following shall apply:

3.4.5.2.1 Vendor shall have thirty (30) days after the notice to pay the Violation Use Fee or give Operator notice contesting the assertion of noncompliance.

3.4.5.2.2 If Vendor fails to respond to the notice, Vendor shall pay the Violation Use Fee. Otherwise, Operator shall schedule a public hearing before the city manager or designee to investigate whether the Violation Use Fee is properly assessed. Operator shall provide Vendor at least ten (10) days notice of such hearing, which shall specify the time, place and purpose of the hearing. At the hearing, Vendor shall be provided an opportunity to be heard and present evidence. If the result of the hearing is that Vendor is liable for Violation Use Fee, then the Violation Use Fee is due ten (10) days after the hearing decision is announced.

3.4.5.3 Vendor may appeal the outcome of the hearing to an appropriate court, which shall have the power to review Operator's decision "de novo". Such appeal to the appropriate court must be taken within thirty (30) days after the issuance of Operator's determination. Otherwise, the outcome of the hearing shall be final and conclusive.

3.5 Payments Cumulative. All categories of Use Fee and all amounts payable by Vendor hereunder or under any tax, assessment, fee or other existing or future ordinance or other law of the City of Scottsdale or the State of Arizona shall be cumulative and payable in addition to each other, and such amounts shall not be credited toward, substituted for, or set off against each other in any manner

3.6 Use Fee Payment Schedule. Vendor shall pay Use Fee to Operator on the following schedule:

3.6.1 Vendor shall report Percentage Use Fee each month no later than the tenth (10th) day of the following month and shall pay Percentage Use Fee once each quarter ten (10) days after the end of the quarter. Vendor shall pay Violation Use Fee at the times provided above. All other Use Fee shall be payable on the tenth (10th) day of the month after the month in which it accrued. For example, other Use Fee that accrues in September shall be payable on or before October 10. If an amount is not known in advance, Operator shall have the right to estimate the amount, with an adjustment to be made within thirty (30) days after the actual amount becomes known.

3.6.2 Each installment shall include all Use Fee then accrued.

3.6.3 Any correction due to an error in Operator's estimate or for any other reason shall be paid by Vendor to Operator (or by Operator to Vendor, as the case may be) within thirty (30) days after notice of the correction by either party to the other.

3.7 Use Fee Amount Report. Vendor shall provide with each installment of Use Fee and at such other times as this Agreement may provide a report showing the manner in which each category and component of Use Fee was calculated. The report shall itemize the transactions giving rise to the Use Fee. When Operator requests from time to time, Vendor shall provide with the report dated and signed journal entries, cash register tapes and other documentation substantiating Gross Sales and other amounts. A sample report is attached as **Exhibit "E"**. Vendor shall print such number and the contract number given at the top right corner of the first page of this Agreement on each check.

3.8 Place of Payment. Unless and until Operator gives notice otherwise, Vendor shall deliver all Use Fee Payments to Operator's remittance processor at Suite 215, 7447 East Indian School Road, Scottsdale, Arizona 85251.

3.9 Security Deposit. Upon execution of this Agreement, Vendor shall provide to Operator, and maintain with Operator at all times during the term of this Agreement, a cash security deposit in the amount equal to Fifty Thousand and No/100 Dollars (\$50,000.00) to guarantee the faithful performance of this Agreement. The same cash deposit also serves as the security deposit under the Kitchens Agreement and shall not be returned until it no longer so serves. Any prepaid Use Fee or other funds or property of Vendor held by or available to Operator or any issuer of a letter of credit, receiver, escrow agent or other third party under or related to this Agreement shall also stand as a security deposit guaranteeing Vendor's faithful performance of this Agreement. Any portion of any security deposit to which Vendor may then be entitled, net of any setoff or other obligation of Vendor, shall be paid to Vendor without interest by the holder of Operator's rights under the BOR Agreement within sixty (60) days after the later of termination of this Agreement and completion of all of Vendor's obligations related to this Agreement.

3.10 Late Fees. Use Fee is deemed paid only when Operator actually receives good cash payment or a check that is honored when first presented by Operator for payment. Should Operator not receive any Use Fee on or before the date due, a late fee shall be added to the amount due in the amount of the greater of ten percent (10%) of the amount due, or One Hundred Dollars (\$100.00). Any Use Fee that is not timely paid shall also accrue simple interest at the rate of one and one-half percent (1 ½ %) per month from the date the amount first came due until paid. Vendor expressly agrees that the foregoing represent fair and reasonable estimates by Operator and Vendor of Operator's costs (such as accounting, administrative, legal and processing costs, etc.) if there is a delay in payment of Use Fee. Operator shall have the right to allocate payments received from Vendor among Vendor's obligations.

3.11 Duty to Maximize Use Fee. Subject to the requirements of this Agreement, Vendor shall occupy, operate and conduct its business under this Agreement so as to maximize the Percentage Use Fee payable hereunder.

3.12 Misreported Gross Sales. For all Gross Sales not properly and timely reported by Vendor as required by this Agreement, the percentage used to calculate Percentage Use Fee otherwise payable hereunder shall be increased by ten percent (10%) more than the percentage of Gross Sales otherwise payable. For example, if the rate applicable to certain Gross Sales were otherwise twenty percent (20%), then, in the event of Vendor's failure to properly and timely report, the rate would be thirty percent (30%). This increase is in addition to any and all other rights or remedies Operator may have related to Vendor's failure to properly

report Gross Sales or timely pay Use Fee. Vendor agrees that this payment is a fair and reasonable way of compensating Operator for Operator's cost of investigating and administering underreported Gross Sales. Operator's contract administrator shall have authority to elect not to apply this paragraph from time to time.

3.13 Holdover Use Fee. If there is a holdover, all Use Fee, and every element thereof, shall be increased by an additional fifty percent (50%) over the amount of Use Fee that would otherwise be payable under this Agreement.

3.14 No Use Fee Refunds. Operator shall own all Use Fee as soon as it is paid or delivered. Use Fee is not refundable for any reason.

IV. OPERATIONS

4. Operations and Marketing. Vendor's use and occupation of the Use Areas and the entire Westworld Facility shall in all respects conform to all and each of the following cumulative provisions (collectively the "Restrictions"):

4.1 Permitted Uses. Vendor shall use the Use Areas solely for the Permitted Uses and shall conduct no other activity at or from the Use Areas. Except as expressly permitted by this Agreement, Vendor shall confine its activities at the Westworld Facility to the Use Areas. The Permitted Uses are limited to the following:

4.1.1 The following uses at the Monterra Building:

4.1.1.1 Food preparation and serving.

4.1.1.2 Alcohol preparation and serving.

4.1.1.3 Receiving and storage of food and alcohol prior to its consumption at the Westworld Facility.

4.1.1.4 Storage of supplies and equipment for Food Service and Alcohol Service at the Westworld Facility.

4.1.1.5 Staging for Food Service and Alcohol Service at the Westworld Facility.

4.1.1.6 Hosting of events at the Monterra Building.

4.1.2 The following uses at the Remote Serving Spaces:

4.1.2.1 Food preparation and serving.

4.1.2.2 Alcohol preparation and serving.

4.1.3 The following uses at the Aprons: trash cans, condiment stations and like food service and sanitary equipment.

4.1.4 Such additional related uses to which Operator may give or retract consent from time to time. Such additional uses may only be conducted following Operator's giving to Vendor notice of such consent. Operator may terminate or impose conditions and limitations on such consent from time-to-time in Operator's sole and absolute discretion.

4.2 Prohibited Uses. Without limitation, the following uses are prohibited at or from the Use Areas and elsewhere at Westworld Facility:

4.2.1 Preparation, storage, or other activity for food or alcohol that will not be served at the Westworld Facility.

4.2.2 Preparation, storing, staging or otherwise supporting any event or activity outside the Westworld Facility.

4.2.3 Vending machines, pinball games, video games, amusement devices, pay telephones, ATMs or similar devices.

4.2.4 Sale of film, suntan lotion, lip gloss, sunglasses, souvenirs, tobacco, alcohol, literature, clothing or other items that are not food or alcohol. The preceding sentence does not apply to ordinary incidental sales of food or alcohol related consumables necessary for ordinary food and alcohol service, such as paper cups and napkins, toothpicks and disposable tablecloths.

4.2.5 Tobacco or similar substances.

4.2.6 All uses not specifically authorized by this Agreement.

4.3 Actions by Others. Vendor shall be responsible to ensure compliance with this Agreement by all persons using the Westworld Facility claiming through or under Vendor or this Agreement. Vendor shall cause all such persons to not do anything that this Agreement prohibits Vendor from doing. The Restrictions do not apply to Operator.

4.4 Requests to Provide Service. THIS PARAGRAPH APPLIES NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT. Unless Operator specifically requests in writing from time to time on an event-by-event basis at Operator's sole and absolute discretion, Vendor shall not provide Food Service or Alcohol Service except at the Monterra Building. At all times, this Agreement prohibits Vendor from providing Food Service and Alcohol Service at the Westworld Facility unless Operator so requests Vendor. However, while the Kitchen Agreement is in effect, this paragraph does not prohibit Vendor from using the Monterra Building kitchen as needed to help Vendor meet its obligations under the Kitchen Agreement to provide Food Service and Alcohol Service at the Westworld Facility, subject to compliance with this Agreement as to all activity that occurs at the Monterra Building. Food Service and Alcohol Service provided from the Monterra Building to events outside the Monterra Building at the Westworld Facility while the Kitchen Agreement is in effect shall be deemed to have been provided under the Kitchen Agreement and not under this Agreement. For example, Vendor shall pay "Percentage Use Fee" under the Kitchen Agreement and shall not pay Percentage Use Fee under this Agreement. Operator intends to enter into agreements at various times that may grant partial or complete exclusive rights to provide food, alcohol or other goods or services away from the Monterra Building at the Westworld Facility. Any Vendor right to provide Food Service or Alcohol Service

outside the Monterra Building shall be limited as necessary to respect any and all such agreements.

4.5 Relationship to Event Contracts This Agreement governs Food Service and Alcohol Service at and from the Monterra Building. The conduct of events at the Westworld Facility outside the Monterra Building is governed by the Event Contracts. For example, whether a casino night is allowed at an event, whether signage is allowed at an event (including without limitation signage advertising Vendor or Vendor's suppliers), and all other questions about the planning, conduct, equipping, promotion or other aspects of an event and the experience of those attending an event will be determined by the Event Contracts and not by this Agreement. This Agreement does not prohibit Vendor from contracting with event producers to provide ancillary services not based at the Monterra Building (such as chair and table rentals not based at the Monterra Building or ticket printing) or to purchase services from event producers (such as advertising at an event) but such services are not within the scope of this Agreement or included in the Permitted Uses. This Agreement does not grant to Vendor any rights related to any of the issues described in this paragraph.

4.6 Vendor Events. This Agreement does not allow Vendor to produce any events at the Westworld Facility outside the Monterra Building. Any Vendor produced event at the Westworld Facility outside the Monterra Building would be pursuant to a separate Event Contract. Neither Vendor nor Operator is obligated to enter into any Event Contract for any Vendor produced event.

4.7 Limits on Events at the Monterra Building. Historically, some events at the Monterra Building have been incompatible with events held elsewhere at the Westworld Facility. To prevent such incompatibility in the future, the following shall apply:

4.7.1 Prior to contracting for an event at the Monterra Building, Vendor shall give notice to Operator of the proposed event, expected attendance, use of outdoor facilities and other aspects of the proposed event at the Monterra Building. Within seven (7) days thereafter Operator shall approve or disapprove the event.

4.7.2 Vendor shall keep itself and producers of events at the Monterra Building informed of events scheduled at the Westworld Facility and shall not host events at the Monterra Building that could reasonably be expected to disrupt or be disrupted by another event at the Westworld Facility.

4.7.3 Events elsewhere at the Westworld Facility have priority over events at the Monterra Building.

4.7.4 Prior to contracting for an event at the Westworld Facility, Vendor shall deliver to the event producer against a signed receipt a copy of the event compatibility provisions of this Agreement (or a summary specified by Operator from time to time) together with a copy of the then current calendar of events scheduled for the Westworld Facility. A summary of such provisions, as specified by Operator from time to time shall also be included in the contract. If the contract is entered into more than ninety (90) days before the Monterra Building event, then Vendor shall deliver the summary again to the event producer against a signed receipt between sixty (60) and forty-five (45) days before the Monterra Building event.

4.8 Monterra Building Hours. No food or beverage service at the Monterra Building is permitted from 2:00 a.m. to 6:00 a.m. on any day except for buffet breakfasts without alcohol. Food and Service and Alcohol Service are permitted during all park operational hours. No use of the Use Areas by customers shall be made outside general operational hours for the Westworld Facility as established from time to time by Operator.

4.9 Damage to Operator's Property. If any damage to Operator's equipment, improvements or other property occurs related in any way to Vendor's use of the Westworld Facility, then:

4.9.1 Vendor shall immediately notify Operator by telephone and shall cause the vicinity of the damage to be secured.

4.9.2 Operator shall decide whether Operator shall repair the damage or Vendor shall repair the damage. In either case, the repair shall be at Vendor's expense. If Operator directs Vendor to repair the damage, then Vendor shall cause the damage to be repaired within seventy two (72) hours or within such longer period as may be necessary to complete the work. Vendor's work shall not be deemed complete until Vendor accompanies Operator to inspect the work and Operator determines after such inspection that the work is properly completed.

4.10 Signs. All signage visible from outside the interior of the Monterra Building is prohibited except in compliance with the following requirements:

4.10.1 Signs Required. Vendor shall install and maintain any signage Operator may request directing Vendor's staff, visitors, parking, deliveries and other vehicles and other users to comply with this Agreement.

4.10.2 Sign Approval. Signs shall be designed and operated as follows:

4.10.2.1 Vendor shall not erect, install, apply for a permit for, or display any sign until Vendor has submitted written request, together with descriptions and drawings showing the intended locations, size, style and colors of such signs to Operator, and has received notice of Operator's approval of the sign. Vendor signs shall be subject to the same plans review and other requirements that apply to other construction work by Vendor under this Agreement.

4.10.2.2 Vendor shall bear all costs pertaining to the erection, installation, operation, maintenance, replacement and removal of all signs including, but not limited to, the application for and obtaining of any required building or other permits regardless of the reason for any such activity, even if such activity is required by Operator pursuant to this Agreement.

4.10.2.3 Operator approves the existing signs at the Monterra Building as of the date of this Agreement.

4.10.3 Signs Affected. The requirements of this paragraph apply to all signs, designs, monuments, decals, graphics, posters, banners, markings, and other manner of signage visible outside the Monterra Building.

4.11 Lighting. Vendor shall turn off all lighting not then being used to light a specific activity then occurring. Vendor shall not use more lighting than reasonably necessary for any

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activity. Exterior lighting at the Monterra Building, other than existing lighting, shall be shielded and otherwise configured to minimize spillover outside the specific lighted area.

4.12 Noise. Noise in connection with the Permitted Uses is subject to the following limitations:

4.12.1 Except for kitchen timers, burglar alarms and other safety devices, audio speakers, sirens or other devices for making noise are prohibited.

4.12.2 All equipment must be equipped with appropriate mufflers and other sound control devices.

4.12.3 Sound equipment is allowed at the Monterra Building but must be operated so that sound coming therefrom does not exceed the ambient noise level and cannot be distinguished at the boundary of the Westworld Facility from other sound emanating from the Westworld Facility. All sound equipment shall be oriented so that sound is directed toward the south and west. All sound and other equipment at the Monterra Building shall be designed, installed, maintained and operated so that noise created thereby does not interfere in any way with any other event or use of the Westworld Facility.

4.12.4 Vendor shall comply with all Westworld staff instructions concerning noise.

4.13 Video Equipment. Vendor shall not use at the Westworld Facility televisions, computer monitors, video screens, video displays, video projectors or other equipment for displaying video images, signals or patterns. Vendor shall not use the Use Areas for viewing video images, signals or patterns. Operator may elect to temporarily suspend this paragraph in whole or in part from time to time subject to such conditions or requirements as Operator may desire from time to time. This paragraph does not prohibit the following:

4.13.1 Video displays that are directed to and principally visible to Vendor's customers at the Monterra Building.

4.13.2 Incidental use of cell telephones, tablet computers, laptop computers and similar personal electronic devices by individuals for their own personal viewing.

4.13.3 Fixed image video display boards showing the items for sale at the Remote Serving Spaces and the prices of such items. Such boards shall be subject to the sign requirements of this Agreement.

4.13.4 Use of a tablet computer or a similar device by Vendor's staff to take orders and otherwise conduct business if the device has a screen less than twelve inches (12") measured diagonally.

4.14 Outdoor Uses. All uses other than parking, pedestrian access, and similar incidental uses are confined to the Monterra Building. During events, Vendor may use Remote Serving Spaces and Aprons as permitted by this Agreement.

4.15 Vendor's Agent. Vendor shall at all times when Vendor is conducting any activities at the Westworld Facility retain on call available to Operator at the Westworld Facility an 11788801v4

active, qualified, competent and experienced person to supervise all activities at the Westworld Facility and who shall be authorized to represent and act for Vendor in matters pertaining to all emergencies and the day-to-day operation of the Permitted Uses and all other matters affecting this Agreement. Vendor shall also provide notice to Operator of the name, street address, electronic mail address, and regular and after hours telephone and telefax numbers of a person to handle Vendor's affairs and emergencies at the Westworld Facility. Any change shall be given in writing hand-delivered to Operator's on-site Westworld Facility manager as well as in the manner stated for notices under this Agreement.

4.16 Identification. All Vendor employees, contractors and subcontractors shall wear a uniform or shall wear on their clothing a clearly visible identification card bearing their name and photograph and Vendor's logo or name.

4.17 Coordination Meetings. Vendor shall meet with Operator and other Westworld Facility users from time to time as requested by Operator to coordinate and plan operation of the Westworld Facility and all matters affected by this Agreement. Vendor must comply with (and train and cause its personnel to comply with) security, alcohol, safety and emergency programs established by Operator from time to time.

4.18 Fixtures and Personalty. Vendor shall from time to time provide to and maintain at the Use Areas all equipment and other items necessary for the Use Areas to be conveniently used for the Permitted Uses. Without in any way limiting the foregoing, Vendor shall provide to, and maintain in good repair upon the Use Areas at its own expense all of the items listed on **Exhibit "F"** attached hereto.

4.19 Operation Details. Operator and Vendor shall comply with the requirements of **Exhibit "G"** attached hereto.

4.20 Obstructing Traffic. Vendor shall not obstruct or interfere with the use of any walkways, driveways, vehicle lanes or other areas at the Westworld Facility and shall at all times maintain safe, convenient and free pedestrian and vehicular access at the Westworld Facility as determined by Operator from time to time.

4.21 Loading and Delivery Vehicles. Delivery vehicles outside the Monterra Building shall use locations specified by Operator and shall not park longer than Operator may elect to permit from time to time.

4.22 Vehicle Size. Vehicle size, weight and height shall be limited to the engineering design limits of the improvements to various portions of the Westworld Facility.

4.23 Keys. Vendor shall not allow any person other than a bona-fide employee of Vendor to possess, have custody of, hold or use any key, access code or other actuator (collectively "Keys") to any lock, door, gate or other control point, equipment or other device at the Westworld Facility. Vendor shall keep detailed records of access to Keys and immediately report to Operator any loss of or improper use of or access to any Key. Vendor shall participate in and comply with Westworld access control and safety programs from time to time.

4.24 Operator Access. Vendor shall admit authorized Operator staff members to all parts of the Use Areas at all times upon demand upon the presentation of Operator real estate administration or staff identification cards.

4.25 Access and Similar Areas. Vendor shall not obstruct any portion of the sidewalks, entries, passages, vestibules, utility routes, halls, doors, skylights, stairways, windows or other openings, hallways, corridors, passageways, radiators and hour-lighting attachments, or ways of access at the Westworld Facility, nor use them for any purpose other than ingress and egress to and from the Facilities. Vendor shall not use the water closets and water apparatus for any purpose other than for which they were constructed, and shall not place in them any sweepings, rubbish, rags, papers or other substances.

4.26 Common Areas. Subject to current and future regulations and policies governing the use of, and access to the Westworld Facility, Vendor, its officers, employees, agents, patrons and invitees, and its suppliers of services and furnishers of materials shall have the right of ingress to and egress from the Use Areas through such portions of the Westworld Facility as are reasonably necessary for Vendor to perform this Agreement. Such right is strictly limited to ingress and egress over areas that are designated by Operator for that purpose from time to time. Such right is strictly limited to ingress and egress.

4.27 Parking Rules. Operator shall provide parking for the Use Areas as follows:

4.27.1 Parking shall be subject to current and future regulations and limitations governing parking at the Westworld Facility.

4.27.2 Vendor shall cause its employees and the employees of all other persons and vehicles at the Westworld Facility related to this Agreement to park in employee parking areas as designated by Operator from time to time.

4.27.3 Operator shall make available to the Use Areas non-exclusive use of parking spaces not less than the number of spaces required by applicable municipal parking regulations. During major events at the Westworld Facility, parking and access shall be modified as necessary to reasonably accommodate the event. Without limitation, Operator may require Vendor to use parking provided generally for the event or to use shuttle service to the License Area. Licensor shall not decrease parking to less than Two Hundred (200) Parking Spaces. Maintenance responsibilities for all use of parking spaces and access areas pursuant to this Agreement shall remain with Vendor. Vendor shall promptly clean up any spills or debris and repair any damage caused by Vendor or its suppliers or customers. Vendor's rights to parking shall in no event exceed Vendor's actual reasonable need for parking at the Use Areas. For example, if the Monterra Building is closed from time to time, then Licensor need not make parking spaces available during such time.

4.27.4 Parking includes all manner of vehicles, trailers, storage pods and other portable equipment. Vendor shall pay applicable charges for overnight parking.

4.28 Fuels. No filling of flammable gas, flammable liquid or other fuel tanks is allowed at the Westworld Facility.

4.29 Pests. Vendor shall maintain the Use Areas free of mosquitoes, termites, rats and other insect and pest infestations and free of standing water, mold and other biological hazards.

4.30 Prohibited Names. The name of Vendor's business operations conducted at the Westworld Facility shall comply with the following:

4.30.1 Unless Operator first gives Vendor notice of Operator's consent otherwise in Operator's sole and absolute discretion, Vendor shall operate the Permitted Uses under the name "Monterra" or under Vendor's actual legal name as stated at the beginning of this Agreement.

4.30.2 The use of any other name in connection with Vendor's operations at the Westworld Facility under this Agreement is subject to Operator approval at Operator's sole and absolute discretion as to name, payments for naming rights, payment of all or a portion of naming rights, payments to Operator, and all other matters.

4.30.3 Vendor shall not use or allow others to use in connection with any Vendor's operations at the Westworld Facility any name that directly or indirectly refers to or contains any part of Operator's name or the Westworld Facility's name or otherwise suggests a connection between Operator and Vendor or Vendor's activities.

4.30.4 Vendor shall not use in connection with its operations at the Westworld Facility any name associated with products or purveyors of any sort of alcohol, tobacco, adult entertainment or gambling related products or services.

4.30.5 Following termination of this Agreement for any reason, Operator shall have the exclusive right to use or allow others to use any name used to identify Vendor's business at the Westworld Facility, so long as Operator does not use Vendor's name as stated at the beginning of this Agreement or use a name that Vendor is then actively using and continues to use for event food and alcohol service at other locations in the United States of America.

4.31 Governmental and Neighborhood Relations. Vendor shall conduct its activities in coordination with Operator as necessary to maintain good relations with all governmental and other entities having jurisdiction over the Use Areas, all other occupants of the Westworld Facility, and the occupants of surrounding real property. Vendor shall immediately give to Operator notice of any actual or threatened dispute, violation or other disagreement relating to the Westworld Facility. Vendor is not an agent for Operator. Without limitation, such entities (none of whom are third party beneficiaries to this Agreement) include:

4.31.1 Arizona Department of Liquor Licenses and Control.

4.31.2 Arizona Water Conservation District

4.31.3 Bureau of Reclamation

4.31.4 Central Arizona Water Conservation District

4.32 Hazardous Substances. Vendor's activities upon or about the Westworld Facility shall be subject to the following regarding any hazardous or toxic substances, waste or materials, or any substance now or hereafter subject to regulation under the Comprehensive
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Environmental Response and Liability Act, 42 U.S.C. §§ 9601, et seq., the Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., or the Toxic Substances Control Act, 15 U.S.C. 2601, et seq., or any other federal, state, county, or local law pertaining to hazardous substances, waste or toxic substances and their reporting requirements (collectively "Toxic Substances");

4.32.1 Vendor shall not produce, dispose, transport, treat, use or store any Toxic Substances upon or about the Westworld Facility. The prohibitions of the preceding sentence only shall not apply to janitorial supplies and similar ordinary chemicals necessary for ordinary use in conducting the Permitted Uses. Such materials must be properly and lawfully contained and labeled in proper tanks and receptacles.

4.32.2 Vendor shall dispose of any materials as required by law and as reasonably required by Operator.

4.32.3 Vendor shall not use the Westworld Facility in a manner inconsistent with regulations issued by the Arizona Department of Environmental Quality, or in a manner that would require a permit or approval from the Arizona Department of Environmental Quality or any other governmental agency.

4.32.4 In addition to and without limitation of any other indemnities or obligations, Vendor shall pay, indemnify, defend and hold Operator harmless against any loss or liability incurred by reason of any Toxic Substance on or affecting the Westworld Facility attributable to or caused by Vendor or anyone using the Use Areas or the Westworld Facility under this Agreement or acting or claiming under Vendor or this Agreement or otherwise relating to this Agreement.

4.32.5 Vendor shall prevent third parties from having access to Vendor's Toxic Substances or other hazardous material at the Westworld Facility.

4.32.6 Vendor shall immediately notify Operator of any Toxic Substance at any time discovered or existing upon the Westworld Facility.

4.32.7 Within twenty-four (24) hours after any violation by Vendor of this Agreement pertaining to Toxic Substances, Vendor shall give Operator notice reporting such violation.

4.33 Quality Service. In entering into this Agreement, Operator and Vendor have foremost in mind providing the public with food and alcohol service and facilities of the highest quality in a family atmosphere. Without limitation, Vendor shall do the following:

4.33.1 Vendor shall operate the Use Areas in a first-class manner; shall furnish prompt, clean and courteous service; and shall keep the Use Areas attractively maintained, orderly, clean, sanitary and in an inviting and safe condition at all times and meeting or exceeding the standards of comparable first class facilities in the western United States all to Operator's reasonable satisfaction. For purposes of the preceding sentence, the facilities listed on **Exhibit "H"** attached hereto (the "Comparison Facilities") shall be deemed to be similar facilities. Operator shall have the right by written notice from time to time in its reasonable discretion to designate other public event facilities in the United States as additional or replacement Comparison Facilities.

4.33.2 Vendor shall not allow any person or persons in or about the Westworld Facility related to Vendor's operations who shall fail to be clean, courteous, efficient and neat in appearance or who shall use improper, profane, obnoxious or rude language or act in a loud or boisterous or otherwise improper manner.

4.34 Disorderly Conduct. Nudity and other disorderly conduct are prohibited as provided in **Exhibit "I"** attached hereto.

4.35 Limited Exclusive Use. Vendor has no exclusive rights of any description except at the Monterra Building.

4.36 Operating Requirement. Upon Operator's request, and not otherwise, Vendor shall provide Food Service and Alcohol Service at all events at the Westworld Facility where Food Service or Alcohol Service are requested as follows:

4.36.1 Vendor shall provide Food Service and Alcohol Service with adequate resources to meet demand. The preceding sentence applies to adequate food, alcohol, equipment, supplies, staff, management and all other resources necessary for efficient, orderly, abundant, high-quality, timely Food Service and Alcohol Service.

4.36.2 Vendor shall work closely with event producers in advance of events and during events to ensure that Vendor is able to perform its obligations.

4.36.3 Vendor's obligation applies regardless of the size of the event.

4.36.4 Unless otherwise directed by Operator, Vendor shall provide Food Service and Alcohol Service at all times that each event is open to the public.

4.36.5 Unless otherwise directed by Operator, Vendor may elect to provide Food Service and Alcohol Service on event move-in days and move-out days.

4.36.6 Operator shall specify the means, level, schedule, location and other details of Food Service and Alcohol Service for each event at least seven (7) days before the first day of the event.

4.36.7 Vendor shall supplement its resources from time to time as may be necessary to provide Food Service and Alcohol Service as described in this Agreement.

4.36.8 Operator is entitled to rely on information provided by event producers and other information.

4.36.9 Vendor shall timely open for service. Without Operator's consent, Vendor shall not close Food Service and Alcohol Service before the time specified by Operator.

4.36.10 Vendor shall provide Food Service and Alcohol Service on a non-discriminatory basis.

4.37 Required Annual Food Plan. Vendor shall provide Food Service and Alcohol Service according to an annual operations plan (the "Annual Food Plan") as follows:

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4.37.1 Annual Food Plan Contents. The Annual Food Plan shall contain historic information, along with future projections and plans for the coming year regarding the following matters:

4.37.1.1 Proposed Food Service and Alcohol Service menus, pricing, quality, portions and other characteristics.

4.37.1.2 Anticipated event schedule, attendance, Food Service and Alcohol Service requirements and revenues.

4.37.1.3 Financial.

4.37.1.4 Food, equipment, staffing and other resources.

4.37.1.5 Operating tasks and expenses.

4.37.1.6 Maintenance, repair and other work to the Use Areas and all equipment.

4.37.1.7 Space usage.

4.37.1.8 Managing compliance with alcohol laws and rules at the Westworld Facility.

4.37.1.9 Other matters relevant to this Agreement or the Westworld Facility as requested by Operator.

4.37.1.10 Preliminary projections and plans regarding all such matters for the subsequent five (5) years.

4.37.2 Annual Food Plan Process. This paragraph does not apply during the Kitchens Agreements. Vendor shall each year prepare a proposed Annual Food Plan as follows:

4.37.2.1 Annual Food Plan Approval. No later than January 1 of each year during the term of this Agreement (including the last year), Vendor shall deliver to Operator a proposed Annual Food Plan for the subsequent year. Operator's contract administrator shall review the proposed Annual Food Plan as to whether it projects financially sound, specific, measurable, realistic, achievable and sustainable performance measures and timely compliance with this Agreement. Operator may take into account the Comparison Facilities. If Operator's contract administrator approves the proposed new Annual Food Plan prior to the end of such year, and if this Agreement will be in effect in the subsequent year, then the proposed new Annual Plan shall be the Annual Food Plan under this Agreement during the subsequent year. Otherwise this Agreement shall terminate at the end of the year in which Vendor delivers the proposed Annual Food Plan.

4.37.2.2 Annual Food Plan Changes. Changes to the Annual Food Plan shall require Operator's contract administrator's approval.

4.37.3 Compliance with Annual Food Plan. Vendor shall provide Food Service and Alcohol Service in compliance with the Annual Food Plan.

4.37.4 Annual Food Plan Review. In January and July of each year, Operator and Vendor shall review the objectives, expenditure estimates, estimated effects and other aspects of the Annual Food Plan and determine steps for Vendor to achieve the objectives.

4.38 Liquor License. Vendor shall provide Liquor Service as follows:

4.38.1 Vendor or its sublessee shall at all times maintain appropriate liquor licenses and similar permissions (collectively the "Liquor License") permitting all Alcohol Service that Vendor provides under this Agreement, regardless of location at the Westworld Facility. The boundaries of the Liquor License as of the date of this Agreement are as depicted on **Exhibit "J"**. Vendor shall cause the Liquor License boundaries to temporarily or permanently expand or contract at the Westworld Facility to accommodate reconfiguration of the Westworld Facility, use of parking lots for events and other circumstances, all as Operator may direct from time to time. Vendor shall, upon Operator's request, remove the Liquor License from areas where Vendor is not providing Alcohol Service.

4.38.2 Vendor shall maintain a single Liquor License for both the Monterra Agreement and this Agreement.

4.38.3 Upon termination of this Agreement for any reason, Vendor shall at Operator's request cause the Liquor License to be removed, canceled or transferred to another location. The preceding sentence does not apply to a liquor license to the extent the liquor license is necessary for Vendor's compliance with the Kitchens Agreement.

4.38.4 Vendor must meet all necessary requirements for the Liquor License and is responsible for obtaining, dispensing, and handling any alcohol, including, but not limited to, hiring qualified personnel to serve the alcohol and ensuring general compliance with the Liquor License and related laws and regulations.

4.38.5 Operator shall include in Event Contracts a requirement that event producers cooperate in ensuring compliance with applicable alcohol laws and Westworld alcohol policies. Vendor shall challenge persons improperly using or in possession of alcohol at the Westworld Facility. If the person fails to immediately come into compliance, then Vendor shall immediately report the offender to Operator. Operator and Vendor shall meet as needed to refine procedures for alcohol compliance.

4.39 Food Pricing. Vendor shall serve and dispense only high quality food and alcohol, with service, portions and prices at least comparable to, or more favorable to the customer than, those maintained at the Comparable Facilities, all as reasonably determined by Operator. The price limit in the preceding sentence does not apply to beverages served at the License Area and Vendor shall be free to set its prices for food and beverages served at the License Area as Vendor sees fit. Vendor's menu, price, quality and portion schedules will be subject to approval by Operator. Operator may, at any time, review Vendor's menu, price, quality and portion schedules then in effect and may require that Vendor revise them to comply with this Agreement.

4.40 Drainage Operations. Vendor's use of the Westworld Facility shall be subject and subordinate to use of the Westworld Facility as a drainage and flood control facility that will necessarily directly and indirectly affect Vendor, the Permitted Uses, and the Use Areas. Operator's rights under this paragraph limit Vendor's rights under all other provisions of this Agreement. Vendor's use of the Use Areas or the remainder of the Westworld Facility shall not be permitted by Vendor to in any way adversely affect Operator's use or operation of the Westworld Facility as a flood control facility.

4.40.1 Operator reserves the right to further develop or improve the Westworld Facility as a flood control facility as it sees fit, regardless of the desires or views of Vendor, and without interference or hindrance.

4.40.2 Operator reserves the right, but shall not be obligated to Vendor to maintain and keep in repair the Westworld Facility as a flood control facility, together with the right to direct and control all activities of Vendor in this regard.

4.40.3 There is hereby reserved to Operator, its successors and assigns a right of use of the entire Westworld Facility as a flood control facility. This right shall include the right to cause in the Westworld Facility such construction, earthmoving, maintenance, inspection, repair, replacement, operations, and other activity inherent in the use of the Westworld Facility as a flood control facility.

4.40.4 Vendor shall not be entitled to any damages or other remedy arising out of any use of the Westworld Facility for flood control purposes or for any interruption of Vendor's business, use, construction, repair or operation related thereto.

4.40.5 Vendor shall not make use of the Use Areas or the remainder of the Westworld Facility in any manner that might interfere with the use of the Use Areas or the remainder of the Westworld Facility as a flood control facility. Whether any particular conduct complies with the foregoing shall be determined by Operator.

4.40.6 Operator's rights under this paragraph are delegable and are assignable.

4.41 Operator Control of the Westworld Facility. Operator shall have full freedom to operate the Westworld Facility in the manner that Operator views to be in the general best interests of Operator, the Westworld Facility and the public, taking into account any factor that Operator may consider to be relevant from time to time. Without limitation:

4.41.1 For purposes of this paragraph, operation of the Westworld Facility includes all decisions about the following:

4.41.1.1 Construction, operation, maintenance, repair and all other factors influencing the physical condition of the Westworld Facility and its suitability for any event or use.

4.41.1.2 Selection of events to occur at the Westworld Facility, including without limitation, the terms upon which events may occur at the Westworld Facility, and favoring or disfavoring events in any respect, such as willingness to host the event, as well as assignment of dates or facilities, etc.

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4.41.1.3 Establishment, administration, imposition or collection of charges for use of the Westworld Facility or otherwise related to the event.

4.41.1.4 Exercise of Operator's rights under this Agreement.

4.41.2 Operator has no duty to operate the Westworld Facility in a manner that maximizes Gross Sales or other amounts.

4.41.3 In selecting events to occur at the Westworld Facility and otherwise dealing with events and proposed events, in addition to any other factors that Operator may consider to be relevant, Operator may take into account any of the following:

4.41.3.1 Whether the event is a tourism oriented event.

4.41.3.2 The amount of tourism, economic activity, tax and other benefits the event may generate for the Westworld Facility and Operator generally at the Westworld Facility and elsewhere.

4.41.3.3 Noise, light, traffic and any other consequence or influence on the Westworld Facility, nearby lands, and throughout the City of Scottsdale generally.

4.41.3.4 The amount, certainty and long term duration of financial, advertising, community, and resource commitments the event is willing to make to the Westworld Facility and the Scottsdale community.

4.41.3.5 The work, time and expense to prepare, process and enter into a contract for the event.

4.41.3.6 The amount of time, facilities and other resources the event may request at the Westworld Facility and elsewhere, such as move-in time and move-out time.

4.41.3.7 Effect on generating full use of the Westworld Facility during the low season (April through September).

4.41.3.8 The event's ability to strengthen the City of Scottsdale's image and success as a high-end first class tourism destination, including in relation to competing tourism destinations.

4.41.3.9 The duration, stability, strength and potential of the event.

4.41.3.10 The nature, reputation, theme, industry and demographics of the event and its participants and attendees, and how they reflect on the Westworld Facility, Operator and its officials and citizens.

4.41.3.11 The event's management, business history and reputation.

4.41.3.12 Ticket prices and other direct or indirect costs of attending all or part of the event.

4.41.3.13 The level or other characteristics of any discount or other financial or other local resources the event may request.

4.41.3.14 The event's possible effects on other existing or potential events to be held at the Westworld Facility or elsewhere.

4.41.3.14.1 The amounts that the event will pay to Operator for use of the Westworld Facility.

4.41.4 Whether or not listed above, Operator shall have no duty to Vendor regarding its decisions about how to operate the Westworld Facility and shall not be accountable to Vendor in any way for its decisions about how to operate the Westworld Facility.

4.42 Operator's Financing. Notwithstanding anything in this Agreement to the contrary, the Permitted Uses and Vendor's other rights and obligations are hereby further restricted to the extent Operator may elect from time to time to prohibit any activity or circumstance that would cause or result in (or that in Operator's view creates a material risk of causing or resulting in) any of the following:

4.42.1 Violation of any existing or future indebtedness, bond or other documents or obligations (collectively the "Financing Documents") related to the Westworld Facility.

4.42.2 Unfavorable tax treatment or other consequences for any person relating to the Financing Documents.

V. IMPROVEMENTS BY OPERATOR

5. Improvements by Operator. Operator has not promised to and is not obligated in any manner to make any improvements or perform any other construction at the Use Areas or the Westworld Facility or to nearby lands.

VI. VENDOR'S IMPROVEMENTS GENERALLY

6. Vendor's Improvements Generally. All of Vendor's improvements and other construction work to the Westworld Facility (collectively "Vendor's Improvements") shall comply with the following:

6.1 Vendor's Improvements. Vendor's Improvements include, without limitation all construction, installation, alteration, modification, replacement, repair, grading, removal, demolition or other cumulatively significant construction or similar work of any description to existing or future improvements upon or related to the Westworld Facility or environs whether or not specifically described herein, including without limitation the structure, grounds, improvements, utility, lighting, plumbing, sewer, and other aspects and components of the Use Areas and the Westworld Facility.

6.2 Zoning and Similar Approval Process. The zoning processes, building permit processes, and similar regulatory requirements that apply to Vendor's Improvements are completely separate from the plans approval processes under this Agreement. Vendor's satisfaction of any requirement of this Agreement does not count toward any compliance with any regulatory requirement. Vendor's satisfaction of any regulatory requirement does not count toward

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compliance with any requirement of this Agreement. Vendor must make all submittals and communications regarding the requirements of this Agreement through Operator's contract administrator for this Agreement, and not through planning, zoning, building safety or other staff. Vendor must make all submittals and communications regarding planning, zoning, building safety, and other regulatory requirements through planning, zoning, building safety or other applicable staff and not through Operator's contract administrator for this Agreement. Vendor shall be responsible to directly obtain all necessary permits and approvals from any and all governmental or other entities having standing or jurisdiction over the Westworld Facility. Vendor bears sole responsibility to comply with all stipulations and conditions that are required in order to secure such rezoning and other approvals.

6.3 Relationship of Plans Approval to Regulatory Processes. Vendor's submission of plans under this Agreement, Operator's approval of plans for purposes of this Agreement, and the plans approval process under this Agreement shall all be separate and independent of all development, zoning, design review and other regulatory or similar plans submittal and approval processes, all of which shall continue to apply in addition to the requirements of this Agreement and its approvals. BUILDING PERMITS, ZONING CLEARANCES, OR ANY OTHER GOVERNMENTAL REVIEWS OR ACTIONS DO NOT CONSTITUTE APPROVAL OF ANY PLANS FOR PURPOSES OF THIS AGREEMENT.

6.4 Design Requirements. All Vendor's Improvements shall comply with the following design requirements:

6.4.1 All Vendor's Improvements shall conform to the standards of the Maricopa Association of Governments and of the City of Scottsdale Design Standards and Practices Manual, as may be amended from time to time.

6.4.2 All Vendor's Improvements shall be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other buildings and improvements located at the Westworld Facility.

6.4.3 Vendor shall perform any and all construction work in a workman-like manner as reasonably determined by Operator and in conformance with all building codes and similar rules.

6.4.4 Vendor's construction work must not interfere with normal operation of the Westworld Facility. In any event, Vendor must leave the Use Areas and the Westworld Facility in as good or better condition as they may be on the date of this Agreement, or such better condition as the Use Areas and the Westworld Facility may hereafter be placed.

6.4.5 Except as Operator may expressly allow, all Vendor's Improvements shall be contained entirely within the Monterra Building and without any encroachment or dependence upon any other property. All of Vendor's construction and other obligations shall apply to any such encroachment or dependence.

6.4.6 Any changes to utility facilities shall be strictly limited to the Use Areas, shall not affect utilities outside the Monterra Building, and shall be undertaken by Vendor at its sole cost and expense.

6.5 Approval Required. Vendor shall not perform any Vendor's Improvements construction work requiring a building permit (including work on adjacent public lands, if applicable) without having first received written plans approval from Operator. Operator may withhold approval in Operator's sole and absolute discretion. Such consent requirement shall apply to design, aesthetics, functionality, land use for all improvements, furnishings, furniture, equipment, carpeting, fixtures, paint, wall treatments, utilities of every description, communications cabling, decorations, lighting and other construction work of any description as described in all plans heretofore or hereafter delivered by Vendor to Operator.

6.6 Effect of Plans Approval. Operator's approval of plans submitted shall be for purposes of this Agreement only and shall constitute irrevocable approval (but only at the level of detail of the applicable stage of the review process) of the matters plainly shown on the plans approved. Operator shall not reject subsequent plans to the extent the matter to which Operator objects was plainly shown on plans previously approved by Operator. However, Operator is not precluded from objecting to matters not previously approved, matters not previously plainly disclosed on approved plans, changes to plans, or refinements or implementation of matters previously approved.

6.7 Plans Required. Vendor's design of all Vendor's Improvements shall occur in three stages culminating in final working construction documents for the Vendor's Improvements (the "Final Plans"). The three stages are, in order of submission and in increasing order of detail, as follows:

6.7.1 Conceptual plans showing the general layout, locations, elevations, configuration, and capacities of all significant improvements, walls, passageways, doors, windows, utilities, water systems, and other features significantly affecting the appearance, design, function or operation of each element of Vendor's Improvements. The conceptual plans must also show general locations and dimensions of all rooms, hallways and other areas together with the number of square feet of building and other areas that all significant uses and facilities will respectively occupy.

6.7.2 Preliminary plans showing all surface finishes and treatments, finished elevations, general internal and external building design and decoration schemes (including without limitation colors, textures and materials), mechanical, communications, electrical, plumbing and other systems, building materials, landscaping and all other elements necessary prior to preparation of final working construction documents and showing compliance with all requirements of this Agreement. The preliminary plans shall show all detail necessary prior to preparation of Final Plans.

6.7.3 Final Plans.

6.8 Approval Process. The following procedure shall govern Vendor's submission to Operator of all plans for Vendor's Improvements, including any proposed changes by Vendor to previously approved plans:

6.8.1 All plans Vendor submits under this Agreement shall show design, appearance, capacity, views, and other information reasonably deemed necessary by Operator for

a complete understanding of the work proposed, all in detail reasonably deemed appropriate by Operator for the level of plans required by this Agreement.

6.8.2 All plans must comply with all requirements of law, any applicable insurance policies, all Site Documents, and this Agreement.

6.8.3 Vendor shall deliver all plans submissions for non-regulatory approvals under this Agreement directly to Operator's contract administrator and shall clearly label the submissions to indicate that they are submitted pursuant to this Agreement and not for building permits, zoning or other approvals. Vendor shall submit for Operator's review five (5) complete sets of the plans on paper, and, if Operator requests, one (1) copy of the plans in an electronic form.

6.8.4 Within ninety (90) days after completion of any Vendor's Improvements, Vendor shall deliver to Operator one (1) copy of "as-built" plans for the Vendor's Improvements on paper and one (1) copy in electronic form showing that the construction is completed according to the approved plans.

6.8.5 All plans in electronic form shall include vector line drawings of the improvements and such other information as this Agreement requires, all in a machine readable and manipulable form. The format of electronic data and the media upon which such data is supplied shall be such then reasonably common data format and media as Operator may specify from time to time.

6.8.6 Vendor shall resolve significant design issues with Operator prior to preparing plans to be submitted.

6.8.7 In addition to other submissions required under this Agreement, Vendor shall simultaneously deliver to Operator's contract administrator copies of all applications and approvals and supplemental, supporting and related materials for all zoning, development review, building permits, and similar processes for the Vendor's Improvements.

6.8.8 Construction plans for Vendor's Improvements shall be prepared by qualified registered engineers acceptable to Operator.

6.8.9 All construction and plans preparation for Vendor's Improvements from initial proposals through final construction documents and completion of construction shall be performed by professionals selected and paid by Vendor. All of Vendor's design and construction contractors shall have substantial experience in timely and successfully constructing projects similar to Vendor's Improvements.

6.8.10 The engineer shall place these words on each sheet of engineering work for Vendor's Improvements: "The engineer has performed this work for the benefit and reliance of the City of Scottsdale and assures the City of Scottsdale that the engineer's work is properly performed and that it complies with any engineering requirements set out in Monterra Food and Alcohol License Agreement (No. 2013-191-COS).

6.8.11 All Operator plans reviews, inspections, standards and other rights and actions with relation to Vendor's Improvements are for Operator's sole and exclusive benefit and neither Vendor nor any other person shall rely thereon or have any rights related thereto.

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6.8.12 All BOR approvals are in addition to all of Operator's approval rights hereunder. Responsibility for approval of plans by BOR shall in all events remain with Vendor.

6.8.13 Submission dates shall be such dates as are necessary for Vendor to timely obtain the approvals required by this Agreement. Vendor is responsible to allow adequate time for all communications and plans revisions necessary to obtain approvals and shall schedule its performances hereunder and revise its plans as necessary to timely obtain all approvals.

6.8.14 No plans shall be deemed approved by Operator for purposes of this agreement until Operator's contract administrator stamps them "APPROVED ONLY FOR PURPOSES OF THE PLANS APPROVED REQUIREMENTS OF ARTICLE 6 OF MONTEREA FOOD AND ALCOHOL LICENSE AGREEMENT NO. 2013-191-COS", and Operator's contract administrator initials and dates the stamp (collectively "Stamped").

6.8.15 Within thirty (30) days after Operator receives plans from Vendor, Operator shall make available to Vendor one (1) copy of such plans either Stamped or marked to indicate the reasons that Operator does not approve the plans.

6.8.16 If changes are required, Vendor shall revise the plans incorporating the changes requested by Operator and shall within thirty (30) days after Operator returns the marked up plans to Vendor submit revised plans to Operator. Within twenty-one (21) days after Operator's receipt of the revised plans, Operator shall make available to Vendor one (1) copy of the revised plans either Stamped or marked to indicate the reasons that Operator does not approve the plans.

6.8.17 Final decision authority regarding all design and construction issues shall rest with Operator.

6.9 Cost of Vendor Improvements. All Vendor's Improvements shall be designed and constructed by Vendor at Vendor's sole cost and expense. In no event, including without limitation termination of this Agreement for any reason, shall Operator be obligated to compensate Vendor in any manner for any of Vendor's Improvements or other work provided by Vendor during or related to this Agreement. Vendor shall timely pay for all labor, materials, work, and all professional and other services related thereto and shall pay, protect, indemnify, defend and hold harmless Operator, Operator's employees, officer's, contractors and agents and the Westworld Facility against all claims related thereto. Vendor shall bear the cost of all work required from time to time to cause the Use Areas and other nearby property owned by Operator to comply with local zoning rules, the Americans with Disabilities Act, building codes and all similar rules, regulations and other laws. Vendor shall also bear the cost of all work required from time to time to cause any nearby property owned by Operator to comply with all such laws if such work is required because of work performed by Vendor, by Vendor's use of the Use Areas, or by any exercise of the rights granted to Vendor under this Agreement.

6.10 Improvement Quality. Vendor shall perform and diligently pursue to completion any and all work in a workman-like manner as reasonably determined by Operator and in conformance with all building codes and similar rules. All of Vendor's Improvements shall be high quality, safe, fire resistant, modern in design, and attractive in appearance, all as approved by Operator through the plans approval processes described in this Agreement in addition to any zoning, building code or other regulatory processes that may apply.

6.11 Ownership of Vendor's Improvements. All permanent Vendor's Improvements shall be and become part of the real property of Operator as constructed or installed.

6.12 Damage During Removal. Upon removal of any item installed in or attached to the Use Areas at any time (including without limitation, upon termination of this Agreement if applicable), Vendor shall simultaneously restore the Use Areas to their prior condition, or to a condition matching Operator's surrounding improvements, as directed by Operator, and repair any holes, mounting surfaces or other damage whatsoever to the Use Areas. All such work shall be subject to the plans approval and other requirements of this Agreement. Vendor shall not remove any item at any time without first submitting to Operator at least fourteen (14) days in advance a notice describing the item to be removed. Said notice shall describe the work to be done to restore the Use Areas and be accompanied by a cash bond in an amount determined by Operator to completely protect Operator and the Use Areas from any failure by Vendor to fully and timely perform its obligations under this Agreement relating to said items or their removal.

6.13 Disturbance of Toxic Substances. Prior to undertaking any construction or other significant work, Vendor shall cause the Use Areas to be inspected to prevent disturbance of potential asbestos or other Toxic Substances. Prior to any work of any description that bears a material risk of disturbing potential asbestos or other Toxic Substances, Vendor shall cause the contractor or other person performing such work to give to Operator notice by the method described in this Agreement to the effect that the person will inspect for such materials, will not disturb such materials, and will indemnify, defend and hold Operator harmless against any disturbance in such materials in the course of the contractor's or other person's work. Vendor shall cause any on-site or off-site storage, inspection, treatment, transportation, disposal, handling, or other work involving Toxic Substances by Vendor in connection with the Use Areas to be performed by persons, equipment, facilities and other resources who are at all times properly and lawfully trained, authorized, licensed, permitted and otherwise qualified to perform such services. Vendor shall promptly deliver to Operator copies of all reports or other information regarding Toxic Substances.

6.14 Contract Administrators. Upon execution of this Agreement, Operator and Vendor shall each designate a contract administrator to coordinate the respective party's participation in designing and constructing any Vendor's Improvements and otherwise administering this Agreement. Each contract administrator shall devote such time and effort to the Vendor's Improvements as may be necessary for timely and convenient coordination among the parties and their representatives involved with the Vendor's Improvements and compliance with this Agreement. Operator's contract administrator will not be exclusively assigned to this Agreement or the Vendor's Improvements.

6.15 Operator's Contract Administrator. Operator's contract administrator's authority with respect to the Use Areas is limited to the administration of the requirements of this Agreement. Without limitation:

6.15.1 No approval, consent or direction by Operator's contract administrator or other persons affiliated with Operator inconsistent with this Agreement shall be binding upon Operator.

6.15.2 Vendor shall be responsible for securing all zoning approvals, development review, and other governmental approvals and for satisfying all governmental requirements pertaining to the Vendor's Improvements and all other activities related to the Use Areas and shall not rely on Operator or Operator's contract administrator for any of the same.

6.15.3 Unless otherwise specified by Operator's city manager, Operator's initial contract administrator shall be Brian Dygert, General Manager, Westworld.

6.16 Time for Completion. Vendor shall diligently and expeditiously pursue to completion the construction of all approved Vendor's Improvements. Vendor shall complete construction of all of other Vendor's Improvements no later than the earlier of i) (90) days after the date of plans approval, or ii) any earlier date required by this Agreement. The time period for completing restoration work in the event of damage to the Use Areas is the time reasonably necessary to complete the work, but in no event longer than ninety (90) days after the damage.

6.17 Worksite Safety. Vendor shall cause all construction and similar work related to this Agreement to be conducted in a safe and cautious manner. Without limitation, Vendor shall cause such work to be conducted in compliance with established industry safety standards and practices.

6.18 Construction Reports. Vendor shall provide to Operator a monthly notice containing a narrative report of the progress of design and construction of Vendor's Improvements.

6.19 Work Time and Manner Restrictions. All installation, construction, maintenance, inspection, repair and other work of any kind shall be done in a manner that does not disrupt traffic or nearby land uses. Without limitation, such work shall be done in compliance with applicable Operator policies and directions from time to time, taking into account the various sensitivities of traffic, tourism, events, adjoining land uses, other Westworld Facility uses, and all other needs and concerns that could be affected by Vendor's work. All construction by Vendor must comply with applicable Westworld noise, light, timing, event planning, dust and other policies in effect from time to time.

6.20 Construction Assurances. In addition to any other payment or performance required under this Agreement, at Operator's exclusive option, Vendor shall, prior to any construction work by Vendor at the Use Areas, provide to Operator bonds, letters of credit, or other assurances ("Improvement Assurances") acceptable to Operator in Operator's sole and absolute discretion that the contractor will properly and timely complete the work and that Vendor will pay for the work. Vendor shall deliver directly to Operator's legal department (together with a copy to Operator as provided for notices under this Agreement) a full and complete draft of all Improvement Assurances and all related and supporting documentation at least thirty (30) days prior to the date the Improvement Assurance is required.

VII. VENDOR'S INITIAL PROJECT CONSTRUCTION

7. Vendor's Initial Project Construction. This Agreement does not obligate Vendor to construct any new improvements at the Monterra Building.

VIII. MAINTENANCE AND UTILITIES

8. Maintenance and Utilities. Maintenance and utilities for the Use Areas shall be provided as follows:

8.1 Maintenance Operator. Operator shall maintain the access driveway between the Monterra Building and the park road system. Operator has no other maintenance or repair obligations.

8.2 Maintenance by Vendor. Vendor shall at all times repair, maintain and replace the Monterra Building and facilities thereat at Vendor's sole expense in a sound, clean and attractive manner to the standards prevailing at the remainder of the Westworld Facility, as determined in Operator's reasonable discretion. Without limitation, Vendor shall be responsible for the following:

8.2.1 Adequate and sanitary handling and disposal, away from the Monterra Building and the Westworld Facility of all trash, garbage and other refuse related to Licensee's use of the Westworld Facility.

8.2.2 Cleaning and servicing of all drains, sewers and plumbing within the Monterra Building together with cleaning of drains and sewers to the point of connection with the main public sewer system.

8.2.3 All irrigation, landscape, building and other maintenance required to operate the Monterra Building in a first class manner with appearance, landscaping, upkeep, repair and refurbishing, cleanliness and healthy vegetation meeting or exceeding the manner of maintenance at the remainder of the Westworld Facility.

8.3 Utilities. Vendor shall contract for and pay all charges, fees, deposits and other amounts for gas, electricity, water, sewer, waste disposal services, garbage disposal, telephone and all other utilities at the rates applicable thereto.

8.4 Utility Interruptions. Operator is not responsible for any interruption of utilities to or upon the Use Areas or other difficulties related to utilities at the Use Areas or the Westworld Facility. Without limitation:

8.4.1 Operator is not responsible for utility interruptions caused inside or outside the Use Areas.

8.4.2 Operator is not responsible for utility interruptions not caused directly by Operator's sole gross negligence.

8.4.3 Operator is not responsible for the acts, breach, errors or omissions of any provider or consumer of electrical service or other utilities to the Westworld Facility.

IX. BREACH BY VENDOR

9. Breach by Vendor. Vendor shall comply with, perform and do each performance and provision required of Vendor herein and shall cause all persons using the Westworld Facility or 11788801v4

claiming through or under Vendor or this Agreement to do the same. Vendor's failure to do so shall be a material breach by Vendor of this Agreement.

9.1 Events of Default. This entire Agreement is made upon the condition that each and every one of the following events shall be deemed an "Event of Default" by Vendor of Vendor's material obligations under this Agreement:

9.1.1 If Vendor shall be in arrears in the payment of Use Fee and shall not cure such arrearage within ten (10) days after Operator has given Vendor notice of such arrearage.

9.1.2 If Vendor shall fail to operate the facilities (except during specific periods expressly excused by this Agreement) for a total of two (2) days within any twelve (12) month period.

9.1.3 If Vendor shall abandon the Use Areas or the Westworld Facility or cease to conduct business at the Use Areas or the Westworld Facility.

9.1.4 If any environmental, health or similar inspector issues any formal notice of investigation or violation of health, environmental or similar regulations in connection with Vendor's use of the Westworld Facility or determines during any two or more consecutive inspections that the same deficiency has been repeated or that the overall operation falls materially below standards for first rate well operated similar facilities in Maricopa County.

9.1.5 If Vendor or any other person or entity having liability for all or part of Vendor's obligations under this Agreement shall be the subject of a voluntary or involuntary bankruptcy, receivership, insolvency or similar proceeding, or if any assignment of any of Vendor's or such other persons' property shall be made for the benefit of creditors or if Vendor or such other person is not regularly paying its debts as they come due (collectively a "Vendor Insolvency").

9.1.6 If any circumstance, occurrence, action or inaction by Vendor shall occur contrary to the provisions of the Site Documents. Notwithstanding the preceding sentence, Vendor shall not be in default if all of the following are true:

9.1.6.1 An applicable cure period (the "Site Document Cure Period") is specifically provided in the applicable Site Document.

9.1.6.2 Vendor is able to cure not later than a date (the "Cutoff Date") far enough in advance of the end of the Site Document Cure Period that Operator would have adequate time during the same cure period for Operator to cure should Vendor fail to cure.

9.1.6.3 Vendor immediately gives Operator notice of Vendor's promise to cure before the Cutoff Date.

9.1.6.4 Vendor diligently prosecutes the cure to completion before the Cutoff Date.

9.1.6.5 Prior to the Cutoff Date, Vendor gives Operator notice that such completion has been fully accomplished.

9.1.7 If Vendor does not commence and diligently pursue to completion any future construction within the times required by this Agreement. The times specified for concluding construction have been established far enough in advance, have taken into account the likelihood of construction delays so that no cure period is provided.

9.1.8 If the issuer of any guaranty, letter of credit, bond, insurance policy or similar instrument shall fail for any reason to timely and fully honor any request by Operator for funds or other performance under the instrument within ten (10) days after Operator gives notice to Vendor of such failure.

9.1.9 If Vendor shall engage in a pattern of repeated failure (or neglect) to timely do or perform or observe any provision contained herein. After Operator has once given notice of any failure by Vendor to comply with any provision of this Agreement, the following shall constitute a repeated failure by Vendor to comply with such provision:

9.1.9.1 Another failure to comply with the provision during the following thirty (30) day period.

9.1.9.2 Three (3) or more failures to comply with the provision during any ninety (90) day period.

9.1.9.3 Six (6) or more failures to comply with any provision of this Agreement during any twelve (12) month period.

9.1.10 If Vendor shall fail to or neglect to timely and completely do or perform or observe any other provision contained herein and such failure or neglect shall continue for a period of thirty (30) days after Operator has given Vendor notice of such failure or neglect.

9.2 Operator's Remedies. Upon the occurrence of any Event of Default or at any time thereafter, Operator may, at its option and from time to time, without further demand or notice, exercise at Vendor's expense any or all or any combination of the following cumulative remedies in any order and repetitively at Operator's option:

9.2.1 Terminate this Agreement.

9.2.2 Terminate or suspend any and all of Vendor's rights under this Agreement.

9.2.3 Enter into and upon all or part of the Use Areas and repossess the same, and expel Vendor and those claiming by, through or under it, and remove their effects, if any, forcibly if necessary, without being deemed guilty of trespass and without prejudice to any other remedy.

9.2.4 Reuse or relet all or part of the Use Areas or otherwise use, manage, operate or allow another party to use, manage or operate all or part of the Use Areas and undertake at Vendor's expense any construction, legal, re-leasing, brokerage, advertising, remodeling or other work or preparations of any description related thereto.

9.2.5 Accelerate all Use Fee that this Agreement requires Vendor to pay during the remaining term of this Agreement.

9.2.6 Enforce a lien (which Vendor hereby grants to Operator in addition to any statutory or other lien that may exist) upon all of Vendor's real or personal property now or at any time hereafter at or pertaining or related to the Use Areas securing all of Vendor's obligations hereunder. Operator's lien pursuant to the preceding sentence is junior in priority to any permitted purchase money lien Vendor grants in order to acquire such personal property. Vendor appoints Operator as its agent to execute and file any instrument Operator deems necessary to perfect said interest.

9.2.7 Cause a receiver to be appointed for all or part of the Use Areas and for the continuing performance of Vendor's obligations at the Use Areas and operation of Vendor's business thereon.

9.2.8 Pay or perform, for Vendor's account, in Vendor's name, and at Vendor's expense, any or all payments or performances required hereunder to be paid or performed by Vendor.

9.2.9 Abate at Vendor's expense any violation of this Agreement.

9.2.10 Notwithstanding anything in this Agreement to the contrary, unilaterally and without Vendor's or any other person's consent or approval, draw upon, withdraw or otherwise realize upon or obtain the value of any letter-of-credit, escrowed funds, insurance policies, or other deposits, sureties, bonds or other funds or security held or obligated by Vendor, Operator or any third party pursuant to this Agreement (whether or not specifically mentioned herein) and use the proceeds for any remedy permitted by this Agreement. Vendor hereby irrevocably grants to Operator a power of attorney coupled with an interest to act for Vendor in all respects with respect to any of the foregoing.

9.2.11 Be excused without any liability to Vendor therefor from further performance of any or all obligations under this Agreement.

9.2.12 Require increased or additional security deposits, letters of credit or other security to protect Operator and the Property.

9.2.13 Insist upon Vendor's full and faithful performance under this Agreement and upon Vendor's full and timely payment of all amounts during the entire remaining term of this Agreement.

9.2.14 Assert, exercise or otherwise pursue at Vendor's expense any and all other rights or remedies, legal or equitable, to which Operator may be entitled.

9.3 Power of Attorney. For the purpose of exercising any of Operator's rights or remedies hereunder, Vendor hereby irrevocably appoints Operator as Vendor's true and lawful attorney in fact, and such power of attorney shall be deemed to be a power coupled with an interest that cannot be revoked for any reason, to pay or perform at any time, for Vendor's account and at Vendor's expense, any or all payments or performances required hereunder to be paid or performed by Vendor, to terminate of record this Agreement, to enter into and upon the Use Areas or any part thereof, and to perform any act upon the Use Areas or otherwise deemed necessary by Operator to exercise its rights under this Agreement.

9.4 Notice of Vendor's Breach. Vendor shall promptly give notice to Operator of any event or circumstance, that is (or that with the passing of time or the giving of notice or both will become) an Event of Default under this Agreement. Vendor shall also promptly give to Operator notice of any notice or claim given by any third party alleging that an event or circumstance has occurred that is (or that with the passing of time or the giving of notice or both will become) an Event of Default under this Agreement.

9.5 Non-waiver. Vendor acknowledges Vendor's unconditional obligation to comply with this Agreement. No failure by Operator to demand any performance required of Vendor under this Agreement, and no acceptance by Operator of any imperfect or partial performances under this Agreement, shall excuse such performance or impair in any way Operator's ability to insist, prospectively and retroactively, upon full compliance with this Agreement. No acceptance by Operator of Use Fee payments or other performances hereunder shall be deemed a compromise or settlement of any right Operator may have for additional, different or further payments or performances. Any waiver by Operator of any breach of condition or covenant herein contained to be kept and performed by Vendor shall not be deemed or considered as a continuing waiver and shall not operate to bar or otherwise prevent Operator from declaring a default for any breach or succeeding or continuing breach either of the same condition or covenant or otherwise. No statement, bill or notice by Operator or Vendor concerning payments or other performances due hereunder, or failure by Operator to demand any performance hereunder, shall excuse Vendor from compliance with this Agreement nor estop Operator (or otherwise impair Operator's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this Agreement. No waiver of any description (INCLUDING ANY WAIVER OF THIS SENTENCE OR PARAGRAPH) shall be effective against Operator unless made in writing by a duly authorized representative of Operator specifically identifying the particular provision being waived and specifically stating the scope of the waiver. VENDOR EXPRESSLY DISCLAIMS AND SHALL NOT HAVE THE RIGHT TO RELY ON ANY SUPPOSED WAIVER OR OTHER CHANGE OR MODIFICATION, WHETHER BY WORD OR CONDUCT OR OTHERWISE, NOT CONFORMING TO THIS PARAGRAPH.

9.6 Reimbursement of Operator's Expenses. Vendor shall pay to Operator upon demand any and all amounts expended or incurred by Operator in performing Vendor's obligations together with interest thereon at the rate of ten percent (10%) per annum from the date expended or incurred by Operator.

9.7 Inspection. Operator shall have access to all portions of the Use Areas at all times for the purpose of examining, inspecting, evaluating, planning, repairing, designing, maintaining or showing the Use Areas or exercising Operator's other rights hereunder. Vendor shall promptly undertake appropriate action to rectify any deficiency (identified by Operator during such inspections or otherwise) in Vendor's compliance with this Agreement. This paragraph does not limit Operator's other rights of access to the Use Areas elsewhere in this Agreement or otherwise. This right of access is in addition to access rights for Operator inspectors or other employees and officers acting within their legal authority. Vendor shall make enclosed areas available for inspection by Operator upon reasonable notice.

9.8 Breach by Operator. Notwithstanding anything in this Agreement to the contrary, if Operator at any time is required to pay to Vendor any amount or render any performance, such amount or performance is not due until thirty (30) days after notice by Vendor to Operator that the

amount has become payable or that the performance is due. If a cure cannot be effected during that period, Operator shall not be in default so long as Operator commences cure during the period and diligently prosecutes the cure to completion provided such cure must be completed within thirty (30) days after the notice. To the extent permitted by law, Vendor expressly waives any right pursuant to any law now existing or which may be effective during the term hereof to make repairs at Operator's expense.

9.9 Right to Set off and Credit. In addition to its other rights and remedies under this Agreement, Operator shall have the right to set off and credit, from time to time and at any time, any and all amounts due to Vendor and affiliates from Operator, pursuant to this Agreement or otherwise, against any sum that may be due to Operator from Vendor and affiliates pursuant to this Agreement or otherwise.

9.10 Vendor Grants Contract Lien and Security Interest. To secure the payment and performance of Vendor's obligations (including, without limitation, the payment of Use Fee), Vendor hereby grants to Operator an express lien and security interest as follows:

9.10.1 Collateral. The lien covers all kitchen equipment and other personal property (including, without limitation, equipment, furniture, inventory, merchandise, fixtures, and improvements) now or hereafter located at the Westworld Facility, and all proceeds and accounts receivable therefrom (the "Collateral").

9.10.2 Vendor Waives Exemptions. Vendor hereby waives exemption laws relating to such lien.

9.10.3 Removal of Property Barred. Vendor shall not remove the Collateral from the Use Areas except for the sale during the term of this Agreement of inventory or merchandise during the ordinary course of business and the removal of an item of worn out Collateral in the ordinary course of business when the Vendor is replacing the item.

9.10.4 Statutory Lien. This lien is given in addition to any landlord's statutory or other lien.

9.10.5 Vendor's Financing Statement. Contemporaneously with Vendor's execution of this Agreement, Vendor shall execute and deliver to Operator and file Uniform Commercial Code financing statements in form and substance sufficient (upon proper filing) to perfect the lien.

9.10.6 Operator Appointed as Attorney-in-Fact. Vendor hereby appoints Operator its true and lawful attorney-in-fact in its name or otherwise to execute and file any financing statements or continuation statements on Vendor's behalf if Vendor fails to do so promptly and to do any and all acts to execute and file any and all documents that may be necessary to realize, perfect, continue, preserve, and protect the security interest upon the Collateral.

9.10.7 Collateral Remedies. In addition to any other remedies provided herein, upon the occurrence of any event of default, Operator shall be entitled to exercise all of the rights and remedies of a secured party under the Uniform Commercial Code (which rights may include

Operator's right to enter the Use Areas and to take possession of any and all Collateral without liability for trespass or conversion). Operator may sell Collateral at a public or private sale, with or without having the Collateral at the sale, after giving Vendor reasonable notice as to the time and place of the sale. At such sale, Operator or its assignees may purchase the Collateral unless such purchase is otherwise prohibited by law. Unless otherwise provided by law, the requirement of reasonable notice shall be met if such notice shall be given to Vendor at the Use Areas at least fifteen (15) days prior to the date of the sale.

9.10.8 Proceeds Applied to Vendor's Debt. The proceeds of such disposition, less all expense connected with the taking of possession and the sale of the Collateral (including reasonable attorney's fees), shall be applied as a credit against the indebtedness secured by the lien. Any surplus shall be paid to Vendor. Vendor shall pay any deficiencies upon demand.

9.10.9 Attorney's Fees Included. Reasonable attorney's fees and other amounts incurred by Operator in enforcing any right or exercising any remedy pursuant to this Agreement shall be deemed part of the obligation secured by the lien.

9.10.10 City Manager's Lien Authority. Upon Vendor's request, Operator's city manager shall have authority to foreclose, enforce, release, substitute collateral for or subordinate the Lien, subject to payment of such amounts as the city manager may determine to provide Operator equivalent or better security.

X. TERMINATION

10. Rights at Termination. The following provisions shall apply at the expiration of the term hereof or upon any other termination of this Agreement:

10.1 Delivery of Possession. Vendor and all persons using the Westworld Facility under contracts with Vendor or otherwise claiming under this Agreement shall cease using or occupying the Westworld Facility. Vendor shall without demand, peaceably and quietly quit and deliver up the Use Areas to Operator.

10.2 Surviving Obligations. Termination of this Agreement in any manner or for any reason (including without limitation by expiration, or termination of this Agreement by either party under any termination right provided herein) does not terminate Vendor's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or events leading to or occurring before termination. In addition, Vendor's insurance, indemnity and other obligations shall continue in effect until Vendor and its property have actually vacated the Westworld Facility.

10.3 Removal Work. All construction and other work by Vendor to remove any item from the Westworld Facility before or after termination of this Agreement shall be subject to the plans approval and other requirements of this Agreement.

10.4 Continuation of Business. Upon termination of this Agreement, through passage of time or otherwise, Vendor shall aid Operator, unless directed otherwise by Operator, in all ways in continuing uninterruptedly the business of operating the Use Areas for Food Service and Alcohol Service as herein described. If requested by Operator, Vendor shall continue providing Food Service and Alcohol Service (either alone or if requested by Operator in cooperation with

Operator or a new user) for a period not to exceed ninety (90) days after the date of termination of this Agreement. The preceding sentence applies only to operational employees and personal property. Operator shall pay to Vendor Vendor's reasonable actual cost of providing such employees and personal property.

10.5 Items at the Use Areas. All personal property owned or used by Vendor at the Use Areas under this Agreement shall be divided into categories as follows:

10.5.1 Category Priority. When an item fits the description of more than one category, then the item shall be included only in the one of the categories that is listed first in this Agreement. The listing of a category is not necessarily an indication that there will or will not be items in the category. Each category includes all operating manuals, warranties and similar materials relating to the items in the category.

10.5.2 Operator Items. Certain items (the "Operator Items") that Operator paid for or brought to the Use Areas, or that this Agreement provides for Operator to own (e.g., Keys, Operator's equipment, things constructed by Operator).

10.5.3 Building Items. Certain items (the "Building Items") that are incorporated into the building or attached to other improvements or cannot be removed without damaging the building or other improvement or the item (such as walls, windows and carpet).

10.5.4 Attached Items. Certain items (the "Attached Items") that are attached to the building or attached to other improvements or a fixed location and typically remain at a fixed location for their useful life (e.g., water heaters, window coverings, plumbing fixtures, telecommunication wiring).

10.5.5 Specialty Items. Certain items (the "Specialty Items") that are specialized items specifically suited to providing the specific Permitted Uses under this Agreement (e.g., kitchen and serving equipment and other items specifically suited to Food Service and Alcohol Service). The Specialty Items specifically include easily removable walk-in freezers.

10.5.6 Unattached Items. Certain items (the "Unattached Items") that are items of general utility that are not attached to the Use Areas that could likely be useful to a person occupying the Use Areas for uses other than the Permitted Uses (e.g., desktop computers, office chairs and portable office fans).

10.5.7 Financial Items. Certain items (the "Financial Items") that are money and business records to which Operator has no claim.

10.5.8 Personal Items. Certain items (the "Personal Items") that are household items owned by Licensee's employees (e.g., family photographs, personal umbrellas and personal portable music players).

10.5.9 Miscellaneous Items. All other equipment and personal property of every description at the Use Areas.

10.6 Equipment Inventories. Vendor shall deliver inventories (the "Equipment Inventories") to Licensor as follows:

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10.6.1 Vendor shall deliver Equipment Inventories each July 1 during this Agreement, within ten (10) days after termination of this Agreement for any reason, and within twenty (20) days after any request by Operator (such requests not to be made without cause more often than once each year).

10.6.2 Equipment Inventories shall cover the following:

- 10.6.2.1 The Attached Items.
- 10.6.2.2 The Specialty Items.
- 10.6.2.3 The Unattached Items.
- 10.6.2.4 The Miscellaneous Items.

10.6.3 Equipment Inventories shall include the following:

- 10.6.3.1 Licensee's signature
- 10.6.3.2 The date of the Equipment Inventory.
- 10.6.3.3 A list of the items.
- 10.6.3.4 The following detail for each item listed:

10.6.3.4.1 The date of acquisition.

10.6.3.4.2 The initial purchase cost if installed new or the actual retail value of the property at the time of installation.

10.6.3.4.3 The depreciated book cost and the actual retail value at the date of transfer of any used item already owned by Vendor and transferred from another location to the Use Areas.

10.6.3.4.4 Delivery and installation charges.

10.6.3.4.5 The condition of the item as of the time of delivery or installation at the Use Areas.

10.6.3.4.6 The estimated current value of each item.

10.6.3.4.7 The category of the item (e.g., Specialty Items).

10.7 Operator shall be unconditionally entitled to rely upon any Equipment Inventory.

10.8 Any items of any description not listed on any Equipment Inventory shall be conclusively deemed to be Attached Items.

10.9 Ownership of Items at Termination. Upon termination of this Agreement for any reason, Operator shall decide whether to become the owner or reject becoming the owner of any of the Operator Items, Building Items, Attached Items, Specialty Items and Miscellaneous Items that Operator does not already own. Vendor shall not remove items from the Westworld Facility that Operator owns or has an interest in, but shall remove all other items of every category and description. Such ownership shall occur without requirement of any deed, conveyance, or bill of sale. However, if Operator shall request any documents in confirmation thereof, Vendor shall promptly execute, acknowledge and deliver the same.

10.10 Payment for Work and Items at Termination. Operator is not obligated to pay Vendor for any work or items at termination except as follows:

10.10.1 Operator shall pay to Vendor for any Specialty Items that Operator chooses to retain.

10.10.2 The price of such Specialty Items shall be the fair market value of such items "as is" and "where is" at the Use Areas for sale to a third party to use elsewhere as determined by an actual appraisal by an independent appraiser selected by Vendor from a list of three (3) unrelated appraisers nominated by Operator. The appraisal shall include consideration of the cost, condition, age, and other factors affecting value of the items appraised. The amount of any outstanding lien or other obligation regarding any items shall be subtracted from the overall purchase price.

10.11 Abandoned Property. Any personal or other property of Vendor or persons claiming through Vendor that may be located at the Use Areas at the end of this Agreement shall be deemed to be abandoned and shall automatically become the property of Operator. Operator shall have the right to reject ownership and require Vendor to remove and be accountable for such property. Operator shall be free to use, sell or otherwise dispose of such property at Operator's discretion without accounting to Vendor or any other person.

10.12 Confirmation of Termination. Upon expiration or termination of this Agreement for any reason, Vendor shall provide to Operator upon demand confirmations of termination covering the Use Areas executed and acknowledged by Vendor and by all persons who claim that they have been received from or through Vendor any interest in or right to use the Use Areas.

10.13 Cleaning. Vendor shall vacate the Use Areas leaving the Use Areas thoroughly cleaned, in good repair, and with all utilities operating, with the Use Areas maintained and repaired and also in as good order and condition, reasonable use and wear excepted, as the Premise now are or in such better condition as the Use Areas may hereafter be placed.

10.14 Environmental Report. Prior to vacating the Monterra Building, Vendor shall provide to Operator a phase 1 environmental survey showing that no environmental contamination has occurred to the Monterra Building during the period the Monterra Building has been available to Vendor, including during the Old Agreement.

XI. INSURANCE AND INDEMNITY

11. Insurance and Indemnity. During the entire term of this Agreement, Vendor shall insure the Use Areas and activities at and about the Westworld Facility and provide indemnification as follows:

11.1 Insurance Required. Prior to entering, occupying or using the Use Areas in any way, and in any event not later than the date ten (10) days after the date of this Agreement and at all times thereafter when this Agreement is in effect or Vendor is occupying or using the Use Areas in any way, Vendor shall obtain and cause to be in force and effect the following insurance:

11.1.1 Commercial General Liability. Commercial general liability insurance with a limit of Five Million Dollars (\$5,000,000.00) for each occurrence, a limit of Five Million Dollars (\$5,000,000.00) for products and completed operations annual aggregate, and a limit of Five Million Dollars (\$5,000,000.00) general aggregate limit per policy year. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, bodily injury, advertising injury, and liability assumed under an "insured contract" including this Agreement.

11.1.2 Liquor Liability. Liquor liability insurance in an amount not less than Five Million Dollars (\$5,000,000.00) for each claim and Five Million Dollars (\$5,000,000.00) for all claims in the aggregate. This coverage is required at all times when alcohol is being consumed, sold, or served at the Westworld Facility, or when Vendor holds any type of liquor license for the Westworld Facility, or when any liquor license otherwise exists with respect to the Use Areas.

11.1.3 Automobile Liability. Automobile liability insurance with a combined single limit of One Million Dollars (\$1,000,000.00) for each accident covering any and all owned, hired, and non-owned vehicles assigned to or used in any way in connection with Vendor's use of the Westworld Facility. Without limitation, such insurance shall cover hazards of motor vehicle use for loading and unloading.

11.1.4 Workers' Compensation. Such workers' compensation and similar insurance as is required by law and employer's liability insurance with a minimum limit of One Hundred Thousand Dollars (\$100,000.00) for each accident, One Hundred Thousand Dollars (\$100,000.00) disease for each employee, Five Hundred Thousand Dollars (\$500,000) policy limit for disease. All contractors and subcontractors must provide like insurance.

11.1.5 Employee Fidelity/Crime. Crime/Fidelity coverage, including but not limited to, the perils of employee dishonesty, robbery, theft, and disappearance or destruction of money and securities in performance of their duties under this Agreement. The coverage limit shall be not less than Ten Thousand and No/100 Dollars (\$10,000.00) per loss.

11.1.6 Special Risk Property. Unless waived by Operator in writing, all risk property insurance covering damage to or destruction of all buildings and other improvements to the Use Areas, including without limitation, all improvements existing upon the Use Areas prior to this Agreement or hereafter constructed in an amount equal to full replacement cost of all such improvements. Such insurance shall be special causes of loss policy form (minimally including

perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, riot, civil commotion, theft, vandalism, malicious mischief, collapse and flood).

11.1.7 Personal Property. Vendor shall maintain special causes of loss personal property coverage, as defined by Insurance Services Office, Inc., in an amount per occurrence equal to full replacement cost of all personal property used in connection with the Westworld Facility.

11.1.8 Boiler and Machinery Insurance. Boiler and machinery insurance in the amount of the full replacement cost of all machinery and mechanical equipment.

11.1.9 Builder's Risk Property Insurance. Builder's risk insurance in the amount of the entire cost of any construction as well as subsequent modifications thereto. Such builders risk insurance shall be maintained until final payment has been made or until no person or entity other than Operator and Vendor has an insurable interest in the Use Areas, whichever is earlier. This insurance shall include interests of Operator, Vendor and all subcontractors and sub-subcontractors involved in the work during the life of the course of any construction, and shall continue until all work is completed and accepted by Operator and Vendor. Vendor bears full responsibility for loss or damage to all work being performed and to the buildings under construction. Builders' risk insurance shall be on all-risk policy form and shall also cover false work and temporary buildings and shall insure against risks of direct physical loss or damage from external causes including debris removal, demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for architect's service and expenses required as a result of such insured loss and other "soft costs". Builders' risk insurance must provide coverage from the time any covered property comes under Vendor's control and/or responsibility, and continue without interruption during construction or renovation or installation, including any time during which the covered property is being transported to the construction installation site, and while on the construction or installation site awaiting installation. The policy will provide coverage while the covered Use Areas or any part thereof are occupied. Builders' risk insurance shall be primary and not contributory.

11.1.10 Other Insurance. Any other insurance Operator may require for the protection of Operator and Operator's employees, officials, representatives, officers and agents (all of whom, including Operator, are collectively "Additional Insureds"), the Use Areas, the Westworld Facility, surrounding property, Vendor, or the activities carried on or about the Use Areas. Such insurance shall be limited to insurance a reasonable person owning, leasing, designing, constructing, occupying or operating similar facilities could reasonably purchase.

11.2 Policy Limit Escalation. Not more than once in any ten (10) year period, Operator may elect on not less than thirty (30) days notice to Vendor to increase the amount or type of any insurance to account for inflation, changes in risk, or any other factor that Operator reasonably determines to affect the prudent amount of insurance to be provided. In addition, the policy limits of all liability insurance policies that have an initial limit herein stated to be One Million Dollars (\$1,000,000.00) or more shall be automatically adjusted on each five (5) year annual anniversary of this Agreement by the CPI Adjustment (unless otherwise mutually agreed upon) and in accordance with the following rules:

11.2.1 The resulting limit shall be rounded up to the nearest One Million Dollar (\$1,000,000.00) increment.

11.2.2 If the policy limit was increased for any reason in the preceding five (5) years, then the adjustment formula shall assume that the increased policy limit was in effect at the beginning of the five (5) year period.

11.3 Form of All Insurance. All insurance provided by Vendor with respect to the Use Areas, whether required by this Agreement or not, and all insurance provided by third parties under this Agreement, shall meet the following requirements:

11.3.1 "Occurrence" coverage is required except for directors' and officers' liability. "Claims made" insurance is not otherwise permitted.

11.3.2 If Vendor uses any excess insurance then such excess insurance shall be "follow form" equal to or broader in coverage than the underlying insurance.

11.3.3 Policies must also cover and insure Vendor's activities relating to the business operations and activities conducted away from the Use Areas.

11.3.4 Upon Operator's request, Vendor shall provide to Operator copies of actual insurance policies.

11.3.5 Vendor's insurance shall be primary insurance as to the risks it covers.

11.3.6 All policies, including workers' compensation shall waive transfer rights of recovery (subrogation) against Operator and the other Additional Insureds.

11.3.7 All deductibles, retentions or "self-insured" amounts are subject to the following:

11.3.7.1 Vendor shall be solely responsible for all such amounts.

11.3.7.2 No such amount shall be applicable to coverage provided to Operator.

11.3.7.3 No such amount for any policy during any year may exceed Ten Thousand and No/100 Dollars (\$10,000.00).

11.3.7.4 Such amounts shall not exceed in total Ten Thousand and No/100 Dollars (\$10,000.00) per loss.

11.3.8 All policies shall contain provisions that neither Vendor's breach of a policy requirement or warranty, nor failure to follow claims reporting procedures, shall affect coverage provided to Operator.

11.3.9 All liability insurance must name Operator and the other Additional Insureds as additional insureds. Vendor shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement.

11.3.10 All applicable policies must list Operator as a loss payee as respects proceeds relating to the Use Areas.

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11.3.11 All policies must require the insurer to provide Operator with at least thirty (30) days prior notice of any cancellation, reduction or other change in coverage. The insurer's duty to notify Operator of changes in coverage shall not include phrases such as "endeavor to" or "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives."

11.3.12 All policies shall require that notices be given to Operator in the manner specified for notices to Operator under this Agreement.

11.3.13 Vendor may elect to use excess insurance to meet the insurance requirements of this Agreement, but such excess insurance shall be "follow form" equal to or broader in coverage than the underlying insurance.

11.4 Insurance Coverage. The insurance required by this Agreement shall cover all of the Westworld Facility.

11.5 Evidence of Insurance. Vendor shall provide evidence of all insurance as follows:

11.5.1 Certificates must be in ACORD form or equivalent acceptable to Operator.

11.5.2 Vendor shall provide to Operator certificates of insurance annually and at the time of each change in coverage. Vendor shall provide certificates at other times at Operator's request.

11.5.3 Certificates must evidence that the policy described by the certificate is in full force and effect and that the policy satisfies each requirement of this Agreement applicable to the policy. For example, certificates must evidence that Operator and the other Additional Insureds are additional insureds.

11.5.4 Each insurance certificate provided to Operator constitutes a warranty and representation by Vendor to Operator that policies, coverages and other matters are actually in effect as described in the certificate.

11.6 Acceptable Insurers. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurer) by the State of Arizona Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++ 6.

11.7 Operator's Election to Provide Insurance. Operator is not required to carry any insurance covering or affecting the Use Areas or use of Operator's property related to this Agreement. Operator may elect to acquire all or any part of the insurance required by this Agreement (with or without any other real property Operator may own, or control) and Vendor shall pay to Operator the costs of such insurance as reasonably determined by Operator. Vendor shall provide all required insurance not so provided by Operator. Any insurance or self-insurance maintained by Operator shall not contribute to Vendor's insurance.

11.8 No Representation of Coverage Adequacy. By requiring insurance, Operator does not represent that coverage or limits will be adequate to protect Operator, Vendor or others. Operator's failure to demand evidence of compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Vendor from Vendor's obligation to maintain required insurance.

11.9 Use of Subcontractors. Before Vendor allows any contractor, subcontractor or other person to occupy, use or work on or about the Use Areas pursuant to this Agreement, Vendor shall comply with one of the following:

11.9.1 Vendor shall cause the insurance that Vendor is required to maintain under this Agreement to cover all of the acts of such person. The preceding sentence does not require such persons to provide insurance that merely duplicates insurance Vendor provides.

11.9.2 Vendor shall cause such person to provide to Operator the same insurance with respect to such person's acts that this Agreement requires Vendor to provide to Operator. The preceding sentence does not require such persons to provide insurance that merely duplicates insurance Vendor provides. Vendor shall cause such person to execute in favor of Operator a writing containing the same indemnification requirements set forth herein. Such requirements shall apply to such person whether or not such person signs such a writing.

11.10 Indemnity. In addition to all other indemnities and other obligations hereunder, to the fullest extent permitted by law, throughout the term of this Agreement and until all obligations and performances under or related to this Agreement are satisfied and all matters described in this paragraph are completely resolved, Vendor (and all other persons using, acting, working or claiming through or for Vendor or this Agreement (if they or their subcontractor, employee or other person or entity hired or directed by them participated in any way in causing the claim in question)) shall jointly and severally, indemnify, defend and hold harmless Operator and all other Additional Insureds for, from and against any and all claims or harm related to the Permitted Uses, the Use Areas or this Agreement (the "Indemnity"). Without limitation, the Indemnity shall include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use, financial harm, or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, and the cost of appellate proceedings and all other costs and expenses of litigation or resolving the claim) that may arise in any manner out of any use of the Use Areas or other property related to this Agreement or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to this Agreement, including without limitation any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the Use Areas or surrounding areas related to this Agreement, including without limitation, claims, liability, harm or damages caused in whole or in part by Operator or any other Additional Insured or anyone for whose mistakes, errors, omissions or negligence Vendor or Operator may be liable. As a condition to Operator's executing this Agreement, Vendor specifically agrees that to the extent any provision of this paragraph is not fully enforceable against Vendor for any reason whatsoever, this paragraph shall be deemed automatically reformed to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law. The Indemnity shall also include and apply to any environmental injury, personal injury or other liability relating to Operator's or Vendor's acquisition, ownership or use of real property developed, operated, owned, used, controlled or possessed by Operator or Vendor under this Agreement. Notwithstanding the foregoing, the Indemnity does not apply to:

11.10.1 Claims arising only from the sole gross negligence of Operator and its employees.

11.10.2 Claims that the law prohibits from being imposed upon the indemnitor.

11.10.3 The "Indemnity" shall not apply to injury or other harm that has nothing to do with and is not caused or exacerbated by this Agreement, or by Vendor's use of the Use Areas or the Westworld Facility.

11.11 Risk of Loss. Vendor assumes the risk of any and all loss, damage or claims to the Use Areas or related to Vendor's use of the Use Areas or other property of Operator, Vendor or third parties. Vendor shall be responsible for any and all damage to its property and equipment related to this Agreement.

11.12 Indemnities and Insurance Cumulative. Vendor's obligations to indemnify do not diminish in any way Vendor's obligations to insure; and Vendor's obligations to insure do not diminish in any way Vendor's obligations to indemnify. Vendor's obligations to indemnify and provide insurance are in addition to, and do not limit, any and all other liabilities or obligations of Vendor under or connected with this Agreement. The amount and type of insurance coverage required by this Agreement do not limit the scope of the indemnities or other requirements of this Agreement.

11.13 Bureau of Reclamation Insurance. To the extent requested by Operator, Vendor shall cause BOR to be an additional insured under insurance required by this Agreement and, to the extent requested by Operator from time to time, Vendor's indemnities shall include BOR.

XII. CONDEMNATION

12. Condemnation. The following shall govern any condemnation of all or any part of or interest in the Westworld Facility:

12.1 Termination by Condemnation. If a total condemnation occurs, then this Agreement shall terminate. If a partial taking occurs, this Agreement shall continue in full force and effect as to the part of the Westworld Facility not taken.

12.2 Condemnation Proceeds. Vendor hereby assigns to Operator Vendor's entire interest in all condemnation damages, interest, severance damages, and any other payments or proceeds of any kind relating to the condemnation (collectively the "Condemnation Proceeds"). Vendor shall execute and deliver to Operator assignments or other instruments requested by Operator confirming such assignment. Vendor shall immediately pay to Operator any Condemnation Proceeds Vendor may receive. The Condemnation Proceeds shall not include relocation benefits, if any, awarded specifically only to Vendor to cover expenses of relocating Vendor's business located at the Use Areas at the time of the condemnation. Such relocation award shall be owned by and paid directly to Vendor only. Any repair, relocation or similar costs to Vendor relating to the condemnation shall be borne by Vendor.

12.3 Power to Condemn. Vendor acknowledges that BOR, Operator and others from time-to-time may use the power to condemn the Use Areas, the Westworld Facility, or any interest therein or rights thereto. Operator has not relinquished any right of condemnation or eminent domain over the Use Areas or the Westworld Facility. Operator does not warrant that Operator will not condemn the Use Areas or the Westworld Facility during the term of this Agreement, but Operator does not presently have intentions to condemn the Use Areas.

XIII. DAMAGE TO OR DESTRUCTION OF WESTWORLD FACILITY

13. Damage to or Destruction of Monterra Building. If the Monterra Building is damaged by fire, explosion, the elements, the public enemy, or other casualty, and the cost of restoring the Monterra Building would exceed fifty percent (50%) of then estimated cost of constructing the Monterra Building, then Operator and Vendor either of them acting alone shall each have the unilateral right to terminate this Agreement; provided that Operator shall have such right of termination only during the final ten (10) years of the original term of this License (or, if the BOR Agreement has then been extended, during the final ten (10) years of such extension). In the event of cancellation by Operator, Operator shall be entitled to all insurance proceeds less the following amount to which Vendor is entitled: the lesser of (a) ten percent of the proceeds for each full year remaining on the term of this Agreement, or (b) the present value of Vendor's net income lost by reason of the cancellation. If this Agreement is not so terminated, then Vendor shall restore the Monterra Building. In the event of damage to the Monterra Building to a lesser degree or extent, Vendor shall restore the Monterra Building. In any event, where Vendor is required to restore the Monterra Building, such work shall be performed with due diligence and at Vendor's sole cost and expense, except that Licensor shall reimburse Licensee for restoration work to the extent of such net insurance proceeds as provided by this Agreement.

XIV. VENDOR'S RECORDS

14. Vendor's Records. Vendor shall keep records and provide information to Operator as follows:

14.1 Scope of Information. Unless otherwise specified, all of Vendor's recordkeeping and disclosure obligations under this article include and are limited to the following cumulative topics as reasonably determined by Operator (collectively the "Covered Information"):

14.1.1 All information about this Agreement.

14.1.2 All information about Operator's and Vendor's rights and obligations under this Agreement.

14.1.3 All information about Gross Sales.

14.1.4 The status of any Vendor's Improvements.

14.1.5 Business conducted at the Westworld Facility.

14.2 Financial Reports. Vendor shall periodically deliver to Operator reports (the "Financial Reports") as follows:

14.2.1 Vendor shall provide a Financial Report for each quarter beginning with the quarter during which this Agreement is dated.

14.2.2 Vendor shall deliver each Financial Report to Operator as soon as it is available and in any event within thirty (30) days after the end of the quarter.

14.2.3 Each Financial Report shall contain the following in reasonable detail:

14.2.3.1 A balance sheet as of the end of the quarter.

14.2.3.2 A statement of income for the quarter.

14.2.3.3 A statement of changes in financial position for the quarter.

14.2.3.4 Statements comparing all of such information with the comparable information for the corresponding quarter of the previous year.

14.2.4 Financial Reports shall be in reasonable detail.

14.2.5 The Financial Report for the fourth quarter of any year shall cover the fourth quarter and shall also cover the entire preceding year.

14.2.6 Vendor shall deliver the following with each Financial Report:

14.2.6.1 A certificate by an independent certified public accountant acceptable to Operator stating that the accountant has reviewed the Financial Report and that the Financial Report has been prepared in accordance with United States generally accepted accounting principles consistently applied throughout the quarter and prior quarters.

14.2.6.2 A certificate by the individual who is the subject of the Financial Reports, or the chief financial officer or general partner, as the case may be, of the subject of the Financial Report stating that:

14.2.6.2.1 The information provided with the Financial Report and during the period covered by the Financial Report is correct and has been prepared in accordance with United States generally accepted accounting principles consistently applied throughout the quarter and prior quarters.

14.2.6.2.2 There exists no Event of Default and no condition, event or act, which with notice or lapse of time or both, would become an Event of Default or, if any such Event of Default or any such condition, event or act exists, specifying the nature and period of existence thereof and what action Vendor proposes to take with respect thereto.

14.2.6.3 If a Financial Report has been audited, a certificate from the auditor stating that the auditor has reviewed the information in accordance with United States standard auditing practices and that in making the examination necessary for the audit the auditor obtained no knowledge of any Event of Default by Vendor under this Agreement or condition, event or act, which with notice or lapse of time or both would become an Event of Default, or if the auditor has obtained knowledge of any such Event of Default or pending Event of Default, specifying the same. Operator may require that Financial Reports be audited. Vendor shall make available to Operator all work papers and records produced by the auditor pertaining to the audit, or copies thereof, within ten (10) working days after notice by Operator to do so.

14.3 Performance Reports. Within ninety (90) days after the end of each year, Vendor shall provide to Operator a written report. Said report shall include all of the following:

14.3.1 The status of any Vendor's Improvements.

14.3.2 Vendor's use of the Use Areas and the Westworld Facility.

14.3.3 Documentation evidencing Vendor's compliance with the terms of this Agreement. Operator may elect to specify forms to be completed by Vendor to document Vendor's performance and the dates for submitting such forms.

14.3.4 Vendor shall participate in any annual performance review of Vendor's performance of the terms of this Agreement. Operator may notice such reviews as public review hearings with the opportunity for public participation.

14.3.5 Such other Covered Information as Operator may designate.

14.4 Supplemental Reports. Vendor shall deliver to Operator written reports (and, if requested by Operator, a presentation to Operator's governing council or designee) covering such Covered Information as Operator may request from time to time.

14.5 Records Inspection. At Vendor's expense, Vendor shall:

14.5.1 Permit and assist Operator and its representatives at all reasonable times to inspect, audit, and copy Vendor's records of Covered Information.

14.5.2 Make the records of Covered Information (and reasonable accommodations for Operator's audit and inspection) available within five (5) days after this request to Operator at Vendor's offices in Maricopa County, Arizona (or at another location requested by Operator within the corporate limits of the City of Scottsdale).

14.5.3 Cause Vendor's employees, agents, accountants and auditors to give their full cooperation and assistance in connection with Operator access to the Covered Information.

14.6 Presentations. Operator may require Vendor to attend annual performance reviews. Operator may require Vendor to make presentations to Operator's city council or designee with respect to any report or Covered Information. Operator may elect to allow public participation at such reviews and presentations.

14.7 Standards for Records. Vendor shall maintain a standard, modern system of recordkeeping for the Covered Information and shall keep and maintain proper and accurate books and other repositories of information relating to the Covered Information in accordance with United States generally accepted accounting principles applied on a consistent basis. If Operator does not receive Covered Information, Operator shall have the right to estimate the information that is not provided, which estimate shall be binding upon Vendor.

14.8 Record Retention. Vendor shall preserve records of the Covered Information in a secure place within the City of Scottsdale, Maricopa County, Arizona for a period ending seven (7) years after the time period reported by the records.

14.9 Record Media Included. Operator's and Vendor's rights and obligations regarding the Covered Information encompass media, materials, and data repositories of every kind and character that may contain Covered Information. Such repositories include, without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase

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orders, computer data, invoices, cash register tapes, contracts, logs, accounts, commitments, arrangements, notes, diaries, ledgers, correspondence, reports, drawings, receipts, vouchers, memoranda and other repositories of Covered Information.

14.10 Costs of Audit. If an audit, inspection or examination discloses underpayments (or other matters adjusted in favor of Operator) of any nature that exceed the lesser of three percent (3%) of any payments or single payment, Vendor shall pay to Operator Operator's actual cost (based on the amount paid by Operator, or based on reasonable charges charged by private auditors and other service providers for comparable work if the examination is performed by Operator's employees) of the examination, together with late fees, interest, and other amounts payable in connection with such adjustments or payments. Any adjustments and/or payments due as a result of any such examination shall be made within a reasonable amount of time (not to exceed 30 days) after Operator gives to Vendor notice of Operator's findings. In lieu of itemizing Operator's audit costs in any particular instance, Operator may elect to require Vendor to pay a flat charge of Five Hundred Dollars (\$500.00) to cover Operator's audit costs, which amount Vendor acknowledges is a fair estimate of the actual minimum cost to Operator to investigate, discover, verify, and otherwise deal with a reporting or payment error by Vendor.

14.11 Applicable to Others. Vendor shall cause all other persons occupying or using the Use Areas or the Westworld Facility under this Agreement to keep records of and report the Covered Information in the manner provided in this article. The preceding sentence does not apply to short time visitors to the Westworld Facility in connection with this Agreement in the ordinary course of business who are not conducting the Permitted Uses or business operations of their own at the Westworld Facility (such as a person merely supplying food or kitchen equipment to Vendor). Without limitation, such persons shall provide Financial Reports and Activity Reports. This article shall be included, and whether or not actually included shall be deemed included, in favor of Operator in each Vendor agreement for use of any portion of the Westworld Facility in connection with this Agreement.

14.12 Access after Termination. Operator's access to Covered Information shall continue for seven (7) years after termination of this Agreement for any reason.

XV. COMPLIANCE WITH LAW

15. Compliance with Law. Vendor shall perform its obligations under this Agreement and all activities at the Use Areas and all activities at the Westworld Facility in accordance with all federal, state, county and local laws, ordinances, regulations or other rules or policies as are now in effect or as may hereafter be adopted or amended. Without limiting in any way the generality of the foregoing, Vendor shall comply with all and each of the following:

15.1 Applicability of Municipal Law. Without limitation, Vendor shall comply with municipal laws as follows:

15.1.1 Vendor acknowledges that this Agreement does not constitute, and Operator has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to Vendor with regard to) any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Scottsdale or

any other governmental body upon or affecting Vendor, the Use Areas, the Westworld Facility or Vendor's use of the Use Areas or the Westworld Facility.

15.1.2 All of Vendor's obligations hereunder are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of), all existing or future laws and regulations applicable to Vendor.

15.1.3 This Agreement is not intended to diminish any performances that would be required of Vendor by law if this Agreement had been made between Vendor and a private citizen.

15.1.4 Operator by this Agreement cannot and has not relinquished or limited any right of condemnation or eminent domain over the Use Areas or any other property related to this Agreement or within the Westworld Facility.

15.1.5 This Agreement does not impair the City of Scottsdale's power to enact, apply or enforce any laws or regulations, or exercise any governmental powers affecting in any way Vendor, the Use Areas or the Westworld Facility.

15.1.6 Operator's rights and remedies hereunder for Vendor's failure to comply with all applicable laws supplement and are in addition to and do not replace otherwise existing powers of the City of Scottsdale or any other governmental body.

15.2 Government Property Lease Excise Tax. Vendor shall be responsible for any and all property taxes and all government property lease excise taxes described in A.R.S. § 42-6201 *et seq.* or similar laws in force from time to time that are lawfully assessed against the Use Areas or against Operator or Vendor with respect to the Use Areas. Pursuant to A.R.S. § 42-6206, failure by Vendor to pay the taxes after notice and an opportunity to cure is an event of default that could result in divesting Vendor of any interest in or right of occupancy of the Use Areas.

15.3 Taxes, Liens and Assessments. In addition to all other amounts herein provided, Vendor shall pay, when the same become due and payable, all ad valorem and other taxes and general and special fees, charges and assessments of every description that during the term of this Agreement may be levied upon or assessed upon or with respect to Vendor's use of the Use Areas or the Westworld Facility, the operations conducted therein, any amounts paid or other performances under this Agreement by either party, and all possessory interest in the Use Areas and improvements and other property thereon, including any interest, penalties and other expenses that may be imposed. Vendor shall pay, indemnify, defend and hold harmless Operator, the Use Areas, the Westworld Facility and all interests therein and improvements thereon from any and all such obligations, and from any lien therefor or sale or other proceedings to enforce payment thereof. Operator shall have the right from time to time to require that all of the foregoing payments be made by Vendor through Operator. Vendor shall pay all sales, transaction privilege, and other taxes.

15.4 Food Laws. Vendor shall at all times comply with Federal Pure Food and Drug Laws and all other applicable health rules, regulations, standards, laws and ordinances of the United States of America, State of Arizona, County of Maricopa, City of Scottsdale and any other authority lawfully exercising authority over food and alcohol services. Vendor shall at its own expense obtain and maintain all necessary licenses and permits permitting the sale of food and

alcohol at the Westworld Facility. Vendor shall conduct the Food Service and Alcohol Service in a manner that achieves and maintains an "Acceptable" rating or such other rating as may be the highest grade of performance issued by applicable food regulatory officials.

XVI. ASSIGNABILITY

16. Assignability. This Agreement is not assignable by Vendor unless the assignment is made in strict compliance with the following:

16.1 Assignments Prohibited. Every assignment of any part of Vendor's interest in the Use Areas or this Agreement or any of Vendor's rights or interests hereunder is prohibited (and any assignment shall be void and vest no rights in the purported assignee) unless Vendor first receives from Operator notice of Operator's consent to the assignment.

16.2 Special Expertise. In making this Agreement, Operator depends upon Vendor's particular capacities, expertise, powers, and good offices, which would not be satisfactorily provided by a third party. No Vendor right or obligation hereunder may in any way whatsoever be assigned or delegated to a third party without Operator's prior express written consent.

16.3 Transactions Included. All references in this Agreement to assignments by Vendor shall be deemed also to apply to all of the following transactions, circumstances and conditions and to all persons claiming pursuant to such transactions, circumstances and conditions:

16.3.1 Any voluntary or involuntary assignment, conveyance, transfer of the right to use the Use Areas or sublicense of the Use Areas or any interest therein or any rights under this Agreement, in whole or in part.

16.3.2 Any voluntary or involuntary pledge, lien, mortgage, security interest, judgment, claim or demand, whether arising from any contract, any agreement, any work of construction, repair, restoration, maintenance or removal, or otherwise affecting the Use Areas (collectively "Liens"). The preceding sentence does not apply to a "twenty day notice" or similar notice of a potential mechanics lien for construction work or materials supplied to the Use Areas for construction permitted by this Agreement so long as no actual mechanic's lien attaches to the Use Areas. In this article, a foreclosure of a Lien means a judicial foreclosure sale, a trustee's sale, or a deed in lieu of foreclosure.

16.3.3 The use, occupation, management, control or operation of the Use Areas or any part thereof by others. The preceding sentence does not apply to Vendor's hiring and discharging of employees.

16.3.4 Any hiring, contracting or other delegation of Vendor's rights or duties under this Agreement including without limitation delegation of Vendor's rights or duties to provide Food Service or Alcohol Service.

16.3.5 Any transaction (or series of related or unrelated transactions) transferring any significant part of the corporate stock (or other evidence of ownership, as applicable), or any other direct or indirect transfer of any significant part of the ownership, management or control of

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Vendor other than a transfer of a shareholder's or other owner's ownership caused by that shareholder or other owner's death.

16.3.6 Any assignment by Vendor for the benefit of creditors, voluntary or involuntary.

16.3.7 A Vendor Insolvency.

16.3.8 The occurrence of any of the foregoing by operation of law or otherwise.

16.3.9 The occurrence of any of the foregoing with respect to any assignee.

16.3.10 The failure through death, disability, withdrawal, retirement, severance or otherwise of Fred Unger to personally be, remain and act as the chief executive officer and the majority owner of Vendor or to have practical control of the Use Areas (collectively, "Loss of Control").

16.4 Assignment Transactions Excluded. References in this Agreement to assignments by Vendor do not apply to the following transactions:

16.4.1 Vendor's hiring and discharging of employees.

16.4.2 Normal turnover on Vendor's board of directors.

16.5 Pre-approved Assignments. Subject to certain conditions hereafter stated, Operator hereby consents to certain assignments (the "Pre-approved Assignments") so long as they do not result in Loss of Control. The only Pre-approved Assignment is Vendor's engagement of M Culinary Concepts LLC, an Arizona limited liability company to perform on Vendor's behalf the Food Service and Alcohol Service that this Agreement requires Vendor to provide.

16.6 Assignment Remedies. In addition to all other remedies under this Agreement, the following shall apply if an assignment occurs without Operator's consent:

16.6.1 Any assignment without Operator's consent shall be void and shall not result in the assignee obtaining any rights or interests in, under or related to this Agreement.

16.6.2 Operator may, in its sole discretion and in addition to all other remedies available to Operator under this Agreement or otherwise, and in any combination, terminate this Agreement, collect Use Fee from the assignee and/or declare the assignment to be void, all without prejudicing any other right or remedy of Operator under this Agreement. No cure or grace periods shall apply to assignments prohibited by this Agreement or to enforcement of any provision of this Agreement against an assignee who did not receive Operator's consent.

16.7 Effect of Assignment. No action or inaction by Operator shall be deemed a waiver of the prohibition on assignments or any other provision of this Agreement, or the acceptance of the assignee, sublessee or occupant as Vendor, or a release of Vendor from the further performance by Vendor of this Agreement. No action or inaction by Operator regarding an assignment shall relieve Vendor from obtaining Operator's consent to any further assignment. No assignment shall release Vendor from any liability hereunder.

16.8 Enforceability after Assignment. No consent by Operator shall be deemed to be a novation. This Agreement shall control any conflict between this Agreement and the terms of any assignment or any document related to any assignment. Operator's consent to any assignment does not in any way expand or modify this Agreement or waive, diminish or modify any of Operator's rights or remedies under this Agreement. Operator shall not be bound by any provision of any instruments relating to any Assignment. This Agreement shall be enforceable personally and in total against Vendor and each successor, partial or total, and regardless of the method of succession to Vendor's interest hereunder. Each successor having actual or constructive notice of this Agreement shall be deemed to have agreed to the preceding sentence

16.9 Grounds for Refusal. Except for the Preapproved Assignments, no assignment of this Agreement by Vendor is contemplated or bargained for. Vendor acknowledges that only Vendor personally can provide to Operator the benefits that induced Operator to enter into this Agreement and that Operator has entered into this Agreement in strict reliance upon Vendor's covenant that only Vendor alone will occupy the Use Areas. Operator has the absolute right for any reason or for no reason in its sole and absolute discretion to give or withhold consent to any Assignment or to impose any financial, operational or other conditions whatsoever upon Operator's consent to any Assignment. The preceding sentence does not apply after the first ten (10) years of this Agreement and also does not apply for the first ten (10) years of this Agreement so long as both of the following are true:

16.9.1 National Western Capital Corporation owns all of Vendor's interests under this Agreement (subject only to the Pre-approved Assignment).

16.9.2 National Western Capital Corporation is entirely owned by Frederick R. Unger, or, if he is deceased, entirely owned by Jennifer Unger and/or the descendants of Frederick R. Unger.

16.10 Form of Assignment. Any assignment shall be by document in form and content acceptable to Operator. Without limitation, any assignment shall specify and require that each assignee acquiring any interest under this Agreement shall assume and be bound by, and be obligated to perform the terms and conditions of this Agreement.

16.11 Assignment Fee. Vendor shall pay to Operator in advance the sum of Two Thousand Five Hundred Dollars (\$2,500.00) as a nonrefundable fee for legal, administrative and other expenses related to every request for consent to an assignment, whether or not Operator grants such request.

16.12 Assignment by Operator. Operator's interests in this Agreement shall be automatically deemed to be assigned to any person who acquires Operator's rights under the BOR Agreement. Upon any such assignment, Operator's or its assigning successor's liability with regard to this Agreement shall terminate.

16.13 Assignment of Kitchens Agreement. Vendor's rights and obligations under this Agreement shall be held by the same person or entity that holds the licensee's rights under the Kitchens Agreement. In addition:

16.13.1 No assignment or other transfer of any licensee rights under the Kitchens Agreement shall occur without a corresponding assignment of Vendor's rights under this Agreement to the assignee and assumption of Vendor's obligations under this Agreement by the assignee.

16.13.2 In addition to all of Operator's other remedies, Operator shall have the right to unilaterally terminate this Agreement if this Agreement is not assigned to and assumed by any assignee of the Kitchens Agreement, even if the assignment is prevented by Operator's failure to consent to such assignment.

16.13.3 Vendor shall give Operator thirty (30) days advance notice of any assignment of any licensee rights under the Kitchens Agreement.

XVII. MISCELLANEOUS

17. Miscellaneous. The following additional provisions apply to this Agreement:

17.1 Integration. This Amendment constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, proposal, draft agreement, discussion outline, correspondence, memoranda or representation regarding the Use Areas, or the Westworld Facility.

17.2 Severability. If any term, condition, covenant, stipulation, agreement or other provision herein contained is held to be invalid or unenforceable for any reason, the invalidity of such provision shall in no way affect any other provision herein contained. Further, this Agreement shall be deemed automatically reformed to secure to Operator the legal, equitable, practical and other benefits of the provisions of this Agreement as written to the very maximum extent permitted by law.

17.3 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was entered into on the basis that it shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, that might otherwise favor Vendor.

17.4 Paragraph Headings. The paragraph headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.

17.5 Exhibits. All exhibits that are specifically stated to be attached to this Agreement are hereby incorporated into and made an integral part of this Agreement for all purposes.

17.6 Attorneys' Fees. If either party brings any action, suit or other proceeding to collect Use Fee or, to take possession of the Use Areas, or to vindicate, enforce or exercise any rights or remedies under this Agreement, the non-prevailing party shall pay the other party's costs of such proceeding and all expenses of such proceedings together with such sum as the court (and 11788801v4

not a jury) may adjudge reasonable as attorneys' fees and all other litigation expenses and costs. If Operator is the prevailing party, then Vendor shall provide evidence to Operator of the rate of payment of Vendor's attorneys' fees to its counsel and Operator shall be entitled to recover payment for attorneys employed by Operator (including attorneys who are regular employees of Operator) at the same rate of payment.

17.7 Choice of Law and Court. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules. Exclusive proper venue for any action regarding this Agreement shall be the Maricopa County Superior Court or the Federal District Court in the District of Arizona sitting in Maricopa County. Operator and Vendor consent to personal jurisdiction in such courts. Operator has not waived its claims procedures as respects this Agreement. Claims by Vendor shall comply with time periods and other requirements of Operator's claims procedures from time to time.

17.8 Time of Essence. Time is of the essence of each and every provision of this Agreement.

17.9 Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.

17.10 Approvals and Inspections. All approvals, reviews and inspections by Operator under this Agreement or otherwise are for Operator's sole benefit and not for the benefit of Vendor, its contractors, engineers or other consultants or agents, or any other person.

17.11 No Partnership. Vendor has no relationship with Operator except as defined by this Agreement. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture, association or similar relationship between the parties.

17.12 Nonliability of Officials and Employees. No official, representative or employee of Operator shall be personally liable or otherwise responsible to any party, or to any successor in interest to any party, for any default or breach by Operator or for any amount or other obligation of Operator or otherwise under the terms of this Agreement or related to this Agreement.

17.13 Notices. Notices under this Agreement shall be given in writing delivered to the other party or mailed by registered or certified mail, return receipt requested, postage prepaid addressed to:

If to Operator: Brian Dygert
 Westworld Administrative Office
 16601 N. Pima Road
 Scottsdale, AZ 85260

Copy to: City Attorney
 City of Scottsdale
 3939 N. Drinkwater Blvd.
 Scottsdale, AZ 85251

If to Vendor: National Western Capital Corporation
Attention: Fred Unger
7134 E. Stetson Drive, Suite 400
Scottsdale, AZ 85151

17.14 By notice from time to time, a person may designate any other street address within Maricopa County, Arizona as its address for giving notice. Notices to Vendor may instead be hand delivered to Vendor's management office at the Use Areas. Service of notice by mail shall be deemed to be complete three (3) days (excluding Saturday, Sunday and legal holidays) after the notice is deposited in the United States mail.

17.15 Amendments. This Agreement may not be amended except by a formal writing executed by all of the parties.

17.16 Funding. This paragraph shall control notwithstanding any provision of this Agreement or any exhibit or other agreement or document related hereto. Operator's provision of funds under this Agreement is in all respects subject to appropriation by the Scottsdale City Council. Operator's entire obligation under this Agreement shall be limited to the amount appropriated. If funds necessary to fulfill Operator's obligations under this Agreement are not appropriated by the Scottsdale City Council, Operator may terminate this Agreement by ninety (90) days notice to Vendor. Termination in accordance with this provision shall not constitute a breach of this Agreement by Operator. No person will be entitled to any compensation, damages or other remedy from Operator if this Agreement is terminated pursuant to the terms of this paragraph or other terms of this Agreement.

17.17 No Recording. This Agreement shall not be recorded.

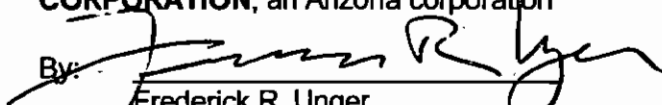
17.18 Statutory Cancellation Right. In addition to its other rights hereunder, Operator shall have the rights specified in A.R.S. § 38-511.

17.19 Employment of Unauthorized Workers. Vendor shall comply with A.R.S. §23-211, et seq. and all other applicable federal, state and local laws and regulations that relate to Vendor's employees (collectively, the "Unauthorized Worker Laws"). Vendor shall cause each person or entity who provides labor, time or effort to Operator under this Agreement (the "Contractors") to comply with the Unauthorized Worker Laws as respects the Contractors' employees. Without limitation, Vendor warrants and represents pursuant to A.R.S. §41-4401(A)(1) that Vendor and the Contractors comply with A.R.S. §23-214(A). Pursuant to A.R.S. §41-4401(A)(2), a breach of this paragraph shall be a material breach of this Agreement and an event of default, which shall entitle Operator to exercise any and all remedies described in this Agreement or otherwise available at law or equity, including without limitation termination of this Agreement and the remedies described in A.R.S. §23-214(B). However, pursuant to A.R.S. §41-44-1(C), Vendor shall not be deemed to be in material breach under the previous sentence if Vendor and the Contractors establish that they have complied with the employment verification provisions prescribed by §274A and §274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). Operator shall have the right to inspect the records and papers of Vendor and its employees, and of Contractors and their employees, to ensure that Vendor and the Contractors are in compliance with this paragraph. Vendor shall indemnify, defend and hold Operator harmless from any loss, liability or other harm

arising from or relating to Vendor's or the Contractors' failure to comply with this paragraph or the Unauthorized Worker Laws. Each contract that Vendor enters into with a Contractor shall contain a provision binding the Contractor to this paragraph. This paragraph does not limit any of Operator's rights under other laws or under other provisions of this Agreement.

EFFECTIVE AS OF THE DATE FIRST GIVEN ABOVE.

LESSEE: **NATIONAL WESTERN CAPITAL CORPORATION**, an Arizona corporation

By: 
Frederick R. Unger
Its: President

LESSOR: **CITY OF SCOTTSDALE**,
an Arizona municipal corporation

By: _____
W. J. "Jim" Lane, Mayor

ATTEST:

Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

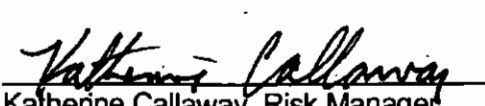
OFFICE OF THE CITY ATTORNEY

By: 
Bruce Washburn, City Attorney


Brian Dygert, Westworld General Manager


Paul T. Katsenias, Executive Director, Community & Economic Development


Dan Worth, Executive Director Public Works

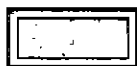

Katherine Callaway, Risk Manager

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TABLE OF EXHIBITS TO MONTERRA FOOD AND ALCOHOL LICENSE AGREEMENT

<u>Exhibit</u>	<u>Paragraph</u>	<u>Description</u>
A	C	The Map.
B	1.9	List of restaurant equipment
C	1.9	List of catering equipment
D	2.1	Notice of termination of 1996 Monterra agreement.
E	3.7	Sample Use Fee amount report
F	4.18	List of required equipment
G	4.19	Operation details
H	4.33.1	List of comparison facilities
I	4.34	Disorderly conduct provisions
J	4.38.1	Initial liquor license boundaries

WEST WORLD FACILITY MAP



WEST WORLD FACILITY



MONTERRA BUILDING
(CONTAINING KITCHEN #6)

**LIST OF FIXTURES AND PERSONAL PROPERTY FOR RESTAURANT USE
(RESTAURANT EQUIPMENT)**

1. Flat wear to accommodate a minimum of 400 guests.
2. Dishware to serve 400 guests minimum.
3. Miscellaneous pots, pans, utensils for kitchen.
4. Full complement of tables and chairs to accommodate indoor and outdoor dining.
5. Culligan water filter system.
6. Superior hot water heater.
7. Ice-O-Matic Ice Machine.
8. Sinks, stoves, freezers and other restaurant equipment.
9. Other assets as listed on October 1996 Depreciation Schedule.

**LIST OF FIXTURES AND PERSONAL PROPERTY FOR CATERING USE
(CATERING EQUIPMENT)**

	<u>QUANTITY</u>	<u>DESCRIPTION</u>
1.	40	Round folding tables
2.	300	Wooden folding chairs
3.	1	Portable Bar B.Q. grills
4.	10	Chafing pans
5.	0	Table cloths (Rentals)
6.	0	Cloth Napkins
7.	5	8 ft. rectangle folding tables
8.	1	Portable podium
9.	1	Portable stage
10.	300	Banquet Chairs
11.		Other miscellaneous equipment

WHEN RECORDED RETURN TO:

CITY OF SCOTTSDALE

ONE STOP SHOP

(Martha West)

7447 East Indian School Road, Suite 100

Scottsdale, AZ 85251

(resolution 9584)

(Monterra at Westworld)

(related to Contract No. 960214 and to Contract No. 2013-191-COS)

**NOTICE OF TERMINATION OF FIRST AMENDED AND RESTATED RESTAURANT AND
CATERING CONCESSION AGREEMENT**

THIS NOTICE OF TERMINATION OF FIRST AMENDED AND RESTATED RESTAURANT AND CATERING CONCESSION AGREEMENT is made this _____ day of _____, 20____ by City of Scottsdale, an Arizona municipal corporation ("Operator"), and National Western Capital Corporation, an Arizona corporation ("Vendor").

A. Operator and Pegasus Restaurant and Catering, Inc., an Arizona corporation ("Original Vendor") were the original parties to that certain First Amended and Restated Restaurant and Catering Concession Agreement dated December 30, 1996 and recorded May 13, 1998 at document No. 98-0398960 of the public records of Maricopa County, Arizona (the "Old Agreement"). The Old Agreement was subsequently amended by that certain First Amendment to First Amended and Restated Restaurant and Catering Concession Agreement (the "First Amendment") dated October 20, 2003 between Licensor and Vendor and recorded November 12, 2003 at document No. 2003-1561377 of the public records of Maricopa County, Arizona. Operator is the licensor and Vendor warrants and represents Operator to be the successor to the Original Vendor under the Old Agreement.

B. Operator and Vendor desire to confirm that the Old Agreement has terminated.

NOW THEREFORE in consideration of the foregoing, Operator and Vendor hereby give notice that, the Old Agreement is completely terminated.

EFFECTIVE AS OF THE DATE FIRST GIVEN ABOVE.

VENDOR: **NATIONAL WESTERN CAPITAL
CORPORATION**, an Arizona corporation

By: _____
Frederick R. Unger
Its: President

11788801v4

Exhibit "D"
Page 1 of 3

COS Contract No. 2013-191-COS

LESSOR: **CITY OF SCOTTSDALE,**
an Arizona municipal corporation

By: _____
W. J. "Jim" Lane, Mayor

ATTEST:

Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

By: _____
Bruce Washburn, City Attorney

Brian Dygert, Westworld General Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Frederick R. Unger, President of NATIONAL WESTERN CAPITAL CORPORATION, an Arizona corporation.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by W. J. "Jim" Lane, Mayor of the City of Scottsdale, an Arizona municipal corporation.

Notary Public

My Commission Expires:

SAMPLE USE FEE AMOUNT REPORT
CITY OF SCOTTSDALE
LICENSE PAYMENT REPORT

Accounting Department
7447 E. Indian School Road
Suite 215
Scottsdale, AZ 85251
www.ScottsdaleAZ.Gov
480-312-2437

National Western Capital Corporation
7134 E. Stetson Drive, Suite 400
Scottsdale, AZ 85251

Attention: Fred Unger
funger@springcreekdevelopment.com, 480-874-1002, ext. 11

AR ACCOUNT # _____

Please fill out portion below and return with your payment

Lease payment for ____ Quarter 20____
(2013-186-COS)

Amount remitted \$ _____
Date ____/____/2013

Gross Food Sales at Monterra (Sections 3.2 & 3.3.1)

\$ _____

2% of Gross Food Sales

\$ _____

Attach applicable monthly spreadsheet(s)

Gross Food Sales arising from food sales CATERING elsewhere at WestWorld

\$ _____

10% of Food & Beverage Gross Sales CATERING

\$ _____

Attach applicable monthly spreadsheet(s)

Gross Food Sales arising from food sales CONCESSIONS elsewhere at WestWorld

\$ _____

20% of Food & Beverage Gross Sales CONCESSIONS

\$ _____

Attach applicable monthly spreadsheet(s)

Gross Alcohol Sales arising from alcohol service elsewhere at Westworld

\$ _____

30% Gross Alcohol Sales Sale

\$ _____

Attach applicable monthly spreadsheet(s)

TOTAL AMOUNT DUE BY ____/____/20____

\$ _____

(within 30 days of end of quarter)

Signed _____

DATE _____

REVIEWED BY CITY CONTRACT ADMINISTRATOR

Signed _____

DATE _____

LIST OF REQUIRED EQUIPMENT

1. None

Operation Details

None

Comparable Facilities

1- Oklahoma State Fair Park

Jim Norick Arena

www.okstatefair.com

2- Los Angeles Equestrian Center

Equidome at Griffith Park

www.la-equestriancenter.com

3- South Point Arena and Equestrian Center

www.southpointarena.com

4- National Western Complex

Denver Arena & Coliseum

www.nationalwesterncomplex.com

5- Will Rogers Memorial Center

Will Rogers Coliseum and John Justin Arena

www.fortworthgov.org

Disorderly Conduct

1. **Conduct at Westworld Facility.** In entering into this Agreement, Operator and Producer have foremost in mind providing the public with a family Atmosphere devoid of any act by any person contrary to the highest standards of community sensitivity, and avoiding any substance or appearance of any noisy, unruly, inebriated, disruptive, disorderly, lewd, nude, topless, bottomless, gambling, adult oriented, unwholesome or sexually oriented behavior, business, entertainment, or other activity of any description or to any degree at the Westworld Facility. Any such behavior, business or activity at the Westworld Facility by Producer, any customer of Producer or anyone else using any part of the Westworld Facility related to Producer or this Agreement while this Agreement is in effect is strictly prohibited. The preceding sentence does not apply to private conduct that occurs completely inside a lawfully parked recreational vehicle that is fully enclosed with solid walls, if such conduct is not visible to the public or otherwise discernible outside the recreational vehicle. Producer specifically acknowledges that the requirements of this paragraph are a requirement of this Agreement independent of and in addition to any zoning or other governmental regulation affecting the Westworld Facility.

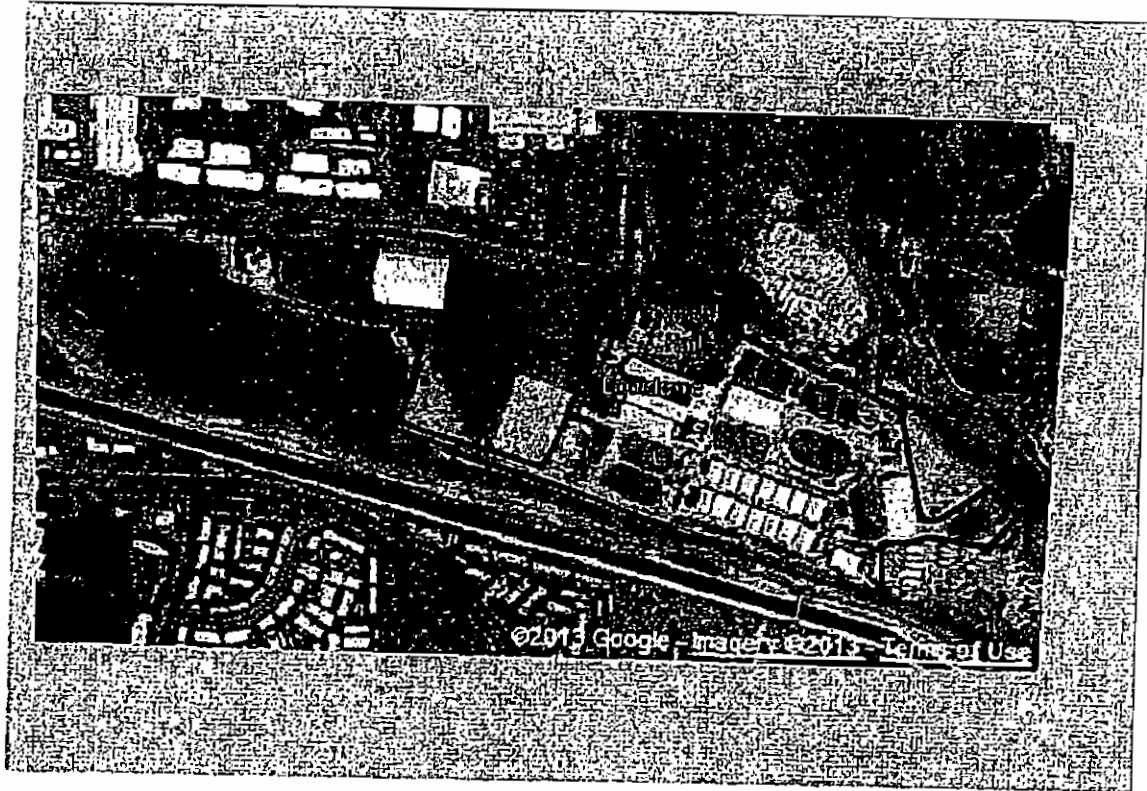
1.1 This subparagraph does not apply to private conduct that occurs completely inside a lawfully parked recreational vehicle that is fully enclosed with solid walls if such conduct is not visible to the public or otherwise discernible outside the recreational vehicle. No materials shall be displayed, viewed or produced upon the Westworld Facility depicting specified anatomical areas or specified sexual activities. No person shall exhibit, use, display or offer to sell any devices, objects or paraphernalia that are designed or typically marketed for use in connection with specified sexual activities. No person shall perform specified sexual activities upon the Westworld Facility. No person shall make visible his or her specified anatomical areas. "Specified anatomical areas" shall mean less than completely and opaquely covered human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola; and human male genitals in a discernibly turgid state, even if completely and opaquely covered; or any simulation or portrayal of any of the foregoing. Specified sexual activities shall mean human genitals in a state of sexual stimulation or arousal; acts of masturbation, sexual intercourse or sodomy; fondling or other erotic touching of human genitals, pubic region, buttock or female breast; or any simulation or portrayal of any of the foregoing.

1.2 Producer shall immediately cause to be removed from the Westworld Facility any person related to Producer or this Agreement (including without limitation Producer's customers) who:

- 1.2.1 Violates this paragraph.
- 1.2.2 Appears or is believed to be to be intoxicated or illegally under the influence of any narcotic or chemical.
- 1.2.3 Commits an act of violence.
- 1.2.4 Acts in a loud or unusually boisterous manner.
- 1.2.5 Harms or threatens harm to any person or thing.
- 1.2.6 Uses loud or electronically amplified profanity.
- 1.2.7 Violates laws or regulations applicable to the Westworld Facility.

1.3 The requirements of this paragraph are for the benefit of Operator and for the benefit of all real property located within one thousand feet (1,000') of the Westworld Facility. Such third party beneficiaries' sole remedy is injunctive relief against Producer and those claiming under Producer and not against Operator to enforce the requirements of this paragraph.

11788801v4



LIQUOR LICENSE AREA

OPTION A

RESOLUTION NO. 9584

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, APPROVING A WESTWORLD FOOD AND ALCOHOL LICENSE AND MARKETING AGREEMENT WITH NATIONAL WESTERN CAPITAL CORPORATION AND A RELATED MONTERRA FOOD AND ALCOHOL LICENSE AGREEMENT AND AUTHORIZING A \$200,000 FISCAL YEAR 2013/14 GENERAL FUND OPERATING BUDGET CONTINGENCY TRANSFER TO THE WESTWORLD OPERATING BUDGET

**(WestWorld food and marketing
and Monterra food)**

WHEREAS:

A. City is the operator of the WestWorld recreational facility located northeast of the intersection of Pima Road and the Central Arizona Project Canal in Maricopa County, Arizona.

B. City operates WestWorld pursuant to an agreement with the United States Bureau of Reclamation

C. WestWorld is currently improved with exhibit halls, equestrian arenas, a polo field and related recreation improvements. Included among the WestWorld improvements are:

1. A large climate controlled building known as the Tony Nelssen Equestrian center, which among other things houses an indoor exhibit hall (the "North Hall") and an indoor equestrian arena (the "Equidome").

2. A smaller climate controlled building (the "Monterra Building").

3. Parking areas, arenas, landscaping and related improvements and equipment.

D. Within the Equidome and the North Hall are five walled interior areas that are suitable for use as kitchens for preparation of food for persons attending events at WestWorld.

E. City and National Western Capital Corporation, an Arizona corporation ("Vendor") desire that City grant to Vendor a Food and Alcohol License and Marketing Agreement No. 2013-186-COS (the "Food and Marketing Agreement") allowing Vendor to use the Kitchens and other necessary areas for the preparation and serving of food and beverages for immediate consumption at WestWorld.

F. City and Vendor also desire to pursue certain marketing objectives to enhance and promote WestWorld as a venue for events. The marketing objectives are:

1. Increase event bookings at WestWorld.
2. Attract new events to WestWorld and Scottsdale.
3. Increase the number of contracts between City and event producers that require event producers to conduct their events at WestWorld.
4. Generate increased economic activity in Scottsdale through the effective marketing of WestWorld as a venue for events.
5. Increase national and international exposure of WestWorld and Scottsdale.
6. Respond to information requests from event producers and others who influence events.
7. Increase group and individual tour business at WestWorld and Scottsdale through solicitation and servicing.

G. Certain tourist-oriented events are particularly important to WestWorld and City. Tourist-oriented events are shows, festivals, competitions and other events that are oriented toward people who reside outside of Maricopa County who visit Scottsdale and stay overnight in Scottsdale hotels specifically to attend the event.

H. The Food and Marketing Agreement also provides for Vendor to conduct marketing activities to market WestWorld to tourism event producers and other event producers and to otherwise advance the marketing objectives.

I. The Monterra Building also includes a kitchen, as well as event space. City and Vendor desire to enter into Monterra Food and Alcohol License Agreement No. 2013-191-COS (the "Monterra Agreement") allowing Vendor to use the Monterra Building for events at WestWorld and, upon City's request, for food and alcohol service elsewhere at WestWorld.

J. The Food and Marketing Agreement and the Monterra Agreement will provide direct benefit to City and to the general public by increased revenues to City, better food and alcohol service at WestWorld, increased use of WestWorld and enhancement of the economic and tourism climate of the City of Scottsdale and its environs.

K. The City Council has considered the City expenditure authorized by the Food and Marketing Agreement and the Monterra Agreement and the direct consideration that City will receive and finds that there is a clearly identified public purpose for City's expenditure, if any, and that City will receive direct consideration substantially equal to its expenditure.

L. Current estimates of revenues and expenditures differ from forecasts used to create the FY 2013/14 budget.

M. Section 2 of Ordinance 4095 allows expenditures to be made from budget contingencies and reserves with the approval of the City Council.

N. Article 6, Section 11 of the Scottsdale City Charter permits the transfer of any unencumbered appropriation balance or portion thereof between general classifications of expenditures within an office, department, or agency or from one office, department or agency to another with the approval of the City Council.

O. The City is required to balance its budget and all associated funds.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Mayor is hereby authorized and directed to execute on behalf of the City the Food and Marketing Agreement and the Monterra Agreement in the forms approved by the city council in its meeting at which this resolution is adopted.

2. Authorization is given for a \$200,000 FY 2013/14 General Fund operating budget contingency transfer to the WestWorld operating budget.

PASSED AND ADOPTED by the Council of the City of Scottsdale this ____ day of _____, 20____.

CITY OF SCOTTSDALE, an Arizona
municipal corporation

W. J. "Jim" Lane, Mayor

ATTEST:

By: _____
Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

By: _____
Bruce Washburn, City Attorney

OPTION B

RESOLUTION NO. 9584

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, APPROVING A WESTWORLD FOOD AND ALCOHOL LICENSE AND MARKETING AGREEMENT WITH NATIONAL WESTERN CAPITAL CORPORATION AND A RELATED MONTERRA FOOD AND ALCOHOL LICENSE AGREEMENT AND AUTHORIZING A \$200,000 FISCAL YEAR 2013/14 GENERAL FUND OPERATING BUDGET APPROPRIATION CONTINGENCY TRANSFER TO THE WESTWORLD OPERATING BUDGET TO BE FUNDED BY THE TOURISM DEVELOPMENT FUND

(WestWorld food and marketing
and Monterra food)

WHEREAS:

A. City is the operator of the WestWorld recreational facility located northeast of the intersection of Pima Road and the Central Arizona Project Canal in Maricopa County, Arizona.

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NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Mayor is hereby authorized and directed to execute on behalf of the City the Food and Marketing Agreement and the Monterra Agreement in the forms approved by the city council in its meeting at which this resolution is adopted.

2. Authorization is given for a \$200,000 FY 2013/14 General Fund operating budget appropriation contingency transfer to the WestWorld operating budget to be funded by Tourism Development Fund.

PASSED AND ADOPTED by the Council of the City of Scottsdale this ____ day of _____, 20____.

CITY OF SCOTTSDALE, an Arizona
municipal corporation

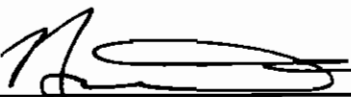
W. J. "Jim" Lane, Mayor

ATTEST:

By: _____
Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

By: _____
Bruce Washburn, City Attorney

Stevens, Katie

From: ace@ultimatearttours.com
Sent: Thursday, December 05, 2013 3:27 PM
To: Jagger, Carolyn; Stevens, Katie
Subject: Agenda Item Comment for 12/10/13 - Item 19-WestWorld

Meeting Date: 12/10/13
Item Number: 19-WestWorld

Contact Information (if blank, user did not provide):

Name: Ace Bailey
Address: 6914 E. 3rd Street
C/S/Z: Scottsdale, AZ 85251
Phone:

Comment for 12/10/13 Item 19-WestWorld:

As a commissioner on the TDC I do not feel that this request falls under the current requirements of Prop 200 to qualify for Bed Tax dollars. M Catering is just that a catering company which does not qualify it for Bed Tax dollars. Perhaps this would be better funded from the General Fund. Thank you. Respectfully submitted, Ace Bailey

Stevens, Katie

From: ren.hirose@starwoodhotels.com
Sent: Monday, December 09, 2013 10:31 AM
To: Jagger, Carolyn; Stevens, Katie
Subject: Agenda Item Comment for 12/10/13 - Item 19

Meeting Date: 12/10/13
Item Number: 19

Contact Information (if blank, user did not provide):

Name: Ren Hirose
Address: 7277 E. Camelback Road
C/S/Z: Scottsdale, AZ 85250
Phone: 480.970.2130

Comment for 12/10/13 Item 19:

As a TDC Commissioner, I am opposed to the #19 Westworld Food Service & Marketing License Agreement. The City Code states that the funding from the Hotel Bed Tax Revenues should be used for Tourism Development. This proposal is requesting funding to manage the Food & Beverage operations and the building of the kitchens which is not directly related to tourism development. During the TDC meeting on 12/4/13, we were not presented any details on the Marketing Program. We were informed that the Marketing initiatives were confidential. Once again, based upon the information that was presented, I strongly oppose the utilization of Hotel Bed Tax revenues for this proposal. Thank you!



December 6, 2013

Fritz Behring
City Manager - Scottsdale City Council

Dear Mr. Behring,

As a Scottsdale hotelier and local resident, I was very concerned to hear that the City was considering paying for WestWorld's operational expenses out of the Tourism Development Fund.

At the Dec. 10 meeting, you'll be considering how to pay for a food service and marketing license agreement for WestWorld of Scottsdale. One of the options set before you is to use tourism funds for these expenses.

While I support the City funding a marketing contract for WestWorld, I do not support this contract being funded from the Tourism Development Fund.

When Scottsdale's hotels and resorts unequivocally supported increasing the bed tax in 2010, it was to ensure that the Scottsdale Convention & Visitors Bureau had dedicated funding for destination marketing, and that the City of Scottsdale had dedicated funding to support the city's other tourism needs, including special events.

The Tourism Development Funds, in accordance with their intention, have been used to fund the building of the Tony Nelssen Equestrian Center, as well as to help develop new events at WestWorld and throughout the city.

However, if the Council were to use these same funds for City operational expenses, that decision would be in total disregard of the voters' decision and Scottsdale's hotel industry. In addition, such a decision could have devastating consequences as it would set a precedent that could quickly defeat the true objective of those funds and diminish our ability as a community to maximize our tourism industry.

I appreciate your past and ongoing support of the industry and thank you for your thoughtful deliberation on the most appropriate way to fund these expenses while keeping in mind the requests of the voters as well as one of the largest industries in Scottsdale.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Rice".

Peter Rice
10519 E. Terra Dr.
Scottsdale, AZ 85258

PETER RICE
General Manager

HYATT REGENCY SCOTTSDALE RESORT & SPA
7500 E. Doubletree Ranch Road, Scottsdale, AZ 85258 USA
Scottsdale.hyatt.com

T +1 480-483-5501
F +1 480-483-5573
peter.rice@hyatt.com

WestWorld Food & Alcohol License & Marketing Agreement

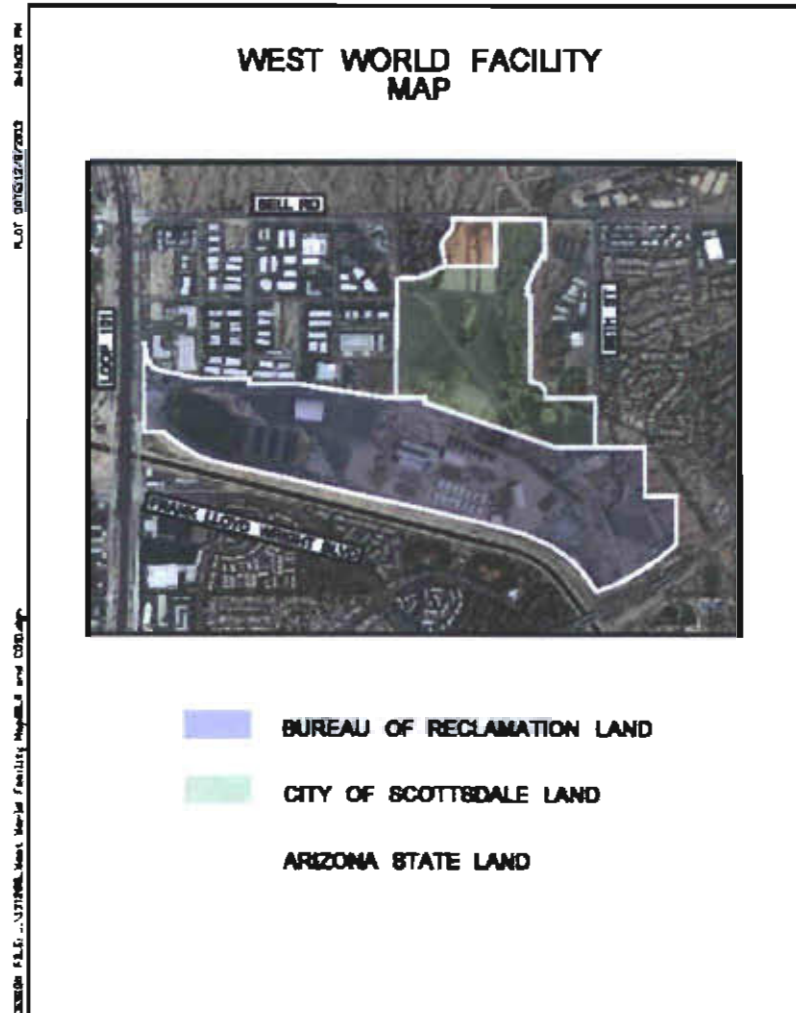
WestWorld

- **Background**
- **From -- 100,000SF open air arena**
- **To – 300,000SF enclosed climate controlled**
- **Big 3 Debt Service Commitment**
 - **Arabian Horse Association of Arizona -- \$240,000**
 - **Barrett Jackson Auction Company -- \$75,000**
 - **Arizona Quarter Horse Association -- \$45,000**

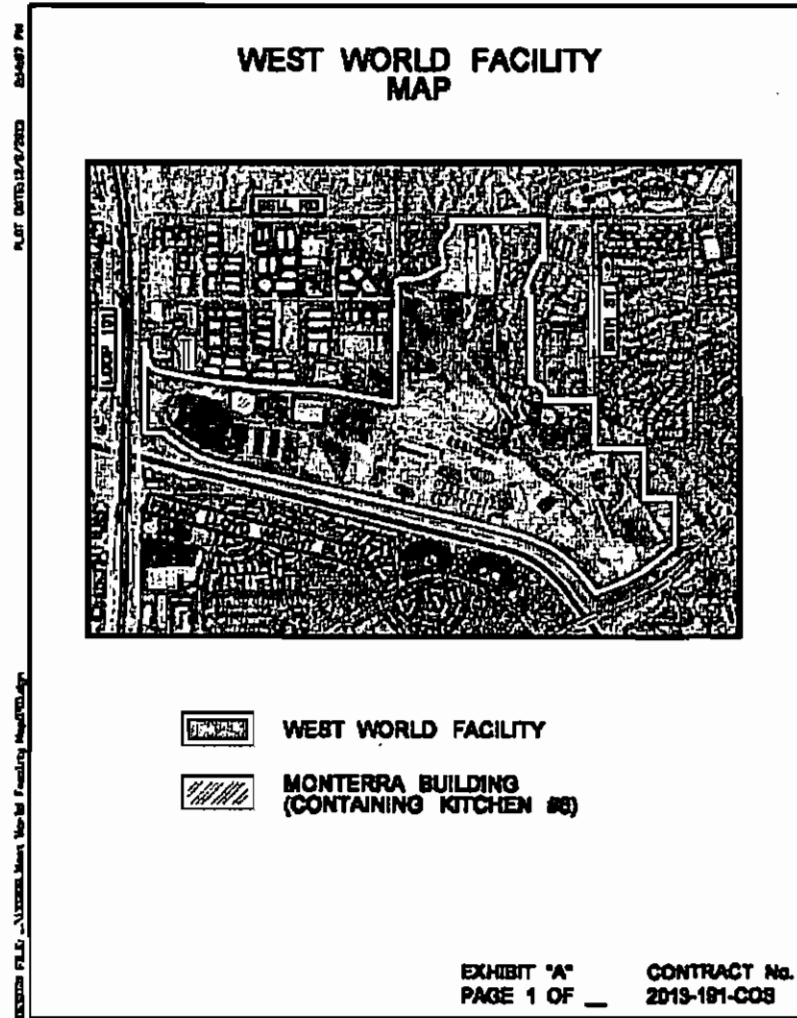
WestWorld

- We have two partners
- BOR outlined in Purple
- Monterra License

WestWorld



WestWorld



WestWorld

Monterra License

National Western Capital Corporation

- **M Catering – Barrett Jackson, The Open, US Government**
- **What it did**
 - **Liquor license for WW**
 - **Events – Food, Beverage, and Alcohol in Monterra**
 - **Invitation – Food, Beverage, and Alcohol on WW**
 - **Sales and Marketing of Monterra**

WestWorld

WW Expansion – Expanded Needs

- 5 Kitchens in Tony Nelssen Equestrian Center need to be finished with equipment (\$750,000 - \$1,000,000)
- Food, Beverage, and Alcohol Service on WW
- Sales – Marketing – all WestWorld – all year

WestWorld

Marketing Needs

- Bring new events
- Create new events
- Hire, pay, supervise staff
- Website development and update
- Create marketing material
- Travel & entertainment expenses
- Coordinate – leverage SCVB, TDC, community

WestWorld

Criteria

- Marketing Plan & Strategy
- Marketing should be Performance based
- Have actual targets for each year
- Ability to cancel if not being met
- City will pay for performance

(Included in writing in the Contract)

WestWorld

2 Agreements – National Western Capital Corporation

- **Food, Beverage & Alcohol**
 - Equip and Pay for 5 Kitchens
 - Quality, variety – Food
 - Unique food – event producer
 - Trained and adequate staff
 - Security cash & credit handling standards
 - Well established vendor in Phoenix market

WestWorld

- **Serve Food and Beverage and pay 20% commission to WestWorld**
- **Serve Alcohol and pay 30% commission to WestWorld**
- **Pay for – build and Equip 5 Kitchens in TNEC**

(In Contract)

WestWorld

2 Agreements – National Western Capital Corporation

- **Marketing**
 - Shows, festivals, events aimed at out-of-town tourists
 - Increase event bookings
 - National & international exposure
 - Group & individual tour business
 - Multi-day events
 - Producers to create new events

WestWorld

Annual Marketing Strategy

- Advertising
- Event and consumer promotions, data base relationship marketing
- Public relations
- Website – develop & maintain
- On-line marketing programs and promotion
- Outlining show categories and targets broadly
- To be submitted annually

WestWorld

Revenue Targets

- FY 13-14 \$3.2 million
- FY 14-15 \$4.0 million
- FY 15-16 \$5.2 million
- FY 16-17 \$5.2 million plus 4% escalation
annual

(In Contract)

WestWorld

Base Marketing Fee

- FY 13-14 \$200,000
- FY 14-15 \$200,000
- FY 15-16 \$200,000
- FY 16-17 \$100,000 plus 4% escalation
- FY 17-18 \$200,000 annual plus 4%
escalation

(In Contract)

WestWorld

Percentage Marketing Fee paid on Event Invoice Revenue

- Totals up to \$3.2 million – No Fee
 - Totals next \$1 million – 10% paid
 - Totals over \$4.2 million – 15% paid
- (In Contract)

WestWorld

Request \$200,000

- **FY 13-14 General Fund Operating Budget appropriation contingency transfer to the WestWorld Operating Budget to be funded by Tourism Development Fund**
- **FY 13-14 General Fund Operating Budget contingency transfer to WestWorld Operating Budget**

WestWorld

City Team

Kelly Ward, Linda Harrington, Elaine Goetze, Kim Lank

Dan Worth, Martha West

Jeff Nichols

Brian Dygert, Gloria Storms

Rose Rimsnider, Paul Katsenes

Item 19

Paul Katsenes
Presentation

WestWorld Food & Alcohol License & Marketing Agreement

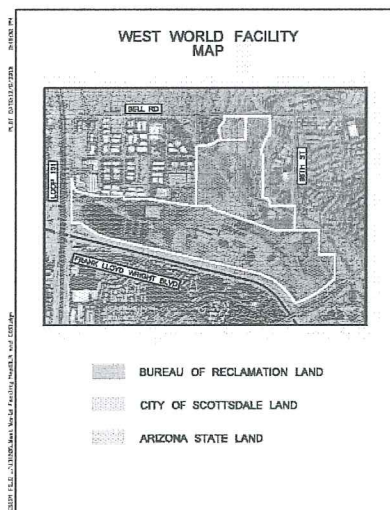
WestWorld

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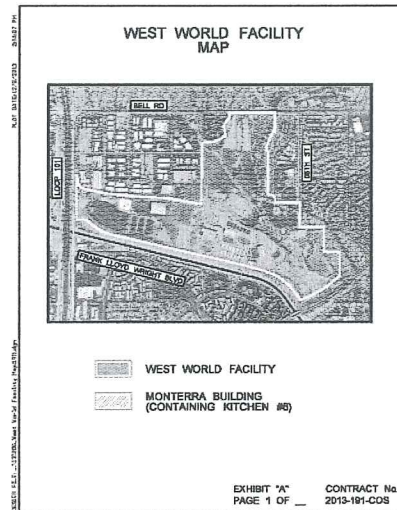
WestWorld

- We have two partners
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- Monterra License

WestWorld



WestWorld



WestWorld

Monterra License

National Western Capital Corporation

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- What it did
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WestWorld

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- Food, Beverage, and Alcohol Service on WW
- Sales – Marketing – all WestWorld – all year

WestWorld

Marketing Needs

- Bring new events
- Create new events
- Hire, pay, supervise staff
- Website development and update
- Create marketing material
- Travel & entertainment expenses
- Coordinate – leverage SCVB, TDC, community

WestWorld

Criteria

- Marketing Plan & Strategy
- Marketing should be Performance based
- Have actual targets for each year
- Ability to cancel if not being met
- City will pay for performance

(Included in writing in the Contract)

WestWorld

2 Agreements – National Western Capital Corporation

- Food, Beverage & Alcohol
 - Equip and Pay for 5 Kitchens
 - Quality, variety – Food
 - Unique food – event producer
 - Trained and adequate staff
 - Security cash & credit handling standards
 - Well established vendor in Phoenix market

WestWorld

- Serve Food and Beverage and pay 20% commission to WestWorld
- Serve Alcohol and pay 30% commission to WestWorld
- Pay for – build and Equip 5 Kitchens in TNEC

(In Contract)

WestWorld

2 Agreements – National Western Capital Corporation

- Marketing
 - Shows, festivals, events aimed at out-of-town tourists
 - Increase event bookings
 - National & international exposure
 - Group & individual tour business
 - Multi-day events
 - Producers to create new events

WestWorld

Annual Marketing Strategy

- Advertising
- Event and consumer promotions, data base relationship marketing
- Public relations
- Website – develop & maintain
- On-line marketing programs and promotion
- Outlining show categories and targets broadly
- To be submitted annually

WestWorld

Revenue Targets

- FY 13-14 \$3.2 million
- FY 14-15 \$4.0 million
- FY 15-16 \$5.2 million
- FY 16-17 \$5.2 million plus 4% escalation
annual
(In Contract)

WestWorld

Base Marketing Fee

- FY 13-14 \$200,000
- FY 14-15 \$200,000
- FY 15-16 \$200,000
- FY 16-17 \$100,000 plus 4% escalation
- FY 17-18 \$200,000 annual plus 4%
escalation
(In Contract)

WestWorld

Percentage Marketing Fee paid on Event Invoice Revenue

- Totals up to \$3.2 million – No Fee
- Totals next \$1 million – 10% paid
- Totals over \$4.2 million – 15% paid
(In Contract)

WestWorld

Request \$200,000

- FY 13-14 General Fund Operating Budget appropriation contingency transfer to the WestWorld Operating Budget to be funded by Tourism Development Fund
- FY 13-14 General Fund Operating Budget contingency transfer to WestWorld Operating Budget

WestWorld

City Team

Kelly Ward, Linda Harrington, Elaine Goetze, Kim Lank

Dan Worth, Martha West

Jeff Nichols

Brian Dygert, Gloria Storms

Rose Rimsnider, Paul Katsenes

ORDINANCE NO. 4018

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SCOTTSDALE, ARIZONA ESTABLISHING A "SPECIAL REVENUE FUND FOR TOURISM DEVELOPMENT"; IDENTIFYING AND DIRECTING REVENUES TO BE DEPOSITED INTO SAID FUND; LIMITING PURPOSES FOR EXPENDITURES FROM SAID FUND; AUTHORIZING THE CITY TREASURER TO CREATE AND MONITOR SAID FUND; ESTABLISHING DELAYED EFFECTIVE DATE

WHEREAS, in March 2010, the citizens of the City of Scottsdale voted to increase the transient lodging (bed) tax from 3% to 5% effective July 2010; and

WHEREAS, the ballot measure directed that 50% of total transient lodging (bed) tax revenues be used for destination marketing and the other 50% for tourism-related event support, tourism research, tourism-related capital projects and other eligible uses as determined by city ordinance and state law; and

WHEREAS, the City receives into its General Fund 100% of the transient lodging (bed) tax collections; and

WHEREAS, the City receives payments into its General Fund pursuant to that certain document titled "Ground Lease" with the Scottsdale Princess Partnership, dated December 30, 1985, that could be dedicated to tourism-related capital projects; and

WHEREAS, the City Council deems it beneficial to formally designate revenues received under the Ground Lease with Scottsdale Princess Partnership (hereinafter "Princess Hotel") for tourism-related capital projects and no other purposes, and

WHEREAS, the City Council deems it beneficial to combine transient lodging (bed) tax receipts with the Princess Hotel lease revenues in a special revenue fund, for improved accounting and operational functions.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Scottsdale, Arizona, as follows:

Section 1. The City Council hereby establishes a special revenue fund, to be known as the "Special Revenue Fund for Tourism Development."

Section 2. One hundred percent (100%) of transient lodging (bed) tax revenues and one hundred percent (100%) of Princess Hotel lease payments shall be received into the Special Revenue Fund for Tourism Development."

Section 3. Funds received into the Special Revenue Fund for Tourism Development may only be spent for identified purposes, as determined by the Council through ordinance.

Section 4. The City Treasurer, or his designee, shall take all appropriate and necessary action to create this fund in the City's financial books and records and shall monitor all transactions into and out of this fund for conformity with approved purposes.

ORDINANCE NO. 4019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF
SCOTTSDALE, ARIZONA; DESIGNATING THE PURPOSES
AND ALLOCATION OF REVENUES FOR THE "SPECIAL
REVENUE FUND FOR TOURISM DEVELOPMENT"; AMENDING
FINANCIAL POLICY 21A IN CONFORMITY THEREWITH;
ESTABLISHING DELAYED EFFECTIVE DATE

WHEREAS, in Ordinance No. 4018 the City Council did establish the "Special Revenue Fund for Tourism Development" and identify which revenues it shall receive; and

WHEREAS, said ordinance expressly stated that the permitted purposes for expenditures would be established through related ordinance; and

WHEREAS, the City Council wishes to establish the permitted purposes for expenditures; and

WHEREAS, establishing the permitted purposes for expenditures necessitate an amendment to City Council's Financial Policy 21A;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Scottsdale, Arizona, as follows:

Section 1. The City Council hereby establishes that the permitted purposes of, and corollary expenditures and transfers from, the monies annually received into the Special Revenue Fund for Tourism Development" through Ordinance No. 4018 are limited to:

1. 50% of the transient lodging (bed) tax revenues approved by voters to be used for tourism-marketing;
2. \$1,500,000 for the General Fund;
3. ~~\$1,200,000 for Events and Event Development;~~
4. \$500,000 for tourism-related administration and research;
5. \$500,000 for one-time commitments to capital projects, events and event development, or administration and research; and
6. The balance for tourism-related capital projects, in the form of one-time commitments or multi-year annual commitments, not to exceed \$600,000 per project.

At the end of each fiscal year, any unused funds in the Special Revenue Fund for Tourism Development will be available for use in subsequent years for any of the non-marketing tourism categories (except the general fund category) and may be allocated without limitations, except that they may not be leveraged for multi-year commitments, such as debt service payments.

Section 2. Financial Policy 21A, as adopted through Ordinance No. 3954, is hereby amended to be in conformity with Section 1 of this Ordinance. Revised Financial Policy 21A is attached hereto as "Exhibit A", and hereby incorporated by this reference as if fully set forth herein.

Section 3. This Ordinance shall be effective for the fiscal year beginning July 1, 2012.

City of Scottsdale
Tourism Program Proforma
July 31, 2013

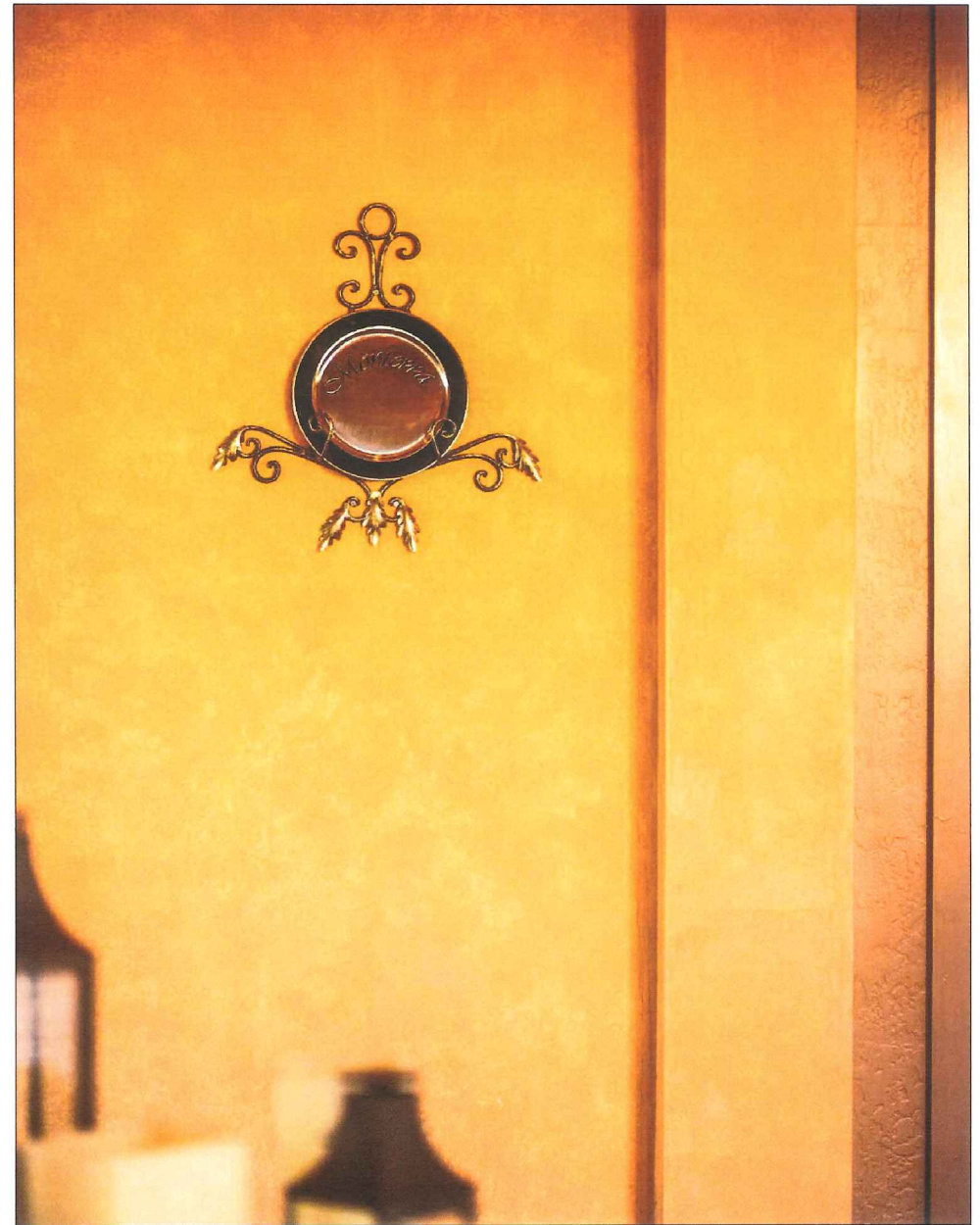
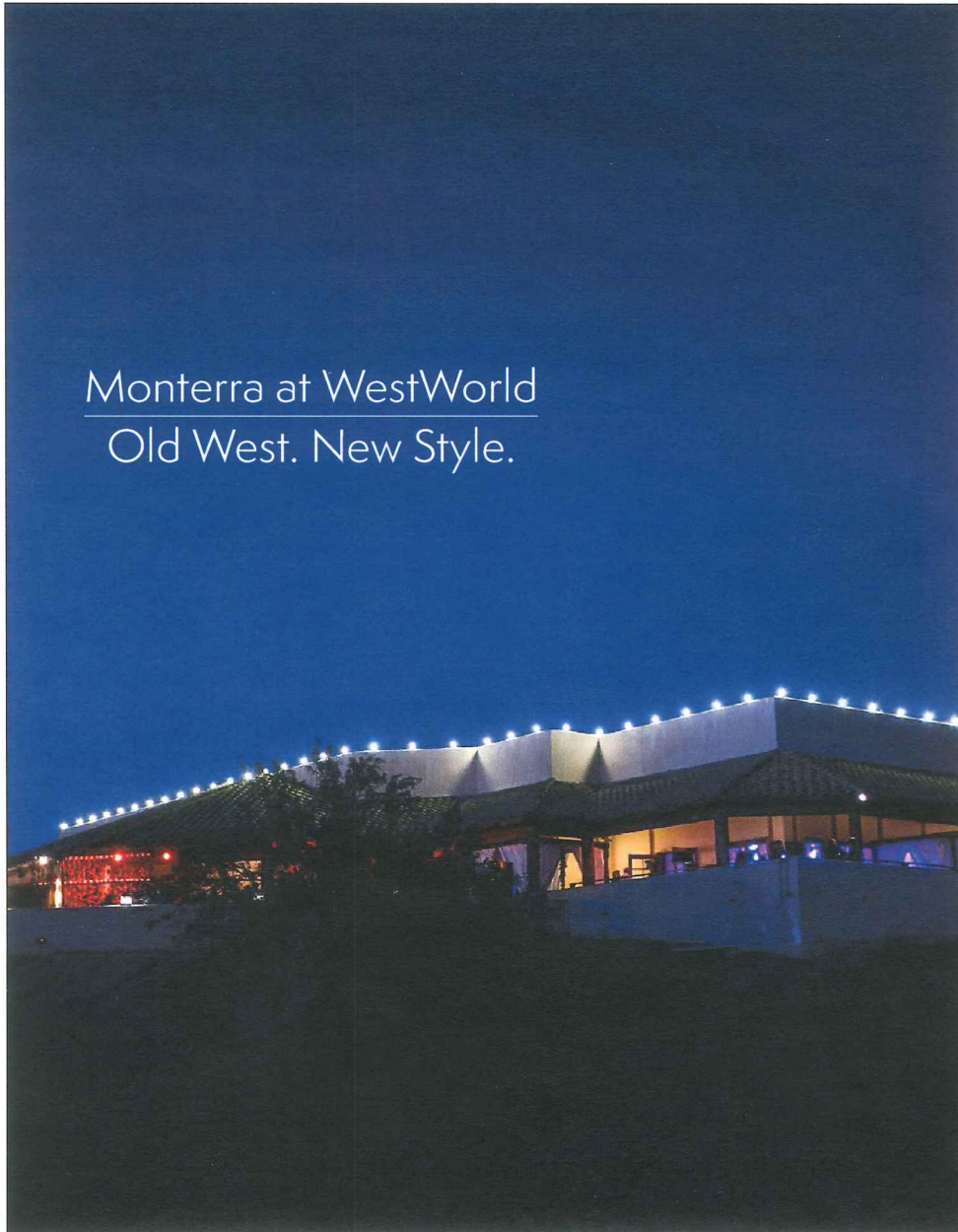
Attachment No. 3

	2012/13 Pre-Audit	2013/14 Estimate	2014/15 Estimate
5% Bed Taxes (one month lag)	\$ 13,851,417	\$ 13,989,000	\$ 14,716,000
Princess Lease Revenues	1,439,195	1,600,000	1,600,000
Event Notification Banner Revenues	10,800	16,000	16,000
Trolley Sponsorship Revenues	70,207		
TOURISM REVENUES	15,371,619	15,605,000	16,332,000
EXPENSES			
Destination Marketing (50% of bed taxes)	(6,925,708)	(6,994,500)	(7,358,000)
General Fund Allocation	(1,500,000)	(1,500,000)	(1,500,000)
Capital Projects (Debt & One-time Capital Projects)			
<u>Multi-year Commitments:</u>			
• WestWorld debt service (started FY06/07, 80 acres)	(600,000)	(600,000)	(600,000)
• TNEC Equestrian Center debt service (started FY12/13)	(588,503)	(1,200,000)	(1,200,000)
• Museum of the West debt service (\$900k/yr est. start FY13/14) 1/		(900,000)	(900,000)
• TPC renovations debt service (\$900k/yr est. start FY14/15)		(900,000)	(900,000)
• Tourism Related Capital Project (TDC reserved \$600k/yr for DDC)			
• Tourism Related Capital Project (uncommitted)			
<u>One-time Commitments (Capital/Event/Admin):</u>			
• Tourism Related Project			
<u>Multi-or One-time Commitments (Capital/Event/Admin):</u>			
• Tourism Strategic Plan 1/ (Council approved 6-14-13 for FY13/14)		(500,000)	-
Total Capital Projects	(1,188,503)	(4,100,000)	(3,600,000)
Event Retention and Development			
New Event Development		(202,374)	(266,320)
Event Notification Program	(15,198)	(16,000)	(16,000)
Fiesta Bowl	(265,717)	(276,346)	(287,400)
AZSBHC Sponsorship Super Bowl (proposed 3 year commitment-\$215,280 per year FY12/13; FY13/14 and FY14/15)	(215,280)	(215,280)	(215,280)
Rock n'Roll Marathon	(113,550)	(60,000)	(60,000)
Women's Half Marathon		(30,000)	(30,000)
Competitor Group Marathon Series (barricades, public safety, st, maint)		(25,000)	(25,000)
Horse and Horsepower Polo Event	(75,000)	(75,000)	
Event Support Funding Program	(160,022)	(200,000)	(200,000)
Baseball Festival	(75,000)		
PGA Schwab Cup	(50,000)		
Community Events	(70,000)	(100,000)	(100,000)
Total Events	160,233 (1,039,767)	(1,200,000)	(1,200,000)
Administrative/Other Professional Services			
Administrative Expenses	(246,752)	(367,000)	(367,000)
Tourism Research	(32,061)	(33,000)	(33,000)
5-yr Tourism Strategic Plan	(99,926)	(100,000)	(100,000)
Total Admin/Other	121,261 (378,739)	(500,000)	(500,000)
TOURISM EXPENSES	(11,032,718)	(14,294,500)	(14,158,000)
CURRENT YEAR UNSPENT	\$ 4,338,901	\$ 1,310,500	\$ 2,174,000
CARRYOVER BALANCE:			
Beginning Balance	\$ 3,018,292	\$ 7,203,910	\$ 3,201,410
Additions			
Current year unspent carryover	4,338,901	1,310,500	2,174,000
Uses			
Hospitality Trolley Expenses (FY13/14 has not been approved by Council)	(153,283)	(180,000)	
Desert Discovery Phase III (CC approved 4-2012)		(60,000)	
Tourism Strategic Plan (Council approved 5-14-13)		(125,000)	
Museum of the West 5-yr match of donations up to \$400k/year 1/		(2,000,000)	
Museum of the West debt service reserve (est. funding FY13/14) 1/		(900,000)	
TNEC Equestrian Center		(2,048,000) 2/	
Ending Balance	\$ 7,203,910	\$ 3,201,410	\$ 5,375,410

1/ Museum of the West pending further City Council approval 2013.

2/ Per Council action on 3/20/2012, the lower of (a) the 2011/12 unspent carryover or (b) \$2.048 million will be used to fund TNEC shortfalls during the construction phase (FY12/13 and FY13/14).

Monterra at WestWorld
Old West. New Style.



Featuring breathtaking views of the McDowell Mountains, Monterra at WestWorld is north Scottsdale's premier special event venue.

With more than 16,000 square feet of newly remodeled indoor/outdoor meeting space, experience modern luxury in a classic Arizona setting. Perched above the Polo Fields at WestWorld, Monterra is an ideal destination for any occasion:

- Corporate Events
- Meetings and Seminars
- Weddings
- Mitzvahs and Milestones
- Fundraisers
- Holiday Parties
- Company Picnics
- Equestrian Events
- Multi-day Festivals
- Concerts

As the exclusive caterer and venue operator, M Catering by Michael's provides exceptional event experiences for clients and attendees. Trust M Catering to exceed your highest expectations from inception to execution. Our globally-influenced cuisine is rivaled only by our indulgently personal service, and their combination will leave everyone with fond memories of their unique experiences.

Please visit www.monterracatering.com and contact us to learn more about hosting your next event at Monterra.

	theatre	classroom	banquet rounds	dinner rounds		reception with patio	conference	square footage
ballroom	500	100	400	250	ballroom	1200+	n/a	5,850
w. ballroom only	300	80	250	150	w. ballroom only	750+	n/a	3,100
e. ballroom only	300	40	150	90	e. ballroom only	450+	n/a	2,750
bar	100	24/32	80	48	bar	100+	24	1,300
green room	n/a	n/a	10	n/a	green room	n/a	8-10	350



Blue Note Lounge

The blank canvas of the Monterra Bar is painted with broad strokes of cool blues, creating an ultra-lounge that draws people with an electric yet relaxed vibe. High-tops and splashes of light beg for a martini to be sipped while surrounding party-goers mix and mingle.

VENDOR: Merestone

HB Harley Bonham
• PHOTOGRAPHIC ARTIST •
www.HarleyBonham.com



Food & Fashion

Bringing together fine cuisine and haute couture, a "Food & Fashion Show" in the East Ballroom and Patio offers an original use for indoor/outdoor event spaces. Models wearing the latest "fashions" in table linens and textiles capture everyone's attention inside while luxurious cabanas offer VIP treatment and relaxation outside. Have a jet set experience without ever leaving the ground.

VENDORS: Cre8ive Event Rentals / Distinctive Event Productions







Light-Meets-Dark Wedding

Luxury abounds in a room divided. To one side, stark white. To the other, enveloping black. A study in contrast, the West Ballroom becomes the most elegant and intriguing venue for a singular dining experience. A world-class DJ mixes music while master mixologists concoct worldly cocktails, and the lucky few invited to the dining table experience the power of light and mystery of dark.

VENDOR: Avant-Garde Floral Studio



HB Hayley Bon
PHOTOGRAPHIC
www.HayleyBonh



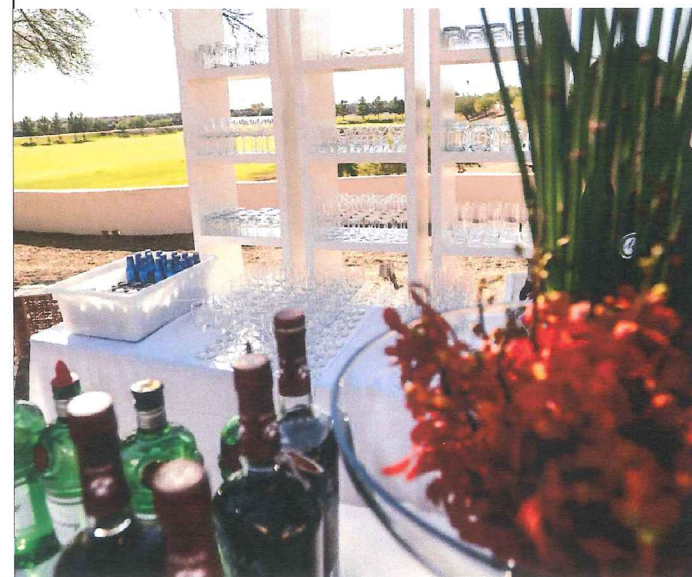
Wine Launch Party

The Upper & Lower Patios are transformed into the terraces of a Tuscan villa, complete with antique European furniture and hand-crafted wood elements. Red roses and red grapes catch the eye, while fine wines and delectable cuisine delight the palate. Lush lawns below and leafy trees along rolling hills beyond inspire thoughts of the Italian countryside, and enjoying an elegant affair with special guests.

VENDORS: Petal Pusher / Event Rents

petal pusher

Event Rents

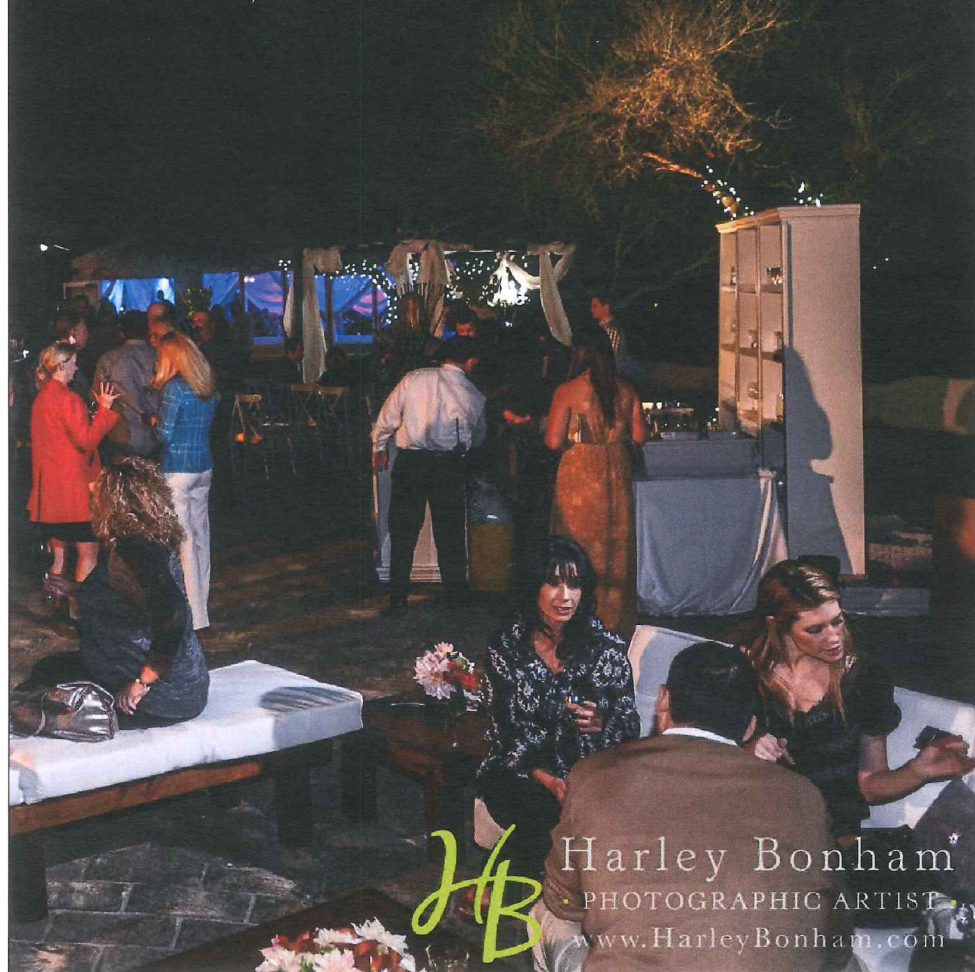


CLASSIC
PARTY
RENTALS
EVENT SPECIALISTS

Rustic Wedding

The Beehive Patio on the west side of the building is an ideal setting for modern luxury in a relaxed atmosphere, complete with gorgeous sunsets on the horizon. The hand-hewn pavers and beehive fireplace – a fixture in Arizona architecture – provide the backdrop for rustic furnishings, creating a casually elegant environment for wedding ceremonies and cocktail receptions.

VENDOR: Classic Party Rentals



HB

Harley Bonham
PHOTOGRAPHIC ARTIST
www.HarleyBonham.com



PROBLEM
PARTY & EVENT RENTALS

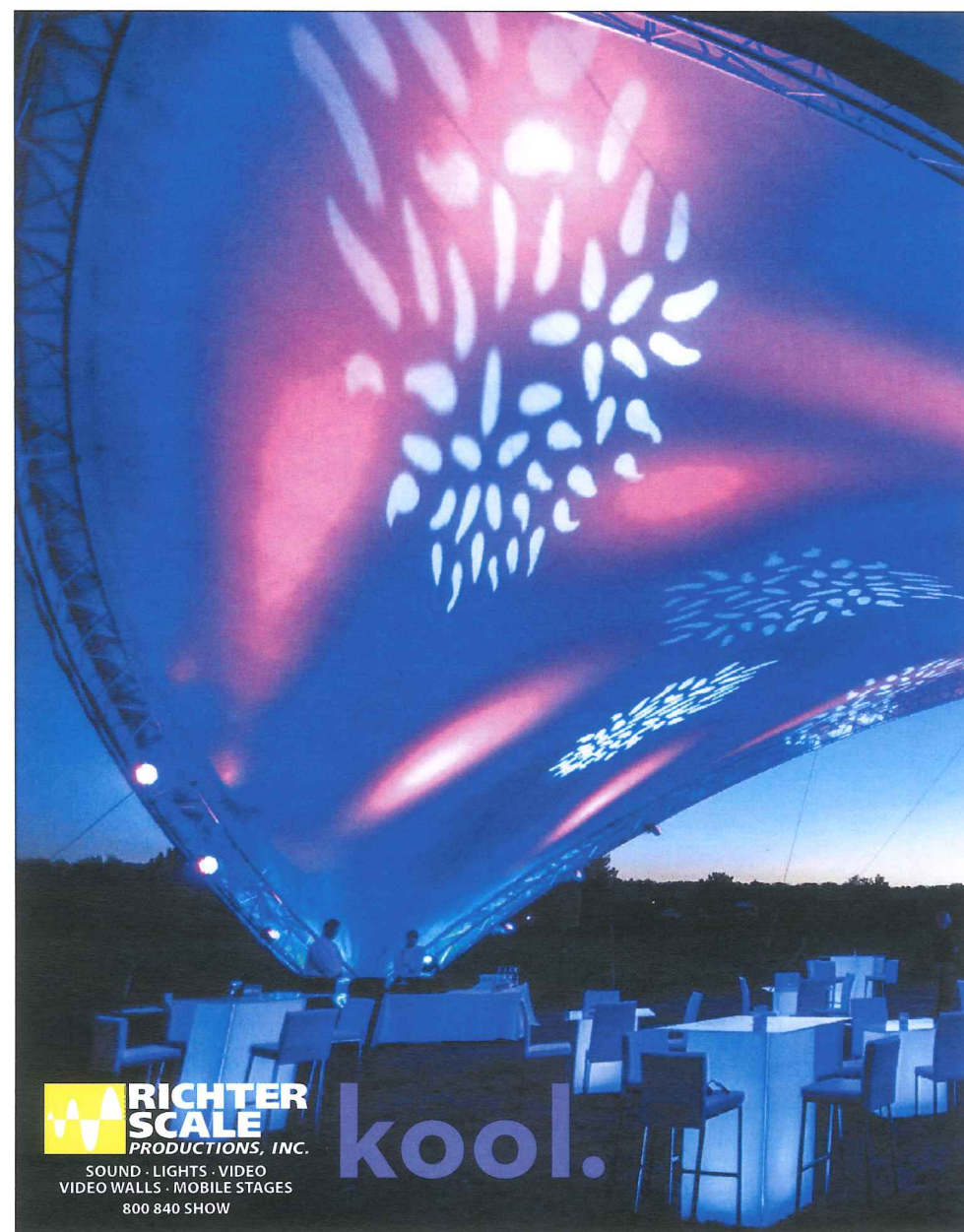
kool.



Miami to Ibiza

Experience a Mediterranean oasis fused with the energy of South Beach. Imagined for lounging and libations, resident mixologists pour cocktails while innovative chefs serve up tantalizing tastes that create the perfect mix of elegance and international flair. White furniture and treatments throughout add to the electricity of the space as guests overlook the Polo Field. This is a one-of-a-kind experience that can only be had on the Southwest Patio at Monterra.

VENDORS: PRO EM / kool. Party Rentals




**RICHTER
SCALE**
PRODUCTIONS, INC.
SOUND · LIGHTS · VIDEO
VIDEO WALLS · MOBILE STAGES
800.840.SHOW

kool.

A Festival Reimagined

The Polo Field at Monterra provides sophistication under starry skies. A unique "saddle-span" enclosure creates a backdrop for projecting subtle yet elegant lighting. The festival comes alive as the hydraulic stage beyond unfolds to reveal a 30-foot video screen that creates added energy and emotion to the space. Above all, the outdoor elements of the desert Southwest captivate everyone in attendance. Own the night.

VENDORS: Richter Scale Productions / kool. Party Rentals

 Harley Bonham
• PHOTOGRAPHIC ARTIST •
www.HarleyBonham.com

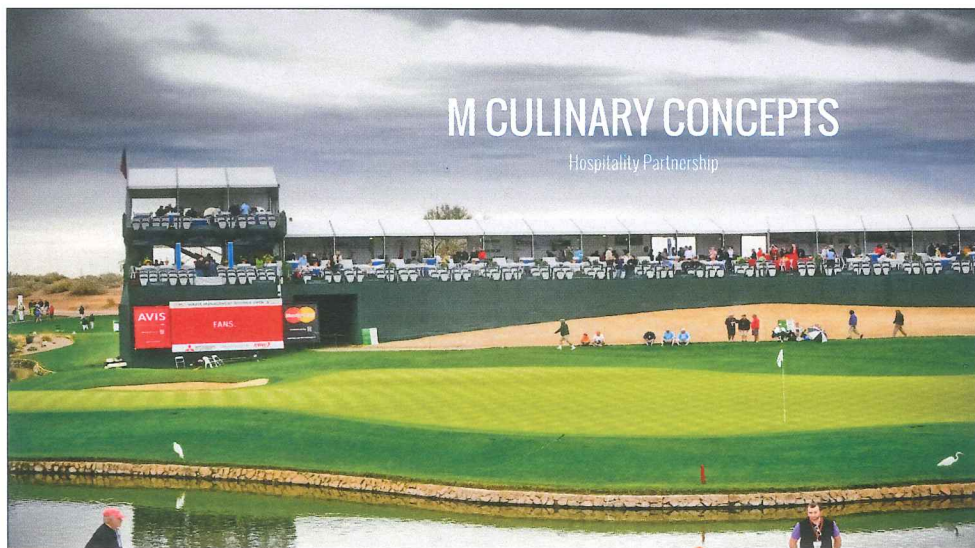


M CATERING
BY MICHAEL'S
mcateringaz.com


MONTERRA
AT WESTWORLD
monterracatering.com

M CULINARY CONCEPTS

Hospitality Partnership



Section One ABOUT M CULINARY CONCEPTS

INTRODUCTION

Founded in 1997, the company known today as M Culinary Concepts has grown to become one of the most respected catering, restaurant and venue operators in Arizona and beyond. With seven hospitality divisions employing over 150 full-time employees in metropolitan Phoenix/Scottsdale, M Culinary Concepts has the diversity, stability and scope to serve as the ideal food service partner.

CATERING AND EVENT SERVICES

M Culinary Concepts, a chef-driven company, is the largest off-premises caterer in the southwestern United States. With a full-service special event company, a limited-service catering company, and a delivery-service catering company, M Culinary Concepts has all the right components to ensure successful fulfillment of catering needs. When opportunities to host special events at off-site locations and premier venues arise, M Culinary Concepts will impress even the most discriminating client with premier hospitality and event planning services.

CONCESSIONS SERVICES

M Culinary Concepts strives to reinvent concessions development, sales and management at public events in Arizona and beyond, serving a diverse array of consumers. Whether operating our own concepts or serving as master concessionaire for subcontractors, M Culinary Concepts serves as the ideal partner, offering exceptional, tailored services and transparent, responsible reporting.

HOSPITALITY CONSULTING

Recognizing a need in the market for a better approach to food service, M Culinary Associates provides comprehensive hospitality consulting services on the local and national levels. Working with hotel chains, restaurant groups and airport master concessionaires, M Culinary Associates places emphasis on the balance between the guest experience and bottom-line contribution, all delivered with measurable results.

COMPANY MILESTONES

1997 - 2004

- 1997 | Opened Michael's at the Citadel, our first restaurant (Scottsdale, AZ)
- 1999 | Launched Michael's Catering in direct response to clients' repeated requests
- 2000 | First catering services at Phoenix Open and Countrywide Tradition
- 2002 | First catering services at Barrett-Jackson Collector Car Auction
- 2004 | Awarded on-site food service for Brophy College Preparatory

2005 - 2010

- 2005 | Opened new-build 36,000ft² Company HQ (Phoenix, AZ)
- Awarded on-site food service contract for DHL (Scottsdale, AZ)
- First services at LPGA Golf Tournament (Las Vegas, NV)
- 2007 | Awarded interim catering contract for J.W. Marriott Camelback Inn during new ballroom construction
- 2008 | Awarded exclusive hospitality catering contract for U.S. Olympic Team Trials - Track & Field (Eugene, OR)
- 2009 | Opened Heirloom, second fine dining restaurant (Scottsdale, AZ)
- Opened Mid-City Kitchen in downtown corridor (Phoenix, AZ)
- 2010 | Awarded on-site food service contract for SRP (Tempe, AZ)

2011 - Present

- 2011 | Awarded contract for Fiesta Bowl and BCS Events - College Football's Biggest Party (Glendale, AZ)
- Co-produced Bud Light Fiesta, new week-long event (Scottsdale, AZ)
- 2012 | Produced Stanford Pre-Fiesta Bowl Pep Rally (Scottsdale, AZ)
- Mid-City Kitchen selected as local restaurant partner by SSP America for Sky Harbor Terminal 4 (Phoenix, AZ)
- Awarded contract for Fiesta Bowl - College Football's Biggest Party (Glendale, AZ)
- Awarded exclusive catering and concessions contract for U.S. Olympic Team Trials - Track & Field (Eugene, OR)
- Awarded contract for Buffalo Wild Wings Bowl - Tailgate Party (Tempe, AZ)

Section Two
OUR FAMILY OF COMPANIES

M CULINARY CONCEPTS

Our Family of Brands



M CATERING - FULL-SERVICE CATERING

Event Planning, Management, Catering, Bar Services



From the intimate to the elaborate, M Catering by Michael's provides exceptional event experiences for corporate, private and not-for-profit clients in Arizona and across the United States. Whether planning a company celebration or a fairytale wedding, a backyard BBQ or a black-tie gala, trust M Catering to exceed your highest expectations. Our globally-influenced cuisine is rivaled only by our indulgently personal service, and our combination of the two will leave you and your guests with cherished memories.

NIBBLERS/MAIN COURSE - LIMITED-SERVICE CATERING

Corporate Catering, Delivery Service



For meetings and small in-office events, trust us to provide catering that exceeds expectations. Priced very competitively, the Nibblers and Main Course menus provide delicious options for breakfasts, lunches, receptions and meeting breaks. Basic services feature eco-friendly disposable serviceware including biodegradable plates, utensils, napkins and cups; upgraded serviceware, including china, plates, stainless flatware and glassware, and buffet materials are available upon request. Delivery and pick-up (when necessary) fees vary by geographical zone, and our fleet covers the entire Valley of the Sun. Most importantly, we approach our delivery-service catering with the same focus on quality, presentation and service that we provide for full-service special events.

MONTERRA AT WESTWORLD

Scottsdale, AZ



Located in the shadows of the McDowell Mountains in North Scottsdale, Monterra at WestWorld is one of the Valley of the Sun's premier event venues. Spectacular panoramic views of the surrounding mountains and stunning desert sunsets provide dramatic backdrops for truly special events. View and download our electronic magazine at https://www.flipdocs.com/showbook.aspx?ID=1004475_595939

M CULINARY ASSOCIATES - HOSPITALITY CONSULTING

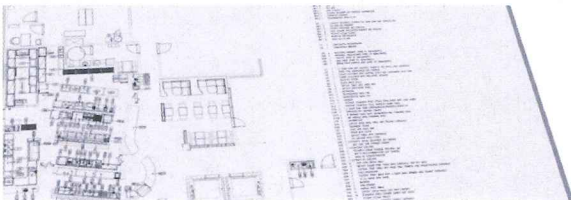
Serving Local, National, International Clients



- Exclusive consultant to Cambria Suites, premier brand of Choice Hotels – complete redesign and implementation of brand-wide food and beverage program, service training, facility design.
- Local partner for SSP America at Phoenix Sky Harbor International Airport – Terminal 4 (Mid-City Kitchen)

M CULINARY ASSOCIATES

Hospitality Consulting Across the United States



Comprehensive Analysis | Efficient Design | Measurable Success



M CULINARY ASSOCIATES

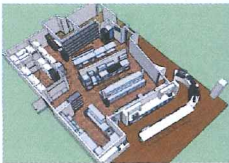
Hospitality Consulting Across the United States



FOH CONCEPT
Café Line



FOH CONCEPT
Café Line



KITCHEN
CONCEPT
Overhead
BOH/FOH



KITCHEN
CONCEPT
Hot Line

Section Three OUR TEAM

OUR EXECUTIVE TEAM



J. BRANDON MAXWELL
PRESIDENT & CHIEF EXECUTIVE OFFICER

- 30+ years in hospitality industry
- Graduate of Cornell University, School of Administration
- Hyatt Hotels: 7 years, New York City, Dallas, Lake Tahoe
- Sfuizi Restaurants: 6 years, East Coast Regional Vice President
- Renaissance Supper Club: 3 years, Partner in Night Club, Santa Monica
- Opened 2 boutique hotel restaurants, Lori's at the Hermosa and T Cook's at the Royal Palms



MICHAEL DEMARIA
CHIEF CULINARY OFFICER & OWNER

- 30+ years of experience
- Michael's at the Citadel, 1997-2007
- M Catering by Michael's, 2001 - Present
- Heirloom, An American Restaurant, 2009 - Present
- Over 20 years of hotel culinary experience in Arizona and California
- 2002 Arizona Culinary Hall of Fame Inductee
- 1992 Culinary Olympics USA Team, Gold Medal Winner
- Began his career in 1976 at the "school of hard knocks" apprentice program at the 5-Star Arizona Biltmore Resort & Hotel
- Avid fly fisherman - catch & release only!



DOUG JANISON
MANAGING PARTNER

- Joined M Culinary Concepts in 1999 and leads operations of all large scale events
- Coordinated all operational needs for The Phoenix Open Golf Tournament, The Phoenix LPGA Golf Tournament, The Traditions Seniors Golf Tournament, The AVP Volleyball Tour, The BMW Ride & Drive Tour
- The Eugene Track and Field Championships in Oregon catered to 5,000 fans over 8 days and ran public concessions to 10,000 guests
- Developed his passion for all things food at the Scottsdale Culinary Institute, graduating in 1992
- Ohio State Fan - GO BUCKEYES!



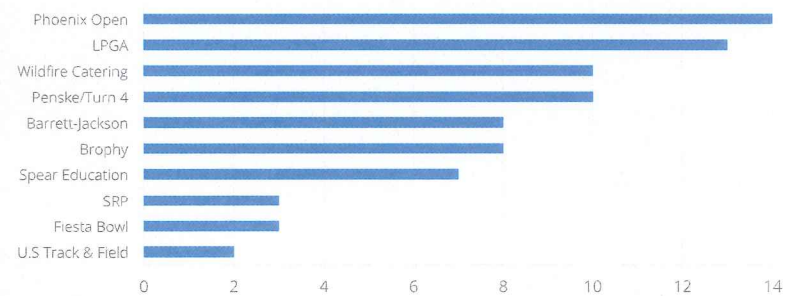
MICHAEL STAVROS
DIRECTOR OF SALES & MARKETING

- Joined M Culinary team in January 2010 with 15+ years of Catering industry experience from his tenure at Aventura Catering, a division of Aramark
- 2002/2003/2004 Microsoft Global Meeting - New Orleans - 15,000 attendees over two weeks
- 2003 ARAMARK Mission One Meeting - Las Vegas - global management convention for 5,500 international guests
- 2004 Prospector's Club Holiday Ball - Reno - 1,500 VIP guests
- 2005 Super Bowl NFL Staff Party - Phoenix - 2,200 attendees
- 2009 NBA All-Star Game - Phoenix, NBA Jam Session & Player's Party
- 2009 NRA Annual Convention - Phoenix - 64,000 attendees over five days

Section Four
OUR PORTFOLIO

ACTIVE PARTNERSHIPS

Active Contracts and Years of Engagement



WM PHOENIX OPEN PGA GOLF TOURNAMENT

2000 - Present



- Exclusive hospitality caterer for Corporate Village, Sky Boxes, Greenskeeper Tents, Members' Tents, Patriots' Pavilion.
- Serving 40,000+ attendees at PGA Tours' most highly-attended tournament.

BARRETT-JACKSON AUTO AUCTION

2002 - Present



- Exclusive hospitality caterer for Sky Boxes, Muscle Lounge.
- Concessions management/participation.

U.S. OLYMPIC TRIALS - TRACK AND FIELD

2008 & 2012



- Exclusive hospitality caterer for Sky Boxes, VIP areas, sponsor areas.
- Master concessionaire.

COLLEGE FOOTBALL - FAN EVENTS

2011 - Present



- Fiesta Bowl - College Football's Biggest Party, VIP pre-game catering.
- Buffalo Wild Wings Bowl - Sponsor catering production, management, service.
- BCS Championship - College Football's Biggest Party, VIP pre-game catering.
- Bud Light Fiesta

Section Five
CONNECT WITH US

WE ARE SOCIAL
CONNECT WITH US

ADDRESS

20645 North 28th Street, Phoenix, AZ 85050

PHONE

602.200.5757

WEBSITE

www.mculinary.com

EMAIL

info@mculinary.com

FACEBOOK

We share amazing posts and updates at facebook.com/mcatering

TWITTER

Our small musings in 140 characters or less [@mcatering](https://twitter.com/mcatering)

AGENCY PORTFOLIO 2013



ABOUT US

ETZEL is an experiential marketing agency.

We believe in innovation, teamwork and exceptional execution to create premium experiences that connect brands with their audiences. We are passionate about pushing creative boundaries, captivating audiences and elevating brands.

PORTLAND, OR + LOS ANGELES, CA



"It's not ETZEL's idea versus my idea; it's a team deal. They're adaptable. They're fun people to be around and work with."

Michael Doherty
Global Presentation Creative Director
Nike

"What you find in working with ETZEL are all those things you would expect and more – efficient operations, exceeding expectations and being very responsive. They are great at bringing creative + innovative thinking to every process."

Mike Minasi
President of Marketing & Advertising
Safeway

"The 2011 BCS National Championship, Bud Light Fiesta ranks as one of the best pre-bowl game environments we have ever been a part of at ESPN."

Tom Hagel
Senior Director Sports Management
ESPN



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FROM GREAT TEAMWORK,
COMES GREAT VICTORIES.



PROJECT MANAGEMENT

- Project timelines, objectives & deliverables
- Budget management & reporting
- Partnership sales & contract negotiation
- Staffing plans & on-site execution
- Hospitality booking & management
- Travel logistics
- Vendor management
- ROI/Asset evaluation & post-event reports

OPERATIONS & LOGISTICS

- Site research, maps & diagrams
- Venue scheduling & permits
- Power analysis & distribution
- Heavy equipment & service vehicles
- Signage layout, design & install
- Temporary structure build-out
- Custom fabrication
- Union & non-union local labor
- EMT/Inter-Agency security
- Shipping, storage & delivery

COMMUNICATIONS & CREATIVE

- IP & concept creation
- Strategy & message development
- Graphic design & production
- Scripting & copywriting
- Digital & social media management
- Environmental design & decor
- Event photography & videography

STAGING & SHOWTIME

- Production & run-of-show management
- Layouts & technical plans
- Stage/set & truss build-out
- Lighting & audio systems
- Media screens, projection & content
- Talent procurement, including celebrities, DJ's, music acts and Emcee's.
- Back stage & green room management


JIM ETZEL
FOUNDER, CEO & PRESIDENT

Jim has 25 years of experience in experiential marketing with a focus on sports, entertainment and lifestyle. His expertise roots itself in a sales, business development and account management background. As the founder and CEO of ETZEL, Jim has provided strategic leadership and hands-on management. Prior to ETZEL, he worked as the Western Region Director for Regency Productions by Hyatt. There he managed account sales, partnerships and development for events such as the Super Bowl, NCAA, Final Four and Ryder Cup. He also spent time as the Director of Business Development for Peter Jacobson Productions and helped to launch the Internet start-up company Greens.com.


TOM ETZEL
EXECUTIVE VICE PRESIDENT

Tom has over 17 years of experiential marketing expertise. As one of the founding members of ETZEL, he has been a crucial player in its success and development. He guides the company by exercising his keen eye for both successful, innovative experiences and opportunities for business development. Through strategic sales and account management, Tom has established meaningful, lasting relationships with Nike, ESPN and other global brands.


PAUL MARDESICH
CFD & COO

Paul has 20 years of executive financial and operations experience, specializing in the growth of emerging companies. His resume includes the management and direction of two service-related companies from start-up to IPO listing. As a successful entrepreneur, Paul founded and managed his own Internet company that was sold to The Golf Channel and even more recently sold an Internet marketing services company. He has been an active investor, advisor and board member to numerous emerging companies including board representation for a venture capital fund. In the beginning of his career, Paul spent 9 years in public accounting.


MIKE KOLLAS
VICE PRESIDENT

Mike has over 25 years of sales and partnership experience. Since joining Etzel in 2007, Mike has been involved with sponsorship sales for numerous events. Through his initiative with the 2008 and 2012 Olympic Track & Field Trials, he secured over two million dollars in partnership support for each Olympic year. Prior to working with Etzel, Mike led and managed many different sales teams working with a variety of clients that range from emerging to Fortune 500 companies. His focus has always been on high value and strategic partnerships. He has led sales teams across the golf, e-content, healthcare and legal industries.



JOE KALFEL

CHIEF EXPERIENCE OFFICER

Joe joined Etzel in 2006, bringing with him over 20 years of experience in entertainment and TV production. As Creative Director, Joe's unique ability to visualize events from both the brand and audience perspective ensures a truly memorable experience. He has overseen events, from concept through to execution, that include the BCS National Championship, Bud Light Fiesta and Nike Soccer's The Chance. Prior to ETZEL, Joe worked 15 years as an independent producer, partnering with agencies, brands and broadcasters. He was also a national award-winning producer of sports and entertainment programming at Portland NBC and ABC affiliates.



SUSAN ETZEL GONZALEZ

PROJECT DIRECTOR

Susan has over 17 years of account and project management experience. Her management expertise and impeccable events planning instincts have led to the success of the US Track & Field Olympic Trials in 2009 and 2012, the Safeway Invitational, Oregon Sports Awards, Nike Women's Marathon for Safeway, Bud Light Fiesta and the 2011 BCS National Championships. Prior to her time at ETZEL, Susan worked as a sales executive and strategic planner for Levi Strauss & Co and a Sales and Project Coordinator at Peter Jacobson Productions including board representation for a venture capital fund. In the beginning of his career, Paul spent 9 years in public accounting.



TONY FISHER

OPERATIONS DIRECTOR

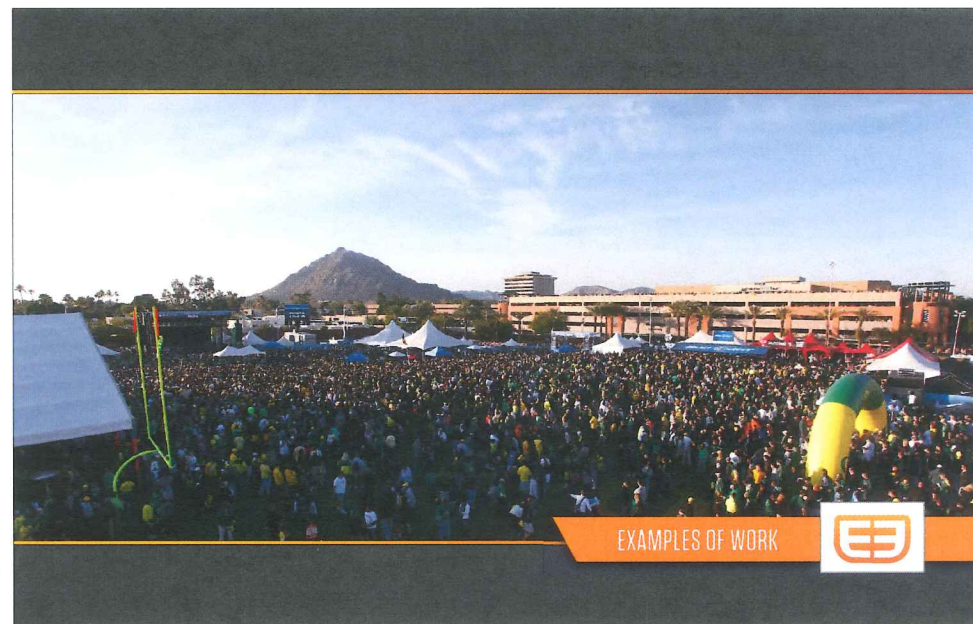
Tony is highly experienced in the direction, operation and execution of brand experiences. He had led the charge on the Olympics Track and Field Trials in both 2000 and 2012, Safeway Game Day activations, Nike Women's Marathon, the Oregon Sports Awards and more. Plus he worked on Super Bowl XLVII. With a deep sports events background, Tony fluidly crosses disparate settings, audiences and sponsors. Before his time at ETZEL, he worked for Nike on their SPARK initiative, specifically in the Event Marketing department. His involvement in athletic events and operations began with his alma mater, the University of Oregon, where he was the Football Operations director.



ANTHONY DITTMANN

REGIONAL DIRECTOR, LOS ANGELES

Anthony is a master event professional with over 15 years relevant experience in dozens of facilities worldwide. He is skilled at operating non-traditional events in obscure locations. Prior to joining ETZEL, Anthony spent 16 years with ESPN and served as the X-Games Event Director in Barcelona, Spain and Tignes, France. Domestically, Anthony served as the Director of Operations for ESPN, X-Games and the ESPYS Red Carpet. Under his leadership with ESPN and the X-Games, Anthony managed a \$10 million/year budget across multiple business units, operations and international companies.





U.S. Olympic Trials - Track and Field (2008 & 2012)
 Location: Eugene, OR
 Clients: Oregon Track Club, Nike, USATF



BCS National Championship Fan Festival - Pop Rallies (2011)
 Location: Scottsdale, AZ
 Clients: Scottsdale Convention & Visitors Bureau, ESPN, Fiesta Bowl



Safeway Game Day Experience (2008 - Present)
 Location: various NCAA and NFL football games
 Client: Safeway



Nike Women's Marathon - Safeway Sponsorship (2008 - Present)
 Location: San Francisco, CA
 Client: Safeway



The Safeway Foundation Gala (2012)
Location: San Francisco, CA
Client: The Safeway Foundation



The Safeway Invitational (2009 - Present)
Location: Monterey, CA
Client: Safeway, The Safeway Foundation



The Chance U.S. Finals (2012)
Location: Nike World HQ - Beaverton, OR
Client: Nike Soccer



The Oregon Sports Awards (2000 - Present)
Location: Nike World HQ - Beaverton, OR
Client: Nike



ESPYS EXPERIENCE (2013)
Location: Los Angeles, CA
Client: ESPN



Hood To Coast : Finish Festival (2013)
Location: Seaside, OR
Client: Hood To Coast



ROSE BOWL FAN EXPERIENCE (2014)
Location: Pasadena, CA
Client: IMG, Rose Bowl



BCS NATIONAL CHAMPIONSHIP ULTIMATE TAILGATE (2014)
Location: Pasadena, CA
Client: ESPN



Good evening Mayor Lane & City Council

Focus solely on the issue
of funding

My name is David Scholefield, a resident of Scottsdale, employed in the hospitality industry in Scottsdale and your Vice Chair of the Tourism Development Commission.

As defined by the City of Scottsdale, Code of Ordinances; the TDC's powers, duties, jurisdiction is to recommend to the city council conditional approval, *or denial* of all uses of funds from that portion of revenues from Special Revenue Fund for Tourism Development.

On behalf of my fellow Commissioners, I am here tonight to champion the TDC motion to **NOT** approve the funding of the Westworld Food & Alcohol License & Marketing Agreement through a General Fund Operating Budget appropriation contingency transfer to be funded by Tourism Development Fund.

Prop 200 does allow for funding of tourism related capital projects and to-date the TDC has supported substantial requests from the Desert Discovery Center, Museum of the West and the TPC of Scottsdale improvements.

All these entities have their own internal infrastructure, operating budgets, business plans, management teams and sales activities. They receive no funding, approved through the TDC, for their operational necessities or shortfalls.

If you do vote to support the Westworld Food & Alcohol License & Marketing Agreement through Bed Tax dollars – it is the consensus of the TDC (and we understand, also echoed by the Scottsdale Convention & Visitors, Bureau Board of Directors) that this could set a precedent whereby any City of Scottsdale - owned or operated facility could request funding through the TDC.

Buses transport tourists, garages accommodate tourist vehicles, parks welcome tourists. If you approve the Motion before you, all these and other City owned and operated facilities could conceivably make a request for funds through the TDC, for your final approval. They all form part of the tourism package Scottsdale has to offer, however they should **not** qualify for consideration of Bed Tax dollars.

Please know that these comments are in no way reflective of the supplier. Nor are they a comment about the Marketing & Sales Plan that has been submitted but not seen or reviewed by the TDC.

Your TDC believes strongly that this is not the intended purpose of the Prop 200 funds as approved by the citizens of Scottsdale.

Stevens, Katie

From: tenders@troongolf.com
Sent: Tuesday, December 10, 2013 1:41 PM
To: Jagger, Carolyn; Stevens, Katie
Subject: Agenda Item Comment for 12/10/13 - Item 19

Meeting Date: 12/10/13
Item Number: 19

Contact Information (if blank, user did not provide):

Name: Tom Enders
Address: 9358 E. Via De Vaquero Drive
C/S/Z: Scottsdale, AZ 85255
Phone:

Comment for 12/10/13 Item 19:

I would like to echo the written and spoken comments from fellow TDC Commissioners regarding the WestWorld Food and Alcohol License and Marketing Agreement. As discussed during last week's TDC Meeting, we collectively feel that these operational expenses should not be paid for out of the Tourism Development Fund. It's our understanding that this fund is intended to support tourism related events, research and capital projects. We do not feel that this request qualifies based on this tourism driven criteria and if the licensing agreement is approved, it should be funded from the appropriate source. Thanks for your consideration and your continued support of Scottsdale Tourism.