

RANCHO SIMI RECREATION AND PARK DISTRICT
INTEROFFICE MEMORANDUM

DATE: November 4, 2021

TO: Board of Directors

FROM: District Manager

SUBJECT: Approval of Amended Agreement between Rancho Simi Recreation and Park District and Mental Equivalent for the Operation of the Food and Beverage Concession at Simi Hills Golf Course - **Supplemental Information**

For your review, please find revised attachments to the staff report for the subject item which is scheduled for discussion at the November 4, 2021 regular board meeting.

The previously distributed attachments included the first amendment which had the incorrect name in the vendor signature line which has been corrected and is attached, and mistakenly included the second contract amendment from the prior food and beverage concession vendor which should not have been included and has been removed.

The revised attachments include the correct first amendment and contract which will be considered by the Board at the November 4, 2021 meeting.



Dan Paranick
District Manager

FIRST AMENDMENT TO AGREEMENT BETWEEN RANCHO SIMI RECREATION AND PARK DISTRICT AND MENTAL EQUIVALENT FOR THE OPERATION OF THE FOOD AND BEVERAGE SERVICE AT SIMI HILLS GOLF COURSE

This First Amendment to Agreement (“First Amendment”) effective February 28, 2022 (“Effective Date”) is entered into by and between Rancho Simi Recreation and Park District (hereafter “District”), 4201 Guardian Ave., Simi Valley 93063, and Mental Equivalent Inc., (hereinafter “Mental Equivalent”), 2585 Cochran Street, Suite #1, Simi Valley, CA 93065.

1. On March 1, 2019, the District Board approved an Agreement with Mental Equivalent (“Agreement”) to operate the food and beverage Concession at the Simi Hills Golf Course (“Golf Course”) located at 5031 Alamo St., Simi Valley.
2. The Term of the First Amendment as provided in Section 3 is from March 1, 2019 to February 28, 2022 with an option to the District to extend the term of the Agreement for up to two additional years on the same terms and conditions as are set forth in the Agreement.
3. By this First Amendment, the District and Mental Equivalent hereby agree to an extension of the term of the Agreement for two years commencing on February 28, 2022, through February 28, 2024 on the same terms and conditions as set forth in the Agreement.
4. Except as modified by this First Amendment, all terms and conditions set forth in the Agreement shall remain in full force and effect

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the day and year herein below written.

Date: _____ RANCHO SIMI RECREATION AND PARK DISTRICT

By: _____
Dan Paranick, District Manager

Date: _____ Mental Equivalent, Inc.

By: _____
Evelyn Garfield, Owner

APPROVED AS TO FORM:

Brian Pierik, District Counsel

**AGREEMENT
BETWEEN RANCHO SIMI RECREATION AND PARK DISTRICT AND
MENTAL EQUIVALENT INC. FOR THE OPERATION OF THE FOOD AND
BEVERAGE CONCESSION AT SIMI HILLS GOLF COURSE**

THIS AGREEMENT, effective as of March 1, 2019 ("Effective Date") is entered into by and between Rancho Simi Recreation and Park District (hereinafter "District"), 4201 Guardian Street, Simi Valley, California 93063, and Mental Equivalent Inc. (hereinafter "Mental Equivalent"), 2585 Cochran Street, Suite #1, Simi Valley, CA 93065.

WITNESSETH

WHEREAS, the District owns the Simi Hills Golf Course located at 5031 Alamo Street, Simi Valley ("Golf Course"); and

WHEREAS, located at the Golf Course is a food and beverage facility ("Premises") more fully identified and described in Section 1 of this Agreement; and

WHEREAS, the principal purpose of District in entering into the Agreement is to serve the public by providing a food and beverage concession at the premises to serve golfers at the Golf Course and the public generally ("Concession"); and

WHEREAS, the District advertised for proposals for the operation of the Golf Course Food and Beverage Concession at the Premises; and

WHEREAS, the District received and carefully analyzed three (3) proposals received on January 25th, 2019, including the proposal submitted by Mental Equivalent; and

WHEREAS, the District determined that Mental Equivalent was the best responsible proposer and selected said proposer to operate the Concession in accordance with the terms and conditions of this Agreement; and

WHEREAS, Mental Equivalent desires to secure and enter into an Agreement in accordance with the foregoing and undertakes to provide services of the type and character required therein by District to meet the needs of the public at the Golf Course Food and Beverage Concession;

NOW THEREFORE, in consideration of their mutual promises, obligations assumed, releases given, payments made and to be made, and the other considerations set forth herein, the parties hereto agree as follows:

SECTION 1. PREMISES

1.1 Premises is defined as the food and beverage facility located adjacent to the pro shop inside the clubhouse at the Golf Course. Premises includes a 798 s.f. dining area, a 260 s.f. bar, a 185 s.f. snack bar, a combined total of 341 s.f. support area/storage space, and a covered patio which can seat up to 144 persons, all of which are graphically depicted in Exhibit A.

SHGC F&B Concession Agreement
RSRPD – MENTAL EQUIVALENT, Inc.

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 MENTAL EQUIVALENT

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SECTION 2. CONCESSION GRANTED

- 2.1 Mental Equivalent is hereby granted the right and privilege to furnish, equip, operate and maintain the Concession at the Premises and, as described in Section 5, on the Golf Course.
- 2.2 Notwithstanding Mental Equivalent's right to furnish and equip the Concession, District reserves the right to further develop or improve the Premises as it sees fit, and without interference or hindrance; however, District may consider the desires and views of Mental Equivalent in planning for further development and improvements.
- 2.3 Mental Equivalent shall be the exclusive provider of food and beverages at the Golf Course.
 - 2.3.1 Mental Equivalent shall have exclusive rights to provide all food and beverages at the Golf Course. With the exception of District-sponsored events as described below, Golf Course patrons shall not be allowed to bring alcoholic beverages onto the Golf Course.
 - 2.3.2 Mental Equivalent shall be expected to cooperate with District personnel on all matters relative to the conduct of District-sponsored events. Mental Equivalent is granted the right of first refusal to provide food or beverages at District-sponsored events at or in proximity to the Premises defined under this Agreement, should Mental Equivalent menu be appropriate for the event as determined by District.
 - 2.3.3 District reserves the right to allow food and beverages to be brought into the Golf Course for designated District-sponsored events. This food and beverage shall be served independent of Mental Equivalent.

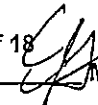
SECTION 3. TERM


- 3.1 The Term of this Agreement is from March 1, 2019 through February 28, 2022, terminating at midnight, unless terminated earlier as may be provided herein.
- 3.2 Three (3) months prior to the conclusion of the three (3) year term of this Agreement, District, at its option, shall have the right to extend this Agreement for up to two (2) additional years on the same terms and conditions as are set forth in this Agreement.

SECTION 4. CONCESSION RENTAL FEE AND REPORTING

- 4.1 Payments
 - 4.1.1 As consideration for District's granting the Concession rights set forth herein, Mental Equivalent agrees to pay District a monthly fee equal to the greater of:
 - a. The minimum monthly rent of \$3,844.53, or
 - b. Ten percent (10%) of Gross Receipts from all food and beverages, and all other Concession sales, including sales resulting from any and all golf-course

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 MENTAL EQUIVALENT

 D.P.

related events but excluding revenues from "pass-through" fundraising activities, with a monthly cap of \$5,000.00 for the first year, adjusting 3% per year for each subsequent year as follows:

- Year One (March 2019 – February 2020) - \$5,000.00
- Year Two (March 2020 – February 2021) - \$5,150.00
- Year Three (March 2021 – February 2022) - \$5,304.50
- Year Four (March 2022 – February 2023) - \$5,463.64 **
- Year Five (March 2023 – February 2024) - \$5,627.54 **

(** assumes the optional two-year extension is executed)

- 4.1.2 The rental payment to be paid by Mental Equivalent to District shall be payable in monthly installments during each year of the term of the Agreement. Mental Equivalent shall pay District the fee set forth in Section 4 on or before 5:00 p.m. on the 15th day of the month following the prior month's end. For example, rent for the month of March 2019 will be due on or before 5:00 p.m. on April 15, 2019.
- 4.1.3 Monthly rent shall commence effective March 1, 2019, and the first payment will be due no later than 5:00 pm on April 15, 2019.
- 4.1.4 As used herein, the term Gross Receipts is defined to mean the total amount charged or received for the sale of any goods, wares, or merchandise, or for the performance of any act or service (whether such act or service is done as part of or in connection with the sale of goods, wares, merchandise or not), for which a charge is made or credit is allowed, including all receipts, cash, credits, and property of any kind or nature. Gross Receipts does not include service tip charges or any sales or use tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser and paid by Mental Equivalent. Gross receipts also does not include amounts collected in conjunction with fundraisers, or "pass-through" revenues, which are immediately passed on to charities in the form of donations. These revenues shall be accounted for separately on the Monthly Gross Receipts and Rent Report and back up documentation kept on file for District review as needed.
- 4.1.5 If the termination of this Agreement falls on any date other than the first or last day of any calendar month, the applicable rental payment for said month, if it is based on the minimum guaranteed monthly rental, shall be paid by Mental Equivalent to District pro rata in the same proportion that the number of days the Agreement is in effect for that month bears to the total number of days in that month.
- 4.1.6 The District is currently planning potential renovations to the irrigation system at Simi Hills Golf Course. It is anticipated that these plans will be formalized in the next 24 months (or within the first 24 months of the term of this Concession Agreement) and construction potentially occurring within the term of this Concession Agreement. While a formal schedule will not be available prior to the start of this Concession Agreement, it is anticipated that the construction will occur over a 3 - 4 month period, during which the Concession will experience reduced revenue. The Course, Clubhouse and Driving Range will remain open during this

construction, which will require the Concession to remain open as well. It is anticipated that the District may reduce rent during this period but the exact terms of this will be negotiated with the selected Concessionaire when the contract is developed.

4.2 Late Payment

- 4.2.1 Failure of Mental Equivalent to pay any of the rental payments or any other fees, charges or payments required herein on time is a breach of this Agreement for which District may terminate same or take such other legal action as it deems necessary. District expects all compensation to be paid on time and Mental Equivalent agrees to pay on time. Payments received by District at the District's office after the due date shall be considered late.
- 4.2.2 Without waiving any rights available at law, in equity or under the Agreement in the event of late or delinquent payment by Mental Equivalent, the latter recognizes that District shall incur certain expenses as a result thereof, the amount of which is difficult to ascertain. Therefore, in addition to monies owing, Mental Equivalent agrees to pay District a late fee set forth below to compensate District for all expenses and/or damages and loss resulting from said late or delinquent payments.
- 4.2.3 An initial late fee of three hundred thirty-three dollars (\$333.00) will be charged for any amount of rent which remains unpaid as of 5:00 p.m. on the 15th day of the month following the prior month's end. An additional late fee of twenty-three dollars (\$23.00) per day will be charged for each additional day during which any amount of rent remains unpaid. For example, if Mental Equivalent pays the rent due for the month of May 2019 by 5:00 p.m. on June 20, 2019, a total of \$402.00 in late fees is due (\$333.00 is due on June 16, and an additional \$23.00 per day is due for June 17, 18, and 19).

4.3 Additional Fees and Charges

- 4.3.1 If District pays any sum or incurs any obligations or expense which Mental Equivalent has agreed to pay or reimburse District for, or if District is required or elects to pay any sum or to incur any obligations or expense by reason of the failure, neglect or refusal of Mental Equivalent to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Agreement, or as a result of an act or omission of Mental Equivalent contrary to said conditions, covenants and agreements, Mental Equivalent agrees to pay to District the sum so paid or the expense so incurred, including all interest, costs, damages and penalties. This amount shall be added to the rental payment thereafter due hereunder, and each and every part of the same shall be and become additional rental payment, recoverable by District in the same manner and with like remedies as if it were originally a part of the basic rental payment set forth in Section 4 hereof.

4.3.2 For all purposes under this Section, and in any suit, action, or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum by District for any work done or material furnished shall be prima facie evidence against Mental Equivalent that the amount of such payment was necessary and reasonable. Should District elect to use its own operating and/or maintenance personnel in making any repairs, replacements and/or alterations and to charge Mental Equivalent with the cost of same, receipts and timesheets shall be used to establish the charges, which shall be presumed to be reasonable in absence of contrary proof submitted by Mental Equivalent.

4.4 Reports

4.4.1 Mental Equivalent shall transmit with its rental payment a Monthly Gross Receipts and Rent Report for the month for which rent is submitted. The completed form shall include a statement of Gross Receipts by source of revenue, and such other information as District may properly require.

4.4.2 Mental Equivalent shall maintain a system of books and records in accordance with generally accepted accounting principles reflecting all revenues received and expenses incurred. Said records and the operations of Mental Equivalent shall be available for audit by District or its designated representative at reasonable times and upon reasonable notice.

4.4.3 Mental Equivalent shall mail or deliver all payments and reports to:

Simi Hills Golf Course
Attn: Brian Reed
5031 Alamo Street
Simi Valley, CA 93063

SECTION 5. MENTAL EQUIVALENT 'S OPERATIONAL RESPONSIBILITIES

5.1 Mental Equivalent shall be responsible for obtaining, at Mental Equivalent's sole expense, all permits, products and services necessary to provide a quality food and beverage service (including the sale of alcohol), including, but not limited to, food and beverages, maintenance of the Premises, employment, training and supervision of Concession personnel with appropriate qualifications and experience to perform all tasks related to the operation, maintenance, and repair of the Premises, and all licenses and permits necessary for the operation of the Concession granted.

5.2 Concession Operations

5.2.1 The Concession must be open for business every day of the year, including Christmas, no later than thirty (30) minutes before the first tee-off time, and it shall close no sooner than thirty (30) minutes after dark.

5.2.2 Mental Equivalent must utilize the Mobile Food and Beverage Cart ("Beverage Cart") for sales on all weekends, holidays (as listed below), and during major tournaments as identified by Golf Course staff. Holidays shall include New Year's

Day, Martin Luther King's Birthday, Washington's Birthday/President's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, the day after Thanksgiving, Christmas Eve day, and Christmas Day.

- 5.2.3 The Concession must be available to the Golf Course and its clientele at all times when the Golf Course is being used by its patrons. At no time will Mental Equivalent's private rentals interfere with use of the Premises by the Golf Course for tournaments or other events.
- 5.2.4 Mental Equivalent shall market, advertise and promote the use of the Premises for the food and beverage Concession at its own expense.
- 5.2.5 Mental Equivalent shall arrange for all rental agreements, including all billings and payments, for catering and rental services.
- 5.2.6 Mental Equivalent shall assume responsibility for complete staffing of the food and beverage Concession, including hiring, supervision and general employment practices.
- 5.2.7 Mental Equivalent shall respond promptly to all complaints from patrons and report to the District regarding each complaint and resolution thereof.
- 5.2.8 Any event utilizing any outdoor area of the Premises, including the patio, scheduled to extend beyond normal hours of operation as specified in Section 5.2.1 are subject to prior written approval by District.
- 5.2.9 Mental Equivalent shall provide banquet menus for use by golf course sales staff to use when booking tournaments. Mental Equivalent shall cooperate with golf course tournament sales staff in the development of a mutually acceptable Banquet Event Order (BEO) form and tracking system to be used for tracking tournament food and beverage sales. Mental Equivalent and golf course tournament sales staff shall cooperate to develop a mutually acceptable process for communicating with tournament customers, as well as planning, preparing for and executing banquets.

5.3 Merchandise and Price Schedules

- 5.3.1 Mental Equivalent shall offer the public a full range selection of breakfast, luncheon and fast-food items and beverages, including beer, wine and alcoholic beverages. Sale of alcoholic beverages must comply with the rules and regulations of the California Alcoholic Beverage Control Board.
- 5.3.2 Mental Equivalent shall offer for sale only foods and beverages of such quality as judged acceptable by District. All of the food items served at the food and beverage Concession shall be fresh and appealing in appearance. Substitutes for advertised products, fillers, dilutions, or reductions in size of standard manufactured or processed products shall not be permitted.

- 5.3.3 District shall have the right to inspect and approve, in the presence of Mental Equivalent, all products to be sold by Mental Equivalent. Any products found not to be in compliance with the requirements of this Agreement shall be subject to rejection by District. In the event District should reject any product, it shall be immediately removed from the premises and shall not be returned for sale.
- 5.3.4 Within sixty days of the Effective Date of this Agreement, Mental Equivalent shall provide District with a Concession menu, including proposed prices. The menu and pricing are subject to approval by District.

5.4 Golf Organizations

- 5.4.1 Mental Equivalent acknowledges that at the Golf Course, District recognizes the respective Men's and Women's Golf Clubs of record. These clubs have, over a long period of time, been helpful in the operation, programming and improvement of the Golf Course facility. Without granting special privileges to any person or group, Mental Equivalent agrees to encourage and cooperate with these organizations, and to consult with their authorized representatives on matters of mutual interest. Similarly, Mental Equivalent agrees to cooperate and consult with other responsible community organizations that use the Golf Course facility.

5.5 Equipment, Furnishings, and Expendables

- 5.5.1 The equipment, furnishings, and fixtures owned by District that shall remain in the Premises for use by Mental Equivalent in operating the Concession, are listed in Exhibit B. These items of equipment, furnishings, and fixtures shall remain the property of District and shall remain on the Premises, and may be used by Mental Equivalent. Care, reasonable repair and replacement of the inventory of equipment, furnishings and fixtures shall be the responsibility of Mental Equivalent.
- 5.5.2 Mental Equivalent shall be responsible for any damage or loss arising from Mental Equivalent's abuse or negligent use of any District-owned property or equipment, whether on or outside the Premises.
- 5.5.3 No equipment, furnishings, or fixtures provided by District shall be removed or replaced by Mental Equivalent without the prior written consent of District. If consent is secured, such removal and/or replacement shall be at the expense of Mental Equivalent. District may, at its sole discretion, fund the purchase of new or replacement equipment, furnishings, or fixtures.
- 5.5.4 Any and all additional equipment, furnishings and expendables required for said Concession shall be purchased and installed by Mental Equivalent at its sole expense and shall remain its personal property. If upon termination of this Agreement, District does not renew said Agreement, Mental Equivalent shall have the right to remove its own equipment, furnishings and expendables, but not fixtures or improvements, from the Premises, and shall be allowed a period of thirty (30) days to make such removal. Any such removal shall be done in a way that minimizes the disruption to Concession business operations. If not removed within

that period, said equipment furnishings and expendables shall become the property of District.

5.5.5 If District determines that equipment, furnishings and expendables of Mental Equivalent left on the Premises by Mental Equivalent should be removed, District may remove and dispose of them, and the cost of doing so shall be paid by Mental Equivalent within thirty (30) days following submittal of a request for reimbursement by District.

5.6 Maintenance, Refurbishing and Repair of Equipment/Premises

5.6.1 Mental Equivalent shall, at all times and at its own expense, keep and maintain the Premises, including all equipment, exposed plumbing and plumbing fixtures, whether owned and/or installed by Mental Equivalent or District, in good repair and in a first class, neat, clean and wholesome condition at all times. Mental Equivalent's responsibility for plumbing ends once the plumbing enters the wall.

5.6.2 Mental Equivalent shall clean all food preparation equipment daily. Walls, ceilings and floors shall be kept free of grease and dirt and shall be cleaned regularly. Countertops and tables shall be kept clean and dry at all times.

5.6.3 Mental Equivalent shall remove and stack out of sight of public view all dirty utensils, pots, pans, table linens, dishes, flatware, glasses and other items. All such items shall be spotless and dry when offered to patrons.

5.6.4 Mental Equivalent shall vacuum the dining room at least once a day, wash the dining room windows on an as-needed basis, perform maintenance and daily cleaning of the patio area, and bus the tables in the dining room and patio areas.

5.6.5 Grease shall not be poured down drains, but shall be disposed of in containers. Mental Equivalent shall, at its own expense, arrange for grease pickup and removal from the premises.

5.6.6 Mental Equivalent shall be responsible for telephone charges in excess of the basic monthly access fees (i.e., long distance calls) for the telephone line assigned to the Concession. Mental Equivalent shall also be responsible for any telephone advertising costs for the line assigned to the Concession.

5.6.7 Mental Equivalent shall be responsible for the maintenance, cleaning and operation of the Cart as identified in Exhibit B. Mental Equivalent shall provide a trash receptacle on the Cart for use by customers. Mental Equivalent shall not sell any items in glass containers from the Cart. Mental Equivalent shall be responsible for maintenance and cleanliness of the Cart storage area.

5.7 Improvements. No capital improvements are required as part of this Concession Agreement. However, the District will consider all reasonable capital improvements and/or clubhouse furnishings proposed which are conducive to the enhancement and increased revenue of the food and beverage facility. Acceptance of this Concession Agreement does not constitute approval of proposed improvements and/or installation of clubhouse

furnishings. All laws must be complied with before the Concessionaire will be permitted to make any capital improvements to the concession.

- 5.8 To the extent permitted by law, Mental Equivalent agrees that upon the expiration of the terms of this Agreement, or upon the termination of this Agreement, that it will transfer all alcoholic beverage licenses issued to or used by Mental Equivalent for the operations of the Golf Course Food and Beverage Concession at the Premises to the entity that replaces Mental Equivalent and which enters into a contract with the District for such operations at a cost to the transferee not to exceed the amount paid by Mental Equivalent for the alcoholic beverage license(s). Mental Equivalent shall notify the District of the amount paid for the alcoholic beverage license(s) no later than April 1, 2019.

SECTION 6. DISTRICT RESPONSIBILITIES

- 6.1 District shall allow Mental Equivalent access to the Premises for purpose of Mental Equivalent complying with this Agreement. District shall also allow Mental Equivalent access to the Golf Course for purpose of complying with the requirement that Mental Equivalent operate the Beverage Cart on the Golf Course. District shall allow Mental Equivalent's contractors and vendors access across those portions of the Golf Course that are necessary for Mental Equivalent's contractors and vendors to access in order to reach the Premises and supply Mental Equivalent with the goods and services necessary for Mental Equivalent to complete its Operational Responsibilities.
- 6.2 District shall pay for all electric, gas, water, internet, and cable television services associated with the operation of the Concession on the Premises. District shall provide one telephone line to the food and beverage facility that shall have a separate telephone number and may be listed under the name of the Concession, and one analog telephone line that may be used for credit card processing and/or a separate fax machine.
- 6.3 District shall maintain the structure's foundations, bearing and exterior walls (including glass, doors, and window frames), subflooring and roof (including gutters and downspouts) on the Premises.
- 6.4 District shall maintain all major building systems, including HVAC system, electrical system, plumbing and sewer systems on the Premises.
- 6.5 District shall maintain all surrounding grounds, including planters, irrigation systems, walkways and parking lot on the Golf Course.
- 6.6 District shall maintain all interior and exterior electrical fixtures, and replace all interior and exterior lights as needed on the Premises.
- 6.7 District shall steam clean the dining room carpet on a regular or as-needed basis.
- 6.8 District shall maintain the pro shop, main entrance area, and public restrooms in a first class, neat, clean and wholesome condition at all times.

SECTION 7. INDEPENDENT CONTRACTOR STATUS

- 7.1 It is expressly understood and agreed between Mental Equivalent and District that Mental Equivalent is an independent contractor and not an agent, servant, employee, or representative of District in the performance of Concession services. No term or provision of this Agreement, or act of Mental Equivalent or District under this Agreement, shall be construed as changing this status. Since Mental Equivalent is an independent contractor, District shall not be providing Mental Equivalent with any of District's employee benefits or with any other statutory benefits, such as Workers' Compensation coverage. District shall not pay withholding taxes, social security taxes, employment insurance contributions and/or payroll taxes for Mental Equivalent and Mental Equivalent's employees. Mental Equivalent must make any and all financial reports in connection with taxes or otherwise as required by state, federal, or local law applicable to a self-employed person/entity.
- 7.2 Mental Equivalent is solely responsible for providing to its employees all legally required employee benefits. District is not responsible for payment of any salaries, wages or compensation to any of Mental Equivalent's personnel.

SECTION 8. INDEMNITY

- 8.1 To the fullest extent permitted by law, Mental Equivalent, at its sole cost and expense, shall defend, indemnify, and hold harmless District, its officers, employees, elected officials, attorneys, members of boards and commissions, agents, and volunteers (hereinafter collectively referred to as "Indemnitees") from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of attorneys or other professionals, and all costs associated therewith (hereinafter collectively referred to as "Liabilities"), arising or claimed to arise, directly or indirectly, out of, in connection with, resulting from, or related to any act, failure to act, error, or omission of Mental Equivalent or any of its officers, agents, servants, employees, subcontractors, material men, suppliers or their officers, agents, servants, or employees, arising or claimed to arise, directly or indirectly, out of, in connection with, resulting from, or related to this Agreement, or the performance or failure to perform any term, provision, covenant, or condition of this Agreement, including this indemnity provision. This indemnity provision is effective regardless of any prior, concurrent, or subsequent active or passive negligence by Indemnitees. This indemnity provision survives the termination of this Agreement or final payment by District hereunder and is in addition to any other rights or remedies which District may have under the law or under this Agreement. Payment is not required as a condition precedent to an Indemnitee's right to recover under this indemnity provision, and an entry of judgment against an Indemnitee shall be conclusive in favor of the Indemnitee's right to recover from Mental Equivalent under this indemnity provision.

SECTION 9. INSURANCE

- 9.1 Mental Equivalent shall, for the term of this Agreement and any extensions of this Agreement, maintain, at its own expense, valid and collectible insurance as required below, and provide certificates to District reflecting compliance with these insurance requirements. This insurance shall not affect Mental Equivalent's liability under the indemnification provisions detailed in Section 8.

9.2 General Liability Insurance

- 9.2.1 Commercial general liability insurance providing broad form comprehensive general liability insurance including bodily injury liability and property damage liability as to all coverage.
- 9.2.2 The limit of liability must be at least \$1,000,000 per person with not less than a \$2,000,000 aggregate limit.
- 9.2.3 The following endorsements/coverage shall be included in the policy:
- a. Contractual liability insurance coverage expressly designating this Agreement;
 - b. Products and completed operations liability coverage;
 - c. Owner's and contractor's protective liability coverage;
 - d. Broad Form Comprehensive General Liability endorsement including, but not limited to, personal and advertising injury liability coverage, premises medical payments coverage, fire legal liability coverage, broad form property damage liability coverage, and extended bodily injury coverage;
 - e. Endorsement naming the Rancho Simi Recreation and Park District, its officers, employees, elected officials, attorneys, members of boards and commissions, agents, and volunteers (hereinafter collectively referred to as "Additional Insured") as additional insured under the policy;
 - f. The policy and all coverage thereunder shall be written on an occurrence basis, rather than a claims-made basis;
 - g. The coverage shall be primary for all purposes and noncontributing with any other applicable insurance coverage carried by the Additional Insured;
 - h. Mental Equivalent and the insurance company waive all rights of subrogation and contribution against the Additional Insured; and
 - i. The policy may not be cancelled nor the above coverage/endorsements reduced without 60 days' written notice to District.

9.3. Automotive Insurance

- 9.3.1 Commercial business automotive liability insurance. Mental Equivalent shall require any subcontractor to provide it with evidence of the same commercial business automotive liability insurance coverage.
- 9.3.2 The amount of insurance shall be at least \$1,000,000 per person or occurrence.
- 9.3.3 The following endorsements/coverage shall be included in the policy:

- a. Endorsement naming the Rancho Simi Recreation and Park District, its officers, employees, elected officials, attorneys, members of boards and commissions, agents, and volunteers (hereinafter collectively referred to as "Additional Insured") as additional insured under the policy;
- b. The coverage shall be primary for all purposes and noncontributing with any other applicable insurance coverage carried by the Additional Insured;
- c. Mental Equivalent and the insurance company waive all rights of subrogation and contribution against the Additional Insured; and
- d. The policy covers use of any automobile; and
- e. The policy may not be cancelled nor the above coverage/endorsements reduced without 60 days' written notice to District.

9.4 Workers' Compensation Insurance

9.4.1 Workers' Compensation and employer's liability insurance for all of its employees. In lieu of evidence of Workers' Compensation Insurance, District shall accept a self-insuring certificate from the State of California. Mental Equivalent shall require any subcontractor to provide it with evidence of Workers' Compensation and employer's liability insurance, all in strict compliance with California state laws.

9.4.2 The following endorsements/coverage shall be included in the policy:

- a. The coverage shall be primary for all purposes and noncontributing with any other applicable insurance coverage carried by District;
- b. Mental Equivalent and the insurance company waive all rights of subrogation and contribution against the Rancho Simi Recreation and Park District, its officers, employees, elected officials, attorneys, members of boards and commissions, agents, and volunteers;
- c. The policy may not be cancelled nor the above coverage/endorsements reduced without 60 days' written notice to District.

SECTION 10. FAITHFUL PERFORMANCE BOND

10.1 Mental Equivalent shall provide a Faithful Performance Bond or the equivalent in cash for the duration of this Agreement in the amount of Twelve Thousand Dollars (\$12,000.00). Said bond is required prior to execution of this Agreement and shall be in the form of a financial instrument preapproved by District.

10.2 Within sixty (60) days of completion or termination of this contract, District shall return the amount of the Faithful Performance Bond to Mental Equivalent, less any damages or delinquent payments which District may offset against this Bond.

SECTION 11. COMPLIANCE WITH LAWS

11.1 Mental Equivalent must comply with all federal, state, county and city laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the Concession services. If Mental Equivalent observes that any provision of the Agreement is at variance with any applicable law, ordinance, rule, or regulation, Mental Equivalent must promptly notify District in writing. If Mental Equivalent performs any work knowing such work to be contrary to any laws, ordinances, regulations, or rules, Mental Equivalent thereby assumes full responsibility therefor and bears any costs and liability attributable thereto.

SECTION 12. TAXES

12.1 Mental Equivalent shall pay all taxes of whatever character which may be levied or charged upon Mental Equivalent to use the Premises for the Concession, or upon Mental Equivalent's improvements, fixtures, equipment or other property, or upon Mental Equivalent's operations, including but not limited to the City of Simi Valley Business Tax and the County of Ventura Possessory Interest Tax.

SECTION 13. PERMITS AND LICENSES

13.1 Mental Equivalent must procure and maintain, at its sole cost, all necessary permits and licenses during the term of the Agreement, including but not limited to each of the following: City of Simi Valley business license, County of Ventura Environmental Health Department permit for food and beverage operations, County of Ventura Environmental Health Department food handler permit, California State Alcoholic Beverage Control Board liquor license, and California State Board of Equalization sales permit.

SECTION 14. ASSIGNMENT AND SUBCONTRACTING

14.1 The particular qualities and characteristics of Mental Equivalent form the basis for District selecting Mental Equivalent to provide the Concession. Mental Equivalent shall not assign, delegate or subcontract any of the Concession services to be provided by Mental Equivalent without prior express written approval of District. In the event of an assignment of this Agreement, or any of the rights or obligations of Mental Equivalent under it, Mental Equivalent remains fully responsible for the satisfactory performance of the services even though some or all of those services are performed by an assignee or subcontractor. The assignee or subcontractor shall be fully bound by the provisions of the Agreement, including all indemnity provisions.

SECTION 15. EMPLOYEE QUALIFICATIONS

15.1 Mental Equivalent must assign only qualified, trained, courteous, competent, and reliable personnel to perform the Concession services. District has the right to require Mental Equivalent to remove from District premises any employee of Mental Equivalent.

15.2 Mental Equivalent has a continuing obligation to provide to District an up-to-date list of all employees assigned to perform the Concession services.

- 15.3 Mental Equivalent's employees shall at all times reflect personal cleanliness. Unkempt and unclean employees shall not be tolerated.
- 15.4 Mental Equivalent's employees shall at all times be neatly and cleanly uniformed at no expense to District. Mental Equivalent's employees must meet all sanitary standards prescribed for restaurant employees.
- 15.5 Mental Equivalent's employees must possess the ability to communicate with the public and staff. District's determination of effective communication is final.

SECTION 16. DISTRICT ACCESS TO PREMISES

- 16.1 District shall be permitted access to any and all areas of the Premises to perform repairs and maintenance and to perform regular building inspections on the Premises at all reasonable times.

SECTION 17. NONDISCRIMINATION

- 17.1 Mental Equivalent, with regard to the Agreement, shall not discriminate on the grounds of race, religion, color, sex, age, national origin, or disability in the selection and retention of all employees, and in the provision of Concession services and sale of products./

SECTION 18. DAMAGE OR DESTRUCTION TO PREMISES

- 18.1 If all or a portion of the Premises are partially damaged by fire, explosion, flooding inundation, floods, the elements, public enemy or other casualty, the same may be repaired by District at its sole option and its own cost and expense. Should the damage render the Premises or a portion thereof uninhabitable or unusable for Concession operations, then a negotiated portion of the fees and charges payable hereunder shall abate from the time of such damage until such time as the Premises are fully restored and certified by District as again ready for use.
- 18.1.2 If, after a reasonable time as solely determined by District, such damage or destruction of the Premises has not been repaired or reconstructed, Mental Equivalent or District may terminate this Agreement in its entirety as of the date of such damage or destruction.
- 18.1.3 Notwithstanding the foregoing, if the Premises, or a substantial portion thereof, are damaged or destroyed as a result of the negligent acts or omissions of Mental Equivalent, its agents, officers, or employees, District may, in its discretion, require Mental Equivalent to repair and reconstruct the Premises, or the District may perform such repairs and reconstruction. If the District does so, Mental Equivalent shall be responsible for reimbursing District for the costs and expenses incurred in making such repairs. Mental Equivalent shall continue paying District rent as determined above during the rebuilding of the facility.

SECTION 19. TERMINATION

- 19.1 Either party may terminate this Agreement, with or without cause, by 90 days written notice to the other party.

SECTION 20. CONSEQUENTIAL DAMAGES

20.1 District shall not be liable hereunder for any special, indirect, incidental or consequential damages whatsoever, whether in contract, tort (including negligence), or strict liability including, but not limited to, loss of use of or under-utilization of labor or facilities, loss of revenue or anticipated profits, or claims from customers resulting from a party's performance or nonperformance of its obligations under this Agreement, or in the event of suspension or termination of this Agreement.

SECTION 21. RETURN TO SAME CONDITION

21.1 At the conclusion of the term of this Agreement or any extension of it, Mental Equivalent shall return the Premises to District in the same condition and state of repair as existed at the commencement of this Agreement, reasonable wear and tear excepted. Any expenses incurred by District in returning the Premises to that condition shall be paid by Mental Equivalent to District within thirty (30) days following District's request for payment.

SECTION 22. INCORPORATION OF PROPOSAL

22.1 Mental Equivalent shall substantially comply with the representations made in "Mental Equivalent" – Proposal to: Rancho Simi Recreation and Park District for the Simi Hills Golf Course Food and Beverage Concession Operation" ("Proposal") submitted to District on January 25, 2019, which Proposal is attached hereto as Exhibit C, and by this reference incorporated herein.

22.2 In the event of a conflict between the Proposal and this Agreement, the Agreement shall control.

SECTION 23. COMPLETE AGREEMENT

23.1 This written Agreement, including all exhibits specifically incorporated herein by reference, shall constitute the complete agreement between the parties hereto. No oral agreement, understanding or representation not reduced to writing and specifically incorporated herein shall be of any force or effect, nor shall any such oral agreement, understanding or representation be binding upon the parties hereto.

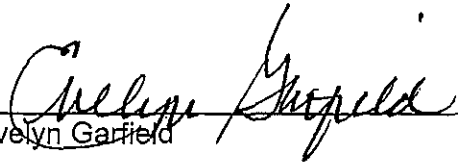
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year herein below written.

Date: 2-26-19 RANCHO SIMI RECREATION AND PARK DISTRICT

By: 
Dan Paranick, District Manager

SHGC F&B Concession Agreement
RSRPD – MENTAL EQUIVALENT, Inc.

Date: 2/27/19 Mental Equivalent, Inc.

By: 
Evelyn Garfield

APPROVED AS TO FORM:


Brian Pierik, Legal Council

Attachment A
Graphic Depiction of the Premises

Item #	Description	#	Purchase Year
1	Patio sets (fire pit, 2 large tables, 2 loveseats, 4 chairs)	2	2012
2	Patio sets (bistro table, 4 chairs)	2	2012
3	Patio sets (large table, 6 chairs)	2	2018
4	Dining room tables, 60" round.	1	2009
5	Dining room tables, 48" square	4	2009
6	Dining room tables, 36" square	5	2018
7	Dining room chairs	33	2009
8	Barstools / bistro tables	12 / 3	2018
9	Standard folding tables	8	2012
10	Framed golf pictures	10	2009
11	Flat-panel TV	2	2013
12	Wooden trash can containers	3	2009
13	Large, 3-panel menu board	1	2009
14	Snack cart	1	2004
15	Flat-top stove/oven	1	1992
16	Double-basket deep fryer	1	2002
17	Two-door sandwich station	1	2004
18	Single-tap beer keg cooler	1	2006
19	Microwave oven	1	2004
20	48" two-door reach-in refrigerator	1	2017
21	24" one-door reach-in refrigerator	2	2017
22	72" three-door reach-in freezer	1	2017
23	Stainless steel prep table	1	1992
24	Heavy-duty manual can opener	1	1992
25	Three-sink dishwashing station	1	1992
26	Medium, two-shelf rolling tray	1	2004
27	Three-shelf, beer storage rack	1	1992
28	Five-shelf, open storage racks	4	2004
29	Two-compartment, top-load, reach-in beer cooler	1	2013
30	Heavy-duty, 48", ice machine	1	2011
31	Commercial-grade, four-burner, stainless steel BBQ	1	2004
32	Cushman beverage cart	1	2015
33	Club Car beverage cart	1	2012