

**GOLF COURSE
MANAGEMENT AGREEMENT**

By and Between

CITY OF ESCONDIDO
a California municipal corporation
("Owner")

and

ESCONDIDO GOLF, LLC
a California Limited Liability
Company("Manager")

DATED: _____

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GOLF COURSE CONSULTING AND MANAGEMENT AGREEMENT

THIS GOLF COURSE MANAGEMENT AGREEMENT (the "**Agreement**") is dated as of _____, 2022 by and between the **CITY OF ESCONDIDO**, a California municipal corporation (hereinafter referred to as the "**Owner**"), and **ESCONDIDO GOLF, LLC**, a California Limited Liability Company (hereinafter referred to as "**Manager**"). Owner and Manager are sometimes hereinafter referred to as the "**parties**."

RECITALS:

A. Owner is the owner of approximately 65 acres designated for an 18-hole (executive) municipal golf course, maintenance building and yard, clubhouse and storage area commonly referred to as the Reidy Creek Golf Course (the "**Golf Course**") located in San Diego County, City of Escondido, and more particularly described in Exhibit "A" attached hereto and incorporated herewith.

B. Manager is qualified in the development, supervision, operation and management of golf course properties and Manager is qualified to supervise, operate and manage the Golf Course.

C. Owner desires to retain Manager to manage and operate the Golf Course on behalf of Owner and Manager has agreed to manage and operate the Golf Course upon the terms and subject to the conditions hereinafter set forth.

D. This Agreement is for Special Services that Manager is qualified to perform due to specialized training and experience. Owner does not have the workforce capable of providing the services included in this Agreement.

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 are hereby acknowledged, Owner and Manager 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 meanings ascribed to them in this paragraph 1.1 unless the context indicates a contrary intent:

"Annual Capital Funding Reserve" shall be established by setting aside 5% of the gross profit for the year in a reserve account for future capital improvements. The use of these funds will be at the discretion of Owner after input from Manager.

"Approved Annual Business Plan" shall mean a plan covering the operation and maintenance of the Golf Course for the applicable Budget Period, prepared by Manager and

approved by Owner in accordance with paragraph 9.1(b) of this Agreement, as such plan may be amended from time to time.

“Bonds” shall mean the \$6,300,000 aggregate principal amount of Escondido Joint Powers Financing Authority 2001 Lease Revenue Bonds (Reidy Creek Project) authorized by and at any time Outstanding under the Indenture.

“Bond Debt Service” shall mean, during any period of computation, the amount obtained for such period by totaling the following amount: (a) the principal and interest amount of the Escondido Joint Powers Financing Authority Lease Revenue Refunding Bonds, Series 2013A (which refunded the Authority’s 2001 Lease Revenue Bonds that financed the construction of Reidy Creek Golf Course) coming due and payable by their terms in such period; (b) the associated bond expense (Custodial Bank Fees).

“Budget Period” shall mean a period of time consisting of a Fiscal Year.

“Capital Expense Funding Requirement” shall mean the amount of funds to be set aside by Owner to pay for capital expense items to maintain the Golf Course in accordance with paragraph 2.2 of this Agreement. Owner and Manager shall review Capital Expense Funding Requirements for each Budget Period and no less than quarterly to determine the amount of funds, if any, needed to maintain the Golf Course. Owner shall deposit into the Operating Account the Capital Expense Funding Requirement within thirty (30) days of notice by Manager.

“Corporate Personnel” shall mean certain employees of Manager that perform services at or with respect to multiple properties, including properties other than the Golf Course and including from locations other than the Golf Course, and that in such event such employees shall be treated as Golf Course Personnel Expenses to the extent that their services are reasonably attributable to the Golf Course; provided, however, that any allocated costs incurred by Manager in performance of its obligations hereunder shall be prorated based upon a reasonable nexus and benefit among all properties which benefit from such expenditure. Corporate Personnel shall include centralized accounting, risk management, information technology, human resources, and marketing.

“Equipment and Supplies” shall mean all equipment and supplies, including furniture, fixtures and equipment (FF&E), together with all replacements thereof and additions thereto, used or useful in the operation of the Golf Course.

“Event of Default” shall mean the occurrence of any of the events described in paragraphs 13.1 or 13.2 of this Agreement, together with the expiration of any cure period applicable to such event.

“First Term Year” shall mean the time period commencing on the Management Commencement Date and concluding on the first anniversary of the first day of the month in which the Management Commencement Date occurs.

“Fiscal Year” shall mean a year beginning on July 1 of one calendar year and ending on June 30 of the following year.

“Golf Course Personnel” shall mean all individuals performing services for the Golf Course, whether employees of Manager or its Affiliates.

“Golf Course Personnel Expenses” shall mean all costs and expenses relating to the employment of any Golf Course Personnel, including reasonable costs in the course of, and necessary for the performance of, obligations hereunder, including, without limitation, all direct and allocated wages, salaries, benefits, taxes, and similar expenses relating to Golf Course Personnel and Corporate Personnel.

“Gross Profit” shall mean Gross Revenue less Operating Expenses.

“Gross Revenue” shall mean gross receipts of every kind and nature from the use and operation of all or any portion of the Golf Course whatsoever, whether for cash, credit or barter, including, without limitation: green fees; rental fees for golf carts, golf clubs and bags, and other rental items; golf bag storage charges; reservation fees; fees for golf handicap and service; rental and concession payments; revenue generated from space rentals and from meetings, banquets, parties, receptions, tournaments, and other group gatherings; revenues from golf schools; rental income from communication site lease agreements; amounts received as compensation for lessons and clinics; receipts from special events; receipts from vending machines; proceeds of any business interruption insurance (net of Manager’s reasonable cost of settling such claim with the insurance carrier); and proceeds of any condemnation award made with respect to any temporary taking of any Equipment and Supplies; provided, however, Gross Revenues shall not include amounts received on food and beverage sales (it being understood that such sales are the subject of a Lease and Concession Agreement of even date herewith), condemnation awards or receipts from sales of Equipment and Supplies under threat of condemnation other than any award made in a temporary taking and in the nature of an award for lost income; proceeds of property insurance (other than business interruption insurance); rebates, refunds and discounts (but not credit and card discounts paid to a credit card system) to customers given in the ordinary course of obtaining such revenues; excise, sales, use and similar taxes collected directly from customers as a part of the price of any goods or services and which are accounted for by Manager to any governmental agency or authority; tips and gratuities paid to Manager or any of its employees; or income or interest derived from cash, securities and other property acquired and held for investment by Manager. Sales upon credit and any other sales or provision of service with respect to which payment is not immediately received shall be treated on an accrual basis and shall be included in the gross receipts for the period during which the goods or services to which such sale relates are delivered or performed.

“Hazardous Materials” shall mean any substance or material containing one or more of any of the following: hazardous material, hazardous waste, hazardous substance, regulated substance, petroleum, pollutant, contaminant, or asbestos, as such terms are defined as of the Management Commencement Date or thereafter defined in any applicable laws, or otherwise generally understood, in such concentrations or amounts as may require clean-up or removal, or which may present a significant risk of harm to guests, invitees, or Golf Course Personnel.

“Improvement” shall mean each improvement constructed by Owner on the Golf Course.

“Indenture” shall mean the Indenture of Trust dated as of April 1, 2001, between the Escondido Joint Powers Financing Authority (of which Owner is a member) and the Trustee

relating to the Bonds, as originally executed or as it may from time to time be supplemented, modified or amended by supplemental Indenture.

“Legal Requirements” shall mean any and all laws, statutes, ordinances, codes, orders, rules, regulations, permits, licenses, authorizations, entitlements, official orders and requirements of, and 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, including, without limitation, any of the foregoing relating in any way to Hazardous Materials or environmental matters.

“Management Commencement Date” shall mean _____, 2022.

“Management Fee” shall mean the Fixed Fee and Incentive Fee set forth in paragraph 6.1 of the Agreement

“Net Profit” shall mean Gross Profit less annual Bond Debt Service Costs less Annual Capital Funding Reserve requirement.

“Operating Contracts” shall mean all contracts now or hereafter entered into for the maintenance, management, 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 Expenses” shall mean, for any period of measurement, all costs and expenses which relate to the maintenance and operation of the Golf Course and/or any services or concessions operated in connection therewith, which costs and expenses shall include, without limitation, ordinary and extraordinary maintenance and repair costs, advertising and promotion expenses, administrative and general office expenses, costs of inventories, Equipment and Supplies, costs of goods and services provided or performed in connection with the operation of the Golf Course, such as water, sewer and other utilities, office and other supplies, commissions, credit card discounts and commissions, music and entertainment, fuel, licenses and permits, refuse removal, vermin control and similar services, Golf Course Personnel Expenses, any maintenance or monitoring systems or requirements in effect from time to time with respect to the Golf Course, the monthly Management Fee, equipment lease financing expense, the cost of any insurance provided in accordance with the terms of this Agreement and any other then unpaid amounts payable to Manager or others with respect to any of the foregoing. The parties acknowledge and agree that Manager operates and may from time to time in the future operate additional golf courses and resort properties besides the Golf Course, and that Manager shall have the right in the exercise of its reasonable business judgment to determine to procure certain services and goods, and incur certain expenses in connection therewith, in the aggregate with some or all of such additional golf courses and properties. In such event, the calculation of **“Operating Expenses”** with respect to the Golf Course shall include (a) with respect to any such aggregate expenses incurred pursuant to Centralized Purchasing, as contemplated by paragraph 3.5 hereof, only the amounts chargeable to the Golf Course pursuant to said paragraph 3.5, and (b) with respect to any other such aggregate expenses (including without limitation salaries and similar expenses of employees spending less than all of their time on matters related to the Golf Course), only such portion of such aggregated expenses as Manager reasonably concludes are allocable to the Golf Course. **“Operating Expenses”** shall not include, however, (i) any depreciation of any Improvements or Equipment

and Supplies, (ii) any income, property or similar taxes payable by Owner or Manager, whether related to the Golf Course or otherwise, (iii) Bond Debt Service; (iv) the cost of capitalized fixed assets purchased for the Golf Course (the threshold for capitalization of specific assets shall be \$5,000) pursuant to the Capital Expense Funding Requirement.

“Operating Expenses Reserve” shall mean, for each month, an amount equal to all Operating Expenses anticipated to be expended during the immediately following calendar month (including the monthly Management Fee and such Operating Expenses as are indicated by the Approved Annual Business Plan).

“Outstanding” when used as of any particular time with reference to Bonds or any additional Bonds authorized by the Indenture, shall mean (subject to the provisions of Section 11.09 of the Indenture) all Bonds or additional Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under the Indenture.

“Owner Board” shall mean the Board of Directors of Owner, or such other appropriate governing body of Owner.

“Person” shall mean an individual, partnership, corporation, limited liability company, association, government or any department or agency thereof, trustee, trust, or any other entity or organization.

“Term” shall mean the Management Commencement Date through the last day of the month preceding the fifth anniversary of the Management Commencement Date. This Agreement may be renewed for one additional four-year period at the City’s sole discretion.

“Term Year” shall mean (a) the First Term Year, or (b) in the case of each subsequent Term Year after the First Term Year, each full year after the first anniversary of the first day of the month on which the Management Commencement Date occurs.

“Trustee” shall mean BNY Western Trust Company, a banking corporation organized and existing under the laws of the State of California, or its successors, as provided in the Indenture.

“Unavoidable Delay” shall mean any delay due to such causes 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; terrorist act and/or threats of terrorism; 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 restraining order or any law, order or regulation of any governmental, quasi-governmental, judicial or military authority; or other similar causes or circumstances beyond the control of Manager, any of which has the effect of delaying, hindering or preventing Manager’s performance of its obligations hereunder, provided (i) Manager shall have notified Owner of such event by notice given not later than fifteen (15) days after Manager has knowledge of the occurrence of such event, and (ii) Manager shall use reasonable efforts to minimize the effects thereof.

1.2. Index of Other Defined Terms. In addition to those terms defined above, the following terms shall have the respective meanings given thereto in the paragraphs indicated below.

<u>Defined Terms</u>	<u>Paragraph</u>
Agreement	Preamble
Annual Operating Report	9.3(b)(ii)
Business Plan Disapproval Notice	9.1(b)
Centralized Purchasing	3.5
Data	3.7
Fixed Fee	6.1(a)
Golf Course	Recital "A"
Incentive Fee	6.1(b)
Liabilities	12.2
Liability Escrow	12.1(l)
Manager	Preamble
Manager Advances	8.4
Manager Legal Requirements	15.1(a)
Manager Marks	3.6
Manager Representatives	12.2
Monthly Disbursement Date	8.3(a)
Monthly Operating Report	9.3(b)(i)
Notice of Operating Account Deficiency	8.2
Owner	Preamble
Owner Legal Requirements	15.1(b)
Owner's Representatives	12.3
Parties	Preamble
Preliminary Annual Business Plan	9.1(a)
Projected Monthly Operating Expenses	8.2

Termination Fee	13.5
Transfer	14.1
WARN Act	13.4(e)
Year End Financials	9.3(b)(ii)

1.3. Accounting Terms. For purposes of this Agreement, all accounting terms not otherwise defined herein or in any Exhibit shall have the meanings ascribed to them in conformity with generally accepted accounting practices and principles consistently applied.

ARTICLE II. **RETENTION OF MANAGER**

2.1. Agreement to Consult and Manage. Owner hereby appoints and retains Manager, and Manager hereby accepts such appointment and retention, as the exclusive manager of the Golf Course during the Term with full power and authority to carry out all responsibilities of Manager upon the terms and subject to the conditions hereinafter set forth.

2.2. Standards of Performance; Relationship Between Owner and Manager. Manager accepts the relationship of trust and confidence established between Manager and Owner by the terms of this Agreement. Manager shall manage, operate and maintain the Golf Course as an executive municipal daily fee golf course. Manager covenants with Owner to furnish its best skill and judgment in performing its obligations hereunder, and shall at all times provide such supervision, management, operating and maintenance services in a manner which maintains the good name and business reputation of Owner. Manager shall perform its duties and obligations under this Agreement in an efficient, expeditious, prudent and economical manner, consistent with the commercial interests of Owner as reasonably understood by Manager, in accordance with standard industry practices with respect to the management and operation of similarly situated golf courses in comparable residential developments of the type described in this paragraph. Notwithstanding the foregoing, Manager's obligations under this Agreement are subject to (a) Owner's approval of the Annual Business Plans reasonably appropriate for the operations contemplated hereby, (b) the availability of funds in the Operating Account sufficient to cover the Operating Expenses, including the Operating Expenses Reserve associated herewith, (c) funds provided by Owner to meet the Capital Expense Funding Requirement for each Budget Period; and (d) payment of all amounts due to Manager hereunder.

ARTICLE III. **EMPLOYEES; ACQUISITION AND OWNERSHIP** **OF EQUIPMENT AND SUPPLIES**

3.1. Employees of Manager.

(a) **Golf Course Personnel.** Manager shall employ, on its behalf and not as employees of Owner, at all times a sufficient number of capable employees to enable it to fulfill Manager's obligations hereunder, properly, adequately, safely and economically and in accordance with the standards 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 Manager; provided, however, that if Owner determines that the continued employment of any employee of Manager at the Golf Course is not in the best interest of Owner or the Golf Course, Owner shall so notify Manager in writing. Upon receipt of such notice, Manager shall take appropriate steps, consistent with applicable law, to cause such employee to cease his or her affiliation with the Golf Course.

(b) **Non-Solicitation**. Without Manager's express written consent, neither Owner nor Owner's Representatives shall directly or indirectly, knowingly solicit (on behalf of itself or any third party), hire or enter into any contract for services with any person who, at the time of such action is, or at any time during a period of eighteen (18) months immediately preceding such action, was one of Manager's or its Affiliate's supervisory or managerial employees. If Owner or Owner's Representatives do solicit (on behalf of itself or any third party), hire or enter into a contract for services such person contrary to the above, it shall pay Manager, as liquidated damages and not as a penalty, an amount equal to twice the annual salary earned by said individual at the time of termination of such employee's employment with Manager.

3.2. Ownership of Golf Course. Manager is entering into this Agreement as an independent contractor to provide the services set forth in this Agreement. By entering into this Agreement, Manager acknowledges that it is acquiring no rights whatsoever in the Golf Course, or any portion thereof (including the Improvements and any trade names, trademarks, logos, emblems and similar identifying matters) or the Equipment and Supplies, except a nonexclusive and revocable license to enter upon the Golf Course and use the Equipment and Supplies, if and to the extent reasonably necessary to carry out its obligations pursuant to this Agreement. Manager 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 (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 (including the Improvements and any trade names, trademarks, logos, emblems, and similar identifying matters) under any circumstances. In no event shall Manager alter or improve any portion of the Golf Course, except as otherwise expressly permitted under this Agreement (including, without limitation, Article XI hereof).

3.3. Operating Contracts. Manager shall, subject to the Approved Annual Business Plan, execute all Operating Contracts necessary or appropriate for the maintenance, management and operation of the Golf Course in accordance with this Agreement. All such Operating Contracts shall be executed in the name of Manager on its own behalf. Manager promptly shall notify Owner in writing of Manager's execution of any material Operating Contract, and, if requested by Owner, promptly shall deliver to Owner a true, correct and complete copy thereof. Manager's execution of any Operating Contract shall be subject to any and all restrictions set forth in Article V hereof. All Operating Contracts shall provide that, notwithstanding any termination of this Agreement by Owner and subsequent management of the Golf Course by Owner or a third party, the counter-party thereto shall, at Owner's request, continue its performance thereunder under the terms and conditions of such Operating Contract. If Manager is then managing other golf courses similar to the Golf Course, Manager shall use its commercially reasonable efforts to utilize the same individuals or entities under the Operating Contracts as are performing similar services or providing similar supplies for Manager in connection with such other golf courses, if such a procedure would result in cost savings to Owner.

3.4. Acquisition of Equipment and Supplies. Manager shall, at Owner's expense and in accordance with the Approved Annual Business Plan, as applicable, purchase and keep the Golf Course adequately furnished with all necessary Equipment and Supplies. The cost of such Equipment and Supplies shall be charged to Owner at net cost and Owner shall be credited with all rebates, refunds, allowances and other discounts allowed to the purchaser, whether such purchaser is Manager or a third party. For purposes of clarification, both Owner and Manager agree that all Equipment and Supplies acquired pursuant to this paragraph 3.4 are exclusively the property of Owner.

3.5. Centralized Purchasing. Manager, at its discretion, may adopt a centralized purchasing system whereby services or Equipment and Supplies are procured and/or purchased for participating golf courses from suppliers designated by Manager or from or through any of Manager's Affiliates ("**Centralized Purchasing**"). Manager may cause the Golf Course to participate in such Centralized Purchasing and Manager or an Affiliate of Manager shall receive pro-rata reimbursement for any additional overhead expense attributable to Centralized Purchasing. At the request of Owner, Manager shall furnish to Owner a price list of all services or Equipment and Supplies proposed or to be purchased by Manager through its Centralized Purchasing. Notwithstanding the foregoing, the cost to the Golf Course of any purchase accomplished through the Centralized Purchasing, (including the aforementioned fee) taking into account the quality and payment terms of the items purchased, shall be no greater than the cost of which such services and items could be obtained by Golf Course from unaffiliated third parties, (without payment of the aforementioned expense reimbursement). If such maximum amount is determined to have been exceeded, the excess shall be rebated immediately by Manager to Owner. All such purchases shall be made by Manager as agent for and at the sole risk of Owner. Manager makes no representations or warranty with respect to such services and items so purchased and shall not be responsible for defects in any property acquired, but shall enforce third party warranties regarding such services and items.

3.6. Intellectual Property. Any and all data which Manager collects, develops or produces during the Term, whether alone or jointly, with Owner or others, which relate to the operation of the Golf Course (the "Data"), shall be joint property belonging to Manager and Owner. As joint owners of the Data, Manager and Owner shall be free to deal with and dispose of, in whole or in part, its ownership interest in the Data without the consent of the other party, and without accounting to the other party so long as it can do so without exposing the other party to any liability. In no event, however, shall either party be entitled to grant any exclusive license or other exclusive right in any aspect of the Data or in any intellectual property right associated with any Data to any person or entity, unless the granting party has obtained the non-granting party's prior written consent for such grant, which consent may be withheld by the non-granting party in its sole discretion.

ARTICLE IV.

RIGHTS AND RESPONSIBILITIES OF MANAGER AND OWNER

4.1. Manager Obligations During the Term. Subject to any requirements, restrictions or limitations set forth elsewhere in this Agreement (including, without limitation, the requirements set forth in paragraph 2.2), Manager shall perform or cause to be performed all tasks reasonably necessary or appropriate in connection with the ongoing operation, management,

maintenance, repair and upkeep of the Golf Course. In performing such tasks Manager shall, at a minimum, do the following:

(a) Interview, select and retain consultants and other professionals as may be reasonably necessary or appropriate for the maintenance and operation of the Golf Course as set forth in the Approved Annual Business Plan, as applicable.

(b) Perform all ministerial acts and duties reasonably relating to (i) the payment in accordance with the Approved Annual Business Plan, as applicable, of all indebtedness, taxes and assessments on personal property, and other undisputed obligations due or to become due with respect to the Golf Course that accrue on or after the Management Commencement Date, (ii) the preparation, submission and processing of all claims regarding the Golf Course (other than claims under any insurance to be maintained by Owner hereunder, with respect to which Manager will reasonably cooperate with Owner in its preparation, submission and processing of claims), (iii) the prosecution of any appeal of any tax or assessment on personal property 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.

(c) Diligently pursue the collection of all sums due and owing to Owner or Manager from all purchasers of goods and/or services relating to the Golf Course.

(d) Complete an inventory of all equipment and provide that inventory to Owner, so that Owner can enter into its vehicle management database system. Subject to the Approved Annual Business Plan, as applicable, coordinate with Owner for the purchase of required Golf Course Equipment and Supplies. Manager shall ensure that Owner is provided an updated inventory periodically, or as requested by Owner.

(e) Subject to the Approved Annual Business Plan, as applicable, 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.

(f) Comply in all respects with the Approved Annual Business Plan, as applicable (except to the extent provided under paragraphs 8.3 and 9.2).

(g) Subject to the Approved Annual Business Plan, as applicable, repair or replace, as reasonably necessary, all Equipment and Supplies. Manager shall maintain all equipment in compliance with applicable regulations, including any required inspections. Maintenance and repair of City owned golf course equipment (Exhibit B) shall be performed by Owner. Consumables shall be the responsibility of the Manager, which includes but not limited to blade sharpening, blade replacement and wear items related to grounds and facility/property maintenance.

4.2. Management Period.

(a) **Manager.** In addition to any obligations under paragraph 4.1, during the Management Period, and subject to any requirements, restrictions or limitations set forth elsewhere in this Agreement (including, without limitation, the requirements set forth in paragraph 2.2), Manager shall, at a minimum, do the following:

(i) Fully comply, and cause the operations of the Golf Course to fully comply, with all Legal Requirements; provided, however, that the foregoing shall not apply to any Legal Requirements governing construction and construction quality, compliance with which, as set forth in paragraph 4.2(b), shall be the sole responsibility of the Owner.

(ii) Apply for, obtain and maintain in full force and effect, at Owner's expense, all permits, licenses designated by Owner or necessary or appropriate for the management, maintenance and operation of the Golf Course. All such permits and licenses shall be the sole and exclusive property of Owner other than any permit or license personal to the party providing services.

(iii) Immediately advise Owner of any discovery by Manager of any Hazardous Materials in, on or about the Golf Course, promptly following such discovery jointly determine with Owner the actions which should be taken to ensure that the presence of such Hazardous Materials in, on or about the Golf Course will not constitute a violation of any Legal Requirement, and upon approval by Owner of any actions recommended by Manager, promptly take, or cause to be taken, such actions.

(iv) Fully cooperate with and provide any necessary or appropriate documents, materials and information to, any financial institution or other lender designated by Owner.

(v) Make recommendations to Owner from time to time concerning improvements and modifications to the Golf Course.

(vi) Obtain and maintain in full force and effect all insurance reasonably required to be maintained by Manager pursuant to Article XII hereof.

(vii) Comply with all agreements governing or affecting the Golf Course that Manager has been provided with, including, without limitation, mortgages, deeds of trust, regulatory agreements, declarations of covenants, conditions and restrictions, and similar documents, copies of which shall be provided to Manager upon execution of this Agreement.

(viii) Prepare and allow inspection by Owner of the plans, books, records and other materials specified in Article IX, below.

(ix) Maintain in full force and effect all Operating Contracts (other than such Operating Contracts as may be replaced by a new Operating Contract) reasonably necessary or appropriate for the ongoing management, maintenance and operation of the Golf Course in accordance with this Agreement.

(x) Negotiate, prepare, review and, subject to the restrictions set forth in Article V, execute all agreements reasonably necessary or appropriate for the management, maintenance and operation of the Golf Course.

(xi) Obtain all warranties provided by, and lien waivers from, laborers, materialmen and contractors in connection with any Improvements made pursuant to Article XI.

(b) **Owner**. During the Management Period, and subject to any requirements, restrictions or limitations set forth elsewhere in this Agreement (including, without limitation, the requirements set forth in paragraph 2.2), Owner:

(i) May design, construct and install Improvements on the Golf Course, provided, however, Owner shall provide Manager no less than sixty (60) days notice prior to commencement of construction of the Improvements, with a copy of the plans for the proposed Improvements. Within fifteen (15) days of receipt thereof, Manager shall review the plans for the Improvements and shall approve or disapprove the same, which approval shall not be unreasonably withheld. If Owner wishes to proceed with the Improvements notwithstanding the disapproval of Manager, the parties shall revise the Approved Annual Business Plan, as applicable, to reflect any negative impact that the construction and/or implementation of the Improvements will have on Golf Course operations. All Improvements constructed by Owner or at the direction of Owner shall be constructed in a workmanlike manner in accordance with standard construction industry practices.

(ii) Shall provide Manager with notice and copies of all agreements governing or affecting the Golf Course, including, without limitation, mortgages, deeds of trust, regulatory agreements, declarations of covenants, conditions and restrictions, and similar documents.

(iii) Shall not modify or amend any agreement governing or affecting the Golf Course in such a manner that imposes additional burdens on the Manager or results in the reduction of Gross Revenues, as defined herein, without the written consent of Manager in its sole discretion.

ARTICLE V.

RESTRICTED ACTIVITIES OF MANAGER

5.1. Without the prior written consent of Owner, which consent may be granted or withheld in Owner's sole discretion, Manager shall not do, or cause or permit to be done, any of the following during the Term of this Agreement:

(a) Borrow or lend money, or enter into any other agreement, in the name of Owner.

(b) Assign, transfer, pledge, compromise or release any of the claims of or debts of \$5,000 or more due Owner, except upon payment in full.

(c) Arbitrate or consent to the arbitration or settlement of any claim of or against Owner or any other dispute or controversy involving Owner.

(d) Make, execute or deliver in the name of Owner, or with respect to any of the assets of Owner, 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 property of the Golf Course, or, except as contemplated in the Approved Annual Business Plan, as applicable, 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.

(f) In the name of or on behalf of Owner, endorse any note, or become a surety, guarantor, or accommodation party to any obligation.

(g) Knowingly violate any Legal Requirement.

(h) Commence or maintain in the name of or on behalf of Owner any action or proceeding, whether judicial, administrative or otherwise.

(i) Engage in, or permit, suffer or allow the occurrence of, any storage, holding, release, emission, discharge, generation, abatement, disposition, handling, or transportation of any Hazardous Materials. Notwithstanding the foregoing, Manager need not secure the prior written consent of Owner before utilizing, in connection with the reasonable and necessary operation and maintenance of the Golf Course, fertilizers, and pesticides, provided such substances are utilized in compliance with all applicable laws and regulations and the procedures approved by Owner as required in subparagraph (j) below.

(j) Except for fertilizers and pesticides reasonably necessary for operation and maintenance of the Golf Course, and except for any other substances and materials reasonably necessary for the operation and maintenance of the Golf Course (all of which substances and materials shall be used, installed, kept and maintained in compliance with all applicable Legal Requirements), place or cause to be placed in, on, or around the Golf Course any Hazardous Materials. In the event Manager discovers or obtains actual knowledge of the existence of any Hazardous Materials in, on or around the Golf Course other than permitted to be so located in compliance with this Agreement, Manager shall promptly notify Owner. Manager shall not be responsible for any Hazardous Materials (i) present on the Golf Course prior to the date hereof, unless deposited thereon by Manager (ii) placed on the Golf Course in accordance with the terms of this Agreement, (iii) which becomes present on the Golf Course after the date hereof as a result of some event or condition over which Manager had no control, or (iv) which becomes present on the Golf Course after termination of this Agreement and all extensions hereof; provided, however, Manager shall promptly notify Owner of any notice received by Manager 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 Materials and shall cooperate reasonably with Owner in responding to such notice and correcting or contesting any alleged violation. Manager hereby agrees to indemnify,

defend (with attorneys approved by Owner, which approval shall not be unreasonably withheld) and hold Owner free and harmless from any cost, expense, penalty or other liability incurred by Owner as a result of any breach by Manager of its obligations under this paragraph. Owner hereby agrees to indemnify, defend (with attorneys approved by Manager, which approval shall not be unreasonably withheld) and hold Manager free and harmless from any cost, expense, penalty or other liability incurred by Manager as a result of or in connection with or arising from Hazardous Materials other than that caused by Manager's breach of this Article V.

ARTICLE VI. **COMPENSATION TO MANAGER**

6.1 Management Fee. Commencing on the Management Commencement Date, Owner shall pay Manager for services rendered under this Agreement a Management Fee for each month of the operating Term (and proportionally for any fraction of a month) comprised of the following:

(a) A Fixed Fee to be paid during the following time periods:

(i) First Term Year. Commencing on Management Commencement Date _____ and continuing through _____, the sum of \$75,000 to be paid in equal monthly installments of \$6,250.

This Fixed Fee is to increase by the lesser of 2.5% or CPI annually in subsequent years for the duration of the Agreement.

(b) In addition to the Fixed Fee, an "**Incentive Fee**" equal to ten percent (10%) of Net Profit (Gross Profit less Bond Debt Service, less the annual Capital Funding Reserve), shall be paid annually and covered and calculated in the manner set forth in paragraph 6.2 below.

(c) In addition to the Fixed Fee and the Incentive Fee, an Accounting Fee of \$1,250 shall be paid monthly. This Accounting Fee is to increase by 2.5% annually for the duration of the Agreement.

6.2. Payments of Management Fee.

(a) Manager shall be paid the Fixed Fee for each month on the first day of such month (except with respect to the Fixed Fee paid pursuant to Paragraph 6.1(a)(i) for the first partial month, which fee for such partial month shall be paid within five (5) days of the Management Commencement Date).

(b) The Incentive Fee will be calculated annually by taking 10% of the Net Profit, which is equal to Gross Profit of Reidy Creek Golf Course less the annual Bond Debt Service, less the annual Capital Funding Reserve requirement for Reidy Creek Golf Course and paid by the 30th of the month following the last month of the fiscal year. The Incentive Fee shall

not exceed the percentage of the Total Fee (Fixed Fee and Incentive Fee combined) allowable under IRS revenue procedures.

ARTICLE VII.
INTENTIONALLY DELETED

ARTICLE VIII.
BANK ACCOUNTS, DEPOSITS AND WITHDRAWALS

8.1. Operating Account. On or before the Management Commencement Date, Manager shall establish one or more bank accounts for the Golf Course, which accounts (collectively, the "**Operating Account**") shall be used by Manager for the deposit on a daily basis of all Gross Revenues collected from the operation of the Golf Course. Manager and Manager's designee(s), whose names shall be disclosed to Owner, shall be sole signatory on the Operating Account. Manager shall not allow any funds withdrawn from the Operating Account to be commingled with any other funds or bank accounts of Manager.

8.2. Deposits Into Operating Account. From and after the Management Commencement Date, Manager shall deposit into the Operating Account all Gross Revenues received with respect to the Golf Course promptly following receipt thereof. If at any time Manager determines that the funds on deposit in, or projected to be on deposit in, the Operating Account (taking into account reasonably anticipated Gross Revenues) will be insufficient to pay, as and when due, Operating Expenses reasonably anticipated to be incurred in accordance with the Approved Annual Business Plan during the immediately succeeding thirty (30) calendar days, Manager shall have the right to provide written notice (a "**Notice of Operating Account Deficiency**") to Owner of the amount of such anticipated deficiency. The Notice of Operating Account Deficiency shall set forth the anticipated amount of the deficiency. Within five (5) days following receipt of a Notice of Operating Account Deficiency, Owner shall deliver to Manager for deposit into the Operating Account an amount equal to the anticipated deficiency specified on the Notice of Operating Account Deficiency.

8.3. Withdrawals from Operating Account. Manager shall use the funds in the Operating Account as follows:

(a) **Monthly Withdrawals.** On the first business day of each calendar month from and after the Management Commencement Date, (each "**Monthly Disbursement Date**") Manager shall use the funds in the Operating Account in the following order of priority:

(i) First, to the payment of any outstanding or accrued Management Fees and to reimburse Manager for any outstanding Manager Advances;

(ii) Next, Manager shall retain in the Operating Account an amount sufficient to pay for (A) all unpaid Operating Expenses (other than Management Fees previously paid pursuant to paragraph 8.3(a)(i)), (B) all Operating Expenses anticipated to be expended during such calendar month, as indicated by the Approved Annual Business Plan;

(iii) Next, to the extent that there are funds remaining on deposit in the Operating Account in excess of the amounts necessary for the application of the foregoing clauses (i) through (ii), Manager shall retain in the Operating Account an additional amount equal to the Operating Expenses Reserve; and

(iv) Next, to the extent that there are funds remaining on deposit in the Operating Account in excess of the amounts necessary for the application of the foregoing clauses (i) through (iii), Manager shall disburse the balance of such funds to Owner.

Manager shall have the right to withdraw funds retained in the Operating Account pursuant to the foregoing clauses (ii) and (iii) as and when necessary in order to pay any accrued and unpaid Operating Expenses to the extent that the same are consistent with the Approved Annual Business Plan; provided, however, Manager, in the performance of its duties under this Agreement may not deviate by more than ten percent (10%) from any budget department set forth in the Approved Annual Business Plan.

(b) **Withdrawals to Pay Expenses.** In addition, Manager shall use funds from time to time on deposit in the Operating Account to pay accrued and unpaid Operating Expenses.

8.4. Manager Advances For Operating Expenses. The parties acknowledge that Manager shall have the right, but not the obligation, to advance its own funds (collectively, the "**Manager Advances**") to pay Operating Expenses consistent at all times with paragraph 8.3. Any Manager Advances shall be reimbursed pursuant to paragraph 8.3.

8.5. No Other Withdrawals From Operating Account. Except for disbursements and withdrawals made in accordance with paragraphs 6.1, 6.2, 6.3, 8.3, 8.4, 8.7, 13.4(c) and 13.5 hereof and expenditures made in connection with an emergency as contemplated by paragraph 9.2 hereof, Manager shall not have the right to withdraw or disburse funds from the Operating Account unless such withdrawal or disbursement first has been approved in writing by Owner.

8.6. Separate Accounts of Manager. Notwithstanding the provisions of paragraphs 8.1 and 8.7, Manager shall establish a separate account for the payment of all payroll expenses of the Golf Course Personnel (which account may be a general payroll account established by Manager for the payroll expenses of all employees of Manager). Manager may withdraw funds from the Operating Account from time to time for deposit into such separate payroll account; provided, however, that (a) in no event shall the amount so withdrawn from the Operating Account exceed the actual amount necessary to pay the Golf Course Personnel, (b) in no event shall any such withdrawal from the Operating Account occur more than two (2) business days prior to the date upon which such funds are to be paid out of the separate payroll account to the Golf Course Personnel, and (c) any sums so withdrawn immediately shall be deposited into such separate payroll account.

8.7. Change of Banks. If so directed by Owner in writing, Manager shall change a depository bank or any depository arrangements effected pursuant to this Agreement.

8.8. Adjustment of Capital Expense Funding Requirement. In the event that Manager determines in its reasonable judgment that the Capital Expense Funding Requirement is

insufficient to provide for anticipated capital and other expenses for any Budget Period, the parties shall negotiate in good faith an increase to the Capital Expense Funding Requirement.

ARTICLE IX.
FINANCIAL AND REPORTING MATTERS

9.1. Annual Business Plan.

(a) Submission of Preliminary Annual Business Plan. No later than ninety (90) days prior to the commencement of each Budget Period, Manager shall submit to Owner for Owner's written approval, which approval shall not be unreasonably withheld, a proposed budget and business plan (the "**Preliminary Annual Business Plan**") for the Golf Course for the next Budget Period. The Preliminary Annual Business Plan shall include such operating and capital budgets, fee schedules and plans as Owner may from time to time direct for the Budget Period.

(b) Approval of Preliminary Annual Business Plan. Each Preliminary Annual Business Plan is subject to the written approval of Owner, not to be unreasonably withheld. Subject at all times to paragraphs 9.1(f), Owner shall have twenty-five (25) days from its receipt of the Preliminary Annual Business Plan and other materials required under paragraph 9.1(b) in which to approve or disapprove the Preliminary Annual Business Plan, which approval not be unreasonably withheld. If Owner does not disapprove the Preliminary Annual Business Plan in writing within twenty-five (25) days after receipt of the Preliminary Annual Business Plan, the same shall be deemed approved. If required by Owner, Manager shall make a presentation to Owner summarizing the major expenditures and changes in the Preliminary Annual Business Plan as compared to the prior Budget Period. If Owner disapproves the Preliminary Annual Business Plan, Owner shall give Manager written notice (the "**Business Plan Disapproval Notice**") of such setting forth Owner's reasons for such disapproval. As soon as reasonably practical after Manager's receipt of the Business Plan Disapproval Notice, but in no event more than fifteen (15) days thereafter, Manager shall submit to Owner, for its written approval, a revised Preliminary Annual Business Plan which shall resolve all matters previously reasonably disapproved by Owner. The Preliminary Annual Business Plan, as approved by Owner or modified as set forth herein, shall be referred to in this Agreement as the "**Approved Annual Business Plan**." Owner shall consent to reasonable changes or amendments to the Approved Annual Business Plan. If the Approved Annual Business Plan is modified with the approval of Owner during any Budget Period, the most current modified plan shall be deemed the Approved Annual Business Plan under this Agreement.

(c) Six Month Review of Annual Business Plan. Within six months following the approval of the Annual Business Plan, Manager and Owner shall jointly review the Annual Business Plan, and work in good faith to make any revisions necessary.

(c) In the event the Management Commencement Date does not correspond with the start of the Fiscal Year, the first and last business plans shall be prepared for the partial Fiscal Years.

(d) Owner Acknowledgment and Consent to Changes in the Approved Annual Business Plan. Owner acknowledges, notwithstanding Manager's experience and expertise in relation to the operation and management of facilities similar to the Golf Course, projections contained in each Approved Annual Business Plan are estimates only and further are subject to and may be affected by changes in financial, economic and other conditions and circumstances beyond Manager's control. The Approved Annual Business Plan should not be relied upon as a guarantee of performance. Owner shall consent to reasonable changes or amendments to the Approved Annual Business Plan.

9.2. Emergency Expenditures. Whenever, by reason of circumstances beyond the control of Manager, emergency expenditures up to Five Thousand Dollars (\$5,000) are in the opinion of Manager required to be made for the lawful or safe operation of the Golf Course, Manager may make such expenditures, notwithstanding that such expenditures are not provided for in the Approved Annual Business Plan. Manager, in all events, shall take reasonable steps to secure Owner's prior consent and shall advise Owner as soon as possible of the nature of the emergency, the proposed remedy and the cost thereof.

9.3. Books and Reports.

(a) **Book of Account.** Throughout the Management Period, Manager shall maintain in accordance with generally accepted accounting principles, consistently applied, full and separate books and records for the Golf Course with entries supported by documentation sufficient to allow Owner to ascertain the accuracy of such books and records. Manager shall maintain and safeguard such books and records at Manager's office at the Rancho Bernardo Inn, or at such other location as may be agreed upon in writing. Manager shall provide copies of such books and records to Owner at other locations upon receipt by Manager of a request therefor from Owner. Manager shall ensure such control over accounting and financial transactions as is necessary to protect Owner's assets from theft, error or fraudulent activity by Manager's employees.

(b) **Reports.**

(i) Manager shall prepare and submit to Owner, on or before the twentieth (20th) of each calendar month during the Management Period and the twentieth (20th) day of the calendar month immediately following any month in which this Agreement is terminated, a "**Monthly Operating Report**", which Monthly Operating Report shall be in such form and contain such operating information as Owner may reasonably require and shall include a report of a statement of income and expenses (including the Management Fee) for the Golf Course for the preceding month and a balance sheet for the Golf Course, each prepared on an accrual basis, and, if requested by Owner, an analysis of variances from the Approved Annual Business Plan, as applicable.

(ii) Manager shall prepare and submit to Owner no later than ninety (90) days after the end of each Fiscal Year an "**Annual Operating Report**" for the immediately preceding Fiscal Year (or in the case of a partial Fiscal Year at the beginning or end of the Management Period, an Annual Operating Report for such partial Fiscal Year), which Annual Operating Report shall be in such form and contain such information as Owner may reasonably

require, including, without limitation, the information described in paragraph 9.3(b)(i) above (collectively, the "**Year End Financials**").

(c) **Supporting Documentation.** As additional supporting documentation for the monthly financial statements and Year End Financials required under paragraph (b) above, unless otherwise directed by Owner, Manager shall make available at Manager's principal office at the Rancho Bernardo Inn, the following: (i) all bank statements and bank deposit slips; (ii) detailed cash receipts and disbursement records; (iii) detailed trial balances for receivables and payables and billed and unbilled revenue items; (iv) paid invoices; (v) supporting documentation for payroll, payroll taxes and employee benefits; (vi) appropriate details of accrued expenses and property records; (vii) daily or weekly reports maintained by Manager in connection with its ongoing operation and management of the Golf Course; and (viii) information necessary for preparation of Owner's tax returns, including a description of and a statement of accounts expended in connection with repairs, capital improvements, taxes and professional fees.

9.4. Owner's Right to Audit. All books, records and supporting documentation maintained by Manager pursuant to this Article IX shall be the sole and exclusive property of Owner, and shall be made available to Owner at Owner's request at reasonable times during normal business hours, and, in addition, in connection with independent financial audits of Owner, as well as audits by any governmental authority. Owner, or persons appointed by Owner, may, during ordinary business hours, examine all books, records and files maintained for Owner by Manager. Owner may perform any audit or investigation relating to Manager's activities at any office of Manager if such audit or investigation relates to Manager's activities for Owner. Without limiting the provisions of paragraph 9.4 hereof, should Owner or Owner's employees or representatives discover any errors in record keeping, Manager shall correct such discrepancies promptly upon discovery and make necessary adjustments. Manager shall inform Owner in writing of the action taken to correct any audit discrepancies.

ARTICLE X. **REPRESENTATIONS AND WARRANTIES**

10.1. Owner's Representations and Warranties. As a material inducement for Manager to enter into this Agreement, Owner represents and warrants to Manager that as of the Management Commencement Date:

(a) Owner is duly organized, validly existing, and in good standing under the laws of its state of organization, is duly qualified to do business in the state in which the Golf Course is located, and has full power, authority, and legal right to execute, perform and timely observe all of the provisions of this Agreement to be performed or observed by Owner. This Agreement has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligation of Owner enforceable in accordance with the terms hereof.

(b) To the best of Owner's knowledge, there is no claim, litigation, proceedings or governmental investigation pending against or relating to Owner, the properties or business of Owner or the transactions contemplated by this Agreement, which does or may reasonably be expected to materially and adversely affect the ability

of Owner to enter into this Agreement or to carry out its obligations hereunder, and there is no basis for any such claim, litigation, proceedings or governmental investigation, except as has been fully disclosed in writing to Manager.

(c) This Agreement constitutes a valid and binding obligation of Owner and does not and will not constitute a breach of or default under any of the organizational or governing documents of Owner or the terms, conditions, or provisions of any law, order, rule, regulation, judgment, decree, agreement, or instrument to which Owner is a party or by which it or any substantial portion of its assets (including the Golf Course) is bound or affected.

(d) No approval of any third party (including any ground lessor or the holder of any Mortgage) is required for Owner's execution and performance of this Agreement that has not been obtained prior to the execution of this Agreement.

(e) Owner, at its own expense, shall maintain in full force and effect starting on the Management Commencement Date and throughout the Management Period its legal existence and the rights required for it timely to observe and perform all of the terms and conditions of this Agreement.

(f) Owner is the sole owner of a fee interest in and to the Golf Course as defined in Recital A of this Agreement, subject to customary title exceptions. Owner has full power, authority and legal right to own a fee interest in and to such real and personal property.

10.2. Manager's Representations and Warranties. As a material inducement to Owner to enter into this Agreement, Manager represents and warrants to Owner that as of the Management Commencement Date:

(a) Manager is duly organized, validly existing, and in good standing under the laws of its state of organization, is duly qualified to do business in the state in which the Golf Course is located, and has full power, authority, and legal right to execute, perform and timely observe all of the provisions of this Agreement to be performed or observed by Manager. This Agreement has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligation of Manager enforceable in accordance with the terms hereof.

(b) There is no claim, litigation, proceedings or governmental investigation pending against or relating to Manager, the properties or business of Manager or the transactions contemplated by this Agreement, which does or may reasonably be expected to materially and adversely affect the ability of Manager to enter into this Agreement or to carry out its obligations hereunder, and there is no basis for any such claim, litigation, proceedings or governmental investigation, except as has been fully disclosed in writing to Owner.

(c) This Agreement constitutes a valid and binding obligation of Manager and does not and will not constitute a breach of or default under any of the organizational or governing documents of Manager or the terms, conditions, or provisions

of any law, order, rule, regulation, judgment, decree, agreement, or instrument to which Manager is a party or by which it or any substantial portion of its assets is bound or affected.

(d) No approval of any third party is required for Manager's execution and performance of this Agreement that has not been obtained prior to the execution of this Agreement.

(e) Manager, at its own expense, shall maintain in full force and effect starting on the Management Commencement Date and throughout the Management Period its legal existence and the rights required for it timely to observe and perform all of the terms and conditions of this Agreement.

ARTICLE XI. **ALTERATIONS AND IMPROVEMENTS**

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

11.2. Supervision. Throughout the Management Period, Manager shall, if and to the extent requested by Owner, coordinate and supervise all minor alterations of and Improvements to the Golf Course and in connection therewith shall take such actions as Owner 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.

ARTICLE XII. **INSURANCE, INDEMNITY AND CASUALTY**

12.1. Insurance Requirements of Manager

(a) **Insurance Types:** Effective as of the Management Commencement Date, Manager shall obtain all insurance required to be obtained by Manager under this Agreement as follows:

(i) ***Commercial General Liability.*** Insurance Services Office ("ISO") Form CG 00 01 covering Commercial General Liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury, with limits no less than \$10,000,000 per occurrence.

(ii) ***Workers' Compensation.*** Workers' Compensation as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.

(iii) *Automobile Liability.* ISO Form CA 00 01 covering any auto (Code 1), or if Manager has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage, unless waived by the Owner and approved in writing by the Owner's Risk and Safety Division.

(iv) *Property Insurance.* Property insurance against all risks of loss to any Manager improvements or betterments, at full replacement cost with no coinsurance penalty provision. The property insurance is to be endorsed to include Legal Liability Coverage (ISO Form CP 00 40 04 02 or equivalent) with a limit equal to the replacement cost of the leased property, Property insurance shall include not less than \$1,000,000 Fire Legal liability on the Premises, including improvements and betterments owned by the Owner, and shall name the Owner as a loss payee.

Manager shall also provide fire insurance on all personal property contained within or on the Premises. The policy must be written on an "all risks" basis, excluding earthquake and flood. The policy shall insure for not less than 90% of the actual cash value of the personal property, and Manager shall name the Owner as an additional insured.

(v) *Interruption of Business Insurance.* Business interruption insurance of a type and in amounts sufficient to cover loss of profits and rent, management fees, any mortgage payments, real estate taxes, hazard insurance premiums, and adequate cleaning, lighting and maintenance of the Golf Course for a period of at least 12 months, and with a waiting period of no more than seven days by which the minimum monthly rent will be paid to the Owner for a period of up to one year if the Premises is destroyed or rendered inaccessible by a risk insured against by a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements.

(vi) *Crime Insurance.* Crime Insurance, which includes Employee Theft and Theft, Disappearance and Destruction coverage parts, in an amount not less than \$500,000 per occurrence with a deductible no greater than \$100,000 that will pay on behalf of the Manager to the Owner for losses caused by the dishonest acts of the Manager or Manager's employees, agents, or designees.

(vii) *Employment Practices Liability.* Employment Practices Liability insurance in an amount not less than \$2,000,000.

(b) If Manager maintains broader coverage and/or higher limits than the minimums otherwise required by this Lease, the Owner requires and shall be entitled to the broader coverage and/or the higher limits maintained by Manager.

(c) Each insurance policy required by this Lease must be acceptable to the Owner's Attorney and shall meet the following requirements:

(i) *Acceptability of Insurers.* Insurance coverage must be provided by an insurer authorized to conduct business in the state of California with a current A.M. Best's rating of no less than A-: FSC VII, or as approved by the Owner.

(ii) *Additional Insured Status.* Manager's Commercial General Liability, Automobile Liability, Crime, and Business Interruption policies must name the Owner (including its officials, officers, agents, employees, and volunteers) specifically as an additional insured under the policy on a separate endorsement page. The Commercial General Liability additional insured endorsement shall be at least as broad as ISO Form CG 20 10 11 85, or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38, and CG 20 37 if a later edition is used.

(iii) *Primary Coverage.* Manager's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to the Owner, its officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the Owner, its officials, officers, agents, employees, or volunteers shall be in excess of Manager's insurance and shall not contribute with it.

(iv) *Notice of Cancellation.* Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the Owner.

(v) *Waiver of Subrogation.* Manager hereby grants to the Owner a waiver of any right to subrogation that any insurer of Manager may acquire against the Owner by virtue of the payment of any loss under such insurance. Manager agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this subsection shall apply regardless of whether or not the Owner has received a waiver of subrogation endorsement from the insurer. Any Workers' Compensation policy required by this Lease shall be endorsed with a waiver of subrogation in favor of the city for all work performed by Manager, its agents, representatives, employees and volunteers.

(vi) *Self-Insurance.* Manager may, with the Owner's prior written consent, fulfill some or all of the insurance requirements contained in this Lease under a plan of self-insurance. Manager shall only be permitted to utilize such self-insurance if, in the opinion of the Owner, Manager's (i) net worth and (ii) reserves for payment of claims of liability against Manager are sufficient to adequately compensate for the lack of other insurance coverage required by this Lease. Manager's utilization of self-insurance shall not in any way limit the liabilities assumed by Manager pursuant to this Lease.

(vii) *Self-Insured Retentions.* Self-insured retentions must be declared to and approved by the Owner.

(viii) *Verification of Coverage.* At the time Manager executes this Lease, Manager shall provide the Owner with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting the insurance coverage required by this Lease), which shall meet all requirements under this Lease. The Owner reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this Lease, at any time.

(ix) *Special Risks or Circumstances.* The Owner reserves the right, at any point during the term of this Lease, to modify the insurance requirements in this Lease, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

(x) *No Limitation of Obligations.* The insurance requirements within this Lease, including the types and limits of insurance coverage Manager must maintain, and any approval of such insurance by the Owner, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Manager pursuant to this Lease, including but not limited to any provisions within this Lease concerning indemnification.

Failure to comply with any of the insurance requirements in this Lease, including but not limited to a lapse in any required insurance coverage during the term of this Lease, shall be a material breach of this Lease. In the event that Manager fails to comply with any such insurance requirements in this Lease, in addition to any other remedies the Owner may have, the Owner may, at its sole option, (i) immediately terminate this Lease; or (ii) order Manager to immediately vacate the Premises until Manager demonstrates compliance with the insurance requirements in this Lease.

(xi) *Insurance Premiums.* Unless otherwise noted, all insurance described under this Article XII to be carried by Manager will be maintained by Manager at Owner's expense in accordance with the Approved Annual Business Plan, as applicable, with insurance carriers who are legally operating in the State of California and acceptable to Owner, which acceptance shall not be unreasonably withheld. In no event will such insurance be terminated or otherwise allowed to lapse prior to termination of this Agreement or such longer period as may be specified herein. Manager may provide the insurance described in this Article XII in whole or in part through a policy or policies covering other liabilities and projects of Manager. Owner shall not be entitled to a pro-rata refund for partial year coverage on pre-paid insurance premiums.

(xii) *Damages.* Nothing contained in these insurance requirements is to be construed as limiting the type, quality or quantity of insurance Manager should maintain or the extent of Manager's responsibility for payment of damages resulting from its operations under this Agreement.

12.2. Indemnification by Owner. To the extent permitted by law, during the Management Period of the Agreement, Owner shall indemnify, protect, defend (through counsel reasonably satisfactory to Manager), and hold harmless Manager and Manager's Affiliates, shareholders, partners, officers, directors, trustees, beneficiaries, members, employees, agents, and legal representatives and the successors and assigns of each of the foregoing (collectively, the "**Manager Representatives**") from, and Manager Representatives shall not be liable to Owner for, any and all liability, loss, cost, claims (whether administrative or judicial) or expense (including, without limitation, damage to Owner's property, workers compensation and/or employee claims, third party claims and reasonable attorneys' fees and expenses) resulting from or arising from or relating to the ownership, development, construction, management, operation or maintenance of the Golf Course (collectively, the "**Liabilities**"), except to the extent those Liabilities arise from (a) Manager's or a Manager's Representatives willful or criminal misconduct, gross negligence or fraud in connection with or relating to the performance by Manager of its obligations under this Agreement, except to the extent that such Manager's misconduct, gross negligence or fraud is caused by, is a result of, or is done at the direction of an Owner Indemnified Party, or (b) any acts by Manager or Manager's Representatives that are

beyond the scope of authority that Manager reasonably believes it has been granted pursuant to this Agreement.

(a) Duty to Defend. Manager will notify Owner of any action, suit, or proceeding potentially giving rise to an indemnity obligation hereunder, and Owner may, and upon Manager's request shall, at Owner's expense, defend such action, suit, or proceeding, or cause the same to be defended by counsel designated by Manager.

(b) Survival. The obligations of Owner under this paragraph 12.2 shall survive the expiration or earlier termination /of this Agreement (regardless of the basis therefor).

(c) Insurance. Notwithstanding anything to the contrary in this Section 12.2, the Manager and the Manager Representatives shall look first to the appropriate insurance coverages in effect pursuant to this Agreement prior to seeking indemnification under this Section 12.2 in the event any claim or liability occurs as a result of injury to persons or damage to property, regardless of the cause of such claim or liability; provided, however, if the insurance company denies coverage or reserves rights as to coverage, then the Manager and the Manager Representatives shall have the right to seek indemnification, without first looking to such insurance coverage.

12.3. Indemnification by Manager. To the extent permitted by law during the Management Period, and unless otherwise caused by the gross negligence or willful misconduct of Owner or Owner's Representatives (as defined below) or by a breach by Owner of its obligations hereunder, Manager agrees to indemnify, protect and defend (through counsel reasonably satisfactory to Owner) and hold harmless Owner and Owner's shareholders, partners, directors, trustees, beneficiaries, members, officers, employees, agents, and representatives and its and their respective successors and assigns ("**Owner's Representatives**") from, and Owner and Owner's Representatives shall not be liable for, any and all liability, loss, cost, or expense damage (including, without limitation, damage to Owner's property, third party claims and reasonable attorneys' fees and expenses) resulting from or arising from or relating to the management, operation or maintenance of the Golf Course during the Management Period of this Agreement to the extent the same shall have been established by a court of competent jurisdiction to have been caused by the (a) willful or criminal misconduct, gross negligence or fraud of Manager or any of Manager's Representatives, or (b) any acts by Manager or Manager's Representatives which are beyond the scope of authority which Manager reasonably believes it has been granted pursuant to this Agreement in connection with or relating to the performance by Manager of its obligations under this Agreement.

(a) Duty to Defend. Owner will notify Manager of any action, suit, or proceeding potentially giving rise to a claim of indemnification under this paragraph, and Manager may, and upon Owner's request shall, at Manager's expense, defend such action, suit or proceeding, or cause the same to be defended by Counsel designated by Owner.

(b) Survival. The obligations of Manager under this paragraph 12.3 shall survive the expiration or earlier termination of this Agreement (regardless of the basis therefor).

(c) **Insurance**. Notwithstanding anything to the contrary in this **Section 12.3**, the Owner and the Owner Representatives shall look first to the appropriate insurance coverages in effect pursuant to this Agreement prior to seeking indemnification under this **Section 12.3** in the event any claim or liability occurs as a result of injury to persons or damage to property, regardless of the cause of such claim or liability; provided, however, if the insurance company denies coverage or reserves rights as to coverage, then the Owner and the Owner Representatives shall have the right to seek indemnification, without first looking to such insurance coverage.

12.4. Accident Reporting. Manager shall promptly investigate, and make a full, timely written report to Owner regarding all accidents, claims or damage in excess of Five Thousand Dollars (\$5,000) 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 prepare any and all reports required by Owner and any insurance companies in connection therewith. All such reports shall be filed timely with Manager's insurance companies as required under the terms of the applicable insurance policy which provides coverage for such accident, damage or claim. Manager shall not settle, compromise, or otherwise dispose of any claims, demands or liabilities, whether or not covered by insurance proceeds, without the prior written consent of Owner.

ARTICLE XIII. **TERMINATION**

13.1. Events of Default by Manager. The following shall constitute Events of Default of Manager:

(a) if there is any failure by Manager to perform any of the terms, conditions or covenants of this Agreement to be observed or performed by Manager within thirty (30) days after written notice from Owner (or such additional time as is reasonably required to correct any such default provided that Manager commences the cure during such thirty (30) day period and thereafter diligently pursues such cure);

(b) if Manager shall become insolvent or file any debtor proceedings, or should any adjudications in bankruptcy be rendered against Manager, or should Manager take or there be taken against Manager 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 Manager's property, and, in the case of any involuntary proceeding, the same is not discharged within sixty (60) days thereafter, or if Manager makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement of its debts;

(c) if Manager 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; or

(d) if Manager assigns this Agreement in violation of Article XIV.

13.2. Events of Default by Owner. The following shall constitute Events of Default of Owner:

(a) If Owner fails to keep, observe or perform any covenant, agreement, term or provision of this Agreement to be kept, observed or performed by Owner, and such default shall continue for a period of thirty (30) days after written notice thereof by Manager to Owner (or such additional time as is reasonably required to correct any such default provided that Owner commences the cure during such thirty (30) day period and thereafter diligently pursues such cure);

(b) If Owner fails to fund a monetary deficiency pursuant to paragraph 8.2 or pay to the Manager any sum or money when due and payable;

(c) Sale of all or a portion of the Golf Course; or

(d) If Owner shall become insolvent or file any debtor proceedings, or should any adjudications in bankruptcy be rendered against Owner, or should Owner take or there be taken against Owner 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 the Golf Course, and, in the case of any involuntary proceeding, the same is not discharged within sixty (60) days thereafter, or if Owner makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement of its debts.

13.3. Termination Upon Default. Upon the occurrence and continuation 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 therefor specified in such election; provided, however, that in no event shall such date be later than thirty (30) days following the date such election is made.

13.4. Actions Following Termination. In addition to any other rights and remedies afforded to a non-defaulting party following an Event of Default, should a non-defaulting party elect termination, the parties agree that the following additional provisions shall apply in order to facilitate transition in management of the Golf Course:

(a) Manager shall assign, convey, transfer and set over unto Owner, pursuant to an assignment in form and content satisfactory to Owner, all of Manager's right, title, and interest in and to all Operating Contracts then in effect and in Manager's name with respect to the Golf Course, and Manager shall transfer to Owner possession of all Equipment and Supplies.

(b) Manager shall, for a period of two (2) months following such termination, assist and cooperate with Owner to the extent necessary to ensure an orderly and efficient transfer of the operations of the Golf Course by Manager to Owner or Owner's designee. The covenant of Manager contained herein shall survive and remain in full force and effect following any such termination of this Agreement.

(c) Notwithstanding the foregoing, if at the time of termination Manager has not already been paid in full, Manager shall withdraw from the Operating Account funds necessary to cover all outstanding balances owing from Owner to Manager, plus interest, and all outstanding fees (including unpaid Management Fees) and out of pocket costs, including establishment of a Liability Escrow for any open or threatened claims; provided, however, that in the event of a termination due to a default of Manager, Manager shall not have the right to withdraw further

funds to pay fees thereafter accruing. If amounts in the Operating Account are insufficient to pay all outstanding amounts owed to Manager by Owner, such amounts shall be promptly paid directly by Owner to Manager.

(d) For purposes of clarification, the provisions of this Article XIII regarding termination are not intended to limit any other rights or remedies afforded to a party under applicable law as a consequence of an Event of Default in respect of the other party. For example, should an Event of Default occur in respect of Manager (*e.g.*, failure by Manager to perform its obligations hereunder, after notice and opportunity to cure), Owner shall have a right, in addition to termination, to obtain an award for any damages suffered as a consequence of such Event of Default. Notwithstanding the foregoing, the maximum damages to which Manager may be held liable on account of Events of Default hereunder shall not exceed 100% of the aggregate Management Fees paid to Manager for the immediately preceding Budget Period; provided, however, the foregoing limitation shall not apply to, limit, or affect (i) Manager's indemnity obligations under paragraph 12.3 above, or (ii) any claims related to or based upon Manager's willful, criminal or fraudulent misconduct.

(e) Owner acknowledges that Manager or its Affiliate may have an obligation under federal, state, or local law to give advance notice to Golf Course Personnel of any termination of their employment, and that failure to comply with any such notification obligation could give rise to civil liabilities. Therefore, notwithstanding anything to the contrary contained in this Agreement, (i) the date of termination of this Agreement, other than upon expiration of the Management Period, shall be extended so that the date of termination after notice of termination is given to or by Manager shall be on a date which is not earlier than ten (10) days plus the number of days, if any, Manager is required to give its employees advance notification of termination of employment by Manager as required by the Worker Adjustment and Retraining Act, 29 U.S.C., § 2101 et. seq., as hereafter amended ("**WARN Act**"), or any similar federal or state statute; (ii) Owner shall indemnify, hold harmless and defend Manager and its Affiliates from and against any such liabilities based on Owner's actions (including terminating this Agreement) which give rise to such a notification obligation on the part of Manager or any of its Affiliates, if Owner fails to extend the date of termination as required by, and in accordance with, subparagraph (i) of this paragraph 13.4(e); and (iii) Manager shall continue to employ such Golf Course Personnel as are necessary and for so long as is necessary to not cause a "mass layoff," "plant closing," or other violation relating to the termination of Golf Course Personnel under the WARN Act. Owner shall have no responsibility under, nor any liability to Manager and its Affiliates with respect to, the WARN Act, or any similar federal or state statute, provided Owner has complied with its obligations under this paragraph 13.4(e).

ARTICLE XIV.

TRANSFER AND ASSIGNMENTS

14.1. Restrictions on Manager. Manager 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) ("**Transfer**"), without the prior written consent of Owner, which consent may be granted or withheld in Owner's sole judgment. Any assignment by Manager without Owner's consent shall be of no force or effect. A sale or conveyance of more

than 51% of the interests in the profit and losses of Manager shall be considered a Transfer under this Article.

14.2. Restrictions on Owner. Owner may sell, encumber, subordinate, assign, lease, sublease, or 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 Manager, provided that any such transferee shall take its interest subject to the rights of Manager under this Agreement.

ARTICLE XV. LEGAL REQUIREMENTS

15.1. Legal Requirements.

(a) **Manager Legal Requirements.** Throughout the Management Period, Manager shall comply with and observe, without exception, all Legal Requirements applicable to the Golf Course or any of the rights, duties, or obligations of Manager under this Agreement, including all Legal Requirements that are applicable as a result of Manager serving in its capacity as the manager of the Golf Course ("**Manager Legal Requirements**"). All sums required to be paid to ensure compliance with this paragraph 15.1(a) on account of Manager Legal Requirements shall be paid at no cost or expense to Owner.

(b) **Owner Legal Requirements.** Throughout the Management Period, Owner shall comply with and observe, without exception, all Legal Requirements applicable to the Golf Course or any of the rights, duties, or obligations of Owner under this Agreement, including all Legal Requirements that are applicable as a result of Owner serving in its capacity as the Owner of the Golf Course ("**Owner Legal Requirements**"). All sums required to be paid to ensure compliance with this paragraph 15.1(b) on account of Owner Legal Requirements (such as licenses and authorizations to do business in the State of California) shall be paid at no cost or expense to Manager.

15.2. Manager's Right to Contest Legal Requirements. Manager shall recommend to Owner from time to time whether any Legal Requirements should be contested. If requested by Owner, Manager shall contest with reasonable diligence any Legal Requirement designated by Owner. Additionally, and notwithstanding paragraph 5.1(h), Manager shall have the right to contest by appropriate proceedings conducted in good faith and with reasonable diligence the validity or application of any Legal Requirement, whether a Manager Legal Requirement or an Owner Legal Requirement. If compliance with any such Legal Requirement may legally be delayed pending the prosecuting of any such proceeding, Manager may, with the prior written consent of Owner, contest as aforesaid and delay as aforesaid, provided that such contest or delay does not subject Owner to criminal liability, damages or expenses and provided that Manager furnishes Owner security, reasonably satisfactory to Owner, against any loss or injury by reason of such contest or delay. The costs of contesting any Owner Legal Requirement shall be borne by Owner and the costs of contesting any Manager Legal Requirement shall be borne by Manager.

15.3. Environmental Matters. Owner and Manager shall each disclose to the other the presence of any Hazardous Materials known or discovered by Owner or Manager (as the case may be) that may require action in order to comply with (or avoid a violation of) applicable Legal Requirements or that may create or contribute to any claims, damages, losses, or expenses not

typically insured against by the insurance coverages specified in Article XII. If any such Hazardous Materials require removal, abatement, or any other special procedures, such special procedures shall be performed at Owner's expense in compliance with all Legal Requirements. In any case, Manager shall cooperate with Owner and/or any insurance risk manager to analyze what insurance coverages may be available, and at what cost, against the presence of such Hazardous Materials, in order to protect the interests of both Manager and Owner.

ARTICLE XVI. CERTAIN TRANSACTIONS

16.1. Manager or Owner, any Affiliate of Manager or Owner, or both, or any shareholder, officer, member, director, employee or any person owning a legal or beneficial interest therein, may own, lease, develop, operate or manage or participate (directly or indirectly) in the ownership, leasing, development, operation or management of any golf course, resort facilities, or other business or venture of any nature and description independently or with others, which may be located in the same market area or vicinity.

(a) **Owner's Understanding.** Owner hereby represents that in entering into this Agreement, Owner has not relied on any statement as to the possibility of future success or as to any similar matter which may have been prepared by Manager or by any of its Affiliates and understands that no guarantee is made or implied by Manager or by any of its Affiliates as to the future earnings or financial success of the Golf Course.

(b) **Manager's Understanding.** Manager hereby represents that in entering into this Agreement, Manager has not relied on any statement from Owner or any representative or partner of Owner and has conducted such due diligence and investigations as it deems appropriate before entering into this Agreement.

ARTICLE XVII. MISCELLANEOUS

17.1. Waiver. The waiver by either Owner or Manager 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 herein contained. No covenant, term or condition of this Agreement shall be deemed to have been waived by Owner or Manager, unless such waiver is in writing signed by the party against whom such waiver is asserted.

17.2. Entire Agreement. This Agreement sets forth all the covenants, promises, agreements, conditions and understandings between Owner and Manager, oral or written, relating to the subject matter of this Agreement. Neither Owner nor Manager has made any representations or promises not expressly contained herein. No subsequent alterations, amendment, change or addition to this Agreement shall be binding upon Owner and Manager unless reduced to a writing and signed by them.

17.3. Unavoidable Delay. 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

successor thereto) as of such date of delinquency, as its “**prime**” or “**reference**” rate, plus two percent (2%).

17.8. 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 Owner and Manager. Nothing stated in the foregoing sentence shall limit the provisions of Article XIV of this Agreement.

17.9. Persons Indemnified. All agreements by either Manager or Owner 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.

17.10. Applicable Law and Jurisdiction. 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 California in and for the County of San Diego, and Owner and Manager agree to submit to the jurisdiction of such court.

17.11. Cumulative Rights. The rights and remedies conferred upon both Owner and Manager in this Agreement and by law are cumulative.

17.12. Savings Clause. If any provision 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.

17.13. Attorneys’ 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, photostating, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians 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, arbitrations 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.

17.14. 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 at law or in equity.

17.15. Further Assurances. Manager and Owner each agree to execute and deliver from time to time, promptly following any reasonable request therefor 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 determination of the other party, to carry out the transaction described in this Agreement.

17.16. 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 Owner, and all matters relating to their use shall be subject to Owner's approval in its sole judgment. If any design, device, material or process covered by letters patent, copyright or trademark is used by Manager 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.

17.17. 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.

17.18. 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.

17.19. Approvals. In any provision of the Agreement where Owner's or Manager's approval or consent is required, Owner or Manager, as applicable, shall, except to the extent specifically stated to the contrary in such provision, have the right to withhold or refuse its approval or consent in Owner's or Manager's, as applicable, sole and absolute discretion.

17.20. Counterparts. This Agreement 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.

17.21. Nondiscrimination in Employment. Manager will use reasonable and diligent efforts not to discriminate against any employee or applicant for employment because of race, creed, color, age, sex or national origin. Manager 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. Manager shall not discriminate with respect to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

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

17.23. Independent Contractor. Owner and Manager acknowledge and agree that Manager 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 Owner and Manager 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.

17.24. Confidentiality. Manager shall hold confidential any information which Manager receives in connection with the performance of its obligations hereunder and which concerns Owner or its operations or business and shall not disclose all or any portion of such information to any third party, except for such disclosures as are necessary to perform Manager's obligations hereunder or are required by law or by any proposed lender or mortgagee of the Golf Course.

17.25. Limitation on Fiduciary Duties. To the extent any fiduciary duties that may exist as a result of the relationship of the parties are inconsistent with, or would have the effect of expanding, modifying, limiting or restricting any of the express terms of this agreement, (a) the express terms of this agreement shall control; (b) this agreement shall be interpreted in accordance with general principles of contract interpretation without regard to the common law principles of agency; and (c) any liability of the parties shall be based solely on principles of contract law and the express terms of this agreement. the parties further acknowledge and agree that for the purposes of determining the nature and scope of manager's fiduciary duties under this agreement, the terms of this agreement, and the duties and obligations set forth herein, are intended to satisfy all fiduciary duties that may exist as a result of the relationship between the parties, including all duties of loyalty, good faith, fair dealing and full disclosure, and any other duty deemed to exist under the common law principles of agency or otherwise (other than the duty of good faith and fair dealing implied under general contract principles, independent of the common law principles of agency). in addition, notwithstanding anything to the contrary in this agreement, to the fullest extent permitted under applicable law, the parties hereby unconditionally and irrevocably waive and disclaim any power or right such party may have to claim any punitive, exemplary, statutory or treble damages or consequential or incidental damages for any breach of fiduciary duties.

17.26. Trial by Jury. Each party waives, to the fullest extent permitted by law, trial by jury of all claims arising out of or relating to this agreement.

(SIGNATURE PAGE FOLLOWS)

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

“Owner”

CITY OF ESCONDIDO
a California municipal corporation

By: _____
Paul McNamara, Mayor

Date: _____

“Manager”

ESCONDIDO GOLF, LLC
a California Limited Liability Company

By: CourseCo, Inc.
A California Corporation

By: _____
Michael Sharp, President/CEO

Date: _____

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, City Attorney

BY: _____

Exhibit "A"
GOLF COURSE

ALL THAT REAL PROPERTY IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

ALL OF ASSESSOR'S PARCEL NUMBER 187-310-11 LYING NORTHERLY OF JESMOND DENE ROAD, AND LOT "R" ON ESCONDIDO TRACT NO. 819, MAP THEREOF NO. 14185, FILED FOR RECORD WITH THE SAN DIEGO COUNTY RECORDER ON APRIL 5, 2001 AS DOCUMENT NO. 2001-0207056.

Exhibit "B"
Reidy Creek Golf Course Equipment

Asset ID	Description	Asset Type	Serial ID	Profile ID	Fleet Notes
10704	Well for Irrigation	Facility		PLIMP	
10691	Turfcoat Rotary Mower & Blower	Equipment		PM&E	<i>Out of Service, on site for parts</i>
10698	Truck with Vicon Spreader	Equipment		PM&E	<i>Both on site, in service - Bad condition</i>
10697	Truck with Topdresser	Equipment		PM&E	<i>Topdresser on site, truck missing</i>
10690	Triplex Triking	Equipment		PM&E	<i>Missing</i>
10689	Triplex Triking	Equipment		PM&E	<i>Missing</i>
10695	Spraytek Sprayer & Lift Option	Equipment		PM&E	<i>Missing</i>
10692	Sand Scorpion Bunker Rake	Equipment		PM&E	<i>On site, operable (but has many issues)</i>
11677	Reidy Crk Cart Wash Bldg	Facility		PBLDG	
10731	Reidy Creek Golf Course Land	Property		PLAND	
10702	Reidy Creek Golf Course	Property		GOLF	
10733	Reidy Creek Golf - Parking Lot	Facility		PLIMP	
10732	Reidy Creek Golf - Clubhouse	Facility		PBLDG	
13352	Reidy Creek Clubhouse Renovati	Other		GBLDG	
12791	Reconditioned Greens Roller	Equipment		GM&E	<i>On site, operable - Fair condition, needs attention</i>
10703	Maint. Bldg & Storage Bldg	Facility		PBLDG	
10694	Kubota 4-Wheel Drive Tractor	Equipment		PM&E	<i>On site, ROPS removed - Bad condition, unsafe</i>

12074	John Deere ProGator Vehc 2020	Equipment	TC2020B035241	GM&E	<i>On site, operable - Fair condition, needs attention</i>
12076	John Deere Mower 2500A Triplex	Equipment	TC250AD040328	GM&E	<i>Missing</i>
11442	Jacobsen GreenKing IV	Equipment	6228804832	GM&E	<i>Missing</i>

12525	Jacobsen Eclipse 322 Lawnmower	Equipment	6280103582	GM&E	<i>On site, operable - Good condition</i>
10676	Ideal 65 Automatic Bedknife Gr	Equipment		RM&E	<i>Missing</i>
10666	IBS Software & Hardware	Equipment		RM&E	
10646	IBS POS System Computer	Equipment		RM&E	
10677	Golf Shop Cabinetry	Equipment		RM&E	
10693	Gnossen Mid-Size Vacuum	Equipment		PM&E	<i>Missing</i>
10673	Fuel Tanks	Equipment		RM&E	<i>Operable, up to date on inspections per JC Golf</i>
10686	Diesel Greens Mower	Equipment		PM&E	<i>Missing</i>
12075	AD Williams Green Sprayer	Equipment	AD-200-SI-G-200	GM&E	<i>On site, operable - Fair condition, needs attention</i>
12208	2013 John Deere 2030A ProGator	Equipment	1TC203ATEDT070617	GM&E	<i>On site, operable - ok condition</i>
11834	2004 Toro 4500-D Fairway Mower	Equipment	30856-240001306	GM&E	<i>Missing</i>
<i>Additional Equipment on Site - City Owned per JC Golf</i>					
	John Deere 2500 A Mower				<i>On site, inoperable - used for parts</i>
	John Deere 2500 A Mower				<i>On site, inoperable - used for parts</i>

	John Deere 2500 E Mower				<i>On site, inoperable - used for parts</i>
	Club Car Cart				<i>On site, inoperable - used for parts</i>
	EZGO Cart				<i>On site, inoperable - used for parts</i>
	EZGO Cart				<i>On site, inoperable - used for parts</i>
	TORO 3500D mower				<i>On site, inoperable - used for parts</i>
	Jacobsen Greens Mower GPlex2				<i>On site, inoperable - used for parts</i>
	Jacobsen Greens Mower GPlex2				<i>On site, inoperable - used for parts</i>
	Jacobsen Greens Mower EPlex2				<i>On site, inoperable - used for parts</i>
	Qty 10 - (Tan) Yamaha Golf Carts				On site, operable, good condition - approx 3 years old
	Qty 26 - (Charcoal)				On site, operable, good condition - approx 1 year old
	Yamaha Golf Carts				