

AGENDA
McCall City Council
Special Meeting
November 13, 2015 at 9:00 a.m.
McCall City Hall (Lower Level)
Legion Hall
216 East Park Street

9:00 a.m. OPEN SESSION ROLL CALL

BUSINESS

AB 15-219 Golf Course Restaurant Winter Lease Approval Request

OPEN SESSION

ADJOURNMENT

American with Disabilities Act Notice: The City Council Meeting room is accessible to persons with disabilities. If you need assistance, contact City Hall at 634-7142.

McCALL CITY COUNCIL
AGENDA BILL

216 East Park Street
 McCall, Idaho 83638

Number AB 15-219
Meeting Date November 13, 2015

AGENDA ITEM INFORMATION

SUBJECT: <i>Golf Course Restaurant Winter Lease Approval Request</i>		<i>Department Approvals</i>	<i>Initials</i>	<i>Originator or Supporter</i>
		Mayor / Council		
		City Manager	<i>NMC</i>	Originator
		Clerk		
		Treasurer		
		Community Development		
		Police Department		
		Public Works		
		Golf Course		
		Parks and Recreation		
COST IMPACT:	N/A	Airport		
FUNDING SOURCE:	N/A	Library		
TIMELINE:	Immediate	Information Systems		
		Grant Coordinator		

SUMMARY STATEMENT:

At the October 22, 2015 Council meeting, the City Manager brought background information regarding a proposal from Valley CRC Corporation for leasing of the Golf Course Restaurant for the term of November 2015 through May of 2016. The enclosed draft lease is provided for consideration of the Council. Within the draft agreement, City staff has recommended use of a flat monthly rental rate in lieu of use of a percentage of gross revenue, as currently stated in the existing Golf Pro contract. The City Manager will present supporting material in terms of a comparison to support the recommended flat-rate monthly rental rate during presentation of the agreement.

RECOMMENDED ACTION:

Approve the draft Golf Course Restaurant Lease, and authorize the Mayor to sign all necessary documents.

RECORD OF COUNCIL ACTION

MEETING DATE	ACTION
October 22, 2015	City Council gave direction to proceed with developing a draft agreement for lease of the Golf Course Restaurant.

**SHORT TERM LEASE
of Restaurant and Bar**

THIS SHORT TERM LEASE is made and entered into this _____ day of _____, 2015, by and between THE CITY OF McCALL, IDAHO, a municipal corporation, organized and existing under the laws of the State of Idaho, hereinafter referred to as the “Short Term Lessor,” and VALLEY CRC CORP, an Idaho corporation, hereinafter collectively referred to as the “Short Term Lessee.”

W I T N E S S E T H:

WHEREAS, on November 29, 2012, the City of McCall, Idaho entered into the McCall Municipal Golf Course Agreement for Professional Golf Services with Allan Morrison. A copy of the McCall Municipal Golf Course Agreement for Professional Golf Services is attached hereto as Schedule A. The McCall Municipal Golf Course Agreement for Professional Golf Services extends through October 31, 2017; and

WHEREAS, by the McCall Municipal Golf Course Agreement for Professional Golf Services, Allan Morrison acquired, among other things, all rights to the restaurant and bar portion of the McCall Municipal Golf Course that is the subject of this Short Term Lease; and

WHEREAS, Allan Morrison has determined to close the restaurant and bar portion of the McCall Municipal Golf Course during the winter months, but has agreed to allow the City of McCall to lease the restaurant and bar area to a third party (the Short Term Lessee) as long as such arrangement does not in any manner compromise the McCall Municipal Golf Course Agreement for Professional Golf Services or any rights of Allan Morrison thereunder including, but not limited to, the right to peaceably possess and benefit from the liquor license held by the City of McCall as the same applies to the McCall Municipal Golf Course.

NOW, THEREFORE, the Short Term Lessor, for and in consideration of the rents, covenants and agreements hereinafter mentioned on the part and behalf of the Short Term Lessee to be paid, kept and performed, does by these presents grant, demise and lease unto the Short Term Lessee, and the Short Term Lessee does by these presents hire, rent and take from the Short Term Lessor, that certain business premises consisting of the restaurant and bar portion of the McCall Municipal Golf Course and all equipment and furniture associated therewith (the “premises”).

TO HAVE AND TO HOLD the premises for the period beginning _____, _____ and terminating April 30, 2016, for the rental and upon the terms and conditions as follows, to-wit:

1. **PRIOR AGREEMENT:** This Short Term Lease is subordinate, junior and inferior to the McCall Municipal Golf Course Agreement for Professional Golf Services and subject to all terms and conditions applicable therein to Allan Morrison. Short Term Lessee acknowledges the McCall Municipal Golf Course Agreement for Professional Golf Services and receipt of a copy thereof. Short Term Lessee agrees to comply with and be bound by all provisions incumbent upon Allan Morrison under the McCall Municipal Golf Course Agreement for Professional Golf Services, regardless of whether any such provisions are contained within this Short Term Lease as an obligation of Short Term Lessee. In addition, all provisions herein for indemnity to Short Term Lessor are also granted herein by Short Term Lessee to Allan Morrison. Short Term Lessee shall do nothing under this Short Term Lease or otherwise that would violate, interfere with, infringe upon, breach, disrupt, or in anywise negatively affect any right or obligation of, or benefit accruing to, Allan Morrison under the McCall Municipal Golf Course Agreement for Professional Golf Services; and in the event of such an occurrence during the term of this Short Term Lease, in the sole and absolute judgment of either Allan Morrison **or** the City of McCall, Idaho, this Short Term Lease shall immediately be terminated without notice and without consequence to either Allan Morrison or the City of McCall, Idaho.

2. **LIQUOR LICENSE:** A State of Idaho liquor license issued to Short Term Lessor is included in the lease of the premises. Short Term Lessee covenants and agrees that Short Term Lessee will do nothing to jeopardize the good standing of the liquor license or any benefit thereof accruing to either the City of McCall, Idaho or Allan Morrison, will comply with all laws and regulations involving the possessing of a liquor license and sale of alcoholic beverages, and maintain insurance specifically designed to insure liquor licenses. In the event the liquor license is jeopardized during the term of this Short Term Lease, in the sole and absolute judgment of either Allan Morrison **or** the City of McCall, Idaho, this Short Term Lease shall immediately be terminated without notice and without consequence to either Allan Morrison or the City of McCall, Idaho.

3. **RENTAL:** Short Term Lessee covenants and agrees to pay monthly rent for said premises in the sum of \$1,200.00 per month payable on the 1st day of each month for that month commencing _____, _____.

4. **USE OF PREMISES:** Short Term Lessee covenants and agrees that the leased premises shall be used for a restaurant and bar and for catering, and shall not be used for any other purpose or purposes without the prior written consent of Short Term Lessor. No use of the premises shall violate the provisions of the McCall Municipal Golf Course

Agreement for Professional Golf Services. Short Term Lessor specifically reserves the right to schedule the restaurant and bar facilities for City of McCall events and Short Term Lessee agrees to make the restaurant and bar facilities available to the City of McCall for such events and to staff such events. Short Term Lessor will pay Short Term Lessee for the food and beverages for such events.

5. **HOURS OF OPERATION; DETERMINATION OF PRICES:** The parties agree that Short Term Lessee may choose its hours of operation as long as they do not violate any local ordinances or any provisions of the McCall Municipal Golf Course Agreement for Professional Golf Services. Short Term Lessee shall post the hours and days that it is open for business. Short Term Lessee shall also determine the prices to be charged for food and drink.

6. **MAINTENANCE:** Short Term Lessee accepts the premises and improvements in its present condition. Short Term Lessee shall be responsible for routine cleaning of all areas of the restaurant and bar. Short Term Lessee shall report any problem with building maintenance and utilities to the Golf Course Superintendent. Short Term Lessee has no authority to contract for parts or services for building maintenance or utilities. Short Term Lessor shall perform all maintenance and such maintenance as soon as is reasonably practical and shall coordinate its maintenance with the Short Term Lessee.

Short Term Lessee shall provide for the removal of snow on the sidewalks and stairs of the restaurant and bar area and shall ensure that the restaurant and bar area is kept clean and attractive, including maintaining restrooms as well as providing towels, tissue, soap and other supplies, to include cleaning all furniture, fixtures and appliances devoted to restaurant use, including the interior walls and floor coverings. The restaurant and bar area shall maintain at least an A rating upon any inspection by authorized governmental agencies.

Short Term Lessee shall keep all equipment in good operating order at all times and shall perform all additional maintenance as may be required by any insurance policy covering the premises.

Short Term Lessee shall assume full responsibility and expense for Short Term Lessee's personal taxes, merchant invoices, sales taxes, and all other liabilities with respect to its operation of the restaurant and bar.

Short Term Lessee shall provide at its expense, supplies and tools necessary for carrying out its maintenance responsibilities, including light bulbs, soap, paper products and like consumables. Short Term Lessee agrees to replace all dishes, glasses, cookware, utensils, or other kitchenwares that are broken during this Short Term Lease.

At the termination of this Short Term Lease in any manner, Short Term Lessee shall surrender the premises and improvements, equipment and furniture to Short Term Lessor in good condition.

Short Term Lessor shall provide all other maintenance and repair to the premises not otherwise required to be performed by Short Term Lessee, including maintenance of building siding, roofing, windows, decking, stairways, etc. as well as routine cleaning and inspection of the fire suppression systems, electrical, plumbing and any structural matters, upkeep of landscaping and paving, and providing for the removal of snow in the parking lot.

7. **ALTERATIONS AND IMPROVEMENTS:** Short Term Lessee shall have no right to make any alterations or improvements to the premises.

8. **SIGNS, FIXTURES AND EQUIPMENT:** Short Term Lessee shall have the right to place a reasonably sized sign upon the premises advertising Short Term Lessee's business and for the purpose of indicating the name and nature of the business carried on by the Short Term Lessee in said premises; provided, however, that said sign will not obstruct the vision of the leased property on either side of the property subject to this Short Term Lease. Upon termination of this Short Term Lease, Short Term Lessee shall have the right to remove said sign from the premises so long as Short Term Lessee repairs any damage to the structure occasioned by such removal at Short Term Lessee's own cost. Short Term Lessee shall be responsible for obtaining all signage permits required by the City of McCall, Idaho.

9. **COMPLIANCE WITH LAW:** Short Term Lessee agrees to comply with all municipal, state and federal laws, rules, regulations and ordinances and to do all things necessary to stay in compliance with the same. Short Term Lessee agrees to keep all restaurant and bar operating licenses and permits current.

10. **GLASS:** Short Term Lessee agrees to replace all broken or damaged glass upon the premises with replacement glass of the same quality as that which was broken or damaged.

11. **UTILITIES:** It is expressly agreed that during the full term of this Short Term Lease, Short Term Lessor shall provide and pay for its own private telephone service, if any, to the premises. All other utilities will be provided to the premises by Short Term Lessor, however Short Term Lessor does not guarantee an uninterrupted supply of water or electric current; nor does it guarantee uninterrupted service in providing any utilities. Short Term Lessor shall not be liable to Short Term Lessee for any loss, damage, cost or expense which may result from the interruption or failure of any utility services.

12. **TAXES:** Short Term Lessee shall collect and timely pay all applicable sales taxes to the proper taxing authority. The parties acknowledge that no real or personal property taxes are levied on the premises.

13. **ASSIGNMENT OR SUBLEASING:** Short Term Lessee shall not assign this Short Term Lease nor sublet to any other lessee the said leased premises or any portion thereof.

14. **AUTOMATIC CANCELLATION:** The voluntary or involuntary filing of bankruptcy, or assignment for the benefit of creditors, or any other act of insolvency by or on behalf of the Short Term Lessee shall automatically cancel this Short Term Lease, and Short Term Lessor shall be entitled to immediate possession of the leased premises.

15. **DAMAGE OR DESTRUCTION:** If the premises shall be damaged by fire, the elements, explosions or other causes not directly as a result of Short Term Lessee's negligence, Short Term Lessor shall have the sole and absolute right to elect to terminate this Short Term Lease as of the date of such damage or destruction by written notice to Short Term Lessee, and Short Term Lessor shall thereafter be under no obligation to restore, repair or rebuild said buildings or premises, and Short Term Lessee shall be under no obligation to pay any rental from and after the date of such damage or destruction.

16. **FIRE HAZARDS:** The Short Term Lessee shall not do anything in the premises or bring or keep anything therein which will increase the risk of fire, or which will conflict with the regulations of the fire department or any fire laws, or with any fire insurance policies on the buildings, or with any rules or ordinances established by the board of health, or with any municipal, state or federal laws, ordinances or regulations.

17. **LABOR CONTRACTS AND EMPLOYEES:** All labor contracts and employment agreements with employees shall be made directly with Short Term Lessee and that all such employees shall be deemed solely the employees of Short Term Lessee and in no way employees of Short Term Lessor. Short Term Lessee covenants and agrees to indemnify and hold harmless Short Term Lessor of and from any liability for any acts of employees of Short Term Lessee or any acts of persons working for Short Term Lessee under a labor contract.

18. **RIGHT OF INSPECTION:** Short Term Lessor shall have the right to enter the demised premises at any reasonable time to examine the same and to determine the state of repair or alterations which shall or may be necessary for the safety and preservation of the premises.

19. **WASTE PROHIBITED:** Short Term Lessee shall not commit any waste or damage to the premises hereby leased nor permit any waste or damage to be done thereto.

20. **LIABILITY:** Short Term Lessor shall not be liable for any injury or damage which may be sustained by any customer, person or property of the Short Term Lessee, or any other person or persons resulting from the condition of the leased premises or any part thereof, or from any other source or cause whatsoever related to Short Term Lessee's business, and Short Term Lessee agrees to indemnify and hold harmless Short Term Lessor from such liability. All provisions for indemnity hereunder shall also apply to Allan Morrison.

21. **LIABILITY INSURANCE:** Concurrently with the execution of this Short Term Lease, Short Term Lessee shall furnish Short Term Lessor with a Certificate of Insurance evidencing Workman's Compensation Insurance for its employees; providing \$500,000 single limit insurance in the following categories: general liability, products (food and drink), maintenance, and liquor liability; providing \$10,000 cash loss, theft or embezzlement bond or insurance; and to provide a Certificate of Insurance evidencing such insurance and the naming of Short Term Lessor and Allan Morrison as additional insureds on all such policies.

22. **FIRE AND EXTENDED COVERAGE INSURANCE:** Short Term Lessor may maintain fire or casualty insurance, or such other insurance, on the leased premises and Short Term Lessor's improvements and equipment located on the premises as Short Term Lessor desires and Short Term Lessee shall be under no duty or obligation to maintain any such insurance on such property, improvements or equipment of Short Term Lessor.

Short Term Lessee may maintain fire or casualty insurance, or such other insurance, on the contents and personal property located on the leased premises owned by Short Term Lessee as Short Term Lessee desires, and Short Term Lessor shall be under no duty or obligation to maintain any insurance on such personal property and contents owned by Short Term Lessee.

23. **CONDEMNATION:** If the entire premises, or a substantial part thereof, are condemned or taken by purchase in lieu thereof, then this Short Term Lease shall terminate as of the time possession is taken. Any condemnation award shall be divided between the parties hereto in accordance with and in proportion to their respective Short Term Lessor and Short Term Lessee interests.

24. **SURRENDER OF POSSESSION; WAIVER:** Short Term Lessee agrees to surrender possession of said leased premises to Short Term Lessor at the expiration of this Agreement, or any extension thereof, in the same condition as when the same were entered

into by Short Term Lessee, wear and tear, reasonable use and occupancy and damage by the elements excepted; provided, however, in the event of a breach of Short Term Lessee's obligations hereunder, and such breach results in the immediate termination of this Short Term Lease by either Allan Morrison or the City of McCall, Idaho without notice to Short Term Lessee, Short Term Lessee agrees to immediately vacate the premises and waives any legal remedy to which Short Term Lessee may be entitled, such that an immediate termination of this Short Term Lease shall be of no consequence to either Allan Morrison or the City of McCall, Idaho.

25. **DEFAULT AND FORFEITURE:** The following provisions for default and forfeiture under this Short Term Lease shall be applicable to not only a violation of the terms or conditions of this Short Term Lease, but also any violation by Short Term Lessee of any terms or conditions of the McCall Municipal Golf Course Agreement for Professional Golf Services. A default hereunder may be declared by either Short Term Lessor or Allan Morrison and all references hereunder to Short Term Lessor shall also apply to Allan Morrison:

a) In the event there is a default by the Short Term Lessee in the performance of any of the covenants and agreements herein contained or contained in the McCall Municipal Golf Course Agreement for Professional Golf Services, and in the event the said default results in potential liabilities to the Short Term Lessor or is waste and/or damage to leased property, the Short Term Lessor may expend such funds as are reasonably necessary to insure the performance of the defaulting event or waste and/or damage in order to protect itself against liability or to protect its property value, and shall charge the same against the Short Term Lessee. The Short Term Lessee shall pay to the Short Term Lessor, in addition to any other sums that it is required to pay under the terms of this Short Term Lease, said sums expended by the Short Term Lessor, together with interest at the rate of 12% per annum on said funds so expended. Rental payments not paid within thirty (30) days of the agreed dates due shall be considered past due and, therefore, delinquent.

b) Time and the strict and faithful performance of each and every one of the conditions of this Short Term Lease and of the McCall Municipal Golf Course Agreement for Professional Golf Services is expressly made the essence of this Agreement. If default is made by the Short Term Lessee in payment of any part of Short Term Lessee's rent when the same shall become due, or default be made by the Short Term Lessee in keeping, performing or observing any of the covenants and agreements herein contained or contained in the McCall Municipal Golf Course Agreement for Professional Golf Services and such default shall remain so for a period of thirty (30) days after written notice shall have been sent by certified or registered mail to Short Term Lessee as hereinafter provided, then in such event the Short Term Lessor may, at the Short Term Lessor's election, either in law or equity seek specific performance or may declare said term and Short Term Lease forfeited and ended and re-enter

said demised premises to repossess and enjoy the same as in their first estate, and the effect of such default shall in itself, at the election of Short Term Lessor, without further notice or demand constitute a forfeiture and termination of this Short Term Lease. If the Short Term Lessee shall fail to surrender possession of the demised premises to Short Term Lessor, the Short Term Lessee shall be deemed guilty of an unlawful and forcible detention of said Premises. If Short Term Lessee shall abandon or vacate the premises, or if this Short Term Lease be terminated for breach of any of the covenants and agreements herein contained or contained in the McCall Municipal Golf Course Agreement for Professional Golf Services, Short Term Lessee hereby agrees to pay all reasonable expenses incurred by Short Term Lessor in obtaining possession of said Premises from Short Term Lessee, including reasonable legal expenses and attorney's fees, and to pay such other expenses as the Short Term Lessor may incur in putting the premises in good order and condition as herein provided, and also to pay all other reasonable and necessary expenses or commissions paid by Short Term Lessor in releasing the Premises. In the event of notification of default by Short Term Lessor to Short Term Lessee and Short Term Lessee does in fact incur such default, then and in that event Short Term Lessee shall pay, in addition to all arrearage existing under the notice of default, the reasonable attorney's fees incurred by Short Term Lessor in sending notice of default.

26. **HAZARDOUS SUBSTANCES:** Short Term Lessee represents and warrants that the premises will never be used for the generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous substances as those terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC § 9601 et seq. ("CERCLA") Superfund Amendments and Reauthorization Act ("SARA"), applicable state laws or regulations adopted pursuant to either of the foregoing. Short Term Lessee agrees to indemnify and hold harmless Short Term Lessor against any and all claims and losses resulting from a breach of this provision of this agreement. This obligation to indemnify shall survive the payment of the indebtedness and the satisfaction of this agreement.

27. **ATTORNEY'S FEES:** In the event an action is brought to enforce any of the terms or provisions of this Short Term Lease, or enforce forfeiture thereof for default thereof by either of the parties hereto, the successful party to such action or collection shall be entitled to recover from the losing party a reasonable attorney's fee, together with such other costs as may be authorized by law.

In case suit shall be brought for an unlawful detainer of the said premises for the recovery of any rent due under the provisions of this Short Term Lease, or because of the breach of any other covenant herein contained or contained in the McCall Municipal Golf Course Agreement for Professional Golf Services on the part of Short Term Lessee to be kept or performed, Short Term Lessee shall pay to Short Term Lessor all costs, expenses and

attorney's fees which shall be incurred by Short Term Lessor in enforcing the covenants and agreements of this Short Term Lease.

28. **NOTICES:** All notices required to be given to each of the parties hereto under the terms of this Agreement shall be given by depositing a copy of such notice in the United States mail, postage prepaid and registered or certified, return receipt requested, to the respective parties hereto at the following address:

Short Term Lessor: City Clerk
City of McCall, Idaho
216 East Park Street
McCall, ID 83638

Allan Morrison: 308 Camp Road
McCall, ID 83638

Short Term Lessee: Valley CRC Corp
c/o Richard Comstock
945 Lick Creek
McCall, ID 83638

or to such other address as may be designated by writing delivered to the other parties. All notices given by certified mail shall be deemed completed as of the date of mailing except as otherwise expressly provided herein.

29. **REPRESENTATIONS:** There are no verbal promises, implied promises, agreements, stipulations, representations or warranties of any character excepting those set forth in this agreement.

30. **BINDING EFFECT:** The provisions and stipulations hereof shall inure to the benefit of and bind the heirs, executors, administrators, assigns and successors in interest of the respective parties hereto.

31. **RECORDING:** The parties hereto agree that they will not record a copy of this Short Term Lease or any memorandum thereof.

32. **SITUS:** This Short Term Lease is established and accepted by the Short Term Lessee under the laws of the State of Idaho, and all questions concerning its validity, construction and administration shall be determined under such laws.

33. **HEADINGS:** The bolded paragraph headings are for convenience only and are not a part of this Short Term Lease agreement and shall not be used in interpreting or construing this Short Term Lease.

35. **SEVERABILITY:** If any portion or portions of this Short Term Lease shall be, for any reason, invalid or unenforceable, the remaining portion or portions shall nevertheless be valid, enforceable and carried into effect, unless to do so would clearly violate the present legal and valid intentions of the parties hereto.

IN WITNESS WHEREOF, the Short Term Lessor and Short Term Lessee do execute this Short Term Lease the day and year first above written.

SHORT TERM LESSOR:
THE CITY OF MCCALL, IDAHO

By: _____
Mayor

Attest: _____
City Clerk

SHORT TERM LESSEE:
VALLEY CRC CORP

By: _____

APPROVED:

Allan Morrison

PERSONAL GUARANTEES

The undersigned hereby personally guarantee the performance of the Short Term Lessee under the terms and conditions of that certain Short Term Lease dated _____, 2015, and acknowledge that, in executing this Personal Guaranty, they become personally and severally liable for all of the obligations of the Short Term Lessee under the Short Term Lease.

Dated: _____

Principal

Spouse

Dated: _____

Principal

Spouse

Dated: _____

Principal

Spouse

STATE OF IDAHO)
 :ss
County of _____)

On this _____ day of _____, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ & _____, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

(SEAL)

Notary Public for Idaho
Commission Expires: _____

STATE OF IDAHO)
 :ss
County of _____)

On this _____ day of _____, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ & _____, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

(SEAL)

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Commission Expires: _____

STATE OF IDAHO)
 :ss
County of _____)

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(SEAL)

Notary Public for Idaho
Commission Expires: _____