

LEASE AGREEMENT BETWEEN
THE CITY OF CUPERTINO AND HUNGRY JACKS CORPORATION
FOR PROPERTY LOCATED AT 22100 STEVENS CREEK BOULEVARD

This lease agreement ("Lease") is made July 3, 2013, by and between the City of Cupertino (the "City"), a municipal corporation of the State of California, and Hungry Jack's Restaurant Corporation, a California Corporation whose address for the purposes of this Lease is 22100 Stevens Creek Boulevard, Cupertino, California 95014 (the "Lessee"). The building to be leased by the Agreement is commonly known as "The Blue Pheasant Restaurant" and more particularly described as 22100 Stevens Creek Boulevard, City of Cupertino, County of Santa Clara, State of California (the "Property").

RECITALS

- A. On April 7, 2004 Lessee assumed a lease for the Property; and
- B. On April 1, 2009, the Parties agreed to extend the lease through March 31, 2013; and
- C. Lessee and City wish to enter into a new Lease for the continued use of the Property as a restaurant and bar.

NOW THEREFORE, in consideration of the covenants and conditions hereinafter set forth, the parties agree as follows:

1. DESCRIPTION OF THE PROPERTY TO BE LEASED

City leases to Lessee and Lessee leases from Tenant the Property, which is that portion of an approximately 6,800 square feet building located at 22100 Stevens Creek Boulevard, City of Cupertino, and designated for restaurant use commonly known as the "Blue Pheasant," including the kitchen, bar, banquet room, as well as the non-exclusive use of 92 parking spaces, and the fixtures attached to the Property described in Exhibit "A," attached to and made a part of this lease. The Property excludes that certain real Property consisting of the Blackberry Farm Golf Course, and the area of the building designated and used by the City as a golf professional shop.

2. LEASE TERM

a. Initial Term. The lease of the Property shall commence on June 30, 2013 and end on June 30, 2018, unless otherwise terminated under the provisions of this Lease.

b. Option to Renew. Upon mutual agreement of City and Lessee, the initial term of this lease may be extended for up to five years (the "extension period") on the same terms, covenants, and conditions of this lease, except for the Base Rent (and any adjustments thereto). To exercise the extension period, Lessee must give written notice (the "Option Notice") of its interest in extending the term to the City at least six (6) months but not more than one (1) year before the expiration of the initial

term, and Lessee must not be in default under this lease, either on the date of the Option Notice or at the time the extension period commences. City shall review the Option Notice and approve or deny the request within sixty (60) days. The parties shall then have ninety (90) days after the City receives the Option Notice to agree on a rental amount (together with adjustments) which shall approximate fair market value. If the parties agree on a rental and any other provisions for the Extended Term during that sixty (60) day period, they shall execute an amendment to this Lease stating the rental amount (together with adjustments) and other related terms. If the parties are unable to agree with respect to the rental amount or any adjustments thereto within that period, the Option Notice shall be of no effect and this Lease shall expire at the end of the initial term. Neither party to this Lease shall have the right to have a court or other third party set the Base Rent or make adjustments thereto, or enforce agreement of the parties with respect to any particular rent provision. Lessee shall have no other rights to extend the term beyond the Extension Period.

3. RENT

In consideration for the lease of the property described in this agreement, Lessee shall pay City as follows:

a. Base Rent. Lessee shall pay to the City a monthly base rent, without deduction or setoff, in the amount of six thousand eight hundred seventy five dollars (\$6,875.00) commencing March 31, 2013 (the "Base Rent"). Base Rent shall be payable in advance on or before the first day of each month without notice or demand of any kind by the City. In the event that this rent is not paid within ten (10) days after the due date, rent is deemed late and delinquent and a late charge of \$250 plus interest at the legal rate on the delinquent amount shall be assessed as additional rent.

b. Percentage of Gross Sales. In addition to the Base Rent, Lessee shall pay to City not later than April 30 of each year, an additional payment in an amount equal to six percent (6%) of the amount of Lessee's gross receipts from sales ("Gross Sales"), as Gross Sales are defined in this lease agreement, made in, out, through, or from the Property during each calendar year commencing January 1, 2013 during each month of the term of this lease. Lessee shall submit a copy of its annual tax return to City with the annual Gross Sales payment. For the portion of the calendar years in which the lease ends, the Gross Sales shall be the sales for that portion of each of the years during which lease is operative, and Lessee will compute gross sales and pay to City the additional amount to which City is entitled not later than June 30, 2018. Lessee may make payment monthly that would be applied to the annual percentage of Gross Sales owed.

"Gross sales" as used in this lease agreement means the sales price of all food, sundry food items, nonalcoholic and alcoholic beverages, and other commercial items sold and the charges made for all services performed in which a charge is made by Lessee or its sublessees in or upon any part of the Property, whether for cash or on credit, whether paid or unpaid, collected or uncollected, less all credits for returned merchandise, exchanges, refunds, and allowances. The amount of sales tax or excise tax based on sales imposed by any governmental taxing authority shall be excluded from gross sales.

City's acceptance of any Gross Sales payment from Lessee shall not be an admission of the accuracy or sufficiency of the amount of the payment, and lessor shall be entitled at any time within five (5) years after the receipt of any such additional rental payment to question the sufficiency of the amount of the payment or the accuracy of any statement or statements furnished by Lessee to justify the amount or amounts paid.

c. Books and Records. Lessee shall keep complete and proper books, records, and accounts of the Gross Sales both for cash and on credit of each separate department and concession at any time operated on the Property, including all federal, state, and local tax returns relating to the determination of gross receipts. Lessee shall keep such books, records, and accounts on the Property or at its principal office for a period of not less than seven (7) years following the end of each lease year. City and City's authorized representatives shall have the right to examine Lessee's records during regular business hours.

City may, once in any calendar year, cause an audit of Lessee's business to be made by a certified public accountant selected by City. If the statements of gross sales previously made by Lessee to City are found to be less than the amount of Lessee's gross sales as shown by the audit, Lessee shall immediately pay the cost of the audit as well as the additional rental shown in and by the audit to City; otherwise, the cost of the audit shall be paid by City. If Lessee shall at any time cause an audit of Lessee's own business to be made by a certified public accountant, Lessee shall furnish City with a copy of the audit without any cost to City.

d. Address for Payments. All payments shall be submitted to the City, Attention Finance Department at 10300 Torre Avenue, Cupertino, California 95014.

4. HOLDING OVER

If Lessee remains in possession of the Property with City's consent after the expiration of the term of this lease, such possession by Lessee shall be construed to be a tenancy from month to month, terminable on thirty (30) days' notice given at any time by either party. The same terms and conditions contained in this Lease shall apply to any month-to-month tenancy, provided that the monthly base rent shall be one and one-half times the last monthly rent as described in Paragraph 4 of this Lease.

5. USE OF THE PROPERTY; OPERATION

a. Use. Lessee shall continuously use and occupy the Property exclusively as a restaurant and bar which shall be open to the general public. Lessee shall not use or permit the use of the whole or any part of the Property for any other purpose without the City's prior written consent.

b. Compliance with zoning regulations. Lessee's use of the Property shall be consistent with the rules and regulations of the City's PR zoning district.

c. Operating Hours. Lessee shall ensure compliance with the following requirements for operating hours:

(1) Doors to restaurant and bar shall close at eleven o'clock in the evening (11 p.m.) and no persons shall be allowed into the Property after that time;

(2) No alcohol shall be served beyond eleven thirty in the evening (11:30 p.m.);

(3) All music shall stop no later than twelve midnight (12 a.m.); and

(4) The parking lot on the Property shall be cleared of restaurant patron vehicles no later than twelve-thirty (12:30 a.m.).

d. Penalties for Failure to Enforce Operating hours. Lessee shall pay to City within 15 days of notice the following penalties if City or its designated representatives, including the Sheriff's office, observe violation of the operating requirement described in section 5(c)(1):

(1) First violation within a twelve-month period: two hundred dollars (\$200.00);

(2) Second violation within a twelve-month period: four hundred dollars (\$400.00); and

(3) Third violation within a twelve-month period: one thousand dollars (\$1000.00).

e. Lessee to Post Notice of Operating Hours. Lessee shall post at the main entrance to the Property its hours of operation in a manner which will give reasonable notice of its operating hours to prospective customers.

f. Security during operating hours. Lessee shall provide one security guard to patrol the Property during all operating hours and ensure that trash and litter is removed from the Property parking lot and adjoining area upon closure each day.

g. Shared Use of Parking Lot. Lessee's use of the Property shall include the right to use the parking lot jointly with the City. Lessee acknowledges that it does not have exclusive use of the parking lot and that spaces are available on a first-come, first-served basis. City shall not be liable in any manner for any inconvenience, disturbance, loss of business, other damage arising out of availability of the first-come, first-served parking spaces.

6. CITY'S OBLIGATIONS

a. Exterior repairs. The City shall, at its sole expense, keep, maintain and repair the exterior walls and roof of the Property. Should any such maintenance and repair cause the Lessee not to be able to operate the Property as a restaurant and bar for a temporary period, then Lessee's base rent shall be abated during that temporary period. The City may commence any such maintenance or repair by giving Lessee five days written notice.

b. Parking lot maintenance. The City shall, at its sole expense keep, maintain, and repair the joint use parking spaces described in Paragraph 7 (d). However, the indemnity provisions contained in Paragraph 14 of this Lease apply to the use of the parking spaces by Lessee's customers and employees.

c. Exterior property maintenance. On or before June 30, 2014, City shall paint the exterior of the building, install new landscaping, and install a sign in the parking lot stating that the lot closes at 12:30 a.m. City shall coordinate such work with Lessee, and Lessee shall cooperate with City in scheduling such work.

7. LESSEE'S OBLIGATIONS

a. Renovations and Improvements. On or before June 30, 2014, Lessee shall paint all interior walls of the restaurant space and install new carpet at Lessee's sole expense. Lessee shall not undertake any other construction on the Property without City's consent. All alterations, improvements, or additions that are now or in the future attached permanently to the Property shall be the property of City and remain with the Property at the termination of this Lease, except that City can require Lessee, at Lessee's cost, to remove any alterations, improvements, or additions Lessee has made to the Property.

b. Utility payments. Lessee shall pay, as they become due, all charges for water, heat, electric, gas, garbage, and all other utilities furnished to, or consumed on the Property for the maintenance, use, and operation of the Property during the term of the Lease (including any holding-over.) Upon request of the City, Lessee shall produce receipts showing the payment of said utilities.

c. Refuse collection. Lessee shall arrange for refuse collection services by the City of Cupertino and shall reserve a parking space for pick-up of refuse material on collection days scheduled by the City's garbage collection franchise.

d. Actions Affecting Insurance Rates. Lessee shall not do, or permit anything to be done in or about the Property, nor store anything therein, which would in any way increase the rate of fire insurance on the Property.

e. Property Taxes and Assessments. Lessee shall pay, when due, all possessory interest Property taxes, and special assessments imposed on the Property by any public entity during the lease term.

f. Property Maintenance. Lessee shall maintain all portions of the Property in a clean and sanitary condition, including, without limitation, all fixtures, interior walls, floors, painting, ceilings, plumbing, rodent control, glass, water lines, electric service, heating, ventilating and sewage facilities servicing the Property, and shall keep the Property reasonably free and clean of all debris, trash and rubble. Lessee's responsibility for specific maintenance includes but is not limited to the following:

(1) Clean on a daily basis the grease deposit units located under the canopy and outlet flues above all grill installations;

(2) Enter into a contract with a licensed commercial cleaning service to clean the hood and ventilation ducts and equipment above all grills, at least once every six months;

(3) Service the automatic fire extinguisher located above all grills and provide for the maintenance and inspection of all fire extinguishers on the Property in accord with the Fire Code and other applicable local ordinances and regulations.

g. Repairs on Demand by City. Lessee shall make all required repairs upon written demand by City based on City's inspection. Failure to make such repairs within thirty (30) days of City's written demand shall constitute a default by Lessee.

h. Compliance with Laws. Lessee shall, at their sole expense, remain in compliance with all local, state and federal laws and ordinances concerning the Property, the occupancy and use thereof, and the business conducted therein. Should Lessee fail to comply with any such laws and ordinances, the City may, but shall not be obligated to, comply therewith, in which case the amount paid by the City in order to comply, together with all costs, expenses, interest, penalties incurred, shall be added to Lessee's next rent payment and shall be collectible as additional rent in the same manner and with the same remedies as if it had been originally reserved.

i. Insurance. Lessee shall, at its own expense, maintain in full force and effect during the term of this Lease, and during any hold-over, the following insurance in amounts not less than the amounts specified, and issued by an insurance company admitted in California and having a Best Guide Rating of A- Class VII or better:

(1) Comprehensive public liability, including a dram shop endorsement and provisions for personal injury and Property damage coverages, in an amount not less than One Million (\$1,000,000) Dollars for any one person injured or killed, not less than Two Million (\$2,000,000) Dollars for any one accident or occurrence, and not less than Two Hundred Thousand (\$200,000) Dollars Property damage for each accident or occurrence. The City, its officers and employees shall be named as additional insured in all of Lessee's insurance policies meeting the above stated requirements.

(2) Statutory workers compensation insurance and employer's liability insurance for all of Lessee's employees; and

(3) Statutory fire insurance on the Property.

Lessee shall furnish to the City Certificates of Insurance evidencing the insurance coverages set forth above, the name and policy number of each carrier and policy, and that the insurance is in force and will not be cancelled or modified without thirty (30) days written notice to the City. If Lessee does not maintain the above-required insurance, the City may, at its option, pay for the necessary insurance, and the repayment thereof shall be added to any subsequent installment of rent, and shall be collectible as additional rent in the same manner, and with the same remedies as if it had been originally reserved. Based on the fact that the City retains sole occupancy and control of that certain portion of the Property designated as a golf professional shop, appropriate exclusionary endorsements may be provided to remove said designated area from the insurance maintained by Lessee.

j. Obligation to Maintain in Good Condition. Lessee shall, at its own expense, maintain the Property in good and safe condition and repair. The City retains and reserves the right to inspect the Property to insure said maintenance is satisfactory. All repairs; charges and improvements are subject to prior written approval of the City. Lessee's duty to maintain the Property in good repair shall include, but not be limited to, maintaining air conditioning and heating equipment, elevator for disabled persons, freezers, ventilation ducts, kitchen equipment and appliances, garbage disposal equipment, grease traps, the stairs separating the first and second floors, and restroom facilities.

k. Payment of Fees and Charges. Lessee shall pay, before delinquency, any and all taxes, assessments, license fees and public charges levied, assessed, or imposed, and which become payable during the lease term (including holdovers) upon Lessee's fixtures, furniture, appliances and personal Property installed or located on the Property.

8. MECHANICS LIENS

Lessee shall keep the Property free and clear from all liens which may be filed as the result of any improvements made on the Property by any mechanic, laborer, material man or general contractor. If Lessee, in violation of the foregoing condition, fails to pay and retire the amount for which such a lien is security, the City may, at its option, terminate this Lease upon giving written notice of such intention; or the City may, at its option, pay the amount necessary to release said lien, in which case all costs, interest and penalties connected therewith shall be added to the installment of rent next becoming due and shall be collectible as additional rent in the same manner and with the same remedies as if it had been originally reserved as rent. The City shall have the right to post and maintain on the Property such notices of non-responsibility as are provided under California law governing mechanic's liens.

9. ASSIGNMENT

Lessee shall not assign, sublet, license, mortgage or transfer its interest in this Lease or in all or any portion of the Property, nor shall Lessee allow any other person to use or occupy the Property, or any part thereof, without the express written consent of the City. The consent to one assignment, sublet, license, mortgage, transfer, use or occupancy shall not be construed to be a consent to any subsequent assignment, sublet, license, mortgage, transfer, use or occupancy. The City shall have the sole discretion to require a deposit equal to the first and last two months rent, and to require written guarantees in exchange for its consent to any assignment or sublease to a corporation. Any assignment, encumbrance, or sublease without City's consent shall be voidable and, at City's election, shall constitute a default.

10. TERMINATION

a. Any assignment, sublet, license, mortgage, transfer, use or occupancy by Lessee, whether voluntary or involuntary, without written consent by the City shall be void and shall, at the option of the City, terminate this Lease upon written notice to Lessee.

b. Should Lessee default in the payment of any installment of rent, or in the performance of any covenant contained in this Lease, or if any interest held by Lessee in this Lease is affected due to attachment, execution, judgment, insolvency or bankruptcy, whether voluntary or involuntary, the City may terminate this Lease as provided herein.

11. SALE OF THE PROPERTY

In the event of any sale or conveyance by the City of the Property, said sale or conveyance shall be made subject to this Lease and shall operate to release the City from any further or future liability under any of the terms, covenants, and conditions contained herein, whether express or implied, and Lessee shall look solely to the responsibility of the successor in interest of the City in and to this Lease.

12. INDEMNITY

Lessee hereby expressly waives all claims against the City for damages to goods, wares and merchandise in, upon or about the Property, and for injuries to persons in, upon or about the Property, from any cause arising at any time during the Lease term. Lessee shall indemnify, defend and hold the City, its officers, agents, employees and volunteers harmless, from and against (1) any and all claims of liability, loss or expenses in connection with any claim, demand or action asserted against the City, for any damage to property or injury or death to any person occurring in or about the premises, or related to the use of the parking lot by Lessee or Lessee's guests or invitees; (2) any and all claims of liability, loss or expenses in connection with any claim, demand or action asserted against the City, arising out of Lessee's failure to perform any provision of this lease or Lessee's failure to keep the Property in good condition and repair, or any act or omission by Lessee, its agents, contractors, invitees, or employees; and (3) all damages, liability, fines, penalties and any other consequences arising from any noncompliance or violation of any laws, ordinances, codes, or regulations, including but not limited to the Occupational Safety and Health Act and the Americans with Disabilities Act. Except, however, that City shall hold Lessee harmless from all claims of liability for damage resulting from the acts or omissions of City or its authorized representatives.

13. BREACH; LEGAL ACTION; DAMAGES

Upon Lessee's breach of any provision of this Lease, abandonment of the Lease before the end of the term, or if Lessee's right to possession is terminated by the City because of a breach of the Lease, the City, at its sole option may bring legal action to recover from Lessee:

a. The worth at the time of judgment or award of the unpaid rent which had been earned at the time of termination;

b. The worth at the time of judgment or award of the amount by which the unpaid rent which would have been earned after termination until the time of judgment or award exceeds the amount of the rental loss that the City proves could have been reasonably avoided;

c. The worth at the time of judgment or award of the amount by which the unpaid rent for the balance of the term after the time of judgment or award exceeds the amount of the rental loss that the City proves could have been reasonably avoided; and

d. Any other amount necessary to compensate the City for all of the detriment proximately caused by Lessee's failure to perform the obligations under this Lease or which in the ordinary course of business would be likely to result therefrom.

e. "Worth at the time of judgment or award" of the amount referred to in Paragraphs 15 a and b is computed by allowing interest at the rate of ten (10%) percent per annum; the "worth at the time of judgment or award" of the amount referred to in Paragraph 15 c herein is computed by discounting such amount at the discount rate of the Federal Reserve Board of San Francisco at the time of award plus one (1%) percent.

14. CONDITION OF PROPERTY; SURRENDER

a. Lessee accepts the Property and the leased fixtures and equipment as being in good and sanitary order, condition and repair, and agrees to surrender the Property in as good condition as received, except for normal wear and tear, and to remove all of Lessee's signs and other property that is not a fixture of or permanent attachment to the Property, or that is owned and was installed by Lessee during the term of this Lease.

b. If upon expiration or termination of this Lease Lessee fails to remove any personal property belonging to Lessee from the premises, such property shall at City's option at any time after thirty (30) days from the date of expiration or termination be deemed to have been transferred to City, and City shall have the right to remove and dispose of such property without liability to Lessee.

15. ENTRY AND INSPECTION

The City and its authorized representatives shall have the right to enter the Property at all reasonable times for any of the following purposes: (1) to inspect the Property and determine whether the Property is in good condition and whether Lessee is complying with its obligations under this Lease; (2) to do any acts that may be necessary to protect City's interest in the Property; or (3) to perform any of City's duties under this lease, including making any necessary or agreed on repairs or alterations. Further, the City retains the right to enter upon and show the Property to persons considering purchase, rental or lease of the Property and to display the usual notices and signs, "For Sale," "For Lease," or "For Let," upon the Property for sixty (60) days prior to the expiration of the Lease term. Such signs shall be allowed without diminution of rent or hindrance by Lessee. City shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage resulting from the acts or omissions of Landlord or its authorized representatives.

16. PROPERTY UNINHABITABLE; REMEDY

If the Property is wholly or partially destroyed by fire, earthquake or any other cause whatsoever, renting the Property totally or partially inaccessible or unusable, or if the Property is injured by any cause which necessitates an expenditure of more than forty (40%) percent of its fair market value to repair and restore it, or if more than forty percent (40%) of the floor area, measured in square feet, is destroyed, the City may, at its option, elect to terminate this Lease by giving notice to Lessee within sixty (60) days from the date of the destruction or injury. If the City does not terminate the Lease, Lessee's rent shall be abated, from the date of destruction until restoration is completed, in an amount proportionate to the extent to which destruction interferes with Lessee's use of the premises. In no event shall City be under an obligation or duty to restore the Property. If the City elects to restore the Property, it shall proceed with reasonable diligence, but shall not be liable for any delay, other than an abatement of rent during the time that the Property remains uninhabitable. The words "restore" and "restoration", shall not include or apply to any fixture, equipment or additions of any kind, or any Property whatever placed in or upon the Property by Lessee or anyone acting on their behalf. In making restorations, the City may use similar and/or changed workmanship and/or architecture. Immediately upon completion of repairs, the full amount of rent hereunder reserved shall be due and payable. For the purposes of this Lease, the Property shall be deemed "uninhabitable" if it is non-operative as a restaurant and bar business, or if any public agency deems it unsafe or unhealthy for human habitation or use as a restaurant and bar business.

If the City does not elect to terminate the Lease, and does not commence restoration of the Property within one hundred twenty (120) days from the date of destruction or injury, Lessee may, at its option, terminate this Lease upon written notice to the City.

17. EMINENT DOMAIN

a. Total Condemnation. In the event of a total condemnation of the Property during the Lease term, this Lease shall terminate as of the date actual physical possession of the Property is taken by the condemnor. All compensation and damages awarded for such total condemnation shall belong to, and be the sole Property of the City, and Lessee shall have no claim thereto, and hereby irrevocably assign and transfer to the City any right to compensation or damages they may become entitled, provided however, the Lessee shall be entitled to receive any award that may be made for the taking of or damage to Lessee's trade fixtures and any improvements made by Lessee to the Property which Lessee would have had, but for the condemnation, the right to remove upon expiration or termination of this Lease.

b. Rent Due on Total Condemnation. On termination of this Lease by a total condemnation of the Property, all rent and other charges payable by Lessee to or on behalf of the City pursuant to this Lease shall be paid up to the date on which actual physical possession of the Property is taken by the condemnor, and the parties hereto shall thereafter be released from all further liability under this Lease.

c. Partial Condemnation. In the event of a partial condemnation of the Property during the Lease term, this Lease shall terminate as to the portion of the Property so taken on the date when actual

physical possession of said portion is taken by the condemnor; and the parties hereto shall each have the option to terminate this Lease by giving written notice to the other, within thirty (30) days after actual physical possession of said portion is taken by the condemnor. If neither party terminates this Lease as herein provided, then this Lease shall continue in full force and effect as to the remainder of the Property not condemned; provided, however, that the rent payable by Lessee for the balance of the Lease term shall be abated in the ratio that the square footage of enclosed floor space of the Property bears to the total floor space of the Property upon such condemnation. Upon partial condemnation, all compensation and damages awarded for such condemnation shall belong to and be the sole Property of the City; and Lessee shall have no claim thereto and hereby irrevocably assign and transfer any right they may have had to share in the award to the City; provided, however, that Lessee shall be entitled to receive any, award made for the taking of, or damage to, Lessees' trade fixtures and any improvements made by Lessee to the Property which Lessee would have had, but for the condemnation, the right to remove upon expiration or termination of this Lease.

d. Rent on Partial Condemnation. Upon termination of this Lease in part, as herein provided, all rent and other charges payable by Lessee to or on behalf of the City pursuant to this Lease, shall be paid up to the date on which actual physical possession is taken by the condemnor of that part of the Property being condemned; and Lessee shall thereafter be liable only for that portion of rent required for the balance of the Lease term as herein provided.

18. SIGNAGE

The existing signs which identify the Blackberry Farm Golf Course will continue to be prominently displayed along with necessary "Open to the Public" signs for the information of the City's patrons. Lessee shall not install or letter any signs on the Property without the prior written consent of City, and any installation of additional signs by Lessee shall be in accordance with the City's sign ordinances and regulations.

19. SECURITY

If any security is given by Lessee to secure the faithful performance of any or all of the covenants of this Lease on the part of Lessee, the City may transfer and/or deliver such security to the purchaser of the reversion, in the event that the reversion is sold; and the City shall then be discharged from further liability in reference thereto.

20. DEFAULT

a. The occurrence of any of the following shall constitute a default by Tenant:

(1) Failure to pay rent when due, if the failure continues for ten (10) days after notice has been given to Lessee.

(2) Abandonment and vacation of the premises (failure to occupy and operate the premises for twenty (20) consecutive days unless excused by the City shall be deemed an abandonment and vacation.

(3) The making by Lessee of any general assignment or general arrangement for the benefit of creditors; the filing by or against Lessee of a petition to have Lessee adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Lessee the same is dismissed within sixty (60) days); the apportionment of a trustee or receiver to take possession of substantially all of tenant's assets, where possession is not restored to Lessee within forty-five (45) days; or the attachment, execution, or other judicial seizure of substantially all of Lessee's assets, where such seizure is not discharged within thirty (30) days.

(4) Failure to pay any penalties assessed pursuant to section 5(d) of this Lease of this lease, or if the City or its designated representatives observe more than three violations of section 5(c)(1) (Operating Hours- no patrons after 11 p.m.) in any twelve-month period.

(5) Failure to perform any other provision of this Lease if the failure to perform is not cured within the time stated in City's notice to Lessee. If the default cannot reasonably be cured within the period specified in the notice, Lessee shall not be in default of this Lease if Lessee commences to cure the default within the period and diligently and in good faith continues to cure the default.

b. Notices given under this section shall specify the alleged default and the applicable Lease provisions, and shall demand that Lessee perform the provision of this lease or pay the rent or other payment that is in arrears, as the case may be, within the applicable period of time, or quit the premises. No such notice shall be deemed a forfeiture or a termination of this lease unless City so elects in the notice.

21. CITY'S REMEDIES IN THE EVENT OF DEFAULT

City shall have the following remedies if Lessee commits a default. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law.

a. Lessee's Right to Possession Not Terminated. City can continue this lease in full force and effect, and the lease will continue in effect as long as City does not terminate Lessee's right to possession, and Lessee shall have the right to collect rent when due. During the period Lessee is in default, City can enter the Property and relet it, or any part of it, to third parties for Lessee's account. Reletting can be for a period shorter or longer than the remaining term of this Lease. Lessee shall pay to City the rent due under this lease on the dates the rent is due, less the rent City receives from any reletting. No act by City allowed by this paragraph shall terminate the Lease unless City notifies Lessee that City elects to terminate the Lease. After Lessee's default and for so long as City does not terminate

Lessee's right to possession of the Property, Lessee shall have the right to assign or sublet its interest in this Lease if Lessee obtains City's consent, but Lessee shall not be released from liability.

If City elects to relet the Property as provided in this section, rent that City receives shall be applied to the payment of: First, any indebtedness from Lessee to City other than rent due from Lessee; second, all costs, including maintenance costs, incurred by City in reletting; third, rent due and unpaid under this lease. After deducting the payments referred to in this paragraph, any sum remaining from the rent City receives for reletting shall be held by City and applied in payment of future rent as rent becomes due under this lease. In no event shall Lessee be entitled to any excess rent received by City. If, on the date the rent is due under this lease, the rent received from the reletting is less than the rent due on that date, Lessee shall pay to City, in addition to the remaining rent due, all costs, including for maintenance, Landlord incurred in reletting that remain after applying the rent received from the reletting as provided in this paragraph.

b. Termination of Lessee's right to possession. City can terminate Lessee's right to possession of the Property at any time. No act by City other than giving notice to Lessee shall terminate this lease. Acts of maintenance, efforts to relet the Property, or the appointment of a receiver on City's initiative to protect City's interest under this Lease shall not constitute a termination of Lessee's right to possession. On termination, City has the right to recover the following from Lessee:

(1) the worth, at the time of award, of the unpaid rent that had been earned at the time of termination of this lease;

(2) the worth, at the time of award, of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease until the time of award exceeds the amount of loss of rent that Lessee proves could have reasonably been avoided;

(3) the worth, at the time of award, of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of the loss of rent that Lessee proves could have reasonably been avoided; and

(4) any other amount, and court costs necessary to compensate City for all detriment proximately caused by Lessee's default.

c. Appointment of Receiver. If Lessee is in default of this Lease City shall have the right to have a receiver appointed to collect rent and conduct Lessee's business. Neither the filing of a petition for appointment of a receiver nor the appointment itself shall constitute and election by City to terminate this Lease, nor shall such petition or appointment as initiated by City be construed as default of this lease by Lessee.

d. City's Right to Cure. City, at any time after Lessee commits a default, can cure the default at Lessee's cost. If City at any time, by reason of Lessee's default, pays any sum or does any act that requires payment of any sum, the sum paid by City shall be due immediately from Lessee at the time the

sum is paid, and if paid at a later date shall bear interest at the maximum rate an individual is permitted by law to charge from the date the sum is paid by City until Lessee reimburses City. The sum, together with all interest on it, shall be the additional rent.

22. LEASE SUBORDINATE.

a. This Lease shall be subordinate to any mortgages, trust deeds, or bond indentures that are now or may hereafter be placed upon the Property, to any and all advances made or to be made thereunder, to the interest thereon, and to all renewals, replacements and extensions thereof, provided the mortgagee or beneficiary named in the mortgages, trust deeds or bond indentures agrees to recognize Lessee's Lease in the event of foreclosure if Lessee are not in default. If any mortgagee or beneficiary elects to have this Lease superior to its mortgage, trust deed or bond indenture by notice to Lessee, then this Lease shall be deemed superior to the lien of any such mortgage, trust deed, or bond indenture whether this Lease is dated or recorded before or after said mortgage or trust deed.

b. Lessee shall, upon not less than ten (10) days prior written request by the City, execute, acknowledge and deliver to the City a written statement certifying that this Lease is unmodified and in full force and effect, or that there have been modifications and this Lease is in full force and effect as modified, and stating the modifications, and the dates to which the rent and other charges have been paid in advance, if any. The intent is that the statement provided pursuant to this subsection, may be relied upon by any prospective purchaser, mortgagee or assignee of any mortgagee of the Property.

c. The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not cause a merger and shall, at the City's option, terminate all or any existing subleases or sub-tenancies consented to pursuant to this section, or may, at the City's option, operate as an assignment to the City of any or all such subleases or sub-tenancies.

23. NONDISCRIMINATION

Lessee and its employees shall not discriminate against any person or employee because of race, color, religion, ancestry, age, sex, national origin, disability, sexual preference, housing status, marital status, familial status, or other protected classifications. If Lessee is found to be in violation of the State of California Fair Employment and Housing Act or any similar provision of state or federal law in the conduct of Lessee's activities under this Lease, it shall be found in default under this Lease and such default shall constitute a material breach of the Lease, entitling the City to all available remedies in this Lease or by law.

24. GENERAL PROVISIONS

a. Notices. Any notices to be given by either party under the terms of this Lease shall be made in writing and may be delivered either personally or by certified or registered mail with postage prepaid, addressed as follows:

TO LESSEE: The Blue Pheasant Restaurant c/o Mike Tsachres

22100 Stevens Creek Blvd.
Cupertino, CA 95014

TO THE CITY: Director of Parks and Recreation
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014

b. Entire Agreement. This document comprises the entire and integrated agreement of the parties concerning the lease of the Property and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this document shall be effective only if in writing and signed by the City and Lessee.

c. Attorneys' Fees. If legal action is commenced to enforce or to declare the effect of any provision of this Lease, the prevailing party shall be awarded attorneys' fees and costs incurred by such party in the action.

d. Severability. If any term, provision, covenant or condition of this Lease is held by a court to be invalid, void or unenforceable, the rest of this Lease shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

e. Time. Time is of the essence of this Lease.

f. Waiver. No delay or failure to exercise any right or remedy of City on any default by Lessee shall impair such a right or remedy or be construed as a waiver. Additionally, the subsequent receipt and acceptance of rent by the City shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rent so accepted, regardless of the City's knowledge of such preceding breach at the time of acceptance of such rent. Any waiver by City of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Lease.

g. Remedies Cumulative. The remedies provided herein shall be cumulative, therefore, the exercise of any one remedy shall not be to the exclusion of any other remedy.

h. Binding on Heirs; Joint and Several Liability. All of the terms, covenants and conditions of this Lease shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto; and the parties hereto shall be jointly and severally liable hereunder.

i. Governing law. The laws of the state of California shall govern this Lease.

//

//

j. Recordation. Neither Lessee nor City shall record this Lease.

k. Authority. The individuals signing this Lease on behalf of the Parties have the authority to sign on behalf of their respective entities.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement on ~~June~~ ^{July 3}, 2013.

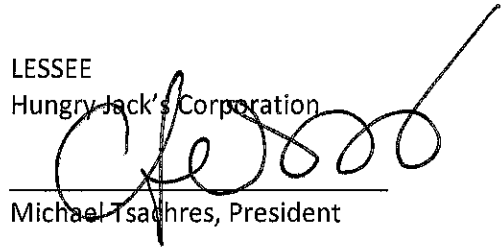
CITY



David Brandt, City Manager

LESSEE

Hungry Jack's Corporation



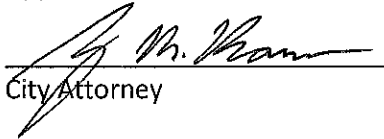
Michael Tsachres, President

ATTEST



City Clerk

Approved as to Form:



City Attorney

*NOTARY ACKNOWLEDGEMENT REQUIRED

Exhibits:

"A": List of Fixtures

EXHIBIT A
Fixtures

Front and Back Bar

Built-in Waitress Station in banquet room

Swamp Cooler on roof

Air Conditioning Unit

Furnaces

Built-in Speakers

Water Heaters

Light Fixtures

Safe

Refrigerated Waitress Station in front of kitchen

Hood and Ventilation System (including automatic fire extinguishing system)

Steam Table and Built-in Freezer in downstairs banquet room kitchen

Walk-in Box with Compressor

GUARANTY AGREEMENT

This guaranty is given by Michael Tsachres, an individual, ("Guarantor") to CITY OF CUPERTINO ("Obligee") to induce Obligee to enter into a lease with Hungry Jacks Corporation, a California Corporation ("Obligor"), for the lease of property located at 22100 Stevens Creek Boulevard, City of Cupertino, State of California.

1. Obligation Guaranteed. For valuable consideration, the undersigned Guarantor jointly and severally unconditionally guarantees to Obligee the following obligations of Obligor: Performance of all terms, provisions, and conditions of said lease above-described and any extension thereof, including the payment of any and all indebtedness of Obligor to Obligee. The word "indebtedness" is used in its most comprehensive sense and includes any and all rent, debts, obligations and liabilities of Obligor, whenever made, incurred, or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether Obligor may be liable individually or jointly with others, or whether recovery may be or become barred by any statute of limitations or otherwise become unenforceable.

2. Insolvency or Bankruptcy. Guarantor jointly and severally unconditionally guarantees the performance of all terms, provisions, and conditions of said lease and any and all indebtedness of Obligor to Obligee, whether or not due or payable by Obligor, on (a) the dissolution, insolvency, or business failure of, or any assignment for the benefit of creditors by, or commencement of any bankruptcy, reorganization, arrangement, moratorium, or other debtor relief proceedings by or against, Obligor or Guarantors, or (b) the appointment of a receiver for, or the attachment, restraint of, or making or levying of any court order or legal process affecting, the property of Obligor or Guarantors, and jointly and severally unconditionally promise to pay this indebtedness to Obligee or order, on demand, in lawful money of the United States.

3. Extent of Liability. The liability of Guarantor under this agreement is exclusive and independent of any security for or other guarantee of the indebtedness of Obligor, whether executed by Guarantors or any other party, and the liability of Guarantors under this Agreement is not affected or impaired by any of the following:

- a. Any indebtedness exceeding Guarantors' liability;
- b. Any direction of application by Obligor or any other party;
- c. Any other continuing or other guaranty, undertaking, or maximum liability of Guarantors or of any other party as to the indebtedness of Obligor;
- d. Any payment on or in reduction of any other guaranty or undertaking;
- e. Any dissolution, termination, or increase, decrease, or changes of personnel of any of the Guarantors; or

f. Any payment made to the Obligor on the indebtedness that Obligor repays to Obligor pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium, or other debtor relief proceeding. Guarantors waive any right to the deferral or modification of Guarantor's obligations by virtue of any such proceeding.

4. Joinder of Parties. The obligations of guarantors are joint and several, and independent of the obligations of Obligor. Obligor who may bring and prosecute a separate action or actions against Guarantors, whether it brings an action against Obligor or joins Obligor in any action or actions commenced. Guarantors waive, to the fullest extent permitted by law, the benefit of any statute of limitations affecting their liability under this agreement or the enforcement of this agreement. Any payment by Obligor or other circumstance that operates to toll any statute of limitations as to Obligor shall also operate to toll the statute of limitations as to Guarantors. Any Guarantor who is a married person agrees that recourse may be had against his or her separate property for his or her obligations under this agreement.

5. Change of Obligation.

a. Guarantor authorizes Obligor, (whether or not after revocation or termination of this guaranty) without notice or demand (except any notice or demand that is required by statute and cannot be waived) and without affecting or impairing their liability, from time to time to do any of the following:

(1) Renew, compromise, extend, accelerate, or otherwise change the time for performance of, or otherwise change the terms of the obligation;

(2) Take and hold security for the performance of this guaranty or the obligation guaranteed, and exchange, enforce, waive and release any security;

(3) Apply security and direct the order or manner of sale of security as Obligor in its discretion may determine; and

(4) Release or substitute any one or more of the Guarantors.

b. Obligor may without notice assign this guarantee in whole or in part.

6. Capacity and Authority. If Obligor is a corporation, partnership or other entity, Obligor need not inquire into or verify the powers of Obligor or the authority of those acting or purporting to act on behalf of Obligor, and this Guaranty shall be enforceable with respect to any indebtedness Obligor grants or extends to Obligor in reliance on the purported exercise of those powers or authority.

7. Subordination. Any indebtedness of Obligor now or later held by Guarantors is subordinated to the indebtedness of Obligor to Obligor, and all indebtedness of Obligor to Guarantors, if Obligor so requests, shall be collected, enforced, and received by Guarantors as trustees for Obligor and be paid

over to Obligees on account of the indebtedness of Obligor to Obligees, without affecting or impairing in any manner the liability of Guarantors under the other provisions of this guaranty.

8. Waiver of Defenses.

(a) Guarantor waives any right to require Obligees to (1) proceed against Obligor, (2) proceed against or exhaust any security held from Obligor; or (3) pursue any other remedy in Obligees' power whatsoever.

(b) Guarantors waive any defense based on or arising out of any defense of Obligor other than payment in full of the indebtedness, including without limitation any defense based on or arising out of the disability of Obligor, the unenforceability of the indebtedness from any cause, or the cessation from any cause of the liability of Obligor other than payment in full of the indebtedness.

(c) Obligees, at its election, may foreclose on any security held by Obligees by one or more judicial sales, whether or not every aspect of any sale is commercially reasonable, or exercise any other right or remedy Obligees may have against Obligor, or any security, without affecting or impairing in any way the liability of Guarantors under this agreement, except to the extent that the indebtedness has been paid.

(d) Guarantor waives all rights and defenses arising out of an election of remedies by Obligees, even though that election of remedies, such as nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Guarantor's rights of subrogation and reimbursement against the principal by operation of Code of Civil Procedure Section 580d or otherwise

(e) Until all indebtedness of Obligor to Obligees is paid in full, even though that indebtedness is in excess of Guarantors' liability under this agreement, Guarantors shall have no right of subrogation, shall waive any right to enforce any remedy that Obligees now has or may later have against Obligor, and shall waive any benefit of, and any right to, participation in any security now or later held by Obligor. Guarantors waive all presentments, demands for performance, notices of protest, notices of dishonor, notices of acceptances of this guaranty, and notices of the existence, creation, or incurring of new or additional indebtedness.

(f) Guarantor assumes all responsibility for keeping themselves informed of Obligor's financial condition and assets, and all other circumstances bearing on the risk of nonpayment of the indebtedness and the nature, scope and extent of the risks that Guarantors assume and incur under this agreement, and agree that Obligees shall have no duty to advise Guarantors of information known to it regarding those circumstances or risks.

9. Attorneys' Fees and Costs. In addition to the amounts guaranteed under this agreement, Guarantors jointly and severally agree to pay reasonable attorneys' fees and all other costs and expenses incurred by Obligees in enforcing this guaranty in any action or proceeding arising out of, or relating to, this guaranty.

10. Liens and Setoffs. In addition to all liens on, and rights of setoff against the money, securities or other property of Guarantors given to Obligee by law, Obligee shall have a lien on and a right of setoff against all money, securities and other property of Guarantors now or later in the possession of Obligee, whether held in a general or special account or for safekeeping or otherwise; and every lien and right of setoff may be exercised without demand on or notice to Guarantors.

11. Nonwaiver of Rights of Obligee. No right or power of Obligee under this agreement shall be deemed to have been waived by any act or conduct on the part of Obligee, or by any neglect to exercise that right or power, or by any delay in so doing; and every right or power shall continue in full force and effect until specifically waived or released by an instrument in writing executed by Obligee.

12. Singular and Plural. In all cases when there is but a single Obligor or a single Guarantor, all words used in the plural shall be deemed to have been used in the singular if the context and construction so require; and when there is more than one Obligor, or when this guaranty is executed by more than one Guarantor, the word "Obligor" and the word "Guarantor" respectively shall mean all and any one or more of them.

13. Effect on Heirs and Assigns. This guaranty and the liability and obligations of Guarantors under this agreement are binding on Guarantors and their respective heirs, executors, and assigns, and inure to the benefit of and are enforceable by Obligor and its successors, transferees, and assigns.

14. Notices. Any notice given by any party under this guaranty shall be personally delivered or sent by United States mail, postage prepaid, and addressed to Obligee or Guarantor at their respective addresses for notices indicated below. Guarantor and Obligee may change the place to which notices, requests, and other communications are to be sent to them by giving written notice of that change to the other.

15. Governing Law and Modification. This guaranty shall be deemed to be made under, and shall be governed by, the laws of the State of California in all respects, including matters of construction, validity, performance, and enforcement, and its terms and provisions may not be waived, altered, modified, or amended except in writing duly signed by an authorized officer of Obligee and by Guarantors.

16. Invalidity. If any provision of this guaranty contravenes or is held invalid under the laws of any jurisdiction, this guaranty shall be construed as though it did not contain that provision, and the rights and liabilities of the parties to this agreement shall be construed and enforced accordingly.

//

//

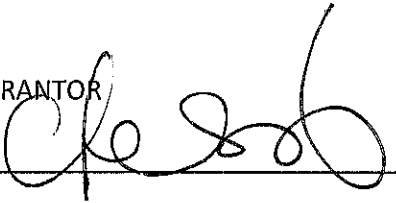
//

17. Headings. Headings in this agreement are for convenience only and shall not be used to interpret or construe its provisions.

18. Counterparts. This agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

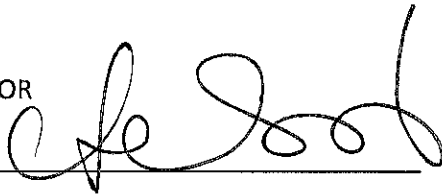
IN WITNESS WHEREOF, the undersigned have executed this Guaranty on ~~June~~^{July} 3, 2013.

GUARANTOR

A handwritten signature in black ink, appearing to read 'Michael Tsachres', written over a horizontal line.

Michael Tsachres

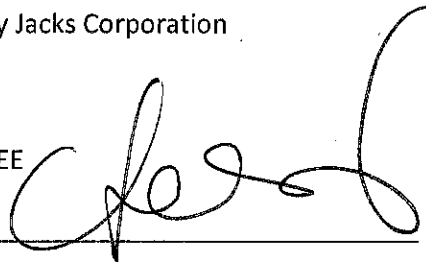
OBLIGOR

By 

A handwritten signature in black ink, appearing to read 'Michael Tsachres', written over a horizontal line.

Hungry Jacks Corporation

OBLIGEE

By 

A handwritten signature in black ink, appearing to read 'Michael Tsachres', written over a horizontal line.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

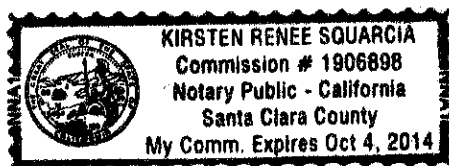
State of California

County of Santa Clara

On July 3, 2013 before me, Kirsten Renee Squarcia, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared David Brandt
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he she/they executed the same in his her/their authorized capacity(ies), and that by his her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature: Kirsten Renee Squarcia
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Lease Agreement, 22100 Stevens Creek Blvd.

Document Date: July 3, 2013 Number of Pages: 22

Signer(s) Other Than Named Above: Michael Tsachres

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of SANTA CLARA

On JULY 5, 2013 before me, KIRSTEN RENEE SQUARCIA, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

personally appeared MICHAEL TSACHRES
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Kirsten Renee Squarcia
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: LEASE AGREEMENT, 22100 STEVENS CREEK BLVD.

Document Date: JULY 3, 2013 Number of Pages: 22

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Corporate Officer — Title(s): _____
- ☐ Individual
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer's Name: _____

- ☐ Corporate Officer — Title(s): _____
- ☐ Individual
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here