

GOLF COURSE LEASE AGREEMENT

THIS GOLF COURSE LEASE MANAGEMENT AGREEMENT (the "Agreement") is executed as of ____, 2017 by and between THE CITY OF POMONA, a Charter City ("Landlord") and _____ ("Tenant"), with respect to the following Recitals:

RECITALS

- A. Landlord is the owner of record of all of that certain real property known as the Palm Lake Golf Course, located at 1300 W. Phillips Drive, Pomona, California more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Property") and desires to lease the property to Tennant for the continued use of the Property as a golf course.
- B. The Property includes: one (1) 9-hole course, multiple practice facilities, a driving range, maintenance and storage facilities, a pro shop, a parking lot and related amenities (the "Golf Course").
- C. In order for Tenant to operate Golf Course independent of the Landlord as the Landlord wishes to lease the Property and Golf Course to Tenant, to together with all rights, privileges, and easements appurtenant to the Property, and all buildings, structures, and other improvements thereon to Tenant. The Property, such appurtenant rights, privileges and easements and such buildings and improvements are collectively referred to as the "Premises."
- D. Landlord and Tenant acknowledge that Tenant may elect to establish an Affiliate to directly employ the Golf Course Personnel (as defined below).

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

ARTICLE I – DEFINITIONS

1.1 **Defined Terms.** When used in this Agreement, including any exhibits or schedules attached hereto, the following terms shall have the meaning ascribed to them in this Article, unless the context clearly indicates a contrary intent:

"Affiliate" shall mean, with respect to any entity, (a) any officer, director or employee of, or general partner in, such entity, and (b) any individual, corporation, partner, partnership, trust or other entity which owns or controls, or is owned or controlled by, or is under common ownership or control with, such entity. As used herein the term "control" shall mean the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of partnership interests or voting securities, by contract, by appointment to a

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managerial position, or otherwise. Tenant shall not have the right to sublease or transfer the rights and obligations of Tenant under this Agreement to a third party without the written consent of Landlord as described further herein.

“Agreement” shall mean this Golf Course Lease Agreement.

“Basic Fee” shall mean the amount specified in Article VI.

"Capital Improvement" means any alteration, addition, improvement, repair, replacement, rebuilding, or renovation to the Golf Course or Premises.

“Equipment and Supplies” shall mean all equipment and supplies used or useful in the operation of the Golf Course, including, without limitation, golf cars, rental golf clubs, mowers, sprayers, vacuums, flags, grass seed, pesticides, herbicides, maintenance and janitorial equipment and supplies, office supplies, all furniture, furnishings, fixtures, equipment, inventory and supplies necessary or appropriate for the operation of the retail and food and beverage portions of the Golf Course such as shelves, racks and display cases other than those provided by manufacturers of clothing and equipment sold in the golf shop, food and beverage inventories, paper supplies, cleaning materials and equipment, tables, chairs, linens, uniforms, eating utensils, dishes, glassware, cook-ware, stoves, ovens, dish-wares, computer equipment and communication equipment. Such Equipment and Supplies shall include, but not be limited to those items described in Exhibit C, which are the property of Landlord, and shall remain the property of Landlord, and may be used by Tenant for maintenance and operation of the Premises. The equipment in Exhibit C may not be removed from the Premises for use or storage off Premises. The equipment in Exhibit C shall be returned to Landlord at the end of the Term in good working condition, reasonable wear excepted.

“Event of Default” shall mean the occurrence of any of the events described in Article XIII of this Agreement as defaults, together with the expiration of any cure period applicable to such event.

“Fiscal Year” shall mean a calendar year beginning on January 1st of one calendar year and ending on December 31st of the same calendar year, or such other fiscal year period as Landlord may hereafter designate in writing to Tenant.

“Golf Course” shall have the meaning ascribed to such term in the Recitals of this Agreement.

“Golf Course Personnel” shall mean those full-time and part-time employees of Tenant during the Term who performs all of their work in connection with such employment at the Golf Course.

“Hazardous Waste” shall mean any matter which has been determined by any existing or proposed federal, state or local statute, law, enactment, ordinance, regulation, order, rule or judicial decision to constitute a hazardous or toxic waste, substance or material.

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“Industry Standard” shall mean a standard of quality at least equal to similar municipal golf facilities located in the eastern Los Angeles County, California-area.

“Legal Requirements” shall mean any and all laws, statutes, local, state or federal ordinances, codes, orders, rules, regulations, covenants, conditions and restrictions, permits, licenses, authorizations, entitlements, official orders and requirements of, conditions imposed by, all federal, state and local governmental regulatory agencies and authorities which are as of the date hereof or hereafter become applicable to the Golf Course or the operation thereof.

“Operating Contracts” shall mean all contracts now or hereafter entered into for the management, maintenance and operation of the Golf Course, including, without limitation, all such contracts for utilities to be provided for the Golf Course and all such contracts for Equipment and Supplies.

“Operating Period” shall mean the period commencing on the date first mentioned in the agreement, and ending upon the expiration of the Term of the Agreement.

“Premises” shall have the meaning ascribed to such term in Recitals of this Agreement.

“Recharge/Drainage Project” shall mean a future project to be conducted by or on behalf of the City of Pomona, at no direct expense to Tenant, in order to improve drainage, storm water runoff, and/or aquifer recharge activities of the City of Pomona.

“Term” shall mean the period of time commencing with the execution of this Agreement in accordance with its terms or a period of five (5) years from the commencement date of this Agreement, subject to the parties’ early termination rights as set forth in Article XIII of this Agreement. At the end of the five-year (5) period, the Term shall be extended for those certain periods of time described below as Term Extension Periods.

“Term Extension Periods” shall mean those periods of time in which the Term is extended as described in section 2.3 below.

“Unavoidable Delay” shall mean any delay such as strikes; lockouts; acts of God; inability to obtain labor, materials, equipment or supplies; governmental restrictions; moratoria; initiatives; referenda; a war or enemy action or invasion; civil commotion; insurrection; a riot; mob violence; malicious mischief or sabotage; an unusual failure of transportation; fire or any other casualty; unusually adverse weather conditions; a condemnation; any litigation or any law, order or regulation of any governmental, quasi-governmental, judicial or military authority; or other similar causes beyond the control of the affected party, any of which has the effect of delaying, hindering or preventing the affected party’s performance of its obligations hereunder, provided (i) Tenant shall have notified Landlord of such event by notice given not later than thirty (30) days after Tenant has knowledge of the occurrence of such event, and (ii) Tenant shall use reasonable efforts to minimize the effects thereof.

ARTICLE II – LEASE OF GOLF COURSE

2.1 **Lease of Premises** Landlord hereby leases, transfers and demises to Tenant, and Tenant hereby leases and takes from Landlord, the Premises for the terms and upon the agreements, covenants and conditions set forth in this Lease, and on the Tenant's Proposal, as attached hereto as Exhibit B and made a part hereof. In the event of any inconsistency between the Tenant's Proposal and the terms of this Lease, the terms of this Lease shall control.

2.2 **Standards of Performance:** Tenant shall manage, operate, and maintain, the Golf Course and Premises in an Industry Standard manner. All capital improvements to the Golf Course and Premises shall be completed in an Industry Standard manner.

Tenant covenants with Landlord to furnish its best skill and judgment in performing its obligations hereunder, and shall at all times provide such operating and maintenance services in a manner which maintains the good name and business reputation of Landlord, and shall perform its duties and obligations under this Agreement in an efficient, expeditious, prudent and economical manner, avoids damage to or waste of the Golf Course, Premises, and all fixtures thereto, consistent with the best interests of Landlord, with respect to the development, management and operation of the Golf Course. Tenant shall conduct all such operations under this Agreement in such a manner so as to maximize all amounts payable to Landlord, when applicable, and minimize all amounts payable by Landlord, when applicable, both hereunder and otherwise in connection with the Golf Course.

2.3 **Term of Agreement.** The obligations of Landlord and XXXX under this Agreement shall commence as of the date hereof, and shall continue thereafter throughout the Term.

2.3.1 Term Extensions. Subject to the reservations stated herein, upon completion of at least \$100,000 in Capital Improvements at the Golf Course, accepted by Landlord and completed pursuant to the terms outlined in paragraph 2.3.2, the Term of this Agreement shall be extended for up to three additional five (5) year renewal terms.

All capital improvements and maintenance costs and expenses, including but not limited to capital improvements qualifying for a Term Extension Periods, shall be undertaken and completed at the sole and absolute undertaking and expense of Tenant.

All physical improvements to and landscaping at the Golf Course shall be considered fixtures of the Golf Course and such shall become the property of Landlord, for which Tenant shall have no right to reimbursement for such improvements at the end of the Term, or at any other time during the Term unless otherwise indicated within this Agreement.

2.3.2 Term Extension Procedures.

Prior to commencing work qualifying for term extensions pursuant to paragraph 2.3.1, Tenant shall:

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- a. obtain all necessary permits, licenses, and other applicable governmental approvals of any kind;
- b. provide Landlord plans relating to an individual capital improvement project prior to engaging in such work, and Landlord shall approve of the quality and scope of the work, such approval shall not unreasonably be withheld; and
- c. receive written notice to proceed with work from Landlord on large capital improvements, response to which shall be provided within thirty (30) days of receipt.

2.4 **Exclusivity.** Tenant shall be solely responsible for the operation and management of the Premises, with full power and authority to carry out all responsibilities of Tenant under this Agreement. No other golf service operation shall be permitted to do business on the same property without the written approval of Landlord and Tenant. Notwithstanding the foregoing, the Landlord reserves the right to enter the Golf Course and the Premises at any time for purposes of inspecting the Premises for compliance with the terms of the Lease. .

ARTICLE III – EMPLOYEES; ACQUISITION AND OWNERSHIP OF EQUIPMENT AND SUPPLIES

3.1 **Employees.** Tenant shall employ at all times, a sufficient number of capable employees to enable it to fulfill Tenant's obligations set forth in this Agreement.

All matters pertaining to the employment, training, supervision, compensation, promotion and discharge of such employees shall be the sole responsibility of Tenant. The cost of employing Golf Course Personnel in accordance with Tenant's operations on the Premises including, but not limited to payroll processing fees, payroll taxes and reasonable and customary benefits such as medical, health and worker's compensation insurance, approved employer matching contributions to XXXX's 401(k) plan, (if matched) and reasonable attorney fees and costs related to the defense of employee claims shall be considered Tenant's operating expenses of the Golf Course and all such expenses shall be paid by the Tenant. XXXX shall be solely responsible for the supervision and control of all Tenants' employees at the Golf Course and Premises commencing with the execution of this Agreement.

3.2 [Intentionally Omitted]

3.3 **Landlordship of Golf Course.** Tenant is entering into this Agreement as a Tenant to obtain a leasehold interest in the Premises in order to provide the services set forth in Tenant's operations proposal (Ex. B hereto). By entering into this Agreement, Tenant acknowledges that it is acquiring no rights whatsoever in the Golf Course other than those set forth herein, or any portion thereof or interest therein (including the improvements and any trade names, trademarks, logos, emblems and similar identifying matters) or the Equipment and Supplies, except a non-exclusive and revocable right to enter upon the Golf Course and use the Equipment and Supplies,

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if and to the extent reasonably necessary to carry out its obligations pursuant to this Agreement. In acknowledging that Tenant is acquiring no rights whatsoever in the Golf Course (including the improvements and any trade names, trademarks, logos, emblems and similar identifying matters) or the Equipment and Supplies, Tenant further agrees that it will not assert, in any legal action or otherwise, any additional right or interest in the Golf Course, or any portion thereof or interest therein (including the improvements and any trade names, trademarks, logos, emblems and similar identifying matters) or the Equipment and Supplies, and will not record any lis pendens or any similar notice of lien against the Golf Course, or any portion thereof or interest therein (including the improvements and any trade names, trademarks, logos, emblems and similar identifying matters), under any circumstances. In no event shall Tenant alter or improve any portion of the Golf Course, except as otherwise expressly permitted under this Agreement.

3.4 Operating Contracts. Tenant shall execute all Operating Contracts necessary or appropriate for the maintenance, management and operation of the Golf Course during the Term in accordance with this Agreement provided such contracts are terminable within thirty (30) day's notice without penalty, do not exceed \$50,000 in the aggregate in annual payments without prior Landlord approval, name Landlord as an insured and express indemnities and are assignable to Landlord without the consent of the contract party. Landlord shall furnish to owner a complete and accurate listing of all contracts in place as of the date first mentioned. Tenant shall promptly notify Landlord in writing of Tenant's execution of any Operating Contract, and shall promptly deliver to Landlord a true, correct and complete copy thereof. Tenant's execution of any Operating Contract shall be subject to any and all restrictions set forth in Article IV hereof. All Operating Contracts shall be subject to Landlord's prior written approval as to form and content, shall allow termination, without cause, by Landlord upon ninety (90) days prior written notice (unless otherwise agreed upon by Landlord in writing), and shall provide that the party thereto other than Tenant shall, at Landlord's request, continue its performance thereunder, subject to the terms and conditions of such Operating Contract, notwithstanding any termination of this Agreement by Landlord and subsequent management of the Golf Course by Landlord or a third party.

3.5 Acquisition of Equipment and Supplies. Tenant shall be responsible for acquisition and payment of all Equipment and Supplies, and shall, at Tenant's expense and shall purchase, lease, or cause to be purchased or leased through other persons or firms, and supervise and coordinate the delivery and installation of, all such Equipment and Supplies. In addition to the foregoing, throughout the Term, Tenant shall, at Tenant's sole expense, purchase or lease, and keep the Golf Course adequately furnished with all necessary Equipment and Supplies. The cost of all such Equipment and Supplies, whether leased or purchased, shall be the sole expense of Tenant.

ARTICLE IV – RIGHTS AND RESPONSIBILITIES OF TENANT AND OWNER

4.1 Tenant. Throughout the Term, Tenant shall, subject to any restrictions or limitations set forth elsewhere in this Agreement, at a minimum, do the following:

- a. Obtain, and maintain at all times, a business license with the City of Pomona;

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- b. Fully comply and cause the Golf Course and its operation to fully comply, with all Legal Requirements as well as all applicable rules, regulations and orders of any local, state or federal ordinances.
- c. Apply for, obtain and maintain in full force and effect, at Tenant 's sole expense, all permits, licenses (excluding any liquor or restaurant licenses), franchises, authorizations, approval, consents and variances, whether regulatory, governmental, quasi-governmental or otherwise, designated by Tenant or necessary or appropriate for the management, maintenance and operation of the Golf Course. All such permits, licenses, franchises, authorizations, approvals, consents and variances shall be the sole and exclusive property of Tenant and upon any terminations of this Agreement, Tenant shall transfer possession of all such permits, licenses (with the exception of the liquor license, which can be transferred for a fee of \$1,000), authorizations, approvals, consents and variances to Landlord or Landlord's designee.
- d. Immediately advise Landlord of any discovery by Tenant of any Hazardous Waste in, on or about the Golf Course.
- e. Fully cooperate with, and provide any necessary or appropriate documents, materials and information to, any financial institution or other lender designated by Landlord, consent to the assignment by Landlord of this Agreement to any such lender as security for any loan made by such lender to Landlord, and otherwise reasonably cooperate in satisfying the requests of such lender, including executing subordination and non-disturbance agreements.
- f. Make recommendations to Landlord from time to time concerning improvements and modifications to the Golf Course.
- g. Obtain and maintain in full force and effect all insurance required to be maintained by XXXXX pursuant to this agreement.

4.2 **Landlord.** Throughout the Term, Landlord may, in its sole and absolute judgment, do the following:

- a. Sell, encumber, subordinate, assign, lease, sublease and otherwise deal with the Golf Course, as the sole and absolute owner thereof, all without any duty to consult with or otherwise obtain the consent of Tenant; and
- b. Modify, amend and adjust the boundaries and the legal description of the Golf Course in order to accommodate the development of any property adjacent to the Golf Course, all upon such terms and subject to such conditions as Landlord may elect in its sole and absolute discretion, provided that the adjustment of the boundaries does not unreasonably reduce the size of the Golf Course; and
- c. Construct, plan, and develop a Recharge/Drainage Project in the vicinity and location of the driving range without directly or indirectly significantly adversely affecting golf course range operations, with the exception of during the time period required for construction.

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4.3 **Operations:**

4.3.1 **Tenant's Responsibilities.** Throughout the Term, Tenant shall, subject to any restrictions or limitations set forth elsewhere in this Agreement, perform or cause to be performed, all tasks specified by this Agreement or which may be necessary or appropriate in connection with the ongoing operation, management, promotion, maintenance, repair and upkeep of the Golf Course. In performing such tasks Tenant shall, at a minimum, do the following:

- a. Comply with all agreements governing or affecting the Golf Course, including, without limitation, any allocation agreements, any reservation policy established from time to time by Landlord, and any applicable ground leases, mortgages, deeds of trust, regulatory agreements, declarations of covenants, conditions and restrictions, and similar documents.
- b. Supervise the sales and marketing, advertising, promotion and publicity relating to the Golf Course, and update the written marketing plan as needed.
- c. Maintain in full force and effect all Operating Contracts (other than such Operating Contracts as may be replaced by a new Operating Contract) necessary or appropriate for the ongoing management, maintenance and operation of the Golf Course in accordance with this Agreement.
- d. Interview, hire, and supervise employees and staff needed for operation of the Golf Course.
- e. Develop employee job descriptions and operational and procedural manuals.
- f. Establish fee schedules and membership fees for the Golf Course, including maintaining and enhancing membership programs, interfacing with Club Members, consistent with Tenant's Proposal.
- g. Conduct all activities necessary, including but not limited to supervision and management of employees to successfully operate manage play on the Golf Course and the operation of the Golf Course, including the golf shop.
- h. Conduct all activities necessary, including but not limited to supervision and management of employees to successfully operate the food and beverage facilities at the Golf Course.
- i. Conduct all activities necessary, including but not limited to supervision and management of employees to successfully operate the golf shop on the Premises.
- j. Conduct all activities necessary, including but not limited to supervision and management of employees for the physical maintenance of the Golf Course, including, without limitation, purchasing, cleaning, and repairing the Golf Course improvements, furnishings, equipment, and fixtures; periodic painting, redecorating, and refurbishing of the Golf Course; maintaining the Golf Course in a neat, clean and ready condition for use by Golf Course guests; maintenance and repair of the Golf Course landscaping and parking lot areas.

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- k. Submit proposals to the City for review and approval prior to beginning any capital expenditures to expand, maintain, repair, and improve the Golf Course.
- l. With the prior written approval of the Landlord as further described herein, supervise and undertake capital expenditures of the Golf Course, improvements to the Golf Course, and clubhouse improvements.
- m. Hold regular meetings (not less than once per month) with the Landlord's designated representative(s) to review the operation and condition of the Golf Course.
- n. Pay and discharge, during the entire Term, before delinquency, all taxes, assessments, water charges, sewer charges, utility rates and fees, levies or other charges, general, special, ordinary, extraordinary and otherwise, of every kind and character which are or may during the Term be levied, charged, assessed or imposed upon or against the Premises or any buildings or improvements which are now or hereafter located thereon, or against any of Tenant 's personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby. In addition, Tenant shall pay any tax assessed exclusively on rental income of Landlord to the extent such income is allocable to this Lease, if and only if such tax is assessed by State or local authorities upon the elimination and in lieu of taxation based on the ownership of real property. At the commencement and at the end of the Term, such taxes, assessments and other charges to be paid by Tenant shall be prorated on the basis of the fiscal year of the taxing authority in question so that, at the commencement and at the end of the Term, as to any such taxes, assessments and other charges levied or assessed for a fiscal year preceding the commencement or extending beyond the end of the Term, Tenant will pay only such proportion of such taxes, assessments and other charges as the portion of such fiscal year following the commencement and preceding the end of the Term bears to the entire fiscal year.
- o. Supervise the accounting responsibilities for the Golf Course, that will include but not be limited to: (i) performing all ministerial acts and duties relating to the payment in accordance with the operation of the Golf Course and Premises, including all indebtedness, taxes and assessments on real and personal property, and other obligations due or to become due with respect to the Golf Course that accrue during the Term; (ii) the preparation, submission and processing of all claims regarding the Golf Course (other than claims under any insurance to be maintained by Landlord hereunder, with respect to which Tenant will reasonably cooperate with Landlord in its preparation, submission and processing of claims); (iii) the prosecution of any appeal of any tax or assessment for the Golf Course; and (iv) the giving and receipt of notices, reports and other communications arising out of, connected with or incidental to the management, maintenance or preservation of the Golf Course.

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- p. Subject to subsection (i) of Article V, below, diligently pursue the collection of all sums due and owing to Landlord or Tenant from all purchasers of goods and/or services relating to the Golf Course.
- q. Subject to the terms of this Agreement, lease or purchase and maintain at the Golf Course all Equipment and Supplies.
- r. Subject to the terms of this Agreement, pay when due, all costs and expenses of every kind associated with the management, maintenance and operation of the Golf Course, as provided for herein.
- s. Establish the general maintenance standards to be implemented and adhered to by the ground crew that will satisfy the operating standards of this Agreement.
- t. To install, operate and maintain such security and safety measures and systems in the operation of and on the Golf Course, as are necessary and advisable to operate the Golf Course in an Industry Standard manner.
- u. To enforce such rules and regulations as may from time to time be enacted by Tenant with the prior written approval of Landlord with respect to the Golf Course, such approval not to be unreasonably withheld, conditioned or delayed.
- v. To fully cooperate and work in good faith with Landlord's accounting and legal advisors, in the preparation of all forms, reports, returns and such other instruments required by law, any governmental authority, or otherwise necessary to effectuate the requirements, purposes, or intent of this Agreement; and to execute all documents necessary for the performance of this Agreement.
- w. To provide and pay for all goods, materials, supplies, equipment, labor, supervision, and any other necessary item to conduct Tennant's obligations under this Agreement.

4.3.2 **Tenant's Use of Premises.**

- (a) Primary use. Tenant agrees that the Premises are designed to provide the general public with golf and golf related recreational facilities and Tenant shall not materially alter the uses without the written consent of Landlord. Tenant agrees to promote the Premises and its facilities and to operate the golf course so that it meets the golfing needs of the general public to the reasonable satisfaction of the Landlord. Tenant further agrees to provide instructional services in golfing technique and practice and to coordinate and promote the activities of golf clubs (organizations), training programs and local and regional tournaments. Tenant shall also provide starter and driving range services and shall monitor the play of the course to ensure that proper golf etiquette is practiced by course participants. Tenant shall have the privilege of using the Premises solely for the purpose set forth in this Lease. It is understood and agreed that the Golf Course is one of the public recreational facilities owned by the city of Pomona, and its conduct and operation are for service to and for the benefit of the general public. No other

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recreation facilities shall be undertaken other than those related to golf without prior written consent of Landlord.

- (b) Facilities. Tenant agrees that at its own expense, it will maintain and operate the Premises in accordance with the terms and conditions of this Lease. Tenant shall operate and maintain the Premises in accordance with the following standard and requirements (the "Operating Standard"): (1) as a quality municipal golf facility comparable in quality with other municipal golf facilities in the Southern California market having similar revenue and costs structures as that of the Premises; and (2) with appropriate agronomic, maintenance and playing conditions, comprehensive customer service, and operational efficiencies, all in a matter to meet the reasonable expectations of the Landlord and as more fully set forth in Attachment B. The Operating Standard may be modified from time to time as necessitated by the conditions of the Premises, any reconfiguration of the Premises, or any damage, destruction or condemnation of the Premises. Minimum operational requirements shall include:
- I. A 9-hole par-3 golf course;
 - II. A practice putting green;
 - III. A driving range;
 - IV. A pro shop, clubhouse, and a concession facility for the sale and rental of golfing related equipment and supplies and for serving sandwiches and refreshments;
 - V. Restrooms and drinking fountain.
- (c) Improvements and renovations. Tenant also agrees that it will use reasonable commercial efforts to complete all improvements and renovations to the reasonable satisfaction of the Landlord.
- (d) Construction of improvements. Tenant shall be responsible for the design of any improvements including, without limitation, grading, irrigation, lighting, pathway design and installation, building modifications, repairs, demolition and construction and related plans and specifications (collectively the Designs). Tenant shall provide Landlord with a copy of the Designs for its review and approval prior to commencement of construction. In the event the Designs are rejected, in whole or in part, Landlord shall provide written notice of such rejection, together with a detailed description of the rejected portion or portions of the Designs. Tenant shall be responsible for all costs and expenses associated with the construction and design of the improvements, including, but not limited to, construction costs, design changes, licenses, permits and insurance.
- (e) Inspection. Landlord, its experts and consultants, shall have the right to inspect and approve the improvements and shall have the opportunity to accept or reject such construction of such improvements when performed; provided that such inspections and approvals shall not be unreasonably withheld or delayed.

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- (f) Hours of operation. The Premises shall be operated and open, weather permitting for business as follows: 365 days per year during business hours that will be established pursuant to the agreement of Landlord and Tenant, initially not to be outside of the hours of 7:00 AM to 7:00 PM. In no event shall the premises be open for business during the hours of 10PM to 6:00 AM without the written approval of Landlord. Tenant shall operate business on a daily schedule which enables the largest number of participants to enjoy the premises. Tenant may close the business operation of the Premises on holidays with the written approval of Landlord.
- (g) Facility fees. Tenant shall have the right to set and charge fees for the use of the Premises.
- (i) Maintenance. Tenant shall have the exclusive duty to maintain the Premises, including but not limited to the golf course, netting, and all site facilities in accordance with the operating standards as described herein, including comparable agronomic turf and playing conditions on a year-round basis. Maintenance shall include, but shall not be limited to, regular mowing, edging, vericutting, aerifying, fertilizing, irrigating and all necessary landscape procedures which are required to keep the Premises, including the golf course, driving range and practice green consistent with the operating standards. Regular maintenance shall also include but not be limited to the requirement to maintain cups, top dress playing areas, repair divots, rake sand traps, renovate turf, provide weed and insect control, maintain water systems including pumps and controls, and to conduct re-sodding and re-seeding when necessary to meet the operating standards. The pruning of trees, shrubs and plants and clipping of grass around all poles, fences and walkways located within the Premises shall also be part of the regular maintenance. Tenant shall be responsible for maintaining the Premises to meet the operating standards. Maintenance of the Premises shall include regular exterior and interior painting and repair so all facilities meet the operating standards. Maintenance of the Premises shall include regular repair and replacement of the netting so all facilities meet the operating standards.

Tenant shall have sole and absolute responsibility for repair and replacement of all improvements on the Premises, subject to reasonable wear and tear. Storage areas shall be kept clean and orderly and shall be reasonably screened from public view when not in use. Kitchen and dining facilities shall be maintained in accordance with all applicable health and safety requirements. No offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable or unlawful fire or health hazard shall be permitted to remain on the Premises and Tenant shall prevent any such matter or material from being or from accumulating on the Premises. Tenant shall furnish trash receptacles for use by the public and shall empty and clean each in order to maintain the operating standard. Tenant shall maintain the Premises and all related facilities in order to meet the operating standards, and in accordance with all applicable city of Pomona code provisions.

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The Landlord shall maintain the trees located in the public right of way immediately adjacent to the public streets bordering the Premises.

- (j) Inspection of Premises. The landlord shall have the exclusive right to inspect the Premises at anytime during normal business hours to determine maintenance and operational compliance and to observe Premises operations.
- (k) Employees. Tenant shall be solely responsible to recruit, hire, train, discharge, promote, supervise, manage the work of, and compensate all its employees necessary to operate the Premises in accordance with the terms of this Lease, including any management staff working at the Premises. Tenant shall be solely responsible for the payment of all wages and compensation, the payment of all payroll taxes and any required withholding taxes for Premises employees. Tenant shall establish or follow formally established policies concerning safety in the workplace, equal opportunity employment, antidiscrimination in the workplace, and such other employee policies and practices as may be required by applicable state, federal and local laws and shall use reasonable efforts to maintain a consistent workforce and supervisory personnel to reduce employee turnover. Tenant shall employ and supervise appropriate personnel in order to fulfill the terms of this Agreement. The hiring, supervision and termination of employees at the Premises shall remain the sole responsibility of Tenant. Any liability, fine, penalty or award (including the cost of defense and attorneys fees) with respect to claims, demands, arbitration, or litigation arising with respect to violations of federal, state and local laws, ordinances and regulations governing the employment or working conditions of the employees arising out of acts or omissions of a Tenant's employee, or the failure of an employee of Tenant to properly supervise its employee's or administer employment practices, or other wrongful conduct of Tenant, shall be the sole responsibility of Tenant and Tenant shall not be entitled to any reimbursement by the Landlord for any damages, costs or attorneys fees unless such damages, costs or attorneys fees were the result of a policy or procedure required by Landlord or the result of working conditions at the Premises previously identified in writing as noncompliant by Tenant and were the responsibility of Landlord which were not remedied after written notice to landlord. All of Tenant's employees are not employees of Landlord.

4.4 **Faithful Performance.** It is understood by Tenant that Landlord is entering into this Agreement in reliance on Tenant's and its Affiliates' expertise in supervising, operating and managing golf facilities and representations made by Tenant. Tenant agrees to faithfully perform its duties and responsibilities under this Agreement, and use Tenant's due diligence to supervise, manage and operate the Golf Course and Premises in an efficient and Industry Standard manner in accordance with the terms and provisions of this Agreement.

4.5 **Title to Buildings and Improvements.** Title to all buildings, structures and improvements that now, or may from time to time constitute a part of the Premises, all carpets,

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draperies, partitions, machinery, equipment and fixtures that are now, or may from time to time be, used, or intended to be used in connection with the Premises, shall be and remain in Landlord.

ARTICLE V – RESTRICTED ACTIVITIES OF TENANT; COVENANTS OF TENANT

5.1 **Restrictions of Activities.** Without the prior written consent of Landlord, which consent may be granted or withheld in Landlord's sole discretion, Tenant shall not do, or cause or permit to be done, any of the following throughout the Term:

- a. Borrow or lend money, or enter into any other agreement, in the name of Landlord.
- b. Except for the Operating Contracts (which shall be governed by Article III), enter into any agreement relating, directly or indirectly, to the Golf Course.
- c. Assign, transfer, pledge, compromise or release any of the claims of or debts due Landlord, except upon payment in full, or, except as expressly provided to the contrary in Article XV, arbitrate or consent to the arbitration or settlement of any claim of or against Landlord or any other dispute or controversy involving Landlord.
- d. Make, execute or deliver in the name of Landlord, or with respect to any of the assets of Landlord, any assignment for the benefit of creditors or any bond, confession of judgment, chattel mortgage, security instrument, deed, guarantee, indemnity bond or surety bond.
- e. Lease, sell, transfer, assign, convey, pledge, encumber, mortgage, hypothecate or otherwise dispose of the Golf Course or Premises, or, except as contemplated herein, lease, sell, transfer, assign, convey, pledge, encumber, mortgage, hypothecate or otherwise dispose of any Equipment and Supplies or enter into any contract for any such purpose. Tenant shall not have the right to encumber the leasehold estate created by this Lease by a mortgage, deed of trust or other security instrument, to secure repayment of any loan to Tenant, and associated obligations, from any lender, except upon express written consent of Landlord.
- f. In the name of or on behalf of Landlord, endorse any note, or become a surety, guarantor, or accommodation party to any obligation.
- g. Violate any Legal Requirement or rule, regulation or order of any local, state or federal ordinances applicable to the Golf Course or Premises.
- h. Engage in, or permit, suffer or allow the occurrence of, any storage, holding, release, emission, discharge, generation, abatement, disposition, handling, or

Landlord initials

Tenant initials

transportation of any Hazardous Waste within the Golf Course. Notwithstanding the foregoing, Tenant need not secure the prior written consent of Landlord before utilizing, in connection with the reasonable and necessary operation and maintenance of the Golf Course's or Premises', fertilizers, pesticides, and fuel, provided such substances are utilized in compliance with all applicable Legal Requirements.

- i. Commence or maintain in the name of or on behalf of Landlord any action or proceeding, whether judicial, administrative or otherwise.
- j. Make any deletion, addition, modification, improvement or other alteration to the Golf Course or Premises other than as expressly authorized hereunder.
- k. Except as may be expressly contemplated hereunder, hire, employ or retain, or contract to hire, employ or retain (other than as an employee of Tenant or Tenant's Affiliate) any entity to manage the day to day operation of the Golf Course.
- l. Expend any funds, except as expressly permitted under this Agreement.
- m. Use any trade names, trademarks, logos, emblems or similar identifying matters of Landlord except in connection with the operation and promotion of the Golf Course.
- n. Except for fertilizers, pesticides and fuel reasonably necessary for operation and maintenance of the Golf Course or Premises, and except for any other substances and materials reasonably necessary for the operation and maintenance of the Golf Course or Premises, place or cause to be placed in, on or around the Golf Course or Premises any Hazardous Waste. In the event Tenant discovers or obtains actual knowledge of the existence of any Hazardous Waste in, on or around the Golf Course or Premises, Tenant shall immediately notify Landlord. Tenant shall not be responsible for any Hazardous Waste present on the Golf Course or Premises prior to the effective date of this Agreement, unless deposited thereon by Tenant, (i) which becomes present on the Golf Course after the date hereof as a result of some event or condition over which Tenant had no control, or (ii) which becomes present on the Golf Course or Premises after termination of this Agreement and all extensions hereof; provided, however, Tenant shall immediately notify Landlord of any notice received by Tenant from any governmental authority of any actual or threatened violation of any applicable laws, regulation or ordinances governing the use, storage or disposal of any Hazardous Waste or the County Entitlement Documents and shall cooperate with Landlord in responding to such notice and correcting or contesting any alleged violation. Landlord hereby agrees to indemnify, defend (with attorneys approved by Tenant, which approval shall not be unreasonably withheld), protect, and hold free and harmless Tenant from any cost, expense, penalty or other liability

Landlord initials

Tenant initials

incurred by Tenant as a result of or in connection with or arising from Hazardous Waste for which Tenant is not responsible under this Article V. Tenant hereby agrees to indemnify, defend (with attorneys approved by Landlord, which approval shall not be unreasonably withheld), protect, and hold free and harmless Landlord from any cost, expense, penalty or other liability incurred by Landlord as a result of or in connection with or arising from Hazardous Waste for which Tenant is responsible under this Article V. The indemnifications set forth in this subsection (n) shall survive the termination or expiration of this Agreement.

- o. Use the Golf Course and Premises for any business use or activity not consistent with the activities contemplated herein.

5.2 Covenants Regarding Activities of Tenant. Tenant agrees and covenants as follows:

- a. Keep and maintain all buildings and improvements now or hereafter located on the Property (subject to Tenant's right to demolish) and all appurtenances thereto in good and neat order and repair and shall allow no nuisances to exist or be maintained therein. Tenant shall likewise keep and maintain the grounds, sidewalks, roads and parking, and landscaped areas in good and neat order and repair. Landlord shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Premises or any buildings or improvements now or hereafter located thereon, and Tenant hereby expressly waives all right to make repairs at Landlord's expense under sections 1941 and 1942 of the California Civil Code, or any amendments thereof.
- b. Comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations affecting the Premises, all buildings and improvements now or hereafter located thereon, or any activity or condition on or in the Premises.
- c. That Tenant will not commit or permit waste upon the Premises other than to the extent necessary for the removal of any buildings or improvements upon the Premises or for the purpose of constructing and erecting thereon other buildings and improvements in accordance with the rights set forth herein.
- d. That Tenant shall contract for solid waste services with a franchised waste hauler within the City of Pomona, and to develop recycling programs to maximize the volume of recycled waste generated from the operation of the Premises, including but not limited to green waste diversion.

Landlord initials

Tenant initials

ARTICLE VI – CONSIDERATION

6.1 Consideration.

a. During all times of the Term, Landlord shall be responsible for paying no monies (\$0) to Tenant for any reason in consideration for Tenant operating the Premises in the manner described herein.

b. Tenant shall be responsible for all costs, expenses, fees, or other amounts of any kind required for the management, operation, maintenance, improvement or otherwise required for the completion of the obligations under this Agreement.

c. As consideration for Tenant undertaking the management, operation, maintenance, improvement and other obligations under this Agreement, Tenant shall be allowed to keep all revenues received from operation of the Golf Course during the Term, unless Tennant generates more than \$150,000 in Net Profits from operation of the Golf Course in a calendar year. In the event that Net Profits from operation of the Golf Course are in excess of \$150,000 in one calendar year, Tennant shall pay Landlord 10% of the Net Profit for that calendar year under the following terms:

1. “Net Profit” shall be defined as Tenant’s revenues from all business activities related undertaken at the Premises minus all expenses incurred in engaging in such business activities at the Premises.

2. Payment shall be remitted to Landlord within 45 days of the end of the calendar year for any year in which more than \$150,000 in Net Profit is generated by Tenant for operation of the Golf Course. Payments made after 45 days of the end of the calendar year for which payment was required shall incur a late payment penalty of 10% per annum of the amount owed.

3. For purposes of calculating the 10% Net Profit payment, the payment due shall be calculated on the entire Net Profit amount, not only the amount over \$150,000.

4. Tenant shall provide Landlord with annual Financial Statements within 45 days of the end of the calendar year.

5. Upon providing at least 14 days’ notice, Landlord, at Landlord’s sole expense, shall have the right to audit Tenant’s financial records for the operation of the Golf Course at reasonable times and at Tenant’s office.

6.2 **Taxes.** Unless otherwise specified or agreed to in writing by the parties, the responsibility for the taxes with respect to the Premises shall be as follows:

a. Tenant shall pay all taxes relating to real and personal property during the entire Term of the Agreement.

b. Tenant shall collect taxes and remit to the appropriate taxing authority all taxes required for all daily golf and merchandise operations.

Landlord initials

Tenant initials

ARTICLE VII – [Intentionally Omitted]

ARTICLE VIII – [Intentionally Omitted]

ARTICLE IX – REPRESENTATIONS AND WARRANTIES

9.1 **Landlord’s Representations and Warranties.** As a material inducement to Tenant to enter into this Agreement, Landlord represents and warrants the following:

9.1.1 **Power of Authority.** That it is duly organized, validly existing and in good standing under the laws of the state of its organization; that it is duly qualified to do business and is in good standing in the State of California; that it has all necessary power and authority to enter into this Agreement and to carry out the transactions contemplated herein; and that the execution and delivery hereof and the performance by Landlord of Landlord’s obligations hereunder will not violate or constitute a default under the terms and provisions of any agreement, law or court order to which Landlord is a party or by which Landlord is bound.

9.1.2 **Authorization; Valid Obligation.** That all actions required to be taken by or on behalf of Landlord to authorize it to execute, deliver and perform its obligations under this Agreement have been taken, and that this Agreement is a valid and binding obligation of Landlord enforceable in accordance with its terms, except as the same may be affected by bankruptcy, insolvency, moratorium or similar laws, or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

9.1.3 **Executing Parties.** That the person(s) executing this Agreement on behalf of Landlord have full power and authority to bind Landlord to the terms hereof.

9.2 **Tenant’s Representations and Warranties.** As a material inducement to Landlord to enter into this Agreement, Tenant represents and warrants the following:

9.2.1 **Power and Authority.** That it is duly organized, validly existing and in good standing under the laws of the State of its organization; that it and/or its Affiliate, if any, is (or will be, promptly after this Agreement is signed) duly qualified to do business and is in good standing in the State of California; that it has all necessary power and authority to enter into this Agreement and to carry out the transactions contemplated herein; and that the execution and delivery hereof and the performance by Tenant of Tenant’s obligations hereunder will not violate or constitute a default under the terms and provisions of any agreement, law or court order to which Tenant is a party or by which Tenant is bound.

9.2.2 **Authorization; Valid Obligation.** That all actions required to be taken by or on behalf of Tenant to authorize it to execute, deliver and perform its obligations under this Agreement have been taken, and that this Agreement is a valid and binding obligation of Tenant

Landlord initials

Tenant initials

enforceable in accordance with its terms, except as the same may be affected by bankruptcy, insolvency, moratorium or similar laws, or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

9.2.3 **Executing Parties.** That the person(s) executing this Agreement on behalf of Tenant have full power and authority to bind Tenant to the terms hereof.

9.2.4 **Prior Experience.** That it has conducted such investigations and made such inquiries as it deems necessary to become fully familiar with the needs of Landlord with respect to the management, operation and maintenance of the Golf Course, has not relied upon any representation or warranty of Landlord or its agents or employees (other than any representations or warranties expressly set forth in this Agreement), and has such skill, judgment and expertise in operating, managing and maintaining golf course facilities that it will be able to operate, manage and maintain the Golf Course in an Industry Standard manner.

ARTICLE X – ALTERATIONS AND IMPROVEMENTS

10.1 **Approvals; Execution of Agreements.** Unless expressly provided to the contrary in this Agreement, previously approved by Landlord in writing or contemplated in this Agreement, Tenant shall not make any alterations of or improvements to the Golf Course. Following any approval by Landlord of any such alterations or improvements, Tenant shall negotiate, and submit to Landlord for its approval (which approval shall not be unreasonably withheld), all necessary agreements relating to such alterations and improvements. Landlord may, at its option, require that such agreements be executed in the name of Landlord or Tenant.

10.2 **Supervision.** Without in any way modifying, impairing or otherwise affecting Tenant's obligations under Article IV hereof Tenant shall, unless otherwise requested by Landlord, coordinate and supervise all alterations of and improvements to the Golf Course without additional compensation, and in connection therewith shall take such actions as Landlord may direct and all steps necessary or appropriate to cause such alterations and improvements to be completed in a timely, efficient, economical and workmanlike manner, and in accordance with all Legal Requirements and the terms of this Agreement.

ARTICLE XI – TRADE SECRETS AND PROPRIETARY INFORMATION

11.1 **Trade Secrets.** During the term of this Agreement, all trade secrets and confidential information belonging to Tenant, and identified as such in writing, including, but not limited to; management guidelines and procedures, manuals, operating manuals and similar compilations, and similar items and documents regularly used in the operation of the business of Tenant, to which the Landlord may have access or which may come into the possession of during the term of this Agreement, shall remain the exclusive property of Tenant and shall be returned to Tenant immediately upon the termination of this Agreement, with the exception of software programs, and computerized data bases, signage, files, and records specific to Landlord, as this remains the property of Landlord.

Landlord initials

Tenant initials

11.2 **Non-disclosure.** The Landlord shall not disclose, directly or indirectly, either during or subsequent to the term of this Agreement, any of Tenant's trade or proprietary secrets or confidential information which has been identified as such in writing by Tenant unless such material shall have previously come into the public domain through no action of the Landlord. Information shall not be deemed confidential if it becomes known to the general public or is developed without the use of other confidential information. The Landlord agrees not to photocopy or otherwise duplicate any such material as above without the prior specific written consent of Tenant. The sole exception to the term defined herein shall be by that of a court order.

ARTICLE XII – INSURANCE REQUIREMENTS

12.1 Insurance Types:

- a. Tenant shall not commence any work or other activities under this Agreement until Tenant obtains all insurance required to be obtained by Tenant under the terms of this Agreement. Tenant shall deliver to Landlord certificates of insurance evidencing such coverage's. Such coverage's shall name Landlord as additional insured.
- b. All insurance described under this Article XII to be carried in the name of Tenant, with Landlord as Additional Insured, and is to be maintained at Tenant's expense, with insurance carriers licensed and approved to do business in the State of California, having a general policyholders rating of not less than "AX" as per the A.M. Best rating program
- c. In no event shall Tenant allow such insurance be terminated or otherwise allowed to lapse prior to termination of this Agreement or such long period as may be specified herein. Tenant may choose to place the insurance described in this Article XII in whole or in part through a policy or policies covering other liabilities and projects of Tenant; provided, however, that any such policies shall: (a) allocate to the Golf Course the full amount of insurance required hereunder, and (b) contain, permit or otherwise unconditionally authorize the waiver contained in Article XI.

12.2 **Evidence of Insurance.** As evidence of specified insurance coverage, a full copy of the insurance policy in effect at all times during the Term of this Agreement, including all waivers, exclusions and riders, and a certificate of insurance evidencing coverage shall be provided to Tenant and Landlord, as issued by the insurance carrier acceptable to Landlord and Tenant showing such policies in force for the specified period.

12.3 **Damages.** Nothing contained in these insurance requirements is to be construed as limiting the type, quantity or quality of insurance Tenant should maintain, or may maintain, or the extent of Tenant's responsibility for payment of damages resulting from its operations under this Agreement. It is ultimately Tenant's responsibility for payment of damages, defense obligation of the Landlord, and indemnification of the Landlord, resulting from Tenant's

Landlord initials

Tenant initials

operations under this Agreement, and it is Landlord's responsibility for payment of damages resulting from its operations under this Agreement.

12.4 **Worker's Compensation Insurance.** Throughout the Term, Tenant shall maintain Worker's Compensation Insurance at the statutory limits, including Employer's Liability of not less than One Million Dollars (\$1,000,000) for all persons whom it employs in carrying out the work under this Agreement, including a waiver of subrogation by the insurance carrier with respect to Landlord. Such insurance shall be in strict accordance with the requirements of the most current and applicable State Worker's Compensation Insurance Laws presently in effect at the time of issuance of each policy.

12.5 **Comprehensive General Liability Insurance.** Throughout the Term, Tenant shall maintain Comprehensive or Commercial General Liability Insurance on an "occurrence" basis, with reasonably acceptable deductible, with limits as follows

- a. General Aggregate \$2,000,000
- b. Products Comp/Op Aggregate \$2,000,000
- c. Personal & Advertising Injury \$1,000,000
- d. Each Occurrence \$1,000,000
- e. Fire Damage (any one fire) \$ 50,000
- f. Medical Expense (any one person) \$ 5,000

Such insurance will cover Independent Contractors, Products and Completed Operations, Contractual Liability including all defense and indemnification obligations contained in this Agreement, Broad Form Property Damage, Severability of Interest and Cross Liability clauses, Personal Injury and Explosion, and Liquor Law Liability. Fire legal liability insurance shall also be maintained by Tenant in reasonable amounts. The limits of liability of the insurance coverage specified in this paragraph may be provided by a combination of primary and excess liability insurance policies.

12.6 **Automobile Liability Insurance.** Throughout the Term, Tenant shall maintain owned, hired and non-owned automobile liability insurance covering all use of all automobiles, trucks and other motor vehicles (excepting golf carts and other motorized golf course equipment for which liability shall be insured under Article 12.5, above) utilized by Tenant in connection with this Agreement with a combined single limit for bodily injury and property damage of not less than One Million Dollars (\$1,000,000).

Upon reasonable notice, Tenant shall also obtain any other insurance that might be reasonably requested by Landlord.

12.9 **Landlord Insurance Requirements.** Landlord shall have no obligation to obtain any insurance related to its obligations under this Agreement. Landlord may choose self-insure in regard to its obligations under this Agreement.

12.10 **Waiver of Liability of Landlord.** To the fullest extent allowed by law, Tenant covenants and agrees that Landlord shall not at any time or to any extent whatsoever be liable, responsible or in any way accountable for any loss, injury, death, or damage to persons or

Landlord initials

Tenant initials

property which, at any time may be suffered or sustained by Tenant or by any person who may at any time be using, occupying, or visiting the Premises or be in, on or about the Premises, from any cause whatsoever, except when whether such loss, injury, death, or damage shall be caused by or in any way results from or arise out of the negligent or intentional acts or omissions of Landlord. Furthermore, Tenant shall forever indemnify, defend, hold, and save Landlord free and harmless of, from and against any and all claims, liability, loss, or damage whatsoever on account of any such loss, injury, death or damage occasioned by any cause other than Landlord's intentional or negligent acts or omissions. Tenant hereby waives all claims against Landlord for damages to the buildings and improvements now or hereafter located on the Property and to the property of Tenant in, upon or about the Premises, and for injuries to persons or property in, on or about the Premises, from any cause arising at any time, except for any such claims arising from negligent or intentional acts or omissions committed by Landlord. Tenant's indemnity obligation set forth in this Section shall survive the termination or expiration of this Lease with respect to any claims or liabilities arising out of injury or damage to person or property which occurs during the Term.

12.12 **Accident Reporting.** Tenant shall promptly investigate, and make a full, timely written report to Landlord regarding any and all injuries, accidents, claims for damages relating to the ownership, operation, management, and maintenance of the Golf Course. Any damage or destruction to the Golf Course and the estimated cost of repair thereof, and shall reported to the Landlord and any insurance companies in connection therewith. All such reports shall be filled timely with Landlord's insurance companies as required under the terms of the applicable insurance policy, which may provide coverage for such accident, damage or claim.

12.13 **Eminent Domain.**

(a) If the whole of the Premises should be taken by any public or quasi-public authority under the power or threat of eminent domain during the Term, or if a substantial portion of the Premises should be taken so as to materially impair the use of the Premises contemplated by Tenant, and thereby frustrate Tenant's purpose in entering into this Lease, then, in either of such events, this Lease shall terminate at the time of such taking. In such event, of the compensation and damages payable for or on account of the Property, exclusive of the buildings and improvements thereon, Tenant and Landlord, as their interests may appear, shall receive a sum equal to the worth at the time of the compensation award of the amount by which the fair rental value of the Premises exceeds the rental payable pursuant to the terms of this Lease for the balance of the Term; the balance of such compensation and damages shall be payable to and be the sole property of Landlord. All compensation and damages payable for or on account of the buildings and improvements located on the Property and constituting a part of the Premises shall be divided among Landlord, Tenant, and Landlord as follows:

(I) All compensation and damages payable for or on account of buildings and improvements having a remaining useful life less than the remaining Term as of the date of such taking shall be payable to and be the sole property of Tenant and Landlord, as their interests may appear; and

Landlord initials

Tenant initials

(ii) A proportionate share of all compensation and damages payable for or on account of buildings and improvements having a remaining useful life greater than the remaining Term as of the date of such taking, determined by the ratio that the then remaining Term bears to the then remaining useful life of such buildings and improvements, shall be payable to and be the sole property of Tenant and Landlord, as their interests may appear, and the remaining share thereof shall be payable to and be the sole property of Landlord.

(b) If less than the whole of the Premises should be taken by any public or quasi-public authority under the power or threat of eminent domain during the Term and this Lease is not terminated as provided in subsection (a) above, Tenant shall promptly reconstruct and restore the Premises, with respect to the portion of the Premises not so taken, as an integral unit of the same quality and character as existed prior to such taking. No adjustment to the Term or other adjustment to the terms of this Agreement shall be made as way of additional compensation for such taking through eminent domain. The compensation and damages payable for, or on account of, such taking shall be applied to the reconstruction and restoration of the Premises by Tenant pursuant to this subsection (b) by application, first, of any sums payable for or on account of the buildings and improvements situated on the Property, and second, of any sums payable for or on account of the Property exclusive of such buildings and improvements. The remainder, if any, after reconstruction and restoration shall be divided among Landlord, Tenant and Landlord in the manner provided in subsection (a) above.

(c) No taking of any leasehold interest in the Premises or any part thereof shall terminate or give Tenant the right to surrender this Lease, nor excuse Tenant from full performance of its covenants or any other obligations hereunder capable of performance by Tenant after any such taking, but in such case all compensation and damages payable for or on account of such taking shall be payable to and be the sole property of Tenant.

(d) Should Landlord and Tenant for any reason disagree (i) as to whether any portion of the Premises taken is so substantial as to impair materially the use of the Premises contemplated by Tenant, (ii) on the division of any compensation or damages paid for or on account of any taking of all or any portion of the Premises, or (iii) on the amount by which the rent payable by Tenant hereunder is to be equitably reduced in the event of a partial taking, then, and in any of such events, the matter shall be determined by arbitration.

ARTICLE XIII – TERMINATION RIGHTS

13.1 **Defaults by Tenant.** An Event of Default with respect to XXXX shall be deemed to have occurred under this Agreement:

(a) If there is any failure by Tenant to perform any of the terms, conditions or covenants of this Agreement to be observed or performed by XXXX within fifteen (15) days after written notice from Landlord (or such additional time as is reasonably required to correct any such default but in no event more than sixty (60) days), or

Landlord initials

Tenant initials

(b) If Tenant shall become insolvent or file any debtor proceedings, or should any adjudications in bankruptcy be rendered against Tenant, or should Tenant take or there be taken against Tenant in any court pursuant to any statute either of the United States or of any State a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's property, and if any of the foregoing proceedings are not discharged within sixty (60) days thereafter, or

(c) If Tenant makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement of its debts, or if Tenant shall permit or suffer this Agreement to be taken under any writ of attachment or execution, and the same is not discharged within thirty (30) days thereafter.

13.2 **Defaults by Landlord.** An event of Default with respect to Landlord shall be deemed to have occurred under this Agreement:

(a) If Landlord fails to keep, observe or perform any covenant, agreement, term or provision of this Agreement to be kept, observed or performed by Landlord, and such default shall continue for a period of fifteen (15) days after notice thereof by XXXXX to Landlord (or such additional time as is reasonably required to correct any such default but in no event more than sixty (60) days), or

(b) If Landlord shall become insolvent or file any debtor proceedings, or should any adjudications in bankruptcy be rendered against Landlord, or should Landlord take or have taken against Landlord in any court pursuant to any statute either of the United States or of any State a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Landlord's property, and if any of the foregoing proceedings are not discharged within sixty (60) days thereafter, or

(c) If Landlord makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement of its debts, or if Landlord shall permit or suffer this Agreement or any portion of or interest in the Golf Course to be taken under any writ of attachment or execution, and the same is not discharged within thirty (30) days thereafter.

13.3 **Termination upon Default.** Upon the occurrence of an Event of Default, the non-defaulting party may, at its option, and in addition to any and all other rights to which it may be entitled under this Agreement or applicable law, elect to terminate this Agreement. Any such termination shall be effective as of the date therefore specified in such election; provided, however, that in no event shall such date be later than sixty (60) days following the date such election is made.

13.4 **Actions Following Termination.** Immediately following any termination of this Agreement for any reason whatsoever Tenant shall assign, convey, transfer and set over unto Landlord, pursuant to an assignment in form and content satisfactory to Landlord, all of Tenant's right, title and interest in and to all Operating Contracts then in effect and in Tenant's name with respect to the Golf Course which are designated by Landlord to Tenant in writing, and Tenant shall transfer to Landlord possession of all Equipment and Supplies. Landlord agrees

Landlord initials

Tenant initials

to hold harmless Tenant for any and all contracts executed during the operating period. This provision shall survive termination of this Agreement.

13.4.1 **Transition.** Upon any termination of this Agreement for any reason whatsoever Tenant shall, for a period of three (3) months following such termination, assist and cooperate with Landlord to the extent necessary to ensure an orderly and efficient transfer of the operations of the Golf Course by Tenant to Landlord or Landlord's designee. The covenant of Tenant contained herein shall survive and remain in full force and effect following any such termination of this Agreement.

13.5. **Holding Over.** This Lease shall terminate without further notice upon the expiration of the Term, and any holding over by Tenant after the expiration of the Term shall not constitute a renewal hereof or give Tenant any rights hereunder or in or to the Premises, except as otherwise herein provided, it being understood and agreed that this Lease cannot be renewed, extended or in any manner modified except in writing signed by Landlord and Tenant.

ARTICLE XIV – TRANSFERS AND ASSIGNMENTS

14.1 **Transfers and Assignments.** Tenant shall not sell, convey, assign, transfer, hypothecate, pledge, or otherwise dispose of (or agree to do any of the foregoing) all or any part of its interest, if any, in this Agreement, or any contractual rights or obligations related hereto (including any rights to receive payments), other than an Affiliate without the prior written consent of Landlord, which consent may be granted or withheld in Landlord's sole judgment.

ARTICLE XV – LEGAL REQUIREMENTS

15.1 **Legal Requirements.** Throughout the Term, Tenant shall comply with and observe, without exception, all Legal Requirements applicable to the Golf Course, and all the rights, duties and obligations of Tenant under this Agreement. All sums required to be paid to ensure compliance with this Article XV under Legal Requirements which are applicable as a result of Tenant serving in its capacity as the operator of the Golf Course (such as licenses and authorizations to do business and sell merchandise) shall be paid at no cost or expense to Tenant unless it is determined after final appeal or arbitration or through a binding settlement that Tenant is at fault serving in its capacity as the operator of the Golf Course.

ARTICLE XVI – [Intentionally Omitted]

ARTICLE XVII – MISCELLANEOUS

17.1 **Waiver.** The waiver by either Landlord or Tenant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein. No covenant, term

Landlord initials

Tenant initials

or condition of this Agreement shall be deemed to have been waived by Landlord or Tenant, unless such waiver is in writing signed by the party against whom such waiver is asserted.

17.2 **Indemnity and Hold Harmless.** Tenant shall defend, indemnify and hold harmless Landlord and its agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or related to its performance or failure to perform its duties and obligations under this Agreement.

17.3 **Entire Agreement.** This Agreement sets forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant, oral or written, relating to the subject matter of this Agreement. Landlord has made no representations or promises not expressly contained herein. No subsequent alterations, amendment change or addition to this Agreement shall be binding upon Landlord and Tenant unless reduced to writing and signed by them.

17.3.1 **Integration.** This instrument constitutes the entire agreement between Landlord and Tenant with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral or written.

17.4 **Force Majeure.** In the event that either party hereto shall be delayed, or hindered in, or temporarily prevented from, the performance of any act required hereunder by reason of an Unavoidable Delay, then performance of such act shall be excused for the period of said delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. In the event that either party shall be indefinitely prevented from the performance of any act required hereunder by reason of an Unavoidable Delay then performance of such act shall be excused. Notwithstanding the foregoing, no Unavoidable Delay shall excuse the timely payment of money when due hereunder except as otherwise expressly provided in this Agreement.

17.5 **Notices.** Notices, statements and other communications to be given under the terms of this Agreement shall be delivered in a timely fashion (and in any event within any time limits established elsewhere in this Agreement) and shall be in writing and delivered by hand (including pre-paid courier) against receipt or sent by certified or registered mail, postage prepaid, return receipt requested, or by secure e-mail, telex, telegram, facsimile or other telegraphic means and addressed as follows:

If to Landlord
City of Pomona
505 S. S. Garey Ave.
Pomona, California 91769
Attn: Mark Lazzaretto
Tel. No.: (909) 620-2421

If to Tenant:

Landlord initials

Tenant initials

or at such other address as from time to time designated by the party receiving the notice in accordance with this Article XVII. The date of service of such notices shall be the date such notices are delivered to the party to whom the notice is given.

17.6 **Captions and Section Numbers.** The captions, section numbers, article numbers and index appearing in the Agreement are inserted only as a matter of convenience, and in no way define, limit, construe or describe the scope or intent of such section or article, nor in any way affect this Agreement.

17.7 **Construction of Language.** The language in all parts of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against either Landlord or Tenant.

17.8 [Intentionally Omitted]

17.9 **Successors.** Except as herein otherwise provided, the terms hereof shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of Landlord and Tenant. Nothing stated in the foregoing sentence shall limit the provisions of Articles XIII or XIV of this Agreement.

17.10 **Persons Indemnified.** All agreements by either Tenant or Landlord to indemnify or hold the other harmless contained in this Agreement shall inure to the benefit not only of the respective indemnitee but also to that of its and their subsidiaries and Affiliates, and shall also inure to the benefit of the directors, officers, employees and agents of any of the foregoing.

17.11 **Applicable Law.** This Agreement and all provisions thereof, irrespective of the place of execution or performance, shall be construed and enforced in accordance with the laws of the State of California. The sole and exclusive venue for any legal action under this Agreement or in any way related to the Golf Course shall be the Superior Court of the State of California and for the County of Los Angeles, and Landlord and Tenant agree to submit to the jurisdiction of such court.

17.12 **Cumulative Rights.** The rights and remedies conferred upon both Landlord and Tenant in this Agreement and by law are cumulative.

17.13 **Savings Clause.** If any provisions of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder or substantially increase the burden on any party hereto, shall be held to be invalid or unenforceable to any extent, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

Landlord initials

Tenant initials

17.14 **Attorney's Fees and Expenses.** In the event of any dispute or litigation concerning the enforcement, validity or interpretation of this Agreement, or any part hereof, the losing party shall pay all costs, charges, fees and expenses (including reasonable attorneys' fees and costs) paid or incurred by the prevailing party, regardless of whether any action or proceeding is initiated relative to such dispute and regardless of whether any such litigation is prosecuted to judgment. For the purpose of this Agreement, the terms "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the parties hereto, which may include printing, photo-stating, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians, designated experts and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include without limitation, all such fees and expenses incurred with respect to appeals, arbitration and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred, and shall include all such fees and expenses incurred or anticipated to be incurred in collecting or enforcing any judgment in connection therewith.

17.15 **Injunctive Relief.** In the event of a breach or threatened breach by either party of any of the covenants or provisions of this Agreement, the other party shall, in addition to any remedies expressly mentioned in this Agreement, have the right of injunction and the right to invoke any remedy allowed at law or in equity.

17.16 **Further Assurances.** Tenant and Landlord each agree to execute and deliver from time to time, promptly following any reasonable request therefore by the other party, any and all instruments, agreements and documents, and promptly shall take such other actions as may be necessary or appropriate in the reasonable detention of the other party, to carry out the transaction described in this Agreement.

17.17 **Trade Names, Royalties and Patents.** All trade names, trademarks, logos, emblems and similar identifying matters related to or used in connection with the Golf Course shall be the sole and exclusive property of Landlord, and all matters relating to their use shall be subject to Landlord's approval in its sole judgment. If any design, devise, material or process covered by letters patent, copyright or trademark is used by Tenant in connection with the Golf Course, it shall provide for such use by legal agreement with the owner of the patent, copyright or trademark or a duly authorized licensee of such owner.

17.18 **No Third-Party Beneficiaries.** This Agreement is not intended and shall not be deemed or construed to convey any rights, powers or privileges on any person, firm, partnership, corporation or other entity not a party hereto except as may be expressly provided herein to the contrary.

17.19 **Incorporation of Exhibits.** The Exhibits attached hereto shall be construed with and as integral parts of this Agreement to be the same extent as if the same had been set forth verbatim herein.

17.20 **Approval by Landlord.** If any provision of the Agreement where Landlord's approval or consent is required, Landlord shall, except to the extent specifically stated to the

Landlord initials

Tenant initials

contrary in such provision have the right to withhold or refuse its approval or consent in Landlord's sole and absolute discretion.

17.21 **Counterparts.** This contract may be executed in any number of counterparts, and each of such counterparts for all purposes shall be deemed to be an original, and all of such counterparts should constitute one and the same agreement.

17.22 **Nondiscrimination in Employment.** Tenant will not discriminate against any employee or applicant for employment because of race, creed, color, age, sex or national origin. Tenant will use reasonable and diligent efforts to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Tenant shall not discriminate with respect to the following: employment, upgrading, demotion or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

17.23 **Special Exculpation.** Except for payment for work performed in accordance with this Agreement, payment of attorneys' fees pursuant to Article XVI hereof, the liability of Landlord hereunder shall be limited to insurance provided by Landlord and in no event shall any other assets of Landlord or any Affiliate of Landlord be subject to any claim arising out of or in connection with this Agreement.

17.24 **Time.** Time is of the essence of this Agreement and each provision hereof of which time is an element.

17.25 **Independent Contractor.** Landlord and Tenant acknowledge and agree that Tenant will act as an independent contractor in the performance of its duties and responsibilities set forth in this Agreement. No provisions hereunder shall be intended to create a partnership or joint venture between Landlord and Tenant with respect to the Golf Course or otherwise, and neither party shall have the power to bind or obligate the other party, except as expressly set forth in this Agreement.

17.25.1 **PERS Eligibility Indemnity.** In the event that Tenant or any employee, agent, or subcontractor of Tenant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the Landlord, Tenant shall indemnify, defend, and hold harmless the Landlord for the payment of any employee and/or employer contributions for PERS benefits on behalf of Tenant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of the Landlord.

17.26 **Confidentiality.** Except as provided below, Landlord and Tenant shall treat this Agreement as confidential and neither shall disclose the contents of this Agreement to any party (other than its legal counsel, auditors and any governmental instrumentality having jurisdiction over Landlord or Tenant) or record or file this Agreement in any public records. Tenant shall hold confidential any information which Tenant receives in connection with the performance of its obligations hereunder and which concerns Landlord or its operations or business and shall not

Landlord initials

Tenant initials

disclose all or any portion of such information to any third party, except for such disclosures as are necessary to perform Tenant's obligations hereunder or are required by law.

Landlord initials

Tenant initials

SIGNATURE PAGE

IN WITNESS WHEREOF, Landlord and Tenant have executed this Agreement as of the date first above written.

By:

“LANDLORD”
City of Pomona
a Charter City

Signature: _____

Name: Linda Lowry

Its: City Manager

By:

“TENANT”

Signature: _____

Name: _____

Its: _____

Landlord initials

Tenant initials

EXHIBIT A

The real property located at 1300 W. Phillips Blvd, commonly known as Palm Lakes Golf Course.

Landlord initials

Tenant initials

EXHIBIT B

Proposal

Landlord initials

Tenant initials
