TERMINATION AGREEMENT FOR BENNETT VALLEY GOLF COURSE CLUBHOUSE LEASE AGREEMENT

This Termination Agreement for Bennett Valley Golf Course Clubhouse Lease Agreement ("Agreement") is made and entered into as of December 8, 2020 (the "Execution Date") by and between Sports Restaurant of Bennett Valley Inc, a California Corporation, as Tenant ("Tenant") and the City of Santa Rosa, a California Municipal Corporation ("City").

RECITALS

- A. The City owns the 18-hole Bennett Valley Golf Course and golf course clubhouse ("Clubhouse") located at 3330 Yulupa Avenue, Santa Rosa.
- B. The City leased the Clubhouse to Tenant pursuant to that certain Bennett Valley Clubhouse Lease Agreement (the "Lease") dated as of February 1, 2007 under which Tenant operates the Clubhouse as restaurant, bar and banquet facility, as amended. The Lease is set to expire January 31, 2022. All capitalized terms undefined in this Agreement shall have the meaning specified in the Lease.
- C. On March 18, 2020, the Sonoma County Health Officer issued a public health order in response to the SARS-CO-V2 global pandemic which required the closing of indoor dining in Sonoma County, including Santa Rosa, in order to slow the spread of the Coronavirus and COVID-19 disease.
- D. Tenant, in part due to the mandated closure of in-door dining and the impacts of the COVID-19 Pandemic, now seeks to terminate the Lease for the Clubhouse and cease all operations.
- E. The City and Tenant have negotiated reasonable terms and conditions for the early termination of the Lease as set forth in this Agreement.

NOW THEREFORE, the parties hereto, for good and valuable consideration the receipt and adequacy of which are hereby acknowledged, hereby agrees as follows:

- 1. <u>Early Termination; Possession.</u> Subject to Tenant's completion to City's reasonable satisfaction of the obligations to surrender the Clubhouse to City set forth in Paragraph 3 below ("Surrender Obligations"), the parties hereby agree that effective as of December 8, 2020 ("Termination Date") the Lease shall be terminated and shall be of no further force of effect, except for any obligations which specifically survive pursuant to the terms of the Lease or this Agreement. As of 5:00 PM PST on the Termination Date, Tenant shall completely vacate the Clubhouse and areas of use on the Bennett Valley Golf Course and deliver full and complete possession of same to the City. Tenant shall deliver to City staff any and all keys, remotes or other means of access to the Clubhouse on or before such date.
- 2. Outstanding Rent; Termination Fee. The City and Tenant hereby agree and acknowledge that Tenant owes past due Rent under the Lease equal to \$34,842.30. Further, the Base Rent that under the Lease from the date of the Termination Date through the remainder of the Term would total \$56,306.40. Based on the current circumstances, the City acknowledges that Tenant's ability to fully utilize the Clubhouse has been severely curtailed, and so has the likelihood that the City or Tenant would be able to timely locate a subtenant or assignee to take over current operation of the

Clubhouse as would be necessary to mitigate the damages and loss to the City. City shall accept Tenant's assignment of all right, title and interest in Tenant's Supplies and Tenant's FF&E, defined in Section 3c as Remaining Personal Property, as full satisfaction of both the past due rent and the future rent that would become due under the remainder of the current Lease term. The parties agree that such exchange of rights and the values assigned or waived by each party is reasonable in such party's determination given the facts and circumstances, and that such exchange is also subject to the full performance of all terms and conditions set forth herein.

- 3. <u>Surrender Obligations</u>. Provided the all such terms and conditions of the Surrender Obligations set forth below are met, the Lease shall terminate and be of no further force and effect upon the Termination Date, except for the provisions which by their terms expressly provide they survive termination of the Lease.
 - a. <u>Initial Inspection and Deficiencies</u>. City and Tenant acknowledge and agree that representatives of City and Tenant have performed a thorough and complete walkthrough inspection of the Clubhouse and City's Equipment prior to the Execution Date and agreed upon any deficiencies that must be repaired or any missing City Equipment that must be restored on site and to the Clubhouse. ("City Inspection"). Such deficiencies and replacements were communicated in an email dated Wednesday, November 18, 2020.
 - b. <u>City's Equipment.</u> Tenant shall assure that all of City's Equipment is in good condition and repair and on site as of the Termination Date. All repairs and replacement required by the City Inspection shall be completed and paid in full by Tenant.
 - c. Tenant's Equipment (FF&E) and Supplies. City and Tenant acknowledge that certain items of personal property and furniture of Tenant referred to in the Lease as Tenant's Equipment (FF&E) and Supplies, and which are specifically described in Schedule 1 to the Bill of Sale attached as Exhibit A to this Agreement ("Remaining Personal Property") are located within the Clubhouse as of the Execution Date. Tenant shall not remove the Remaining Personal Property from the Clubhouse, either before or after the Execution Date of this Agreement. Concurrently with execution of this Agreement, Tenant shall execute and deliver to City a Bill of Sale transferring title to the Remaining Personal Property to City in the form of Exhibit A hereto as of the Termination Date. Tenant hereby represents and warrants that Tenant holds valid legal title to all Remaining Personal Property and that such items are not subject to any liens or outstanding obligations. Tenant shall indemnify and hold harmless the City, its employees, officers and agents from and against any and all claims arising from any parties claiming an interest in the Remaining Personal Property.
 - d. Condition of the Clubhouse. On or before the Termination Date, Tenant shall undertake and complete the obligations contained in the City Inspection, in addition to the following obligations with regard to the surrender of the Clubhouse:

 (i) disconnect its technology equipment from existing wire connections within the Clubhouse;
 (ii) remove Tenant's security system from the Clubhouse;
 (iii) remove its signage from within the Clubhouse;
 (iv) remove its technology equipment (but not horizontal or vertical cabling or wiring from the Clubhouse), excluding the

Remaining Personal Property; (v) patch and paint the Clubhouse as necessitated from the removal of Tenant's property and the surrender activities described in this section; and (vi) repair any damage to the Clubhouse and Building occasioned by the removal of Tenant's property and the surrender activities described in this section, reasonable wear and tear excepted. The Clubhouse shall be deep cleaned, including kitchen and restrooms, to industry best practices standards, and the City's reasonable satisfaction. The Clubhouse shall be left by Tenant in a "broom clean" condition, free of garbage and debris. Tenant shall be authorized to use any licensed, reputable contractor(s) selected by Tenant to undertake the Surrender Obligations.

- e. <u>Final Inspection</u>. City shall perform a final inspection on receiving possession and shall give notice to Tenant within 2 business days after the Termination Date of any items still requiring completion or other deficiencies or Tenant's satisfaction of the Surrender Obligations.
- f. <u>Liquor License.</u> Tenant shall assure the ABC license to sell alcohol is in good standing with the ABC, surrender the license to the ABC, and pay all fees to keep the license in good standing, and complete all documents necessary to transfer and convey the license for the benefit of the City, at no cost to the City. Tenant shall provide a deposit of \$1,235.00 to be held by the City to be used for renewal of the license on July 31, 2021, if no replacement operator has been found. City shall refund the balance to Tenant if a replacement operator has been obtained by such date; otherwise such funds shall be applied, and Tenant shall be obligated to keep such license in good standing until the transfer occurs or the parties agree otherwise.
- g. <u>Utilities.</u> Prior to or concurrent with execution of this Agreement, Tenant shall provide proof of payment or provide a check to pay the following 3 obligations: (i) PG&E paid directly to PG&E; (ii) City of Santa Rosa water of \$12,012.08; and (iii) City of Santa Rosa natural gas (payment plan) of \$12,374.60. Tenant shall ensure that all utilities to the Clubhouse that are Tenant's responsibility pursuant to the Lease have been paid in full up to the Termination Date, and that all shall be transferred to the City as of the Termination Date in good standing.
- h. Operating Contracts. Tenant shall terminate all operating and service agreements and pay all applicable termination fees and shall assure that all such agreements are paid in full and in good standing. The contracts to be terminated are listed on **Exhibit B.**
- i. <u>Possessory Use Taxes.</u> Tenant shall be fully responsible for any and all possessory taxes assessed to the operation of the Clubhouse and shall assure that all taxes are paid in full and current up to the Termination Date. Tenant shall provide written evidence of such payment to the reasonable satisfaction of the City prior to the Termination Date and to the extent any possessory use taxes are assessed after the Termination Date for the period of occupancy, Tenant shall be obligated for such unsecured property tax.

- 4. <u>Indemnification.</u> Tenant shall indemnify and hold harmless the City, it employees, officers and agents from and against any and all claims, cost, expense, damages, fees, fines, penalties or loss or other liability incurred by City in connection with or arising out of Tenant's use and operation of the Clubhouse, including but not limited to any and all claims asserted in connection with Tenant's operation, management or possession of the Clubhouse by any customer, vendor or employee, any hazardous condition discovered or regulatory violation on site that occurred during Tenant's possession under the Lease, any failure by Tenant to fully comply with all obligations under the Lease, including but not limited to, obligations to maintain the Clubhouse, pay any amounts due under any contracts or that may otherwise be owing by Tenant and any failure of warranties made or misrepresentations under the Lease or this Agreement.
- 5. <u>Guaranty of Lease.</u> The irrevocable guarantee of Lease shall continue in full forceand effect to address any obligation or duty of indemnification hereunder.
 - 6. Authority of Parties. Each Party warrants and represents that in executing this Agreement:
 (a) it has the full and unrestricted right, power, capacity and authority to enter into, deliver, execute and perform its obligations under this Agreement; (b) the individuals executing this Agreement have the legal power, right and actual authority to bind it to the terms of this Agreement; (c) all requisite action has been taken by it in connection with the entering into of this Agreement, and no further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required, including without limitation, any lender, or if any such consent is required, such consent has been obtained; (d) this Agreement is a valid and binding obligation upon each Party, and is enforceable against each Party in accordance with the terms hereof; and (e) the execution, delivery and/or performance of the terms of this Agreement will not result in any violation of, be in conflict with, nor constitute a default under any provision of any judgment, decree, order, law or contract to which either Party is bound or otherwise accountable.
 - 7. Entire Agreement. This Agreement embodies the entire agreement and understanding between the Parties on the subject of the condition of the Clubhouse or relating in any way to Tenant's obligations with regard to removal, repair, maintenance, restoration, and surrender of the Clubhouse as described in or generally contemplated by the Lease. Neither this Agreement nor any provision thereof may be changed, waived, discharged or terminated, save and except by an instrument in writing signed by the Party against whom enforcement of the change, waiver, discharge or termination is sought.
 - 8. <u>Understanding of Agreement.</u> Each Party represents and warrants to the other Party that the Party has read and understood this Agreement, and that each Party has had the opportunity to have the legal effect of this Agreement explained by competentlegal counsel of that Party's own choice, and that each Party is executing this Agreement of that Party's own free will. City and Tenant acknowledge that this Agreement was negotiated at arms' length and that no presumptions in favor of or against the drafter shall apply to the interpretation of this Agreement.
 - 9. <u>Counterparts.</u> This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement.

- 10. <u>Digital Image</u>. The Parties agree to accept a digital image of this Agreement, as executed, as a true and correct original and admissible as best evidence to the extent permitted by a court with proper jurisdiction.
- 11. Attorneys' Fees. In the event of any litigation or arbitration in connection with the enforcement of this Agreement, the prevailing Party shall be entitled to actual, reasonable attorneys' fees, costs and necessary disbursements (both out-of-pocket and statutorily authorized) incurred in connection with such action or proceeding, as determined by the court or arbitrator.
- 12. <u>Enforceable Under California Law.</u> This Agreement shall be construed in accordance with, and shall be governed by, the laws of the State of California.
- 13. <u>Headings.</u> Captions, section headings and numbers have been set forth in this Agreement for convenience only and are not to be used in construing this Agreement.
- 14. <u>Successors.</u> This Agreement shall be binding on and inure to the benefit of the Parties and their successors.

SIGNATURES ON FOLLOWING PAGE

SIGNATURE PAGE FOR LEASE TERMINATION AGREEMENT

IN WITNESS WHEREOF and having read and understood all of the terms and conditions of this Agreement, the Parties hereto have caused this Agreement to be executed as of the date first written above.

LANDLORD:	IENANI:
City of Santa Rosa, a Municipal Corporation	SPORTS RESTAURANT OF BENNETT VALLEY INC, a California Corporation
Ву:	
Name:	Ву:
Title:	Name:
Date:	lts:
Approved as to Form	
	Ву:
	Name:
Nancy A. Park	lts:
Best & Krieger LLP	

ACKNOWLEDGMENT OF GUARANTOR

The undersigned executed that certain Guarantee of Lease dated as of		
GUARANTOR:		
Ву:		
Name:		
lts:		
By:		
Name:		
Its:		

Exhibit A

FORM OF BILL OF SALE AND ASSIGNMENT

SPORTS RESTAURANT OF BENNETT VALLEY INC, a California Corporation ("Assignor"), for and in consideration of the covenants and terms of the Lease Termination and Surrender Agreement of even date (the "Consideration") exchanged between Assignor and City of Santa Rosa, a California charter city ("Assignee"), the receipt and sufficiency of which are hereby acknowledged, has ASSIGNED, SOLD, CONVEYED and DELIVERED, and does hereby ASSIGN, SELL, CONVEY and DELIVER unto Assignee, its successors, heirs, executors, administrators personal representatives and assigns, all of Assignor's right, title and interest, if any, in and to those items set forth in Schedule 1 attached hereto (the "Personal Property") which are currently located in the Clubhouse at 3330 Yulupa Avenue in Santa Rosa, California, including any warranties associated therewith.

By acceptance of this Bill of Sale, Assignee hereby accepts and agrees to all matters set forth herein. Effective as of this 8th day of December 2020

Assignee	Assignor:
City of Santa Rosa, a Municipal Corporation	SPORTS RESTAURANT OF BENNETT VALLEY INC, a California Corporation
	By: EXHIBIT DO NOT EXECUTE
By: EXHIBIT DO NOT EXECUTE	Name:
Name:	
Title:	
Date:	- Ву:
	Name:
	Its:
	Date:

SCHEDULE 1 TO BILL OF SALE Description of Remaining Personal Property

Au	dio & Visual Equipment	2	Microphone Stands
Au	dio & Visual Equipment	1	Metal Podium
Au	dio & Visual Equipment	1	AV Dolly (with 3 Mic, 1 Projector 1 remote)
Au	dio & Visual Equipment	8	42 Inch Flat Screen TVs + Wall Mount
Au	dio & Visual Equipment	1	32 Inch Display Monitor + mount
Au	dio & Visual Equipment	2	65 Inch Flat Screen TVs + Wall Mount
Au	dio & Visual Equipment	2	72 Inch Flat Screen TVs + Wall Mount
	Miscellaneous	1	10ft Huskey Ladder
	Miscellaneous	1	6ft Huskey Ladder
	Miscellaneous	3	Hand Trucks
	Miscellaneous	1	Large Hand Truck
	Miscellaneous	16	Wooden Highchairs
	Miscellaneous	6	Plastic Booster Seats
	Silverware & Cutlery	16	Wooden Handle Steak Knives
	Silverware & Cutlery	221	Dinner Knives
	Silverware & Cutlery	150	Spoons
	Silverware & Cutlery	386	Forks
	Banquet China	199	White Dinner Plates
	Banquet China	125	White Salad Plates
	Banquet China	163	White Bread Plates

Banquet China	6	White Bowls
Banquet China	72	Coffee Cups
Banquet China	259	Coffee Saucers
Grill Plate ware	14	Fiesta Plate Large (Round)
Grill Plate ware	45	Fiesta Plate Medium (Round)
Grill Plate ware	15	Fiesta Plate Large (Oval)
Grill Plate ware	49	Fiesta Plate Medium (Oval)
Grill Plate ware	29	Fiesta Bread Plate
Grill Plate ware	7	Fiesta Bowl
Grill Plate ware	24	Soup Cups
Glassware	52	Glass Racks (Variety)
Glassware	3	Glass Rack Dolly
Glassware	30	Red Wine Glasses
Glassware	170	White Wine Glasses
Glassware	107	Champagne Glasses
Glassware	112	Water Glasses
Glassware	153	16oz Beer Glasses
Glassware	6	22oz Beer Glasses
Glassware	40	Rocks Glasses
Glassware	19	Shot Glasses
Glassware	79	Grill Coffee Cups

Glassware	138	20oz Plastic Soda Cups
Glassware	96	Stackable Tumbler Cups
Glassware	24	Carafes
Bar	20	Bar Stools
Bar	4	Highboy Tables
Bar	2	Wooden Step Liquor Display
Bar	1	Beer Taps (14 Lines)
Bar	6	Cocktail Garnish Caddies w/ Containers
Grill	93	Dining Chairs
Grill	16	Square Dining Tables and Base
Grill	4	Flip to Round Dining Table and Base
Grill	40	Condiment Caddies
Grill	5	Silverware Holders
Patio	74	Patio Chairs
Patio	17	Patio Tables
Patio	5	Sets of Bistro Lights + Poles
Furnishings	5	Ceramic Flower Pot
Furnishings	2	Wall Mirrors
Furnishings	2	Decorative Chairs
Furnishings	7	Lobby Chairs
Furnishings	1	Wooden Display Desk

Furnishings	1	Copper Vanity w/ Mirror
Furnishings	1	Copper Bin
Furnishings	3	Round Copper Coffee Table
Furnishings	2	Rectangle Copper Coffle Table
Furnishings	1	Copper Vase
Furnishings	2	Decorative Vases
Furnishings	1	Giant Ceramic Pot
Banquet	2	8ft Round Wooden Table
Banquet	7	8ft Rectangle Wooden Table
Banquet	15	6ft Round Wooden Table
Banquet	8	6ft Rectangle Wooden Table
Banquet	1	6ft Round Plastic Table
Banquet	2	4ft Round Wooden Table
Banquet	4	4ft Square Plastic Table
Banquet	3	6ft Serpentine
Banquet	1	Table Dolly
Banquet	136	Banquet Chairs
Banquet	200	Chair Glides
Banquet	10	Long Dome Silver Chaffer
Banquet	3	Short Rounded Silver Chaffer
Banquet	2	4qt Rounded Silver Chaffer

Banquet	3	Silver Chaffer Lids
Banquet	1	18x18 Wooden Dance Floor w/ Edges & Dolly
Banquet	1	Portable Banquet Bar
Banquet	17	12 Inch Round Mirrors
Banquet	25	Plastic Plate Covers
Banquet	1	Wooden Easel
Banquet	1	Small Condiment Rack
Banquet	3	Mobile Room Divider
Banquet	2	Theatre Ropes
Banquet	2	Large Serving Tray
Banquet	3	Dressing Boat
Banquet	9	Plastic Plate Party Tray
Banquet	1	Glass Party Tray
Banquet	2	Clam Shell Dishes
Banquet	3	Large Salad Bowls
Banquet	12	White Rectangle App Trays
Banquet	1	White Plastic Rectangle Tray
Banquet	8	White Glass Salad Bowls
Banquet	38	Tea Kettle / Creamer Holders
Banquet	14	Black Coffee Carafes
Banquet	6	Plastic Beverage Dispensers

Banquet	6	Large Plastic Salad Bowls
Banquet	2	Champagne Buckets
Banquet	8	Round Stainless-Steel Serving Trays
Banquet	3	Rectangle Stainless Steel Serving Trays
Kitchen Equipment	1	Ice Machine Cuber
Kitchen Equipment	1	Salad Spinner
Kitchen Equipment	1	Keg Jacket
Kitchen Equipment	1	6ft Black Rack
Kitchen Equipment	5	12 Inch Pizza Round
Kitchen Equipment	1	Pizza Stand
Kitchen Equipment	9	Bus Tubs
Kitchen Equipment	1	100lb Portion Scale
Kitchen Equipment	7	5gal Food Prep Container (Round)
Kitchen Equipment	1	5gal Food Prep Container (Square)
Kitchen Equipment	2	4gal Food Prep Container (Round)
Kitchen Equipment	3	Metal Food Prep Container (Rectangle)
Kitchen Equipment	13	Plastic Food Prep Container w/ Lid
Kitchen Equipment	1	Immersion Blender
Kitchen Equipment	1	Food Processor
Kitchen Equipment	2	24 Inch Cutting Boards
Kitchen Equipment	3	18 Inch Plastic Cutting Boards

Kitchen Equipment	1	Tomato Slicer
Kitchen Equipment	3	Large Sautee Pans
Kitchen Equipment	7	Medium Sautee Pans
Kitchen Equipment	10	Small Sautee Pans
Kitchen Equipment	6	Glass Olive Oil Cruets
Kitchen Equipment	1	Rolling Cutting Board Rack
Kitchen Equipment	1	Slicing Mandolin
Kitchen Equipment	2	Carving Station w/ Heat Hamp
Kitchen Equipment	2	Stainless Steel Taco Holder
Kitchen Equipment	37	Sheet Pans
Kitchen Equipment	18	2.5 Inch Hotel Pans
Kitchen Equipment	1	4 Inch Hotel Pan
Kitchen Equipment	2	6 Inch Hotel Pans
Kitchen Equipment	1	Stainless Steel Container w/ Lid
Kitchen Equipment	5	Stainless Steel Soup Serving Pot w/ Lid
Kitchen Equipment	7	Brown Rectangle Serving Trays
Kitchen Equipment	12	Brown Round Serving Trays
Kitchen Equipment	8	Brown Oval Serving Trays
Kitchen Equipment	1	Waffle Iron
Kitchen Equipment	2	Plastic Colander
Kitchen Equipment	16	Wooden Fajita Skillet Holders

Kitchen Equipment	6	Cast Iron Fajita Skillets
Kitchen Equipment	5	White Square Platters
Kitchen Equipment	1	Stainless Steel Porter Pan
Kitchen Equipment	1	Conveyor Toaster
Kitchen Equipment	28	Wire Baskets
Kitchen Equipment	31	Hammered Metal Fry Cups
Kitchen Equipment	12	Plastic Water Pitchers
Kitchen Equipment	13	Wire Cooling Racks
Kitchen Equipment	5	Fryer Pots
Kitchen Equipment	21	Ladles (Variety)
Kitchen Equipment	40	Serving Spoons (Variety)
Kitchen Equipment	37	Tongs (Variety)
Kitchen Equipment	1	Mixing Bowl w/ Lid
Kitchen Equipment	1	Stainless Steel Colander
Kitchen Equipment	1	Stainless Steel Pasta Pot
Kitchen Equipment	9	Stainless Steel Pasta Colander
Kitchen Equipment	12	1/3 Steam Table Pans
Kitchen Equipment	69	Small Steam Table Pans (Variety)
Kitchen Equipment	64	Medium Steam Table Pans (Variety)
Kitchen Equipment	1	Small Colander
Kitchen Equipment	5	Medium Stainless-Steel Mixing Bowls

Kitchen Equipment	4	Stock Pots
Kitchen Equipment	1	Large Pasta Colander
Kitchen Equipment	2	Round Braising Pans
Kitchen Equipment	2	Large Round Braising Pans
Kitchen Equipment		Plastic Squeeze Bottles
Office Equipment	1	Master Safe
Office Equipment	3	Swivel Chairs
Audio & Visual Equipment	1	Security Camera (7) & NVR Server
Office Equipment	2	Desk
Furnishings	4	Wall Mounted Pictures
Furnishings	6	Canvas Venue Pictures
Furnishings	5	Set of Curtains and Rods
Bar	1	Liquor Cage

Exhibit B List of Contracts to be terminated

Advanced Security Systems	Bill Payer ID 31206	707-544-9200
Clark pest control	Account # 1644125	707-571-0414
Recology garbage	Account #1813083722	707-586-1478
Business Property Tax	Account # 800-036-486-000	707-565-1330
City of Santa Rosa Fire Dep Per	Occupancy # 09678	707-543-3500
County of Sonmona Health Dept	Account #AR0004111	707-565-6565
PG&E Electric	Account # 4618967754-8	800-468-4743
PG&E Gas	Account # 6105801379-0	800-468-4743
Environmental Pump Services	Grease Trap	707-775-5443