

**FIRST AMENDMENT TO LEASE**  
(McLaren Park Golf Course, San Francisco, California)

THIS FIRST AMENDMENT TO LEASE (this "Amendment") is made as of \_\_\_\_\_, 2013, by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the Recreation and Park Commission ("City" or "Landlord"), and GLENEAGLES GOLF PARTNERS, LP, a California limited partnership ("Tenant").

**RECITALS**

THIS AMENDMENT is made with reference to the following facts and circumstances:

A. City and Tenant entered into that certain Recreation and Park Department Lease, dated as of December 1, 2004 (the "Lease"), for the lease of certain land and improvements commonly known as McLaren Park Golf Course or the Gleneagles Golf Course, as more particularly described in Section 1 of the Lease (the "Premises"), for the purpose of managing, maintaining and operating a 9-hole golf course located in McLaren Park in San Francisco, and all ancillary activities connected directly to the promotion and management of such golf course.

B. Unless otherwise referred to in this Amendment, capitalized terms shall have the meanings ascribed to them in the Lease.

C. The Term of the Lease is scheduled to expire on November 13, 2013. The Lease provides Tenant with an option to extend the Term of the Lease for a nine (9) year period, subject to the approval of the Recreation and Park Commission and Board of Supervisors of the City and County of San Francisco, provided that Tenant has successfully completed, to City's satisfaction, the proposed capital improvements described in Section 8.1 of the Lease and has operated the property and the business in a satisfactory manner.

D. During the initial Lease Term Tenant entered into an aggressive project addressing years of deferred maintenance, including performing major tree maintenance that addressed safety issues on the course and opened the greens and fairways to much-needed sunlight. Tenant invested additional funds for interior and exterior improvements to the clubhouse, greens renovations, improvements to cart paths, and new course maintenance equipment and golf carts, exceeding the capital improvement goals set forth in the Lease. Due to Tenant's management of the golf course, Golf World mentioned Gleneagles as one of the top 20 9-hole courses in the United States in 2009, and the course is regularly mentioned in golf publications citing its unique design and quality of play. Further, Tenant has successfully cooperated with The First Tee of San Francisco's satellite location at Visitacion Valley Middle School to offer course time for more advanced students, who play at the course alongside seasoned golfers. Under Tenant's sound management the golf course had gone from being isolated space into a lively and integrated part of McLaren Park and the surrounding neighborhood.

E. Accordingly, the parties presently desire to enter into this Amendment to amend the Lease to (i) extend the term of the Lease for nine (9) years, (ii) update certain standard contractual provisions in the Lease, and (iii) modify the Lease in certain other respects, all on the terms and conditions more particularly set forth below.

NOW THEREFORE, in consideration of the matters described in the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, City and Tenant agree as follows:

1. Extension of the Term; No Further Option to Extend or Terminate. Effective as of the Effective Date (as defined in Section 14 below) (i) the Term of the Lease is extended through November 13, 2022, (ii) Tenant shall have no further right to extend the term of the Lease under Section 4.6 of the Lease, and (iii) Section 4.7 of the Lease, which gave City a conditional right to terminate the Lease early, is deleted from the Lease. From and after the Effective Date, all references in the Lease and this Amendment to the “Term” or “term” shall refer to the Term as extended hereby.

2. No Use of Semi-Paved Lot Adjacent to Premises. Effective as of the Effective Date, the final two sentences of Section 3.1 (Leased Premises) of the Lease, which refer to Tenant’s possible future use of the semi-paved parking lot adjacent to Sunnydale Avenue at the foot of the driveway leading to the course parking lot, shall be deleted.

3. Rent Credit Request Procedures. Effective as of the Effective Date, the provisions of Section 5.8 (Rent Credits) of the Lease shall be deleted and the following provision shall be substituted therefor:

“5.8 Rent Credits. In the event City requires certain improvements to be made to the property following all required environmental review, and Tenant is willing to undertake the implementation of such improvements, Tenant, with prior written approval from the General Manager, may deduct the pre-approved expenses for such improvements as rent credits from the monthly Base Rent payments required hereunder. Further, if Tenant desires to receive rent credit for deferred maintenance work to the golf course, emergency capital repairs to the Improvements or the course, or similar capital improvements, Tenant may request approval of such rent credit in writing from the General Manager, and if the General Manager, in his or her sole discretion (following all required environmental review), approves such work and rent credit in writing, Tenant may deduct the pre-approved expenses for such work as rent credits from the monthly Base Rent payments required hereunder.”

4. Reporting Requirement for Taxes and Assessments. Effective as of the Effective Date, Section 6.1(d) of the Lease is deleted and the following provision is substituted therefor:

“6.1(d) Reporting Requirement. San Francisco Administrative Code Sections 23.38 and 23.39 require that the City and County of San Francisco report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction, and that Tenant report certain information relating to any assignment of or sublease under this Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Tenant agrees to provide such information as may be requested by City to enable City to comply with this requirement.”

5. Pesticides Prohibition. Effective as of the Effective Date, Section 7.2(i) of the Lease is deleted and the following provision is substituted therefor:

“7.2(i) Pesticides Prohibition. Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the “Pesticide Ordinance”), which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Tenant to submit to the Department an integrated pest management (“IPM”) plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease, (b) describes the steps Tenant will take to meet the City’s IPM Policy described in Section 300 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant’s primary IPM contact person with

the City. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance."

6. Revised General Provisions. Effective as of the Effective Date, Section 24.25, Section 24.27, Section 24.29, and Section 24.34 of the Lease shall be deleted and the following provisions shall be substituted therefor:

"24.25. Conflicts of Interest. Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of such provisions, and agrees that if Tenant becomes aware of any such fact during the term of this Lease Tenant shall immediately notify City."

"24.27 Tropical Hardwood and Virgin Redwood Ban. Tenant shall not permit the use of any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in or on the Premises or otherwise in the performance of this Lease. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater."

"24.29 First Source Hiring Ordinance. The provisions of San Francisco Administrative Code Chapter 83, the First Source Hiring Program, are incorporated in this Section by reference, and are made a material part of this Lease as though fully set forth herein. As an essential term of, and consideration for, this Lease, unless exempted by the City's Office of Economic and Workforce Development, Tenant shall enter into a First Source Hiring Agreement with the City, on or before the effective date of the Lease. Tenant shall keep, and provide to the City, accurate records demonstrating its compliance with the First Source Hiring Program. Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the Office of Economic and Workforce Development."

"24.34 Notification of Limitations on Contributions. Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Tenant's board of directors, and Tenant's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in

Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Tenant further agrees to provide to City the name of the each person, entity or committee described above."

7. Additional General Provisions. Effective as of the Effective Date the following provisions shall be added to Section 24 (General Provisions) of the Lease:

"24.36 Prevailing Wages for Theatrical Workers. Pursuant to San Francisco Administrative Code Sections 21.C-4 and 21.C-7, unless excepted, Contracts, Leases, Franchises, Permits, and Agreements awarded, let, issued or granted by the City and County of San Francisco for the use of property owned by the City and County of San Francisco shall require any Individual engaged in theatrical or technical services related to the presentation of a Show to be paid not less than the Prevailing Rate of Wages. Individuals engaged in theatrical and technical services include, without limitation, those engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services. Capitalized terms in this Section that are not defined in this Lease shall have the meanings provided in Administrative Code Sections 21.C-4 and 21.C-7.

Tenant agrees to comply with and be fully bound by, and to require its Subcontractors to comply with and be fully bound by, the provisions of Administrative Code Sections 21.C-4 and 21.C-7, including, without limitation, the payment of any penalties for noncompliance and other remedies available to the City. The provisions of Administrative Code Sections 21.C-4 and 21.C-7 are hereby incorporated by reference and made a part of this Lease. Tenant shall cooperate fully with the Labor Standards Enforcement Officer and any other City official or employee, or any of their respective agents, in the administration and enforcement of the requirements of Administrative Code Sections 21.C-4 and 21.C-7, including, without limitation, any investigation of noncompliance by Tenant or its Subcontractors. Tenant agrees that the City may inspect and/or audit any workplace or job site involved in or related to the performance of this Lease, including, without limitation, interviewing Tenant's and any Subcontractor's employees and having immediate access to employee time sheets, payroll records, and paychecks for inspection.

Tenant may obtain a copy of the current Prevailing Rate of Wages from City by contacting its Office of Labor Standards Enforcement. Tenant acknowledges that the City's Board of Supervisors may amend such Prevailing Rate of Wages and agrees that Tenant and any Subcontractors shall be bound by and shall fully comply with any such amendments by the Board of Supervisors."

"24.37 Intellectual Property; Music Broadcasting Rights. Tenant shall be solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property on the Premises, including, but not limited to musical or other performance rights. (Note to Tenant: To obtain the appropriate music performance license, you may contact the BMI Licensing Executive toll free at 1-877-264-2137 Monday – Friday, 9-5 p.m. (Central Time) and the American Society of Composers, Authors and Publishers ("ASCAP") at 1-800-505-4052 Monday – Friday, 9-5 p.m. (Eastern Time).)"

"24.38 Supervision of Minors.

(a) Records Request. If any person applies for employment or for a volunteer position with Tenant, or any subtenant or subcontractor, in which such applicant would

have supervisory or disciplinary power over a minor or any person under such applicant's care, then Tenant, and any subtenant or subcontractors providing services at the Premises, shall request from the California Department of Justice records of all convictions or any arrest pending adjudication of such applicant involving the offenses listed in Welfare and Institution Code Section 15660(a), in accordance with the procedures established in California Penal Code Section 11105.3.

(b) Restriction on Hires for Recreational Sites. If Tenant, or any subtenant or subcontractor, is providing services under this Lease at a City park, playground, recreational center or beach (separately and collectively, "Recreational Site"), Tenant shall not hire, and shall prevent its subcontractors from hiring, any person for employment or a volunteer position to provide supervisory or disciplinary power over a minor or any person under his or her care if that person has been convicted of any offense listed in Welfare and Institution Code Section 15660(a).

(c) Notice Required for Sites Other Than Recreational Sites. If Tenant, or any of its subtenants or subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code Section 11105.3(c), then Tenant shall comply, and cause its subtenant and subcontractors to comply, with Penal Code Section 11105.3(c) and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Tenant shall provide, or cause its subtenants or subcontractors to provide, City with a copy of any such notice at the same time that it provides notice to any parent or guardian, to the extent permitted by law.

(d) General Requirements. Tenant shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this Section of the Lease as a condition of its contract with the subcontractor. Tenant acknowledges and agrees that failure by Tenant or any of its subcontractors to comply with any provision of this Section of this Lease shall constitute an Event of Default. Tenant further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Lease, partially or in its entirety, to recover from Tenant any amounts paid under this Lease, and to withhold any future payments to Tenant. The remedies provided in this Section shall not limited any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy."

"24.39 Public Transit Information. Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Tenant's sole expense."

"24.40 Preservative-Treated Wood Containing Arsenic. As of July 1, 2003, Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative.

Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater."

"24.42 Resource Efficiency. Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient buildings and resource-efficient pilot projects. Tenant hereby agrees that it shall comply with all applicable provisions of such code sections."

"24.43 Food Service Waste Reduction Requirements. Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Lease as though fully set forth. This provision is a material term of this Lease. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, without limiting City's other rights and remedies, Tenant agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$500 liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision."

"24.44 Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Tenant shall remove all graffiti from the Property within forty eight (48) hours of the earlier of Tenant's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. Sections 101 et seq.). Any failure of Tenant to comply with this Section of this Lease shall constitute an Event of Default of this Lease."

"24.45 Sustainable Foods. Sustainable foods are those which, through their production, purchase, and consumption, enhance the health of the environment, producers and consumers through one or more of these methods: growing, processing and distributing locally; using low or no synthetic agricultural chemicals; fairly trading with developing countries; meeting animal welfare standards; processing minimally; no genetic modification; no unnecessary antibiotics; and no added growth hormones.

Tenant shall use commercially reasonable efforts to incorporate sustainable food concepts into everyday operations of the business on the Premises. City encourages Tenant to source sustainable foods by buying certified and/or locally produced food products. Acceptable sustainability certifications are limited to organic certification under the National Organic Standards Act ("USDA Organic), Fair Trade certification, Protected Harvest certification, Food Alliance certification, Rainforest Alliance certification, Certified Humanely Raised and Handled certification, American Humane certification, Marine Stewardship Council certification, and Salmon-Safe certification. Sustainability-related product claims that are acceptable under this clause include "grass-fed" claims, "not treated with artificial growth hormones (RBGH)" claims," produced without the nontherapeutic use of antibiotics" claims, and "raised without added hormones/no hormones added" claims.

Locally produced food products are produced within 200 miles of San Francisco including the following counties in the North Coast, Central Coast, Sacramento and San Joaquin Valleys: Alameda, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Fresno, Glenn, Kern, Kings, Lake, Madera, Marin, Mariposa, Mendocino, Merced, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Sierra, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Tuolumne, Yolo, and Yuba counties.

Tenant shall also provide an annual report on each anniversary date of this Lease outlining how Tenant incorporated these sustainable food concepts into everyday operations of the food and beverage concession and how Tenant informed customers and the youth employed by the Tenant, if any, regarding sustainable foods. This report shall include the percentage of total sales that were products certified as sustainably produced."

8. **No Joint Venture**. This Amendment or any activity by City hereunder does not create a partnership or joint venture between City and Tenant relating to the Lease or otherwise. This Amendment does not constitute authorization or approval by City of any activity conducted by Tenant, and City shall in no way be responsible for the acts or omissions of Tenant on the Premises or otherwise.

9. **Attorneys Fees**. In the event a dispute arises concerning this Amendment, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Amendment, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

10. **References**. No reference to this Amendment is necessary in any instrument or document at any time referring to the Lease. Any future reference to the Lease shall be deemed a reference to such document as amended hereby.

11. **No Third Party Beneficiaries.** This Amendment shall not be deemed to confer any rights or benefits on any party other than the parties to the Lease.

12. **Applicable Law.** This Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

13. **Further Instruments.** The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Amendment.

14. **Effective Date.** This Amendment shall become effective as on the date (the “Effective Date”) upon which (i) the Board of Supervisors passes a resolution approving this Lease, and the Mayor signs such resolution, and (ii) this Amendment is duly executed and exchanged by the parties hereto.

15. **Cooperative Drafting.** This Amendment has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Amendment reviewed and revised by legal counsel. No party shall be considered the drafter of this Amendment, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Amendment.

16. **Miscellaneous.** Except as expressly modified herein, the terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect. The Lease as amended by this Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and conceals any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Amendment shall not constitute a waiver or relinquishment of any rights or remedies that City may have relating to the Lease. Tenant and City hereby ratify and confirm all of the provisions of the Lease as amended by this Amendment.

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In witness whereof, the parties hereto have executed this Amendment as of the date written above.

TENANT: GLENEAGLES GOLF PARTNERS, LP,  
a California limited partnership

By: TwoHsieh, LLC, a California limited liability  
company, Its General Partner

By: \_\_\_\_\_  
Tom Hsieh  
Its Manager

LANDLORD: CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation, acting by and through its  
RECREATION AND PARK COMMISSION

By: \_\_\_\_\_  
PHILIP GINSBURG, General Manager  
Recreation and Park Department

APPROVED BY:

RECREATION AND PARK COMMISSION

PURSUANT TO RESOLUTION NO.

\_\_\_\_\_ DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Margaret McArthur, Commission Liaison

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Anita L. Wood  
Deputy City Attorney