

LEASE AGREEMENT BETWEEN THE
CITY OF HUNTINGTON BEACH
AND
PRIMO NOSH CHEFS LLC, FOR OPERATION OF A FOOD CONCESSION AT THE
HUNTINGTON BEACH SPORT COMPLEX

This Lease is made and entered into by and between the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California ("CITY") and PRIMO NOSH CHEFS, LLC, ("LESSEE," and collectively, the "PARTIES,") as of the date the Huntington Beach City Council approves this Lease.

NOW, THEREFORE, the PARTIES covenant and agree as follows:

1. **DESCRIPTION OF PREMISES.** CITY hereby leases to LESSEE the two food concession buildings with restrooms, together comprising 1,500 square feet, located within the Huntington Beach Sports Complex, located at 18260 Goldenwest Street, Huntington Beach, CA 92648. The Premises are identified on **Exhibit A**, attached hereto.

2. **LEASE TERM.** This Lease shall be for a term of five (5) years commencing at 12:01 a.m. on _____, 2019 and ending at 11:59 p.m. on _____, 2024, unless sooner terminated or extended as herein provided.

3. **EXTENSION OF TERM.** This Lease may be extended for one (1) additional period of five (5) years, by mutual agreement of the PARTIES. If the PARTIES agree to an extension, this Lease shall be subject to the same terms, covenants, conditions, exceptions, and reservations contained herein.

4. **HOLD OVER.** Should LESSEE hold over and continue in possession of the Premises after expiration of the terms of this Lease or any extension thereof, LESSEE's continued occupancy of the Premises shall be considered a month-to-month tenancy subject to all the terms and conditions of this Lease.

5. **ANNUAL RENT.**

(a) **Minimum Base Rent.** For the first year of this Lease, LESSEE shall pay CITY as minimum rent for the Premises ("Minimum Base Rent") the sum of Fifteen Thousand Dollars (\$15,000) per year, plus any increases provided for in Sub-Paragraph "(b)" below. Rent shall be paid in lawful money of the United States of America, without deduction or offset, at Huntington Beach City Hall, City Treasurer, 2000 Main Street, Huntington Beach CA, 92648, or the place CITY may designate in writing. LESSEE shall pay CITY each month One

Thousand Two Hundred Fifty Dollars (\$1,250), which is one-twelfth of the Minimum Base Rent. Should monthly payments for Minimum Base Rent be required for any partial month pursuant to any provision of the Lease, such Rent shall be prorated in accordance with the actual number of days in the month in which such proration occurs.

(b) **Adjustment of Minimum Base Rent.** Commencing on the first anniversary of this Lease, and each anniversary thereafter ("the Rent Adjustment Date"), the Minimum Base Rent shall be adjusted by the annual increase in the Consumer Price Index published by the Bureau of Labor Statistics, United States Department of Labor, for the Los Angeles-Long Beach-Anaheim, CPI-U, as available for the prior one-year period from October 1 through September 30. In no event shall the Minimum Base Rent be decreased from the previous year.

(c) **Percentage Rent.** In alternative to the Minimum Base Rent, each month LESSEE shall pay CITY a sum ("Percentage Rent") equal to the amount that the product of the percentage rate set forth in this paragraph multiplied by the cumulative Gross Sales at the Premises through that month of the Operational Year exceeds the Minimum Annual Rent owed for the same month. LESSEE shall pay CITY Percentage Rent according to the following annual Gross Sales percentages:

| <u>Sales Volume</u> | <u>Percentage Rate</u> |
|--|------------------------|
| Gross Sales from \$0 to \$100,000.00 | 8% |
| Gross Sales above \$100,000.01 to \$150,000. | 10% |
| Gross Sales above \$150,000.01 | 12% |

The "Operational Year" is a one-year period ending December 31. For purposes of computing the Percentage Rent for any partial Operational Year at the beginning or end of the Lease Term or any extension thereof, the volume of Gross Sales for that period shall be adjusted pro rata to the number of months in that partial Operational Year to determine the Percentage Rent to utilize.

Example: When gross sales equals \$300,000 during the Operational Year, the Percentage Rent is as follows:

| | |
|--------------------|-----------------|
| 8% of \$100,000 = | \$ 8,000 |
| 10% of \$50,000 = | \$ 2,500 |
| 12% of \$150,000 = | \$15,000 |
| <u>Total</u> = | <u>\$25,500</u> |

Additional Rent Due in Excess of \$15,000 Minimum Annual Rent is \$10,500.

(d) **Rent Abatement.** Both the Minimum Base Rent and Percentage Rent shall be abated for the first four (4) calendar months of the first year of this Lease. Consequently, the Percentage Rent for the first partial or full Operational Year shall be determined without including as part of Gross Sales the first four (4) months of the Operational Year.

(e) **Monthly Rent.** Each month, LESSEE shall pay CITY the Minimum Base Rent or the Percentage Rent, whichever is greater. LESSEE shall furnish to CITY statements of LESSEE's Gross Sales within Fifteen (15) days after the end of each month. Based upon the cumulative Gross Sales reported through that month of the Operational Year, LESSEE shall pay within fifteen (15) days after the end of the month the Minimum Base Rent or Percentage Rent, whichever is greater. An officer of LESSEE shall sign and certify as correct each monthly Statement of Gross Sales.

(f) **Late Charge.** In the event that CITY does not receive the monthly rent on or before the Fifteen (15) days after the end of each month, a late charge of one and one-half percent (1.5%) of the monthly rent due shall be added beginning Twenty (20) Days after the end of the month, with an additional late charge of one and one-half percent (1.5%) of the original monthly rent due on the Twentieth (20th) day of each subsequent month. If received after the Fifteenth (15th) Day, but postmarked on or before the Fifteenth (15th), the monthly rent will be accepted without penalty.

(g) **Records and Audit.**

(i) Annual Statement. LESSEE shall provide CITY an annual statement of Gross Sales within fifteen (15) days after the end of each Operational Year.

(ii) Sales and Charges. LESSEE shall record all sales and charges by cash registers that display the amount of the transaction certifying the amount recorded. The register shall be equipped with devices which log in daily sales totals, and which shall record on tapes the transaction numbers and sales details. At the end of each day, the tape will record the total sales for that day.

(iii) Production of Statement, Records and Audit. LESSEE shall make available for CITY inspection at the Premises a complete and accurate set of LESSEE's and any sub-lessee's books and records of all sales of merchandise and revenue derived from the conduct of business at the Premises from which Gross Sales can be determined and all supporting sales records, including without limitation all federal and state tax returns. LESSEE shall also furnish CITY copies of LESSEE's quarterly California sales and use returns at the time each is filed with the State of California.

LESSEE further agrees that it will keep, retain and preserve for at least two (2) years all records, books, bankbooks or duplicate deposit books and other evidence of Gross Sales.

CITY shall have the right, upon reasonable notice, during the Lease Term and any extension thereof, and within two (2) years after Expiration or Termination of this Lease to inspect and audit LESSEE's books and records and to make transcripts therefrom to verify the payment due CITY. The CITY may conduct the audit at any reasonable time during normal business hours in a manner that minimizes any interference with the conduct of LESSEE's regular business operations. LESSEE shall cooperate with CITY in making the inspection and audit.

CITY shall also be entitled, once during each Operational Year, and once within two (2) years after Expiration or Termination of the Lease, to an independent audit of LESSEE's books of account, records, cash receipts, and other pertinent data to determine LESSEE's Gross Sales, by a certified public accountant to be designated by CITY, at CITY's sole cost and expense. The audit shall be limited to the determination of Gross Sales and shall be conducted during usual business

If either audit shows a deficiency in the payment of any Percentage Rent, the deficiency shall become immediately due and payable and if there is an overpayment, CITY shall immediately refund the amount of the overpayment to LESSEE. CITY shall bear its costs of the audit unless the audit shows that LESSEE understated Gross Sales by more than five percent (5%), in which case LESSEE shall pay all CITY's reasonable costs of the audit.

(iv) LESSEE's Gross Sales Audit. LESSEE may contest the results of CITY's audit by performing a confirmatory audit within thirty (30) days of receipt of CITY's audit results and supporting evidence, using an independent public accountant reasonably acceptable to CITY. If LESSEE's audit discloses that CITY's audit was incorrect by more than five percent (5%), then CITY shall pay the cost of such audit and shall pay the cost of CITY's audit.

(v) Acceptance. The acceptance by CITY of any monies paid to CITY by LESSEE as Percentage Rent for the Premises, as shown by any statement furnished by LESSEE, shall not be construed as an admission of the accuracy of said statement, or of the sufficiency of the amount of said Percentage Rent payment, but CITY shall be entitled to review the adequacy of such payment pursuant to the above-described audit procedure.

6. GROSS SALES DEFINED. The term "Gross Sales" shall mean the total selling price of all merchandise or services sold or rendered in, or property rented on, or from the Premises by LESSEE, his sublessees, licensees, or concessionaires, whether for cash or on credit, and if on credit whether or not paid, and shall include without limitation:

- (a) Proceeds from all automatic vending, weighing, and other machines owned and operated by LESSEE in or on the Premises;
- (b) Commissions received by LESSEE from such automatic vending, weighing, and other machines not owned by LESSEE but operated in or on the Premises;
- (c) All other receipts of all business conducted in, at or from the Premises, including all deposits not refunded to purchasers, proceeds, receipts or any revenue derived whatsoever from the use of Premises;
- (d) Proceeds from sales based on orders solicited or taken from, in, or on the Premises for merchandise or services to be delivered or rendered off, or from sources outside, the Premises; and
- (e) All other revenue or receipts generated by or arising from the use of the Premises.

7. GROSS SALES EXCLUSIONS. Notwithstanding the provisions of Section 6 of this Lease, the term "Gross Sales" shall not include the following items, and such items may be deducted from "Gross Sales" to the extent they have been included therein or have

been included in a prior computation of "Gross Sales" on which Rent has been paid under this Lease to CITY:

(a) Any sales or use taxes imposed on the sale or rent of food, merchandise, or services that are added to the sales price collected from customers; and

(b) Any transfer of merchandise from the Premises to the manufacturer or supplier from whom it was obtained by LESSEE.

8. BOOKS AND RECORDS. LESSEE shall at all times keep or cause to be kept on the Premises full, complete, and accurate records and books of account showing the total amount of Gross Sales as defined in this Lease made each calendar month in, on or from the Premises. Furthermore, LESSEE shall at the time of sale and in the presence of the customer cause the full selling price of each piece of merchandise and each service rendered in, on, or from the Premises to be recorded in a cash register or cash registers that have cumulative totals and are sealed in a manner approved by CITY. LESSEE agrees to maintain on the Premises for a period of three (3) years following the close of each calendar month all records and books of account and all cash register tapes showing or in any way pertaining to the Gross Sales made in, or from the Premises during such calendar month.

9. CAPITAL INFRASTRUCTURE CREDIT. LESSEE may request that CITY provide a temporary rent credit to offset the cost of capital improvements to the Premises, provided that CITY retains unfettered discretion to deny any credit.

10. BUSINESS PURPOSES AND USE OF PREMISES. The Premises are leased for the purpose of operation of two Sports Park food and beverage facilities offering a menu comparable to Exhibit B, including use of food carts. Any material alteration of the menu shall be approved by CITY.

At all times, LESSEE shall comply with the following requirements:

(a) LESSEE, at its sole cost and expense shall equip, operate, manage, and maintain the Premises in good safe working condition. LESSEE shall meter the Premises for electrical usage and will pay the utility company directly for electricity used in LESSEE's operation.

(b) LESSEE shall operate the Premises for a minimum of "100 Operational Days" during the calendar year, provided the LESSEE may close for up to ten (10) verified rain days. In no case shall the Premises be operating for less than 90 Operational Days per year. An Operational Day is defined as the Premises being open for business a minimum of four (4) consecutive hours.

(c) At all times LESSEE shall comply with all CITY, Orange County, State and Federal laws and regulations, including but not limited to those regarding building permits, health permits and environmental regulations.

(d) Because food and beverage services offered at the Premises shall meet the changing needs of the visiting public, CITY may require LESSEE to make changes to better meet such needs.

(e) LESSEE shall be responsible for obtaining CITY approval of, and providing appropriate signage for the Premises. LESSEE shall maintain all signage in good appearance at all times during the life of this LEASE. CITY shall have the right to approve or require LESSEE to change or remove signs or any other advertising on the premises.

(f) LESSEE will routinely clean and provide limited custodial maintenance of the restrooms, with hand, soap and paper supplies provided by CITY.

(g) CITY reserves the right to prohibit the sale of any item or article which is objectionable or beyond the scope of the food and beverage necessary for proper service to the public or public safety. LESSEE shall fix the prices for the food and merchandise sold at the Premises, provided that CITY reserves the right to establish reasonable maximum prices for any or all items LESSEE sells in accordance with the best interests of the public, LESSEE, and CITY.

(h) Except as permitted in advance in writing by CITY, LESSEE shall sell all foods and beverages in disposable paper or plastic containers, and in no case sell or dispense pull-top cans or Styrofoam containers. Lessee, wherever feasible, shall eliminate the use of non-recyclable containers and plastics. CITY may from time to time review the items sold and containers or utensils LESSEE uses or dispenses, and prohibit the sale or use of non-recyclable containers or plastics.

(i) LESSEE shall not sell beer, wine or other alcoholic beverage from the Premises.

(j) CITY has and may enter into in the future, agreements with businesses marketing food, beverage, apparel and products (collectively, "Vendors") requiring CITY to use and/or sell their products exclusively at CITY parks, beaches and facilities. CITY shall notify LESSEE of such exclusivity agreements, including which products LESSEE may not sell or rent. Once notified, LESSEE shall remove any products from the Premises that CITY may not use or sell pursuant to its exclusivity agreements.

11. PAYMENT OF UTILITY CHARGES. During the term of this Lease or any extension thereof, LESSEE shall pay, and hold CITY and the Premises free and harmless from all charges for the furnishing of gas, water, electricity, telephone services, and other public utilities to the Premises, and for the removal of garbage and rubbish from the Premises.

12. PERSONAL PROPERTY TAXES. LESSEE shall pay before they become delinquent all taxes, assessments, or other charges levied or imposed by any governmental entity on the furniture, trade fixtures, appliances, and other personal property placed by LESSEE in, on, or about the Premises including, without limiting the generality of the other terms used in this Section, anyshelves, counters, vaults, vault doors, wall safes, partitions, fixtures, machinery, plant equipment, office equipment, television or radio antennas, or communication equipment brought on the Premises by LESSEE.

13. REAL PROPERTY TAXES. LESSEE shall timely pay all real property taxes or possessory interest taxes and assessments levied or assessed against the Premises.

14. MAINTENANCE AND REPAIRS.

A. CITY agrees, at its own cost and expense, to make all structural repairs to the Premises including but not limited to foundation, walls, and roof. LESSEE shall notify CITY of necessary repairs, which CITY will commence promptly. In the event City does not commence such work within 30 days from the date of such notice and complete it within a reasonable time thereafter given the nature and extent of the repair, CITY agrees that LESSEE may accomplish such repairs, and CITY will promptly reimburse LESSEE for the repairs.

B. CITY shall have the right to enter the Premises at all reasonable times (and at any time during an emergency) for the purpose of inspecting the Premises or to make any repairs CITY is required to be make pursuant to this Lease. Structural repairs as used in this Section means and is limited to repairs (other than replacement of worn-out parts) to the foundations, structural portions of exterior walls, concrete slabs, beams, columns and walls bearing the main load of the roof and floors, but excluding floor covering and any improvements, additions, or changes, structural or otherwise, made by LESSEE.

C. LESSEE agrees that it will, at its own cost and expense, make all repairs of whatever kind and nature, foreseen and unforeseen, to keep the Premises in good condition, other than the repairs to be performed by CITY pursuant to the preceding Subparagraph A. "Premises" as used in this Subparagraph includes heating, ventilating, air conditioning, interior walls, floor coverings and ceilings, painting and maintenance of exterior walls, the interior and exterior portions of all doors, windows, and plate glass.

D. LESSEE shall maintain and operate the Premises pursuant to a Food Facility Health Permit issued by the Orange County Environmental Health Agency. At all times, the Premises shall be maintained, equipped and operated in compliance with State and County health regulations, CITY Building and Fire Codes, and the disability access provisions of the Federal Americans with Disabilities Act.

15. ALTERATIONS AND LIENS. LESSEE shall not make or permit any other person to make any improvement or install any fixture to the Premises without first obtaining written consent of CITY. LESSEE shall keep the Premises free and clear from any and all liens, claims, and demands for work performed, materials furnished, or operations conducted on such Premises at the instance or request of LESSEE. Furthermore, to the extent CITY consents to any improvement or fixture to the Premises, on expiration or sooner termination of this Lease, and at the option of CITY, the improvement or fixture shall become the property of CITY and remain on the Premises, or CITY may require LESSEE to remove any or all such improvement or fixture and require LESSEE to restore the Premises to their state at the beginning of this Lease.

16. INSPECTION BY CITY. LESSEE shall permit CITY or CITY's agents, representatives, or employees to enter the Premises at all reasonable times for the purpose of inspecting the Premises to determine whether LESSEE is complying with the terms of this Lease and for the purpose of doing other lawful acts that may be necessary to protect CITY's

interest in the Premises under this Lease or to perform CITY's duties under this Lease. CITY may make quarterly inspections of the Premises and provide written reports to LESSEE. LESSEE shall make necessary repairs, clean or take any other reasonable action as required by quarterly inspection reports.

17. SURRENDER OF PREMISES. On expiration or sooner termination of this Lease, or any extensions or renewals of this Lease, LESSEE shall promptly surrender and deliver the Premises to CITY in as good condition as they are now at the date of this Lease, reasonable wear and tear, and repairs required to be made by CITY excepted.

18. INSTALLATION AND REMOVAL OF TRADE FIXTURES. LESSEE shall have the right during the term of this Lease and any renewal or extension of its term, at LESSEE's sole cost and expense, to install and affix in, to or on the Premises such items, herein called "trade fixtures," for use in LESSEE's trade or business as LESSEE may, in his sole discretion, deem advisable. Any and all such trade fixtures that can be removed without structural damage to the Premises or any building or improvements on the Premises shall, subject to Section 20 of this Lease, remain the property of the LESSEE and may be removed by LESSEE at any time prior to the expiration or sooner termination of this Lease.

19. TRADE FIXTURES AS SECURITY FOR LEASE. Subject to and to be subordinated to any security interest which LESSEE may give to any lending institution and/or financing source for the purpose of obtaining financing for the purchase of trade fixtures and equipment or the operation of the Premises, LESSEE hereby grants to CITY a security interest in all trade fixtures and equipment owned by LESSEE and now or hereafter placed on the Premises by LESSEE as security for the faithful performance of all the terms, conditions and covenants of this Lease to be performed by LESSEE. Any rights or rights of removal of trade fixtures given LESSEE by the provisions of Section 18 of this Lease shall be exercisable only if, at the time of removal, LESSEE is not in default in performance of this Lease. LESSEE may, however, at any time he is not in default in performance of this Lease, trade in or replace any trade fixture free of the security interest created by this Section and this security interest will then attach to the item that replaced such trade fixture. On default in performance of any obligation of this Lease to be performed by LESSEE, CITY shall immediately have as to the trade fixtures the remedies provided to a secured party under the Uniform Commercial Code as enacted in the State of California.

20. UNREMOVED TRADE FIXTURES. Any trade fixtures described in Section 18 that are not removed from the Premises by LESSEE within thirty (30) days after the expiration or sooner termination, regardless of cause, of this Lease shall be deemed abandoned by LESSEE and shall automatically become the property of CITY as owner of the Premises to which they are affixed and not simply because of the lien described in Section 19 of this Lease.

21. SIGNS. LESSEE shall not place and maintain, nor permit any other person to place or maintain, on or in any exterior door, wall, or window of the Premises any sign, awning, canopy, marquee, or other advertising without the express written consent and approval of CITY. Furthermore, LESSEE shall not place any decoration, lettering, or advertising matter on the glass of any interior or exterior shop window of the Premises without the written approval and consent of CITY. Should CITY consent to any such sign, awning, canopy, marquee, decoration, or advertising matter, LESSEE shall maintain it at all times during this Lease in good appearance and repair. On expiration or sooner termination of this Lease, any of the items mentioned in this Section not removed from the Premises by LESSEE on such expiration or termination of this Lease may, without damage or liability, be destroyed by CITY.

22. PARTIAL DESTRUCTION. Should the Premises be partially destroyed by any cause not the fault of LESSEE or any person in or about the Premises with the consent, express or implied, of LESSEE, this Lease shall continue in full force and effect and CITY, at CITY's own cost and expense, shall promptly commence and diligently continue and complete the work of repairing and restoring the Premises to their prior condition providing such work can be accomplished under all applicable governmental laws and regulations within one hundred eighty (180) working days.

23. TOTAL DESTRUCTION. Should the Premises or the building on the Premises be so far destroyed by any cause not the fault of LESSEE or any person in or about the Premises with the consent, express or implied, of LESSEE that they cannot be repaired or restored to their former condition within one-hundred eighty (180) working days, CITY may, at CITY's option:

- (a) Continue this Lease in full force and effect by repairing and restoring, at CITY's own cost and expense, the Premises to their former condition; or
- (b) Terminate this Lease by giving LESSEE written notice of such termination.

24. INSURANCE PROCEEDS. Any insurance proceeds received by CITY because of the total or partial destruction of the Premises or the building on the Premises shall be the sole property of CITY, except LESSEE shall be compensated for loss to leasehold improvements and fixtures beyond any and all insurance proceeds including business interruption insurance which would ordinarily flow to the benefit of LESSEE.

25. ABATEMENT OF RENT. Should CITY elect under Section 23 of this Lease or be required under Section 22 of this Lease to repair and restore the Premises to their former condition following partial or full destruction of the Premises or the building on the Premises:

(a) CITY shall have full right to enter the Premises and take possession of so much of the Premises, including the whole of the Premises, as may be reasonably necessary to enable CITY promptly and efficiently to carry out the work of repair and restoration; and

(b) During the time that LESSEE is prevented from using the whole of the Premises, LESSEE shall only pay the Minimum Rent, but not the Percentage Rent described in Section 6 of this Lease.

26. CONDEMNATION COMPENSATION. All compensation and damages awarded for a total taking of the Premises shall belong to and be the sole property of CITY, and LESSEE shall have no claim to any amount or part of any award, except that LESSEE shall be entitled to receive the portion of any award attributable to the taking of those trade fixtures that LESSEE has the right to remove under this Lease but does not remove from the Premises; or when LESSEE does remove the trade fixtures, a reasonable amount for removal and relocation expenses, provided that amount does not exceed the market value of or damages to which LESSEE may become entitled. This Lease shall have no condemnation value to LESSEE.

27. DEFAULT AND TERMINATION

(a) **Default Defined.** The occurrence of any of the following shall constitute a material default and breach of this lease by LESSEE:

(i) Any failure by LESSEE to pay the rent or to make any other payment required to be made by LESSEE under this Lease when that failure continues for ten (10) days after written notice of the failure is given by CITY to LESSEE.

(ii) The abandonment or vacation of the Premises by LESSEE, or the failure by LESSEE to conduct business on the Premises for a period in excess of fourteen (14) consecutive days without prior approval of the CITY.

(iii) A failure by LESSEE to observe and perform any other provision of this Lease, when that failure continues for thirty (30) days after CITY has given written notice of the failure to LESSEE; provided, however, that if the nature of that default is such that it cannot reasonably be cured within a thirty (30) day period, LESSEE shall not be deemed to be in default if LESSEE commences that cure within the thirty (30) day period and thereafter diligently prosecutes it to completion.

(iv) The making by LESSEE of any general assignment for the benefit of creditors; the filing by or against LESSEE of a petition to have LESSEE adjudged a bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against LESSEE, it is dismissed within 60 days); the appointment of a trustee or receiver to take possession of substantially all of LESSEE's assets located at the Premises or of LESSEE's interest in this Lease, when possession is not restored to LESSEE within 30 days; or the attachment, execution, or other judicial seizure of substantially all of LESSEE's assets located at the Premises or of LESSEE's interest in this Lease, when that seizure is not discharged within 30 days.

The notices provided for in subsections (a) through (c) of this Section 27 are not intended to replace, but rather are in addition to, any required statutory notices for unlawful detainer proceedings under Code of Civil Procedure Section 1161 et seq.

(b) **Termination of Lease and Recovery of Damages.** In the event of any default by LESSEE under this lease, in addition to any other remedies available to CITY at law or in equity, CITY shall have the right to terminate this Lease and all rights of LESSEE hereunder by giving written notice of the termination. No act of CITY shall be construed as terminating this Lease except written notice given by CITY to LESSEE advising LESSEE that CITY elects to terminate the Lease. In the event CITY elects to terminate this lease, pursuant to Civil Code §1951.2, CITY may recover from LESSEE:

(i) The worth at the time of award of any unpaid rent that had been earned at the time of termination of this Lease;

(ii) The worth at the time of award of the amount by which the unpaid rent that would have been earned after termination of this Lease until the time of award exceeds the amount of rental loss that LESSEE proves could have been reasonably avoided;

(iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the term of this Lease after the time of award exceeds the amount of rental loss that LESSEE proves could be reasonably avoided; and

(iv) Any other amount necessary to compensate CITY for all detriment proximately caused by LESSEE's failure to perform its obligations under this Lease.

The term "rent" as used in this Lease shall mean the Minimum Rent, the Percentage Rent, and all other sums required to be paid by LESSEE pursuant to the terms of this lease. As used in subsections (i), (ii), and (iii) above, the "worth at the time of award" is computed by allowing interest at the rate of 10 percent per year.

(c) CITY's Right to Continue Lease in Effect After Breach.

(i) If LESSEE breaches this Lease and abandons the Premises before the natural expiration of the term of this Lease, CITY may continue this Lease in effect by not terminating LESSEE's right to possession of the Premises, in which event CITY shall be entitled to enforce all its rights and remedies under this Lease, including the right to recover the rent specified in this Lease as it becomes due under this Lease.

(ii) No act of CITY, including but not limited to CITY's entry on the Premises, efforts to relet the Premises, or maintenance of the Premises, shall be construed as an election to terminate this Lease unless a written notice of that intention is given to LESSEE or unless the termination of this Lease is decreed by a court of competent jurisdiction.

(d) CITY's Right to Relet. In the event LESSEE breaches this Lease, CITY may enter on and relet the Premises or any part of the Premises to a third party or third parties for any term, at any rental, and on any other terms and conditions that CITY in its sole discretion may deem advisable, and shall have the right to make alterations and repairs to the Premises.

LESSEE shall be liable for all of CITY's costs in reletting, including but not limited to remodeling costs required for the reletting. In the event CITY relets the premises, LESSEE shall pay all rent due under and at the times specified in this Lease, less any amount or amounts actually received by CITY from the reletting.

(e) **CITY's Right to Cure LESSEE Defaults.** If, after receipt of the required notice as provided for in subparagraph (a) above, LESSEE breaches or fails to perform any of the covenants or provisions of this Lease, CITY may, but shall not be required to, cure LESSEE's breach. Any sum expended by CITY, with the then maximum legal rate of interest, shall be reimbursed by LESSEE to CITY with the next due rent payment under this Lease.

(f) **Cumulative Remedies.** The remedies granted to CITY in this Section shall not be exclusive but shall be cumulative and in addition to all remedies now or hereafter allowed by law or provided in this Lease.

(g) **Waiver of Breach.** The waiver by CITY of any breach by LESSEE of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by LESSEE either of the same or another provision of this Lease.

28. SUBLEASING OR ASSIGNING AS BREACH.

(a) LESSEE shall not encumber, assign, or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Premises or any of the improvements that may now or hereafter be constructed or installed on the Premises without the express written consent of CITY first had and obtained. LESSEE shall not sublet the Premises or any part thereof or allow any other person, other than LESSEE's agents, servants, and employees, to occupy the Premises or any part thereof without the prior written consent of CITY.

(b) CITY consent to one assignment, subletting, or occupation of the Premises by another person shall not be deemed to be a consent to any subsequent assignment, subletting, or occupation of the Premises by another person. Any encumbrance, assignment, transfer, or subletting without the prior written consent of CITY, whether it be voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of CITY, terminate this Lease.

(c) The consent of CITY to any encumbrance, assignment including occupation or transfer hereof of LESSEE's interest in this Lease or the subletting by LESSEE of

the Premises or parts of the Premises shall not be unreasonably withheld; however, CITY shall have the right of first refusal in connection with any assignment, sale, sublease or transfer hereof and agrees to exercise or refuse such right in writing within thirty (30) days of notice by LESSEE.

29. DEFAULT BY LESSEE. Should LESSEE default in the performance of any of the covenants, conditions, or agreements contained in this Lease, LESSEE shall have breached the Lease and CITY may, in addition to the remedy specified in the subparagraph (b) of Section 29 of this Lease, re-enter and regain possession of the Premises in the manner provided by the laws of unlawful detainer of the State of California then in effect.

30. INSOLVENCY OF LESSEE. The insolvency of LESSEE as evidenced by a receiver being appointed to take possession of all or substantially all of the property of LESSEE, or the making of a general assignment for the benefit of creditors by LESSEE, or filing a petition in bankruptcy shall terminate this Lease and entitle CITY to re-enter and regain possession of the Premises.

31. CUMULATIVE REMEDIES. The remedies given to CITY in this Lease shall not be exclusive but shall be cumulative and in addition to all remedies now or hereafter allowed by law or elsewhere provided in this Lease.

32. WAIVER OF BREACH. The waiver by CITY of any breach by LESSEE of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by LESSEE either of the same or another provision of this Lease.

33. FORCE MAJEURE - UNAVOIDABLE DELAYS. Should the performance of any act required by this Lease to be performed by either CITY or LESSEE be prevented or delayed by reason of an act of God, strike, lockout, labor troubles, inability to secure materials, or any other cause of a like nature not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay, provided that nothing contained in this Section shall excuse the prompt payment of Rent by LESSEE as required by this Lease or the performance of any act rendered difficult solely because of the financial condition of the party, CITY or LESSEE, required to perform the act.

34. CARE OF PREMISES. LESSEE shall:

- (a) Paint, stain or seal the Premises' stucco, trim, etc., a minimum of

every two years, unless City determines in its sole discretion, that such work shall be done once every year. All exterior metal surfaces shall be painted no less than once each year except the roof.

(b) Remove any and all graffiti at LESSEE's own expense from the Premises within forty-eight (48) hours of notice thereof.

(c) Not obstruct, cause or permit any obstruction surrounding the Premises or any part thereof in any manner whatsoever.

(d) Comply with all written notices served by CITY with regard to the care and maintenance of the Premises.

(e) Install, at LESSEE's sole cost and expense, a grease trap and provide for said grease trap to be pumped out a minimum of once per year.

Any written notice CITY gives LESSEE hereunder shall specify the work to be done, the estimated cost thereof, and the period of time deemed to be reasonably necessary for completion of such work. Should LESSEE fail to comply with CITY's written notice within fifteen (15) days, or within a time deemed reasonably necessary of the time specified therein, LESSEE shall pay over to CITY the estimated cost of such work as set forth in the notice. Upon receipt of such sum, CITY shall then proceed to cause the required work to be performed.

35. SECURITY DEPOSIT. Upon execution of this Lease, LESSEE shall pay and maintain at all times hereunder, a security deposit with CITY in a sum of not less than Two Thousand Five Hundred Dollars (\$2,500.00) to guarantee the repair and maintenance of the Premises. Such deposit may be in the form of cash or an assignment of certificate of deposit or savings account. The form of any such assignment shall be approved by the City Attorney.

36. EMERGENCY CLOSING OR CLOSING TO EFFECT REPAIR OR REMODELING OF THE SPORTS PARK. CITY may close the Sports Park, including the Premises without liability to LESSEE at any time it deems necessary for the protection of life, limb or property, or upon reasonable notice to effect any repair, remodeling or rebuilding of the Sports Park deemed necessary by CITY.

37. DELIVERIES OF SUPPLIES. CITY shall establish the days and times for deliveries of supplies, and advise LESSEE in writing thereof. All vendors, salesmen, and guests of LESSEE must obey all parking and traffic regulations.

38. EMPLOYEE PARKING. CITY shall provide without additional charge, reasonable vehicular parking for LESSEE and LESSEE's employees, to access and serve the Premises. LESSEE and its employees must obey all parking and traffic regulations.

39. NOTICE. Any written notice, given under the terms of this Lease, shall be either delivered personally or mailed, certified mail, postage prepaid, addressed to the party concerned, as follows:

CITY OF HUNTINGTON BEACH:

LESSEE:

Deputy Director of Economic Development
City of Huntington Beach
2000 Main Street, P.O. Box 190 Huntington
Beach, CA 92648

Primo Nosh Chefs, LLC
Attn: John Parlagreco/Victor Vargas
15941 Edwards Avenue
Huntington Beach, CA 92647

40. INSURANCE HAZARDS. LESSEE shall not commit or permit the commission of any acts on the Premises nor use or permit the use of the Premises in any manner that will increase the existing rates for, or cause the cancellation of any fire, liability, or other insurance policy insuring the Premises or the improvements on the Premises. LESSEE shall, at his own cost and expense, comply with any and all requirements of CITY's insurance carriers necessary for the continued maintenance at reasonable rates of fire and liability insurance policies on the Premises and the improvements on the Premises.

41. WASTE OR NUISANCE. LESSEE shall not commit or permit the commission by others of any waste on the Premises; LESSEE shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined in Section 3479 of the *California Civil Code* on the Premises; and LESSEE shall not use or permit the use of the Premises for any unlawful purpose.

42. COMPLIANCE WITH LAW. LESSEE shall at LESSEE's own cost and expense comply with all statutes, ordinances, regulations, and requirements of all governmental entities, Federal, State, County and municipal, relating to LESSEE's use and occupancy of the Premises, whether such statutes, ordinances, regulations, and requirements be now in force or hereinafter enacted. The judgment of any court of competent jurisdiction, or the admission by LESSEE in a proceeding brought against LESSEE by any government entity, that LESSEE has violated any such statute, ordinance, regulation, or requirement shall be conclusive as between CITY and LESSEE and shall be ground for termination of this Lease by CITY.

43. BINDING ON HEIRS AND SUCCESSORS. This Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties.

44. PARTIAL INVALIDITY. Should any a court of competent jurisdiction hold any provision of this Lease to be invalid, void, or unenforceable, the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding, so long as the reasonable expectations of the Parties are not materially impaired.

45. SOLE AND ONLY AGREEMENT. This instrument constitutes the sole and only agreement between CITY and LESSEE respecting the Premises, the leasing of the Premises to LESSEE, or the term herein specified, and correctly sets forth the obligations of CITY and LESSEE to each other as of its date. Any agreements or representations respecting the Premises or their leasing by CITY to LESSEE not expressly set forth in this Lease are null and void.

46. TIME OF ESSENCE. Time is expressly declared to be the essence of this Lease.

47. INDEMNIFICATION, DEFENSE, HOLD HARMLESS. LESSEE shall indemnify and save and hold harmless CITY, its officers and employees, from any and all liability, including any claim of liability and any and all losses or costs arising out of the performance of this Lease by LESSEE, its officers or employees or from any willful misconduct of LESSEE, its officers or employees while engaged in the performance of this Lease.

48. WORKERS' COMPENSATION. LESSEE shall comply with all of the provisions of the Workers' Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Division 4 and 5 of the California Labor Code and all amendments thereto; and all similar State or Federal acts or laws applicable; and shall indemnify, defend and hold harmless CITY from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including attorney's fees and costs presented, brought or recovered against CITY, for or on account of any liability under any of said acts which may be incurred by reason of any work to be performed by LESSEE under this Lease.

LESSEE shall obtain and furnish evidence to CITY of maintenance of statutory workers' compensation insurance and employers' liability in an amount of not less than \$500,000 bodily injury by accident, each accident, \$500,000 bodily injury by disease, each employee, and

\$1,000,000 bodily injury by disease, policy limit.

49. INSURANCE. In addition to the Workers' Compensation insurance and LESSEE's covenant to indemnify CITY, LESSEE shall obtain and furnish to CITY the following insurance policies covering the Premises:

(a) **General Liability Insurance.** A policy of general public liability insurance, including motor vehicle coverage. Said policy shall indemnify LESSEE, its officers, agents and employees, while acting within the scope of their duties, against any and all claims arising out of or in connection with the Premises, and shall provide coverage in not less than the following amount: combined single limit bodily injury and property damage, including products/completed operations liability and blanket contractual liability of \$1,000,000 per occurrence. If coverage is provided under a form that includes a designated general aggregate limit, the aggregate limit must be no less than One Million Dollars (\$1,000,000) for this Lease. Said policy shall name CITY, its officers and employees as Additional Insureds and shall specifically provide that any other insurance coverage which may be applicable to the Premises shall be deemed excess coverage and that LESSEE's insurance shall be primary and non-contributory with any other valid and collectible insurance or self-insurance available to CITY. Any available insurance proceeds in excess of the minimum coverage amount specified herein shall be available to CITY. All coverage available to LESSEE shall also be available to CITY. Under no circumstances shall said above-mentioned insurance contain a self-insured retention without the express written consent of CITY; however, an insurance policy "deductible" of \$5,000.00 is permitted.

(b) **Fire Insurance.** In order that the business of LESSEE and the Gross Sales of LESSEE as defined in this Lease may continue with as little interruption as possible, LESSEE shall, during the full term of this Lease and any renewals or extensions thereof, maintain as LESSEE's own cost and expense an insurance policy issued by a reputable company authorized to conduct insurance business in California insuring for their full insurable value all fixtures and equipment and, to the extent possible, all merchandise that is, at any time during the term of this Lease or any renewal or extension thereof, in or on the premises against damage or destruction by fire, theft, or the elements.

LESSEE shall also maintain in force during the entire term of this Lease, a standard broad form fire insurance policy in which CITY is named and which any and all losses are made payable to CITY. The face amount of the policy shall be for ninety (90) percent of the replacement value of the Premises, and be in a form acceptable to the City Attorney.

50. NONDISCRIMINATION. LESSEE agrees not to discriminate against any person or class of persons by reason of sex, age, race, color, creed, physical handicap, or national origin in employment practices and in the activities conducted pursuant to this Lease, in accordance with Government Code § 12940 and the Unruh Civil Rights Act, at Section 51, *et seq.* of the California Civil Code.

51. ATTORNEY'S FEES. In the event suit is brought by either party to enforce the terms and provisions of this Lease or to secure the performance hereof, each party shall bear its own attorney's fees.

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be executed by and through their authorized officers on the day, month and year first above written.

LESSEE:
PRIMO NOSH CHEFS, LLC

By:  _____

ITS: (CIRCLE ONE)
Chairman/President/Vice President

By:  _____

ITS: (CIRCLE ONE)
Chairman/President/Vice President

CITY OF HUNTINGTON BEACH,
a California municipal corporation of the
State of California

APPROVED AS TO FORM:

 _____
City Attorney

INITIATED AND APPROVED:

 _____
Deputy Director of Economic Development

REVIEWED AND APPROVED

City Manager

Exhibit A

Attachment 1

Concessions Map within the Huntington Beach Sports Complex



Exhibit B



SPORTS GRILL & CONCESSIONS

Burgers

Includes Fries or Chips and 1 Canned Drink

| | |
|--|-------------|
| Hamburger | 6.00 |
| ¼ Pound Angus Burger, Sliced Tomatoes, Onion, Shredded Lettuce, Thousand Island Dressing | |
| Cheeseburger | 6.50 |
| ¼ Pound Angus Burger, Sliced Tomatoes, American Cheese, Onion, Shredded Lettuce, Thousand Island Dressing | |
| Double Cheeseburger | 7.50 |
| Two ¼ Pound Angus Burger, Sliced Tomatoes, American Cheese, Onion, Shredded Lettuce, Thousand Island Dressing | |
| Bacon Cheeseburger | 7.50 |
| ¼ Pound Angus Burger, Sliced Tomatoes, American Cheese, Bacon, Onion, Shredded Lettuce, Thousand Island Dressing | |
| Cowboy Burger | 7.50 |
| ¼ Pound Angus Burger, BBQ Sauce, Onion Ring, American Cheese, Bacon | |
| Veggie Burger | 6.50 |
| Veggie Patty, Sliced Tomatoes, Onion, Shredded Lettuce, Thousand Island Dressing | |
| Pastrami Burger | 7.50 |
| ¼ Pound Angus Burger, Pastrami, Swiss Cheese, Sliced Tomatoes, Onion, Shredded Lettuce, Mayo, Mustard | |
| Mushroom and swiss Burger | 7.50 |
| ¼ Pound Angus Burger, Sliced Tomatoes, Grilled Mushroom & Onion, Shredded Lettuce, Thousand Island Dressing | |

Gourmet Hot Dogs

Includes Fries or Chips and 1 Canned Drink

| | |
|--|-------------|
| Regular Dog | 6.00 |
| 100 % Beef Hebrew Giant Hot Dog | |
| LA Street Dog | 7.50 |
| 100 % Beef Hebrew Giant Hot Dog, Bacon Wrap, Bell Peppers, Grilled Onions | |
| Chili Cheese Dog | 7.50 |
| 100 % Beef Hebrew Giant Hot Dog, chili, Melted Cheddar Cheese and diced onions | |
| Pastrami Dog | 7.50 |
| 100 % Beef Hebrew Giant Hot Dog, Sliced Pastrami, Melted Cheddar Cheese | |
| Veggie Vegan Dog | 6.00 |
| 100% Vegan Hot Dog, Shredded Lettuce, Diced Tomatoes, Chopped Onions | |



SPORTS GRILL & CONCESSIONS

Hot Sandwiches

Sandwiches include Chips and 1 Canned Drink

| | |
|---|-------------|
| Meatball Sub | 7.00 |
| Beef Meatballs, Marinara, Mozzarella, Sprinkle Romano Cheese | |
| Chicken Parmesan | 7.00 |
| Chicken parmesan, Marinara, Mozzarella, Sprinkle Romano Cheese | |
| Sausage and Peppers | 7.00 |
| Sautee Sausage & Peppers, Mozzarella, Sprinkle Romano Cheese | |
| Pastrami | 7.00 |
| Sliced Pastrami melted swiss mayo mustard and pickles | |
| Philly cheese steak | 7.00 |
| Sirloin steak Sautee peppers and onions melted cheese | |
| Veggie Melt | 7.00 |
| provolone, cheddar and mozzarella cheese shredded lettuce tomatoes, onions and mayo | |

Cold Subs

Includes fries or chips and can drink

| | |
|---|-------------|
| Ham & Swiss | 7.00 |
| Sliced ham, swiss cheese, shredded lettuce tomatoes, and onions, mayo and mustard | |
| Turkey and Cheese | 7.00 |
| Sliced turkey, cheese, shredded lettuce, tomatoes, and onions, mayo and mustard | |
| Turkey Club | 7.00 |
| Sliced turkey, ham, bacon, shredded lettuce, tomatoes, onions, mayo and honey mustard | |
| Tuna | 7.00 |
| Tuna, shredded lettuce, tomatoes, onions, and mayo | |
| Roast beef | 7.00 |
| Roast beef, cheese, shredded lettuce, tomatoes, onions, mayo and mustard | |
| Veggie | 7.00 |
| Provolone, cheddar and mozzarella cheese shredded lettuce, tomatoes, cucumbers, onions and Italian dressing | |



SPORTS GRILL & CONCESSIONS

Pizza and Italian Cravings

| | |
|---|-------------|
| Cheese Pizza | 6.00 |
| Pizza Sauce, Mozzarella | |
| Pepperoni | 7.00 |
| Pizza Sauce, Mozzarella, Pepperoni | |
| Works | 7.00 |
| Pizza Sauce, Mozzarella, Pepperoni, Italian Sausage, Bell Peppers, Onions, Mushroom, Black Olives | |
| Hot Hawaiian | 7.00 |
| Ham, Pineapple, Jalapenos | |
| Veggie | 7.00 |
| Bell Peppers, Mushrooms, Olives, Onions, Mozzarella, Tomatoes | |
| Stromboli's | 7.00 |
| Pepperoni, Salami, Ham, Mozzarella | |
| All Meat Lovers Rolled Pocket | 7.00 |
| Pepperoni, Salami, Ham, Sausage, Mozzarella | |
| Spinach Stuffed Rolled Pocket | 7.00 |
| Spinach, Ricotta, Mozzarella & Romano Cheese | |
| Chicken and Broccoli Rolled Pocket | 7.00 |
| Grilled Chicken, Broccoli, Ricotta & Mozzarella | |

Kid's Menu

| | |
|--|---------------|
| Chicken Fingers (3) | \$3.00 |
| Homemade Macaroni & Cheese | \$4.00 |
| GoGo Squeeze Apple Sauces (or similar) | \$2.00 |
| Yogurt Squeezers (assorted) | \$1.00 |
| Fresh Apples, Bananas, Oranges (each) | \$1.00 |
| Infant Cereal PUFFS- such as Gerber Graduates or Plum Organic Puffs | \$4.00 |



SPORTS GRILL & CONCESSIONS

Snack Bar

| | |
|-------------------------|-------------|
| Popcorn | 1.00 |
| Chips | 1.00 |
| Candy Bars | 1.00 |
| Ice Cream Treats | 1.00 |

Beverages

| | |
|--|-------------|
| Cans of Soda / Sparkling Water (Flavored) | 1.50 |
| Gatorade | 2.50 |
| Bottle Water | 1.50 |

Breakfast Burritos

| | |
|--|---------------|
| Burritos include egg, country potatoes, cheddar and jack cheese | \$5.00 |
|--|---------------|

Choice of Bacon, Sausage, Chorizo or Ham

**PRICES SUBJECT TO CHANGE*