

2023

GOLF COURSE MANAGEMENT AGREEMENT

between

**THE CITY OF INDIAN WELLS,
a California Municipal Corporation**

and

**TROON GOLF, L.L.C.
a Delaware limited liability company**

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**INDIAN WELLS RESORT
2023 GOLF COURSE MANAGEMENT AGREEMENT**

THIS INDIAN WELLS RESORT 2023 GOLF COURSE MANAGEMENT AGREEMENT (the “**Agreement**”), effective _____, 2023 (“Effective Date”), is between the **CITY OF INDIAN WELLS**, a California municipal corporation (the “**City**”), whose address is 44-950 Eldorado Drive, Indian Wells, California 92210, and **TROON GOLF, L.L.C.**, a Delaware limited liability company (“**Troon**”), whose address is 15044 N. Scottsdale Road, Suite 300, Scottsdale, Arizona, 85254, with respect to the following recitals:

RECITALS

A. The City is responsible for the operation of the Golf Resort at Indian Wells, located at 44-500 Indian Wells Lane, City of Indian Wells, Riverside County, California, consisting of two eighteen (18) hole championship length golf courses (individually, a “**Golf Course**” and collectively, the “**Golf Courses**”), a driving range, clubhouse complex, food and beverage facilities, a golf shop, maintenance facility, Shots in the Night, and a training facility with indoor Trackman bays (collectively, the “**Golf Resort**”).

B. Troon is engaged in the management and operation of golf facilities.

C. The City desires to utilize the services and experience of Troon in connection with the management and operation of the Golf Resort, and Troon desires to render such services upon the terms and conditions outlined in this Agreement.

D. City and Troon previously entered into the Indian Wells Resort Golf Course Management Agreement dated June 1, 2009, as amended (the “Original Management Agreement”). This Agreement replaces and supersedes the Original Management Agreement and all other prior agreements as to its subject matter as of the Effective Date.

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

**ARTICLE I
Definitions**

1.1 Defined Terms. When used in this Agreement, the following terms shall have the meaning ascribed to them in this Article I unless the context clearly indicates a contrary intent:

“Affiliate” shall mean, with respect to any entity, (a) officers, directors, members, managers or employees of, or general partner in such entity, and (b) any individual, corporation, limited liability company, partner, partnership, trust or other entity which owns or controls, or is owned or controlled by, or is under common ownership or control with such entity. As used herein, the term “control” shall mean

the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of partnership interests or voting securities, by contract, by appointment to a managerial position, or otherwise.

“Affiliated Facilities” shall mean all golf course facilities managed or operated by Troon throughout the world (including, without limitation, if designated as such by Troon, golf facilities operated by an Affiliate of Troon).

“Annual Base Fee” shall have the meaning ascribed to that term in Article 7.1 of this Agreement.

“Annual Incentive Fee” shall have the meaning ascribed to that term in Article 7.2 of this Agreement.

“Annual Plan” shall have the meaning ascribed to that term in Article 3.4 of this Agreement.

“Benchmarks and Performance Measures” means industry standard criteria and methods for measuring and evaluating performance. Benchmarks and Performance Measures incorporate market analytics, identify and compare market comp sets, including golf courses and restaurants, financial benchmarks, industry benchmarks, performance measurement, and financial and operational performance measures. Best practices include but are not limited to:

- a) Financial Performance Measures: Revenue growth, profit margin, return on investment (ROI).
- b) Operational Performance Measures: Cycle time, customer satisfaction, defect rate.
- c) Employee Performance Measures: Sales performance, productivity, customer service ratings.

“City” shall mean the City of Indian Wells, a California Municipal corporation, its employees, and elected officials.

“City Hotels” shall mean hotels located within the city limits of Indian Wells.

“City Manager” shall mean the person holding the position of City Manager of the City of Indian Wells or the City Manager’s designee to whom Troon shall report.

“Commencement Date” shall have the meaning ascribed in Article 6.1.

“Compensation” shall mean the direct salaries and wages paid to or accruing for the benefit of the management staff and all other persons employed by Troon at the Golf Resort, excluding persons employed in food and beverage service, together with all fringe benefits payable to or accruing for the benefit of such employees, including employer’s contribution under the Federal Insurance Contributions Act (“**FICA**”), unemployment compensation, or other employment taxes, pension fund contributions, worker’s compensation, group life and accident and health insurance premiums, retirement, disability, and other similar benefits, but excluding (i) severance benefits unless approved in advance by the City and (ii) Employee Bonuses unless payable by Article 3.5(c).

“Easement Agreement” shall mean that certain Easement Agreement by and between the Redevelopment Agency of the City of Indian Wells and certain property owners as amended from time to

time, recorded as Document Number 117222, in the office of the County Recorder of the County of Riverside, California. The Easement Agreement is incorporated herein by reference as though fully set forth herein.

“Employee Bonuses” shall have the meaning ascribed to that term in Article 3.5(c).

“Equipment and Supplies” shall mean all equipment and supplies used or useful at the Golf Resort, including, without limitation, the Golf Shop Inventory, golf course maintenance vehicles and equipment, driving range pickers and pullers, golf carts, rental golf clubs, and bags, green flags, janitorial equipment and supplies, office supplies, and all furniture, furnishings, fixtures, equipment, and supplies used in accordance with this Agreement.

“Exceptional Customer Service” is often linked to the operating qualities associated with “First-Class” as defined in this agreement. Exceptional customer service refers to a level of service that goes beyond the ordinary or expected standards. It involves delivering exceptional experiences and exceeding customer expectations to create long-lasting customer relationships, both internal and external. Exceptional customer service typically involves the following key characteristics:

- a. Personalization: Understanding and addressing individual customer needs, preferences, and circumstances on a personalized level.
- b. Responsiveness: Promptly and effectively addressing customer inquiries, concerns, and requests in a timely manner, showing a genuine willingness to help.
- c. Proactive Communication: Anticipating and providing relevant information to customers before they even ask for it, keeping them informed and engaged throughout their interactions.
- d. Empathy and Understanding: Demonstrating genuine empathy, actively listening to customers, and understanding their emotions, concerns, and perspectives.
- e. Problem Solving: Taking ownership of customer issues or problems and working diligently to resolve them in a timely and satisfactory manner, going the extra mile to find solutions.
- f. Consistency: Delivering a consistently high level of service across all customer touchpoints and interactions, ensuring a seamless and positive experience every time.
- g. Going Above and Beyond: Going the extra mile to exceed customer expectations, anticipating their needs, and surprising them with unexpected gestures or benefits.
- h. Professionalism and Courtesy: Displaying professionalism, respect, and courtesy in all customer interactions, regardless of the circumstances or challenges.
- i. Continuous Improvement: Striving to continuously improve the quality of service provided by actively seeking feedback, analyzing customer experiences, and implementing changes to enhance future interactions.

- j. Building Relationships: Fostering long-term relationships with customers by establishing trust, showing appreciation, and demonstrating a commitment to their satisfaction and success.

“Executive Employees” shall mean the Golf Resort’s General Manager, Director of Golf, Golf Course Superintendent, and Controller.

“F&B Incentive Fee” shall have the meaning ascribed to it in Article 7.3.d

“First-Class” shall mean an operational standard of quality and excellence similar to that found at luxury high-end resort golf facilities in the Western United States, including but not limited to optimum agronomic, maintenance, and playing conditions, exceptional customer service, professional staff, and efficient operations. First-Class shall further be defined as performance standards consistent with the Troon Golf Quality Standards. Being “First-Class” typically refers to possessing qualities or characteristics that are of the highest standard or rank. Below are common qualities associated with being First-Class that the City expects to be implemented into the Golf Resort operations:

- a) Excellence: First-Class entities demonstrate exceptional quality, skill, or performance in their respective fields.
- b) Proficiency: Exhibits a high level of expertise, competence, and mastery in their work or chosen area of focus.
- c) Reliability: Being First-Class involves being consistently dependable and trustworthy, delivering consistent results or experiences.
- d) Attention to Detail: First-Class entities pay meticulous attention to even the smallest details, ensuring precision and thoroughness in their work.
- e) Innovation: First-Class entities are often characterized by their ability to think creatively and bring fresh ideas and approaches to their field, constantly pushing the boundaries of what is considered conventional.
- f) Exceptional Service: First-Class service providers prioritize customer satisfaction, going above and beyond to exceed expectations and deliver an outstanding experience.
- g) Professionalism: First-Class entities adhere to high standards of conduct and maintain a respectful, courteous, and ethical approach in their interactions with others.
- h) Continuous Improvement: Being First-Class entails a commitment to ongoing learning, growth, and self-improvement. First-Class entities seek out new knowledge, refine their skills, and adapt to changing circumstances.
- i) Superior Quality: First-Class products, services, or experiences exhibit a superior level of craftsmanship, performance, durability, or aesthetics.
- j) Superior Attention to Customer Needs: First-Class entities understand and anticipate the needs and desires of their customers, tailoring their offerings to provide personalized solutions or experiences.
- k) Consistency: First-Class entities maintain their high standards consistently over time, ensuring that their performance, products, or services consistently meet or exceed expectations.
- l) Reputation: First-Class entities have a strong and positive reputation in their field, often earning recognition and respect from peers, customers, or the community at large.

“Golf Committee” shall mean the Indian Wells Golf Resort Advisory Committee that is established by the Indian Wells City Council.

“Golf Courses” shall have the meaning ascribed to that term in Recital A above.

“Golf Resort” shall have the meaning ascribed to that term in Recital A above.

“Golf Resort Expenses” shall mean all costs and expenses incurred in the operation, management, and maintenance of the Golf Resort (excluding the expenses related to food and beverage operations), including (a) all expenditures incurred by Troon in the performance of its obligations under this Agreement or expenditures incurred by City for the benefit of the Golf Resort; (b) the total fees paid to Troon pursuant to Article VII of this Agreement; (c) all expenses identified explicitly as “Golf Resort Expenses” in this Agreement; and (d) all other expenses agreed to by the City.

There shall be expressly excluded from Golf Resort Expenses the following costs and expenses of the Golf Resort, which shall be defined as “**Fixed Charges**”:

- (A) Depreciation of the Improvements (if applicable) and FF&E, and amortization of financing costs, pre-opening expenses, organizational and other costs;
- (B) All debt service (including interest and principal) on any indebtedness related to the Facility;
- (C) Rental payments pursuant to any ground lease;
- (D) The cost of external (third-party) audits of Facility operations and/or with respect to Owner’s legal entity;
- (E) Recurring and non-recurring Owner ownership costs, such as Owner’s legal entity administration and servicing fees;
- (F) The Incentive Management Fee;
- (G) Real estate (if applicable) and personal property taxes and assessments (including payments to tax escrow accounts, but without duplication with respect to taxes subsequently paid out of such tax escrow accounts);
- (H) Payments pursuant to any equipment leases or installment sales contracts;
- (I) Such other cash expenditures (including capital replacements and major capital improvements as part of the Restoration Project and otherwise) which are normally treated as a capital expenditure under GAAP; and
- (J) Property insurance premiums.

“Golf Shop Inventory” shall mean the merchandise usually sold at golf shops at First Class private and public golf course facilities, including, without limitation, clubs, bags, balls, clothes, shoes, gloves, hats, and other golf apparel and accessories.

“Gross Revenues” shall mean, for the Operational Year, all revenues generated from the operation of the Golf Resort and or its various components, determined on an accrual basis in accordance with generally accepted accounting principles consistently applied, including without limitation, greens fees, cart fees,

rental fees, driving range revenue, golf shop revenue, lesson fees (payable to the Golf Resort), merchandise sales, frequent player card revenue, and any other revenue relating to the Golf Resort. Specifically excluded from the calculation of Gross Revenues are:

- (a) Food and beverage revenues;
- (b) Sales taxes, excise taxes, gross receipts, and similar taxes now or later imposed upon the sale of food, beverages, merchandise, or services;
- (c) That portion of any lesson fees charged by a golf professional which are not paid to the Golf Resort;
- (d) The amount of any gratuities paid or given by a customer to Golf Resort employees or service charges added to customer billings which represent gratuities to Golf Resort employees;
- (e) Gross receipts received by licensees, vending companies, or concessionaires, except to the extent such proceeds are compensation for amounts that would otherwise constitute Gross Revenue hereunder;
- (f) Interest income and revenues from the sale or mortgage of all or any part of the Golf Resort, revenues received on account of any casualty or condemnation, insurance proceeds (other than business interruption insurance), loan or financing proceeds, and any other revenues from any capital transaction;
- (g) Grant Revenues or Insurance Reimbursements – Revenues from grants or insurance reimbursements shall not be included in gross revenue; and
- (h) Amounts paid by the City to cover Golf Resort expenses or other costs.

“Gross Food and Beverage Revenues” shall mean, for the Operational Year, all revenues generated from the sale of food and beverages at the Golf Resort, determined on an accrual basis in accordance with generally accepted accounting principles consistently applied. Specifically excluded from the calculation of Gross Revenues are:

- (a) Sales taxes, excise taxes, gross receipts, and similar taxes now or later imposed upon the sale of food and beverages;
- (b) The amount of any gratuities paid or given by a customer to the Golf Resort; and
- (c) Employees or service charges added to customer billings representing gratuities to Golf Resort employees.

“Gross Operating Profit” or “GOP” shall mean the amount, if any, by which Gross Revenues exceed Golf Resort Expenses.

“Implementation Goals and Deliverables” shall mean the Implementation Goals and Deliverables list which identifies key areas that are required in the Golf Resort Annual Plan as adopted by the City Council.

“Improvements” shall mean the Golf Resort clubhouse and all other buildings, structures, and improvements now located or hereafter constructed on the land encompassing the Golf Courses (the “Site”) and all fixtures and equipment attached to, forming a part of and necessary or desirable for the operation of such clubhouse and other buildings, structures or improvements (including, without limitation, heating, lighting, plumbing, sanitary system, air-conditioning, refrigeration, kitchen, elevators, and similar items) and such (i) restaurants, bars and banquet, meeting and other public areas, (ii) commercial space, including concessions and shops, (iii) garage and parking space, (iv) storage and service areas, (v) recreational facilities and areas, (vi) public grounds and gardens, (vii) permanently affixed signage and (viii) other facilities and appurtenances, all as presently exist on the Site or are hereafter added thereon during the Term.

“Initial Term” shall have the meaning ascribed in Article 6.1.

“Key Money” shall have the meaning ascribed in Article 3.15.

“Key Money Repayment Amount” shall have the meaning ascribed in Article 3.15.

“Key Money Repayment Date” shall have the meaning ascribed in Article 3.15.

“Legal Requirements” shall mean any and all laws, statutes, ordinances, codes, orders, rules, regulations, permits, licenses, authorizations, entitlements, official orders, and requirements of, or conditions imposed by, all federal, state and local government regulatory agencies and authorities which are as of the date hereof or hereafter become applicable to the Golf Resort, including, without limitation, any of the preceding relating in any way to hazardous materials or hazardous waste.

“Management Fee(s)” shall mean the combination of the Annual Base Fee, the Annual Incentive Fee, and the F&B Incentive Fee.

“Net Operating Income” shall mean the amount, if any, by which Gross Operating Profit exceeds Fixed Charges calculated for the relevant period.

“NOI Deficiency” shall have the meaning ascribed in Article 6.5.

“NOI Shortfall” shall have the meaning ascribed in Article 6.5.

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

“Operational Year” shall mean July 1 to June 30 of each year during the Term of this Agreement.

“Restaurant Lease Agreement” shall mean that certain Amended and Restated Restaurant Lease Agreement of even date herewith between Troon and City with respect to the operation of all food and beverage operations at the Golf Resort.

“Term” shall have the meaning ascribed in Article 6.1.

“Troon” shall mean Troon Golf, L.L.C.

“Troon Golf Quality Standards” shall mean a level of service that is suitable to a golf resort that is First-Class and that has above-average customer response. It includes providing superior attention to customer needs and high-quality service with compassion and warmth, all in accordance with the service level criteria and performance standards set forth in the Troon Golf Quality Standards Manuals on Agronomy, Food and Beverage, and Golf Operations as amended from time to time. The current Troon Golf Quality Standards have been reviewed by the City and shall be provided to the City upon request. The City shall be notified of any amendment to such standards implemented at the Golf Resort.

1.2 Accounting Terms. For purposes of this Agreement, all accounting terms not otherwise defined herein, in the Recitals, or in any exhibit shall have the meanings ascribed to them in conformity with generally accepted accounting principles (“GAAP”) consistently applied.

ARTICLE II

Replace and Supersede; Retention of Troon

2.1 Replace and Supersede. This Agreement replaces and supersedes the Original Management Agreement and all prior agreements as to its subject matter as of the Effective Date. From and after the Effective Date, the parties’ rights and obligations shall be governed by the terms and provisions of this Agreement. Prior to the Effective Date, the parties’ rights and obligations shall continue to be governed by the terms and provisions of the Original Management Agreement. For the avoidance of doubt, termination of the Original Management Agreement shall not result in any termination fees.

2.2 Agreement to Manage. City hereby appoints and retains Troon, and Troon hereby accepts such appointment and retention to act as a consultant to City and as manager of the Golf Resort during the Term with full power and authority to carry out all responsibilities of Troon under this Agreement and otherwise upon the terms and subject to the conditions hereinafter set forth.

2.3 Standards of Performance; Relationship Between City and Troon. Troon accepts the relationship of trust and confidence established between Troon and the City by the terms of this Agreement. Troon shall report to the City Manager concerning the management and operation of the Golf Resort as a First-Class Golf Resort. Troon covenants with City to furnish its best skill and judgment in performing its obligations hereunder and shall at all times provide such consulting and managerial services to maintain the good name and business reputation of City and the Golf Resort. Troon shall perform its duties and obligations under this Agreement in an efficient, expeditious, prudent, and economical manner, consistent with the best interests of the City, in accordance with the standards followed by Troon in its role as course manager of similarly situated First-Class golf facilities operated by Troon, in accordance with the Troon

Golf Quality Standards, and in such manner to maximize all Gross Revenues and minimize all Golf Resort Expenses, both as outlined in this Agreement and otherwise in connection with operation and maintenance of the Golf Resort.

Troon is entering into this Agreement as an independent contractor to provide the services outlined in this Agreement. Troon acknowledges that it is acquiring no rights whatsoever in the Golf Resort, or any portion thereof (including the Golf Courses and any trade names, trademarks, logos, emblems, and similar identifying materials of either the City or the Golf Resort) or the Equipment and Supplies, except a nonexclusive and revocable license, during the Term, to enter upon the Golf Resort and use the Equipment and Supplies if, and to the extent reasonably necessary, to carry out its obligations under this Agreement. In acknowledging that Troon is acquiring no rights whatsoever in the Golf Resort (including any trade names, trademarks, logos, emblems, and similar identifying materials) or the Equipment and Supplies, Troon further agrees that it will not assert, in any legal action or otherwise, any right or interest in the Golf Resort, or any portion thereof. Troon shall not alter or improve any portion of the Golf Resort except as directed by the City or as expressly permitted under this Agreement.

ARTICLE III

Duties and obligations of Troon

In Troon's role as manager of the Golf Resort, Troon shall perform and assume the following duties and obligations subject to the payment obligations of the City with respect to Golf Course Expenses:

3.1 Leadership.

(a) Troon will comprehensively analyze all aspects of the existing Golf Resort maintenance, operations, and marketing goals. Troon will work closely with the City in defining the ongoing goals and visions for the Golf Resort and will provide a new Annual Plan (as defined in Article 3.4 hereinafter) based upon these conclusions.

(b) Troon will adhere to the Troon Golf Quality Standards at the Golf Resort at all times during the Term.

(c) Troon will provide a "First-Class" operation at all times during the Term.

(d) Troon will provide "Exceptional Customer Service" during the Term. Emphasis will be on "creating exceptional experiences" for our customers.

(e) Troon will provide consistent guidance and vision to the Golf Resort and take proactive steps to successfully operate the Golf Resort and adhere to annual operating expectations.

(f) Troon will develop, support, and implement a culture of excellence within the Golf Resort based upon pride, respect, quality of service, and creating an exceptional experience for all patrons of the Golf Resort, including residents, hotel guests, and others.

3.2 Operations.

(a) Troon will utilize commercially reasonable efforts to implement a First-Class maintenance program in accordance with the Troon Golf Quality Standards for the Golf Resort, which will result in optimum agronomic, turf, and playing conditions on a year-round basis, taking into consideration the Annual Plan approved by the City. Troon will perform a detailed analysis of the existing programs in place and, together with the Director of Agronomy, create a specific maintenance program for the Golf Resort as part of the Annual Plan. Troon's goals for Golf Course maintenance, as outlined in the maintenance manual, will be:

- i. Optimize the finest year-round agronomic conditions consistent with First-Class standards and achieve such conditions at the lowest possible cost.
- i. Maximize Troon's national account buying power to save on Equipment and Supplies, including golf carts used in the operation of the Golf Resort.
- ii. Maximize playability while featuring the design strategy.
- iii. Maximize the presentation of the Golf Course in keeping with the overall theme of the Golf Resort.

(b) Troon will utilize commercially reasonable efforts to provide First-Class golf shop operations, including, but not limited to:

- i. Effective tee sheet management utilizing its experience combined with modern point of sale systems, internet support, and reservation systems. Subject to technological availability, assist with the development of an extended tee time reservation system at all City Hotels, allowing full integration between such hotels and the Golf Resort.
- ii. Focus staff priority on making the overall experience at the Golf Resort exceptional and memorable for all customers and on identifying opportunities to sell services and products to such customers.

(c) Troon will utilize commercially reasonable efforts to implement a premier outside services customer-service training program, recognizing that front-line employees usually interact most with the customer. Troon will build upon the existing theme presented by the staff.

(d) Troon will utilize commercially reasonable efforts to provide a comprehensive employee training program for all employees at the Golf Resort, embodying the Troon Golf Quality Standards philosophy. The employee training program shall be consistent with a "First-Class" facility and "Exceptional Customer Service" as defined in this agreement. This training program shall provide all staff with such ongoing and additional training as is necessary to maintain the level of quality set forth in the Troon Golf Quality Standards and the Annual Plan.

(e) Troon will utilize commercially reasonable efforts to provide First-Class and effective golf shop merchandising programs, including:

- i. Coordinating the quality and volume controls of the Golf Shop Inventory.

ii. Pursuant to Article 3.11, taking advantage of Troon's national accounts with Troon vendors. Merchandise and inventory buyers at the Golf Resort will not be restricted to using Troon's national accounts exclusively.

iii. Pursuing regional and national awards and recognition for the Golf Resort, including awards specific to the golf shop.

iv. Implementing carefully monitored plans that maximize gross profit and optimize Golf Shop Inventory levels.

3.3 Marketing.

Troon shall implement the marketing and brand management program that is adopted as part of the Annual Plan (the "Marketing and Brand Management Program").

(a) Troon will assist with preparing a progressive and specially tailored marketing campaign, maximizing all promotional opportunities, including utilizing marketing strategies used at other Affiliated Facilities.

(b) Troon will develop a comprehensive sales and marketing plan to effectively promote and increase the awareness and use of the Golf Resort. The sales and marketing plan will address group outings and special events, promote the use of the Golf Resort by City residents, market to the City Hotels and their guests, and increase the profile of the Golf Resort locally and nationally through effective public relations and advertising programs.

i. Troon will develop and maintain close working relationships with the City Hotels, promoting mutual marketing, sales, and guest service; Troon will encourage open and productive lines of communication with each City Hotel's General Manager, Director of Sales, and all City Hotels' sales support staff.

ii. Troon's sales and marketing staff will routinely meet with City Hotels to discuss marketing and sales, stay-and-play packages, and develop new ideas and strategies.

iii. Troon will take advantage of the City's relationship with Visit Greater Palm Springs in the promotion and marketing of the Golf Resort.

(c) Troon will retain a sales and marketing director to support the Golf Resort. The sales and marketing director will oversee sales associates and assign tasks to appropriate members of the existing golf operations staff. In addition, if needed, to ensure a viable sales and marketing plan, Troon will recruit and hire additional sales staff as authorized in the Annual Plan.

(d) Troon will review existing advertising programs and develop an effective strategy for future advertising programs. With its national buying power, Troon will take advantage of frequency discounts with major magazines and other advertising venues.

(e) Troon will prepare creative advertisement concepts for print, radio, direct mail, internet, social media, etc., working when necessary with a designated graphic artist or ad firm.

(f) Troon will coordinate all public relations endeavors, working with the onsite staff and a designated PR firm when necessary. In addition, Troon will provide its expertise in developing well-written and well-timed press releases, make its regional and national media lists available, and supervise the coordination of this process.

(g) Troon will develop all marketing collateral pieces, such as brochures, promotional fliers, scorecards, yardage books, etc. Troon will develop these materials with a designated graphic artist or ad firm.

(h) Troon will coordinate all website, internet, social media, or e-mail marketing efforts. In addition, Troon will examine the effectiveness and cost of existing programs and make recommendations for ongoing improvements.

(i) Troon will recommend competitive events that would bring exposure and prestige to the Golf Resort at a reasonable cost. Troon will also consider TV events or other innovative promotional concepts that may achieve the same goals.

(j) Troon will review and make recommendations for resident involvement programs and socials, community-related affiliations, charity involvement, support of local golf programs, junior golf promotions, and other public relations considerations.

(k) Troon will prepare customized programs for the residents of the City, which programs may include privileges or preferences for residents reasonably requested by the City. The customized Indian Wells Resident Program includes Pro Shop and F&B discounts, special residents “nights,” and other resident-focused events promoting resident inclusion and connectedness.

(l) Troon shall offer a loyalty program (e.g., similar to the Troon Advantage program) whereby eligible customers of the Golf Resort may receive certain privileges at other participating Affiliated Facilities, subject to terms and conditions reasonably acceptable to Troon.

(m) Troon will extensively network with area resorts, travel agencies, airlines, golf holiday packages, golf wholesalers, and other assorted promotional agencies, generating interest and awareness for the Golf Resort.

As part of the Marketing and Brand Management Program, Troon shall provide cooperative sales and marketing services (the “Cooperative Sales and Marketing Services”) to the Golf Resort, which shall include:

i. System-wide sales and marketing activities for the Golf Resort and all golf facilities managed by Troon and its Affiliates, including national and

international advertising, group sales promotion, public relations, and direct selling efforts for the benefit of the Golf Resort and the collective business development at all golf facilities managed by Troon;

ii. participation in the Troon central reservation system, which provides a regional, national, and international toll-free system for inquiries regarding customer bookings and for making, changing, and canceling reservations at the Golf Resort and Affiliated Facilities;

iii. representation at golf industry sales and trade shows;

iv. an inclusion on, and a hyperlink from, the Troon worldwide website to the Golf Resort worldwide website; and

v. such other additional sales and marketing services as Troon may determine may benefit the Golf Resort and the Affiliated Facilities or develop and promote further the Golf Resort or the Troon brand.

The Golf Resort shall pay, as a Golf Resort Expense, a reasonable monthly assessment in exchange for Troon's provision and/or arranging for the provision of the Cooperative Sales and Marketing Services. The City shall pay the first (1st) assessment on the date of this Agreement (prorated for any partial month) and thereafter on the first (1st) day of each calendar month during the Term. The amount of the assessment shall be included in the Annual Plan. City acknowledges that the Golf Resort shall also be responsible for paying, in addition to the amount of the assessment, any third-party charges or costs associated with the Cooperative Sales and Marketing Services, which shall be provided without mark-up or profit by Troon and shall be a Golf Resort Expense.

3.4 Annual Plan.

(a) On or before April 15 of each Operational Year, Troon shall prepare and submit to the City for its prior written approval a proposed budget for the Golf Resort for the next Operational Year, such proposed budget, as approved by the City in accordance with the terms of this Agreement, referred to hereafter as the "Annual Plan." The Annual Plan shall include an operating budget containing estimates of all Gross Revenues and Golf Resort Expenses for the next Operational Year, including detailed expenditures for (i) property operation and maintenance, (ii) annual tree trimming and overseeding plan, (iii) repairs, replacements, and alterations which do not constitute Capital Improvements, (iv) Equipment and Supplies, (v) the Marketing and Brand Management Program and the Cooperative Sales and Marketing Services, (vi) a capital improvement program for the next Operational Year, (vii) and Employee Bonuses, including performance criteria and methods of calculation. The Annual Plan shall also include the Golf Course maintenance plan and the marketing and business plan for the Golf Resort for the next Operational Year.

(b) The Annual Plan shall comply with the City Council's Implementation Goals and Deliverables identified in Exhibit (XX). The Implementation Goals and Deliverables list defines profitability expectations and identifies key areas that are in the new Golf Resort Annual Plan, including but not limited to:

- Profitability
- The General Fund Amenity Subsidy
- Allocated Payroll
- Projected Net Operating Income by Department
- Operating strategies incorporated into the new budget.
- Capital Budgeting
- Development of the New Concepts, the Business Plan, and the Marketing Plan

Benchmarks and Performance Measures shall be incorporated into the Annual Plan and include market analytics, identify and compare market comp sets including golf courses and restaurants, financial benchmarks, industry benchmarks, performance measurement, and financial, operational, and employee performance measures.

(c) The City shall discuss the Annual Plan at one or more public meetings. The City shall, in its sole discretion, consider adoption of the Annual Plan prior to July 1 of each year. In the event the Annual Plan is not adopted by July 1, pending its adoption, Troon shall continue to manage and operate the Golf Resort in accordance with the standards set forth in this Agreement at a level of expenditures comparable to those contained in the Annual Plan for the preceding Operational Year, until the City Council adopts an Annual Plan with any changes the City Council deems necessary or appropriate.

(d) Troon shall comply, to the extent reasonably and commercially practical, with the applicable Annual Plan. Without the City's prior written consent, the amount expended by Troon for Golf Resort Expenses shall not exceed the amount set forth in the Annual Plan. The City's Finance Director shall approve transfers of budgeted line-item expenditures. Notwithstanding the above, Troon shall be permitted to make additional expenditures not authorized under the then applicable Annual Plan to the extent necessary to respond to an emergency threatening public health and safety or an imminent threat of substantial damage to the Golf Resort. In the event of an emergency that does not endanger public health and safety or an imminent threat to the Golf Resort but which materially impairs the ability of Troon to operate the Golf Resort in a usual manner or is necessary to comply with any applicable insurance requirements, Troon shall submit an emergency funding request to the City's Finance Director or his or her designee and the City's Finance Director shall take prompt action to respond to such submission.

(e) Troon shall develop and maintain a rolling ten-year capital plan and budget limited to the replacement of existing equipment as a part of the Annual Plan. Troon shall develop, maintain, and annually update a Comprehensive Capital Needs and Replacement Plan. The Comprehensive Capital Needs and Replacement Plan shall be presented to the City annually and considered for approval during the Annual Planning Cycle.

(f) Troon and the City Manager shall meet quarterly to review the implementation of the capital plan as adopted in the Annual Plan.

- (g) The parties acknowledge and agree that all capital expansion business development projects are under the City's sole control and discretion.
- (h) The City Manager and Troon shall meet quarterly to discuss the operating and financial performance of the Golf Resort. In addition to providing an analysis of the monthly financial statements, Troon shall provide updates on the City's "Goals and Deliverables" and "Benchmarks and Performance Measures." Troon shall provide the City with a report reconciling the budget for the immediately preceding quarter against actual revenue and expense, along with a schedule detailing any unplanned expenses in excess of \$10,000 in such quarter approved by the City. The parties shall discuss amendments or revisions to the Annual Plan to take into consideration variables or events that did not exist or could not be anticipated by Troon or the City at the time the Annual Plan was prepared. The City Council shall, in its sole discretion, approve any material amendments or revisions to the Annual Plan. The City Manager, in consultant with the City Attorney, shall determine what is material at the City Manager's discretion.

3.5 Human Resources.

(a) Consistent with law, Troon is solely responsible for all human resource issues, legal issues related to employees, and matters regarding Golf Resort employees and offers advice on improvements and direction. Subject to the City's obligation to reimburse Troon for all Compensation, the City shall not interfere with any human resource issues or matters, including but not limited to employee hiring, compensation and benefits, discipline, termination, or reassignment. Troon will notify the City Manager of any significant human resources issues affecting the Golf Resort operations.

(b) Troon shall employ all Golf Resort employees, which shall be reasonably necessary to efficiently operate the Golf Resort as contemplated in the Annual Plan. Troon shall recruit, hire, train, discharge, promote, and supervise the Executive Employees and, through the Executive Employees, manage the recruiting, hiring, training, discharge, promotion, and work of all other employees of the Golf Resort. The Compensation to be paid to all Golf Resort employees, including the management staff working at the Golf Resort, shall be a Golf Resort Expense to be paid as provided in Article 8.2 hereof. Subject to reimbursement as a Golf Resort Expense, Troon shall be solely responsible for the payment of all payroll taxes and the required withholding of taxes for Golf Resort employees, provided, however, that any failure to pay such taxes or withholding and any related fines and penalties shall be paid by Troon without reimbursement from City unless the failure to pay was the result of the failure by City to provide funds as required pursuant to Article VIII.

(c) Notwithstanding the foregoing or anything to the contrary contained herein, the City shall be responsible for paying or reimbursing Troon for the year-end bonuses and incentives owed to Golf Resort employees (the "Employee Bonuses") as a Golf Resort Expense, subject to the following criteria:

- i. The Annual Plan shall establish criteria and objectives for payment of Employee Bonuses and the method of calculating such bonuses such that the City is not required to use its discretion at year's end to determine Employee Bonuses.

- ii. In the event Golf Resort is profitable as a whole during the applicable Operational Year as reflected in the financial statements provided to the City pursuant to Article 8.6, Golf Resort employees will be entitled to collect a portion of their year-end bonus, as agreed to in the Annual Plan.
- iii. As it relates to each individual Golf Resort employee, in the event their department is operating at or above the level of profitability (or budgeted loss) agreed upon in the Annual Plan, as reflected in the financial statements provided to the City pursuant to Article 8.6, such Golf Resort employee shall be entitled to collect a portion of their year-end bonus, as agreed to in the Annual Plan.
- iv. Notwithstanding anything to the contrary contained herein, in no event shall Employee Bonuses cause the Golf Resort to fall below profitability for the applicable Operational Year. The parties agree that Employee Bonuses may be subject to pro-rata deductions to ensure Employee Bonuses do not bring the Golf Resort below profitability. By way of example, if the Golf Resort's total profits for an Operational Year equal \$100,000, Employee Bonuses paid out for that Operational Year may not exceed \$100,000. For clarity and the avoidance of doubt, if the Golf Resort operates at an operational loss for an Operational Year, Golf Resort employees will not be entitled to Employee Bonuses for the applicable Operational Year.

(d) The General Manager of the Golf Resort shall be responsible for the day-to-day management and operation. The Director of Agronomy shall be a current Class A member of the Golf Course Superintendents Association, and the Director of Golf shall be a current Class A member of the Professional Golf Association or the Ladies Professional Golf Association unless the qualified candidate for either position has demonstrated adequate, relevant experience and knowledge as reasonably determined by Troon corporate leadership.

(e) Troon shall not change the General Manager without the City Manager's prior written consent, provided, however, such consent shall not be necessary if (i) such employee voluntarily terminates his/her employment, or (ii) Troon terminates such employee for violations of law, fraud or acts involving moral turpitude; and provided further, that Troon promptly thereafter provides written notice to City stating the reasons therefor. The City shall have the right to provide input regarding any individual whom Troon intends to hire for this position, which input shall not be unreasonably delayed or withheld.

3.6 Management Services Generally.

(a) In performing the services outlined in Articles 3.1 to 3.5 above, Troon shall oversee and implement every aspect of the day-to-day management of the Golf Resort and, in connection therewith, will:

- (i) Comply with all Legal Requirements, all governmental and other land use requirements, approvals, and agreements affecting the Golf Resort, any tee time reservation policy established by the City, and any applicable regulatory agreements, declarations of

covenants, conditions, and restrictions, agreements with the community, and similar documents (including but not limited to the Easement Agreement). Notwithstanding the foregoing, the City shall provide Troon with a copy of any and all applicable documents related to regulatory agreements, community agreements, and recorded covenants applicable to the operation of the Golf Resort.

(ii) In consultation with the City's Finance Director, Troon will coordinate the accounting and financial reporting functions of the Golf Resort. In addition, Troon will create a detailed cost analysis for each department, which will be reflected in the Annual Plan.

(iii) Supervise all sales, marketing, advertising, promotion, and publicity developed by or on behalf of the City relating to the Golf Resort. Such promotion shall include providing complimentary golf privileges to those individuals deemed appropriate by the City in connection with the marketing and advertising of the Golf Resort.

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

(v) Coordinate all sales, marketing, and promotional efforts with the City Hotels, including expanding the existing business with the guests at the Golf Resort.

(vi) Develop and implement an employee satisfaction survey to assess job satisfaction, identify areas of improvement, evaluate workplace conditions, enhance employee engagement, promote open and honest communication, retain and attract talent, and monitor progress over time. Troon shall maintain a competitive salary and benefits package among the Golf Resort's competitive market set.

(vii) Develop and provide employee job descriptions and operational and procedural manuals.

(viii) Troon shall establish all fee schedules for the Golf Courses, food and beverage, and related services.

(ix) Supervise the play management on the Golf Courses and the golf shop operation, bag room, locker rooms, driving range, and golf carts.

(x) Diligently pursue the collection of all sums due and owing to the City from all purchasers of goods and services relating to the Golf Resort. Provide a point-of-sale charging system integrated with all City Hotels, allowing hotel guests to charge for services and merchandise at the Golf Resort.

(xi) Subject to the Annual Plan, pay all Golf Resort Expenses when due.

(xii) Coordinate golf activities and programs with community groups and outside agencies, and generally, represent the Golf Resort within and without the community as necessary to ensure maximum use and play.

(xiii) Troon shall provide the City with complimentary no-charge use of the Golf Resort for city-sponsored events and meetings. Food & Beverage, audio-visual, and other direct costs shall be charged to the City at cost rather than at the market rate. Provided, however, a market rate allocation shall be treated as Gross Revenue for any such event(s), and credit shall be allocated to Troon for purposes of calculation of Management Fees and any termination rights that are based on financial performance, provided, however, that such allocations for city-sponsored meetings shall not be included in financial statements.

(xiv) Maintain in full force and effect, as a Golf Resort Expense, all permits, licenses, franchises, authorizations, approvals, consents, and variances, whether regulatory, governmental, quasi-governmental, or otherwise, designated by the City or necessary or appropriate for the Golf Resort. All such permits, licenses, franchises, authorizations, approvals, consents, and variances shall be the sole and exclusive property of the City.

(xv) Immediately advise City of any discovery by Troon of any hazardous waste in, on, or about the Golf Resort and, promptly following such discovery, jointly determine with City the actions which should be taken to ensure that the presence of such hazardous waste in, on or about the Golf Resort will not constitute a violation of any Legal Requirement (unless such condition is caused by Troon or its employees), and upon approval by City of any action recommended by Troon promptly take, or cause to be taken such actions.

(xvi) Comply with all federal, state, and local laws and regulations pertaining to the storage, use, and disposal of “hazardous or toxic wastes, substances, or materials” as defined by applicable law.

(xvii) Immediately advise the City of any discovery by Troon of any condition or event which may have a material adverse effect upon the Golf Resort or its operations.

(xviii) Make recommendations to the City from time to time concerning improvements and modifications to the Golf Resort.

3.7 Meetings.

(a) Troon shall be available to meet with the City Manager either personally or by conference call as frequently as needed to ensure the successful performance of Troon’s duties hereunder and the Golf Resort’s operations. The parties shall meet not less than quarterly for a formal review of the Golf Resort operations. Both parties will be available for telephonic meetings upon reasonable notice to the other.

(b) The General Manager of the Golf Resort and other Golf Resort and City employees, as determined by the City Manager, shall make himself/herself available to meet quarterly with the directors of sales and golf of participating hotels in Indian Wells. The purpose of the quarterly meetings

shall be to discuss guest services and operational issues relating to the Golf Resort and the hotels. In addition, the General Manager shall host quarterly “Coffee with the GM” events for guests to attend and meet the staff.

3.8 Golf Shop Inventory. Troon agrees to keep Golf Shop Inventory on hand at an amount contemplated in the Annual Plan for merchandise sales in the golf shop. This inventory amount will exclude any gifts or prizes ordered for specific groups or tournaments.

3.9 Specific Operating Procedures. In addition to the more general responsibilities of Troon as manager and operator of the Golf Resort, as provided in Article III, Troon shall operate and manage the Golf Resort in accordance with the following specific operating procedures:

(a) Golf Resort Hours of Operation. The Golf Resort shall be operated every day of the year and shall not be closed on holidays. Notwithstanding the preceding, Troon is expected to operate the Golf Resort profitably. Consistent with profitability and best business practices, Hours of Operation may include certain limitations during the summer and shoulder seasons. Additionally, with the consent of the City, the Golf Resort may be closed to play by the general public for special events. After prior notice to the City and the general managers of the City Hotels, one Golf Course and the driving range may be closed simultaneously for winter over-seeding, and the second Golf Course may be closed for winter over-seeding after the first Golf Course has reopened.

(b) Fees and Charges. Troon shall present all Fees and Charges to the City during the presentation of the Annual Plan. The City’s adoption of the Annual Plan shall constitute approval of the Fees and Charges. Such Fees and Charges shall be comparative and competitive with other First-Class golf resorts in the Coachella Valley. All additional fees, charges, and prices for services at the Golf Resort shall be set by Troon and shall be comparative and competitive with other First Class golf resorts in the Coachella Valley.

(c) Reservation of Golf Rounds. Troon shall comply with Articles 28.1, 28.2, and 28.3 of the Easement Agreement regarding reserving golf tee times.

(d) Dress Code. Troon shall adopt and enforce a dress code for play and the food and beverage venues consistent with other First-Class golf facilities and resorts. This dress code shall apply to all visitors, golfers, and employees.

(e) Club Policy. Troon shall not allow the formation of formal men’s or women’s clubs or any other type of club membership in conjunction with the Golf Resort without the consent of the City.

(f) Handicap Service. During the Term, the City may desire to implement at the Golf Resort a United States Golf Association golf handicap service to both men and women resident golfers who patronize the Golf Resort. Upon the request of the City, Troon shall make the necessary arrangements to implement such a handicap system. The fee charged to golfers by Troon for such handicap service shall be an annual fee and shall not exceed two (2) times the fee charged to the Golf Resort by the Southern California Golf Association or the United States

Golf Association, as the case may be, for providing the handicap service. If the golf handicap service is implemented at the Golf Resort, Troon shall not collect annual fees for the handicap service for any annual period that commences after the expiration of the Term. The handicap service shall not include any privileges to use the Golf Courses as part of its benefits other than the privileges otherwise available to the public.

(g) Starter Service and Marshals. Starter services shall be provided in the golf shop and shall include the assignment of tee times and carts and the collection of fees. While the Golf Courses are open for play, marshals shall closely monitor and control the speed of play and assist the slower golfers in maintaining golf play at acceptable levels.

(h) Valet Parking. Troon shall provide a valet parking service to guests of the Golf Resort. Valet services will exemplify the Troon Golf Quality Standards experience, and Troon shall train and review all valet staff to ensure that Troon Golf Quality Standards are continually provided to all patrons and customers of the Golf Resort. Valet operations, including but not limited to hours, days of operation, and fees charged, will be included as part of the Annual Plan. Golf Resort employees may accept gratuities from customers for such services.

(i) Club Cleaning. Golf club cleaning services shall be provided to golfers immediately upon their completion of golf play. There shall be no charge to the golfers for golf club cleaning services. Appropriate Golf Resort employees may accept gratuities from customers for such services.

(j) Tee Times. The tee times for each Golf Course shall be determined by Troon, in compliance with the Easement Agreement. “Starter” tee times shall not be reserved, and the starter shall not work in groups if it will result in not remaining “on schedule” throughout the day.

(k) Fivesome Play. No more than two (2) fivesomes per hour on each Golf Course shall be allowed. The play of all fivesomes shall be closely monitored, and the Golf Course marshals shall enforce playing time requirements to maintain a standard playing pace of not more than 2 hours and 15 minutes per nine (9) holes.

(l) Tournaments. Consecutive tee times, shotgun starting formats, and modified shotgun starting formats shall be acceptable forms of tournament reservations. During the appropriate seasons and provided the weather conditions permit such an arrangement when a full shotgun (use of all 18 holes) starting procedure is used, it shall be timed in such a manner so as to potentially accommodate two (2) full shotguns per day - one in the morning and one in the afternoon. To schedule a full shotgun tournament, a minimum of 100 green and cart fees must be reserved. In preparation for a tournament, Troon shall, if necessary, prepare tee settings, spectator areas, and tents for judges and players and mark hazards and damaged turf areas. Troon shall provide player identification cards for golf carts and, if necessary, provide “closest to the pin” and “longest drive” markers and scoring forms. Troon shall arrange food and beverage services, including box lunches and beverage carts if requested. Troon may charge a separate fee (but shall not make this fee mandatory as part of the tournament package).

(m) Golf Shop. The golf shop shall be open every day that the Golf Courses are available for play. Notwithstanding the preceding, Troon is expected to operate the Golf Resort profitably, which may include certain limitations on operational hours during the summer and shoulder seasons. Troon shall employ a qualified merchandise manager for the golf shop, who will be responsible for promoting and increasing sales at the golf shop. Troon shall also employ merchandise sales personnel to work in the golf shop each day that the Golf Courses are open for play. In addition, space shall be provided in the golf shop for merchandise that the City may develop as part of its marketing and public relations programs, including such items as T-shirts, polo shirts, sun visors, license plate frames, coffee cups, and golf balls.

(n) Golf Instruction. Troon shall either employ or retain golf instructors as independent contractors to provide golf lessons and instruction at the Golf Resort. All golf instructors must be certified Professional Golf Association or Ladies Professional Golf Association golf professionals or apprentices and shall be approved by the Director of Golf at the Golf Resort. All golf instruction fees shall be handled as a cash register transaction and reported in the same manner as green fees. Troon shall develop a golf instructional program offering individual and group lessons, video instruction, golf clinics, junior golf clinics, and golf schools. This golf instructional program shall complement golf package promotions offered by local hotels. A golf professional shall only be allowed to conduct golf lessons at the Golf Resort if they have first obtained the approval to do so from Troon; such approval may be conditioned on payment of an appropriate fee.

(o) Golf Driving Range. The driving range shall be open every day that the Golf Courses are available for play. Driving range balls shall be of the highest quality, and all cracked and worn range balls shall be removed daily. A driving range fee, if any, shall be charged as set by Troon in the Annual Plan.

(p) Golf Club Rentals and Bag Storage. Quality rental golf clubs and bags shall be available for customers of the Golf Resort. Storage space for golf bags shall be made available, and bag tags shall be placed on all golf bags stored at the Golf Resort with the hotel guest's name printed on the bag tag.

(q) Golf Carts. Golf cart rentals shall be required for all golfers on the Golf Courses. Troon shall not permit private golf carts on the Golf Courses. The Golf Resort shall maintain a minimum of 160 electrically powered golf carts. Golf carts shall be new when acquired and manufactured by a reputable firm. The golf cart fleet shall be replaced based on Troon's condition assessment and recommendation with new units at least every seven (7) years. All golf carts shall be 4-wheel vehicles equipped with canopies, windshields, GPS, coolers, and sand containers and holders. Troon shall employ a full-time on-site cart mechanic qualified to repair and maintain the golf carts.

(r) Sale of Alcoholic Beverages. The City and Troon acknowledge that the sale of all food and beverage, including alcoholic beverages, at the Golf Resort and all revenues, expenses, and income related thereto shall be subject to the terms of the Restaurant Lease Agreement and any agreements entered into between City and Troon in connection therewith.

(s) Office Operations. Troon shall employ an administrative staff at the Golf Resort. The Golf Resort shall be equipped with all necessary equipment to administer the Golf Resort business efficiently. Upon the City's written request, Troon shall provide the City with a written job description for each management position at the Golf Resort. The City shall keep these job descriptions confidential, subject to applicable public records disclosure laws. Troon shall maintain copies of all Troon corporate policies and procedures at the Golf Resort or its corporate office (e.g., human resource and personnel records), as such may be changed from time to time.

(t) Safety and Security. The Golf Resort shall comply with all applicable safety regulations of federal, state, and local governmental agencies, including without limitation any applicable requirements imposed by California Labor Code Articles 1720 *et seq.* and 6300 *et seq.* and regulations promulgated with respect thereto and applicable federal occupational, health, and safety laws and regulations. Troon shall take all reasonable actions to protect the safety of all Golf Resort employees and customers. The Golf Resort shall contain appropriate security systems, including video monitoring of cash operations, security alarm systems, motion detection sensors for after-hours control, and locks for the maintenance yard and perimeter gates. The alarm system at the Golf Resort shall be tied into an offsite monitoring station. Troon shall keep computer backup tapes for seven (7) days for all accounts payable and accounts receivable information. All records at the Golf Resort shall be held in fireproof files.

(u) Customer Service Survey Program. Troon shall develop and implement a customer service survey program or programs to receive feedback on all operation areas of the Golf Resort as part of the Annual Plan. The results must be readily available for review upon request.

(v) Troon Golf Quality Standards Training Program. Before the commencement of each golf season at the Golf Resort, which is anticipated to commence on or about November 1st of each Operational Year during the Term, Troon shall implement a Troon Golf Quality Standards training program for all employees of Troon who come into contact with guests at the Golf Resort. Additionally, Troon shall train and review on an ongoing and continual basis all valet staff to ensure that the Troon Golf Quality Standards experience is provided to all patrons and customers of the Golf Resort. Troon shall also make its employees available to attend the City's Exceptional Service Training Program as directed by the City.

(w) Whitewater River. Troon shall maintain the landscaping within the Whitewater River area between Eldorado Drive and Fred Waring Drive. Troon shall provide the City with an annual budget in connection therewith. Based upon the annual agreed-upon budget, the Golf Resort shall invoice the City monthly for landscaping maintenance.

3.10 Centralized Services and Costs.

(a) Troon shall cause to be furnished to the Golf Resort certain services ("Centralized Services") which are furnished generally on a central or regional basis to other Affiliated Facilities. Centralized Services shall include the following categories of services:

- i. “Payroll Administration,” which includes processing of bi-weekly payroll, including check printing and distribution; remittance of state and federal taxes; administration and processing of garnishments; issuance of W-2, and other procedures related to the maintenance of payroll records;
- ii. “Employee and Benefits Administration,” which includes administration of employee benefits, such as medical and flexible spending programs, monitoring of vacation and sick leave balances, COBRA notification, new hire paperwork, maintenance of personnel records, FMLA leave, 401(k) audit fees, and termination issues;
- iii. “Human Resources Compliance,” which includes the provision of Troon’s standardized materials for conducting compliance training (e.g., standards implementation, safety (including OSHA compliance), and harassment prevention), recruitment, and administration of employee reward and recognition programs;
- iv. “Internal Audit,” which includes periodic oversight, through Troon’s centralized internal audit function, of the Golf Resort’s operational and accounting control procedures;
- v. “Technology Oversight,” which includes access to a computer application “help desk,” access controls (user ID administration), systems design/engineering, systems management methodologies, management of enterprise applications, and enterprise connectivity, as well as assistance from a regional technology manager to coordinate the implementation of new and upgraded technologies, oversight of hardware/software procurement, establishment of strategic technology goals, and monitoring service satisfaction; and
- vi. “EPL/Fraud Insurance,” which includes the insurance cost for the Employers Practices Liability insurance and the Crime Coverage Policy.

Troon’s provision of the Technology Oversight services described above does not contemplate Troon acting as the provider of installation or training services to the Golf Resort; rather, it involves Troon acting in an engineering, managerial, and planning capacity in support of the Golf Resort’s information systems. Accordingly, services supplied to or on behalf of the Golf Resort for technology or information systems support will be provided by a third-party support vendor under the supervision of Troon, and the costs for such services will be a Golf Resort Expense.

From time to time, Troon may propose that additional central or regional services be furnished and included as part of Centralized Services for the benefit of the Affiliated Facilities or in substitution for services now performed at individual facilities, which may be more efficiently performed on a group basis. Troon shall make any modification to the foregoing list of Centralized Services in conjunction with the Annual Plan, upon City approval.

- (b) Centralized Services costs and expenses shall consist of the actual cost of the services without mark-up or profit to Troon or any Affiliate of Troon but shall include salary

and employee benefit costs, cost of equipment used in performing such services, and overhead costs of the home office or any regional or other local office providing such services; provided, however, that costs attributed to corporate office accounting for Troon or any Affiliate of Troon shall not be included.

(c) Costs and expenses incurred in providing Centralized Services for Affiliated Facilities shall be allocated by Troon at all times on a fair and equitable basis, consistently applied among all Affiliated Facilities receiving such services, with such allocations to be adjusted to reflect the timing of the commencement or cessation of receipt of such services by any Affiliated Facility. As of the date hereof, Centralized Services are allocated to the Golf Resort by the following respective allocation methods:

- i. “Payroll Administration” costs shall be allocated among Affiliated Facilities per Affiliated Facility basis according to the number of employees (full-time or part-time) at each Affiliated Facility.
- ii. “Employee and Benefits Administration” costs shall be allocated among Affiliated Facilities per Affiliated Facility basis according to the number of employees (full-time or part-time) at each Affiliated Facility.
- iii. “Human Resources Compliance” costs shall be allocated among Affiliated Facilities per Affiliated Facility basis according to the number of 18-hole golf courses at each Affiliated Facility.
- iv. “Internal Audit” costs shall be allocated among Affiliated Facilities per Affiliated Facility basis according to the number of 18-hole golf courses at each Affiliated Facility.
- v. “Technology Oversight” costs shall be allocated among Affiliated Facilities per Affiliated Facility basis according to the number of 18-hole golf courses at each Affiliated Facility.
- vi. “EPL/Fraud Insurance” costs shall be allocated among Affiliated Facilities, with respect to EPL Insurance, on a per Affiliated Facility basis according to the number of employees (full-time or part-time) at each Affiliated Facility, and with respect to Fraud Insurance, on a per Affiliated Facility basis according to the number of 18-hole golf courses at each Affiliated Facility.

Such allocation methodology may be amended equitably from time to time by Troon.

(d) Costs of Centralized Services shall be payable monthly as Golf Resort Expenses and shall be included in the Annual Plan. The City may at any reasonable time review the records of Troon pertaining to such charges. In addition, if the equipment is installed and maintained at the Golf Resort in connection with the rendering of any Centralized Services, all costs thereof shall be charged to the operation of the Golf Resort either as a current expense or capitalized over a period of years.

3.11 Equipment and Supplies. Subject to the approval of expenditures in the Annual Plan, in carrying out its duties hereunder, Troon shall arrange, on the City's behalf, for procurement as a Golf Resort Expense of all Equipment and Supplies and other goods and services that Troon deems necessary for the normal and ordinary course of operation of the Golf Resort and to operate the Golf Resort in accordance with the Troon Golf Quality Standards and consistent with a First-Class facility. In arranging for the purchase of such goods and services, Troon may utilize its purchasing procurement and/or other group buying programs involving other Affiliated Facilities. In connection therewith, City shall be entitled to receive any and all price discounts or credits that are available under such programs for the specific item or service provided to the Golf Resort, provided that Troon may receive and retain a fee or other compensation from vendors and service providers that are not based on the price of the specific item or service but that is made available to Troon based on the aggregate purchases of such items or services during a particular time period for their services in making the benefit of volume purchases available to the Golf Resort or negotiating and implementing the arrangements with such vendors or service providers. In any and all events, the cost of any item and/or service purchased by the Golf Resort through such programs shall be competitive with that which would be charged by nonaffiliated third-party vendors in an arms-length transaction.

3.12. Prevailing Wages. Troon is aware of the requirements of California Labor Code Section 1720, *et seq.*, and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Section 16000, *et seq.*, ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the services identified in the Agreement ("Services") are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, Troon agrees to fully comply with such Prevailing Wage Laws. City has obtained a copy of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to perform the Services. These rates are on file with the City Clerk or may be obtained at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Troon shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Services available to interested parties upon request and shall post copies at Troon's principal place of business and the project site. According to the provisions of 1775 of the Labor Code, Troon shall forfeit to the City, as a penalty, not more than \$200.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this Agreement, by Troon or by any subcontractor under Troon, in violation of the provisions of this Agreement. The parties intend to effectuate the requirements of Sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within the Agreement, and Troon shall, therefore, comply with such Labor Code sections to the fullest extent required by law. Troon shall defend, indemnify, and hold the City and its respective council members, elected and appointed officers, officials, directors, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.13 Registration/DIR Compliance. If the Services are being performed on a public works project of over \$25,000, when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over \$15,000, when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code Sections 1725.5 and 1771.1, Troon and all subcontractors must be registered with DIR. Troon shall maintain registration for the project's duration and require the same of

any subcontractors. This project may also be subject to compliance monitoring and enforcement by the DIR. Troon shall be responsible for complying with all applicable registration and labor compliance requirements, including submitting payroll records directly to the DIR. Any stop orders issued by DIR against Troon or any subcontractors that affect Troon's performance of Services, including any delay, shall be Troon's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered a Troon-caused delay and shall not be compensable by the City. Troon shall defend, indemnify, and hold City and respective council members, elected or appointed officers, officials, directors, employees, agents, and volunteers free and harmless from any claim or liability arising out of stop orders issued by DIR against Troon or any subcontractor.

3.14 Labor Certification. By its signature hereunder, Troon certifies that it is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such requirements before commencing the performance of the Services.

3.15 Key Money. (a) Troon agrees to contribute up to One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000) as a key money contribution (the "**Key Money**") to be used by the City to cover the costs associated with the reinvention of the Vue Grille & Bar at the Golf Resort. Troon agrees to pay the Key Money to the City on a pull-down basis, subject to the approval of applicable renovation plans and costs. The Key Money payment from Troon to City shall not be treated as an equity investment, and Troon shall not be entitled to any profit, interest, or dividend from the operation of the Golf Resort. Troon's contribution of Key Money is based on managing the Golf Resort for the entire Initial Term.

(b) In the event this Agreement or the Restaurant Lease is terminated early by City or Troon for any reason, the City shall be required to pay Troon the Key Money Repayment Amount (as hereinafter defined). "**Key Money Repayment Amount**" shall mean an amount equal to the pro-rata amount of the Key Money payment, based on the number of days remaining in the Initial Term (i.e., the Key Money amount divided by the total number of days in the Initial Term, multiplied by the number of days remaining in the Initial Term as of the termination date).

(c) In the event that the City's obligation to pay Troon the Key Money Repayment Amount is triggered under Article 3.15(b) above, then the City shall pay Troon the Key Money Repayment Amount on or before the effective termination date of the Agreement (the "**Key Money Payment Date**") and as a condition to termination for any reason.

ARTICLE IV

Restricted Activities of Troon

4.1 Without the prior written consent of the City, which consent may be granted or withheld in the City's sole discretion, Troon shall not do, or cause or permit to be done, any of the following throughout the Term:

(a) Borrow or lend money in the name of the Golf Resort or the City.

(b) During the term of this agreement, Unless Troon first obtains the prior written consent from City, which shall not be unreasonably withheld, Troon shall not engage in managing any golf facility that are competitors of the Golf Resort.

Notwithstanding the provisions of Article 4.1(b) above, Troon and its Affiliates may, at any time during the Term, own, operate, or authorize the operation or lease of exclusively private golf clubs (having neither a resort nor a public component).

City's sole and exclusive remedy shall be to terminate this Agreement under Article 4.1(b). Troon shall promptly provide written notice to the City of any such violation that would give the City the right to terminate this Agreement. City shall exercise such right of termination within thirty (30) days after receiving such notice by providing written notice thereof to Troon specifying a termination date of not less than seventy-five (75) days after the date City's notice is given. As a condition to any termination by City under this Article 4.1(b), City shall pay to Troon all Management Fees (i.e., Base Management Fees, Incentive Management Fees) and other amounts due Troon under this Agreement for the period of time prior to the termination, including but not limited to the Key Money Repayment Amount, but City shall not be required to pay any penalty or termination fee upon such termination. If the City does not timely exercise its right to terminate this Agreement under this Article 4.1(b) with respect to any particular violation, such right shall be deemed waived with respect to such violation, but such waiver shall not affect the subsequent right of the City to terminate this Agreement under this Article 4.1(b) for any subsequent violations.

(c) Except for the Operating Contracts that the City or the Annual Plan approves, enter into any agreement directly or indirectly relating to the Golf Resort.

(d) Assign, transfer, pledge, compromise, or release any of the claims of or debts due the City, except upon payment in full, or arbitrate or consent to the arbitration or settlement of any claim of or against the City or any other dispute or controversy involving the City.

(e) Make, execute, or deliver in the name of the City, or concerning any of the assets of the City or the Golf Resort, any assignment for the benefit of creditors or any bond, confession of judgment, chattel mortgage, security instrument, deed, guarantee, indemnity bond or surety bond.

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

(g) Violate any Legal Requirement or applicable rule, regulation, or order of any local board of fire underwriters or similar body, subject to notification by the City of local requirements as set forth in Article 3.6(a)(i).

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

(i) Make any deletion, addition, modification, improvement, or other alteration to the Golf Resort other than as expressly authorized by the City Manager or as approved in the Annual Plan.

(j) Expend any funds, except as expressly contemplated in the then current Annual Plan or this Agreement, unless as a result of an emergency or otherwise approved by the City Manager in writing.

(k) Make any amendments or alterations to, or fail to comply with, any reservation policy.

(l) Use any trade names, trademarks, logos, emblems, or similar identifying matters of the City or the Golf Resort except in connection with the operation and promotion of the Golf Resort.

(m) Hire additional Golf Resort employees if their combined compensation, along with the existing Golf Resort staff, exceeds the budget set for employee salaries and benefits in the current Annual Plan.

ARTICLE V Employees

5.1 Golf Resort Employees. Troon shall use established procedures, techniques, and programs to hire and evaluate qualified employees. Subject to the obligation of Troon to observe applicable laws regarding such matters, the Annual Plan, and other terms of this Agreement, Troon shall have the authority to hire, establish Compensation and benefits for, promote, discharge, and supervise all employees in accordance with guidelines and employment policies (which shall include, without limitation, policies regarding safety in the workplace, equal employment opportunities, and job discrimination) proposed by Troon and agreed to by the City. Troon acknowledges and agrees that policies and procedures ensure Troon Golf Quality Standards and compliance with Troon's obligations pursuant to this Agreement and that Troon remains responsible for Golf Resort employees. Except for the City's obligation to reimburse Troon for Compensation, Employee Bonuses subject to Article 3.5(c), and other costs and expenses, the City is not responsible for Golf Resort employees, and employees of the Golf Resort are not City employees. As set forth with particularity elsewhere in this Agreement, including the Annual Plan, City shall be responsible for the payment of all costs and expenses incurred in connection with or relating to Golf Resort employees, which Troon provides in accordance with the terms of this Agreement.

5.2 Liability for Golf Resort Employees; Indemnity. Troon shall be solely responsible for any employment related liability, fine, penalty or award (including the cost of defense and attorney fees) with respect to claims, demands, arbitration, or litigation brought by an employee or employees of Troon at the Golf Resort for any reason, including without limitation, (a) employment claims arising out of the improper acts or omissions of a Troon employee; (b) the failure of an Executive Employee to properly supervise the Golf Resort employees or properly administer employment practices in accordance with the Golf Resort employment manual approved by City; or (c) the violation of federal, state or local laws, ordinances or regulations governing the employment or working conditions of the employees at the Golf

Resort (collectively, "Claims"). Troon agrees to indemnify, defend, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all Claims. Except for the proceeds of any insurance coverage described in Article 9.1, Troon shall not be entitled to any reimbursement by the City for Claims. As consideration for Troon's assumption of increased liability for its employees as set forth herein, Troon and City agree that City will pay to Troon an amount equal to Fifteen Thousand Dollars (\$15,000) per full Operational Year for insurance deductible funding. The annual insurance deductible funding expense shall be a Golf Resort Expense as defined in the Agreement.

5.3 Exclusions. In no event shall Troon be required to implement any policy or procedure with respect to the operation of the Golf Resort which Troon reasonably believes would result in employee liability or a violation of applicable labor laws provided that Troon provides written notification of such objection in writing. Furthermore, Troon shall not be responsible for any Claims or damages to the extent that such Claims or damages are the result of working conditions at the Golf Resort, which were identified in writing as non-compliant by Troon and the City failed to provide the requisite funding to remedy such conditions after written notice to City which clearly identifies that Troon disclaims liability pursuant to this Article V.

5.4 Restaurant Employees. Troon acknowledges that the obligations of Troon pursuant to Article V shall apply to all employees who are engaged in F&B Operations.

ARTICLE VI

Term

6.1 Term. Subject to such earlier termination as set forth in Article 6.2, this Agreement shall commence on July 1, 2024 (the "**Commencement Date**") and shall terminate on June 30, 2034 (the "**Initial Term**"). This Agreement is automatically extended for an additional term of five (5) years upon the mutual written agreement of City and Troon. Troon shall provide written notice to City on or about June 30, 2033, regarding the June 30, 2034 expiration date of the Agreement and, thereafter, City shall respond to Troon's written notice on or before September 30, 2033, notifying Troon of its intent to renew or not renew the Agreement. In the Event the Term is extended to June 30, 2039, the Agreement may be extended for additional successive terms of five (5) years each by complying with the notice and response process described above. Specifically, Troon shall provide City with written notice approximately one year in advance of the expiration date of the extended term, and City shall respond on or before ninety (90) days after receipt of the written notice from Troon. If the City fails to respond to written notice regarding any Term extension prior to the commencement date of such extension, this Agreement shall automatically terminate on the final date of the then-current Term. The Initial Term, together with any renewal periods, shall be referred to as the "**Term**."

6.2 Termination by City Upon the Occurrence of Certain Events. The City may terminate this Agreement immediately and without additional notice and without any additional compensation owing to Troon after the applicable termination date hereunder in the event that (i) Troon has committed an Event of Default which has not been cured in accordance with the terms of Article 12.1 hereof, (ii) Troon engages in conduct which materially impacts the reputation of the Golf Resort adversely after written notice from the City specifying in detail the conduct of Troon in that regard, and an opportunity to cure, or (iii) Troon files a petition of any type in bankruptcy, is declared bankrupt, becomes insolvent,

makes an assignment for the benefit of creditors, or goes into liquidation or receivership. As a condition to any termination pursuant to this Article 6.2, the City shall pay Troon all Management Fees and other amounts due Troon under this Agreement for the period of time prior to the termination date, including, but not limited to, the Key Money Repayment Amount.

6.3 Termination without Cause. Notwithstanding any provision of this Agreement to the contrary, City shall have the right to terminate this Agreement without cause, in accordance with the provisions of Article 6.3. City shall exercise this right by providing written notice thereof to Troon during the period beginning on July 1, 2029, and ending on December 31, 2029 (and during the same periods of the 2031 and 2033 Operational Years), which notice shall specify a termination date of not less than one hundred eighty (180) days after the date such notice is given. If the City timely provides such notice, then this Agreement shall, subject to the remaining provisions of Article 6.3, automatically terminate on the specified date of termination. As a condition to such termination, City shall pay to Troon all Management Fees and other amounts due Troon under this Agreement for the period of time prior to the termination date, including, but not limited to, the Key Money Repayment Amount.

6.4 Transition to New Management Company or Operator. Subsequent to Troon receiving written notification of the termination or expiration of this Agreement pursuant to Articles 6.1 and 6.2 above, Troon shall cooperate reasonably with the City in the transition of management responsibility to a new management company or operator. In connection therewith, Troon agrees to provide all requested documents and information in its possession relating to the Golf Resort (other than Troon's proprietary information) and shall provide appropriate training, assistance, and direction to the new management company or operator, and shall in good faith, endeavor to facilitate a smooth, seamless and efficient transition of management responsibility. Troon's failure to comply with Article 6.3 shall be a material default under Article 6.2 (ii) of this Agreement.

6.5. Termination for Financial Performance.

(a) Notwithstanding any provision of this Agreement to the contrary, the City shall have the right on June 30, 2027 (and on the last day of each full Operational Year thereafter during the Term) to terminate this Agreement if a NOI Deficiency (as hereinafter defined) occurred during each preceding full Operational Year (including the Operational Year at the end of which such right arises). For purposes hereof (i) an "NOI Deficiency" shall be deemed to have occurred in any Operational Year if the actual Net Operating Income for such Operational Year (as reflected in the annual financial statement prepared pursuant to Article 8.6 for such Operational Year, subject to appropriate adjustments for City-sponsored events in accordance with Article 3.6(xiii)) does not equal or exceed eighty-five percent (85%) of the budgeted Net Operating Income contained in the Annual Plan for such Operational Year, and (ii) the "NOI Shortfall" for any Operational Year shall be the difference between eighty-five percent (85%) of such projected Net Operating Income for the Golf Resort for such Operational Year and the actual Net Operating Income of the Golf Resort for such Operational Year.

(b) City shall exercise its right to terminate this Agreement under this Article 6.5 by providing written notice thereof to Troon within thirty (30) days after receipt of the annual financial statement prepared pursuant to Article 8.6 for the third full Operational Year ending

on June 30, 2027 (or such later Operational Year as may be applicable). The notice shall specify a termination date of not less than ninety (90) days after the date the notice is given. Subject to the remaining provisions of this Article 6.5, this Agreement shall thereupon terminate at midnight on the termination date specified in City's written notice unless Troon, within thirty (30) days after receipt of such notice and with City's consent, pays to City an amount equal to the NOI Shortfall for the two Operational Years in question. If City consents to accept payment from Troon of an amount equal to the NOI Shortfall and Troon timely pays such amount, then (i) the notice of termination shall be null and void, (ii) this Agreement shall remain in full force and effect, and (iii) the Operational Years for which Troon paid the NOI Shortfalls shall not thereafter be deemed to be Operational Years in which NOI Deficiencies occurred. If Troon fails to timely pay said amount, the notice of termination shall be deemed irrevocable, and this Agreement shall terminate on the termination date specified in the City's written notice. If the City does not timely exercise its right to terminate this Agreement after the full Operational Year ending on June 30, 2027 (or such later Operational Year as may be applicable), such right shall be deemed waived, but such waiver shall not affect the subsequent right of City to terminate this Agreement under this Article 6.5 (including on the last day of the next two (2) full Operational Years if NOI Deficiencies occur with respect thereto).

(c) Notwithstanding anything to the contrary contained in this Article 6.5, City's right to terminate this Agreement under this Article 6.5 (and the amount of any NOI Shortfalls to be paid by Troon hereunder) shall be reduced or eliminated to the extent that an NOI Deficiency in either of such Operational Years is attributable to (i) force majeure events as described in Article 10.3 below, or (ii) increases in expenses which are not within the control of Troon (e.g., utility rates, insurance premiums, and other such items).

(d) As a condition to any termination by City under this Article 6.5, City shall pay Troon all Management Fees and other amounts due Troon under this Agreement for the period of time prior to termination, including the Key Money Repayment Amount pursuant to Article 3.15(b), but City shall not be required to pay any penalty or termination fee upon such termination.

ARTICLE VII

Management Fees

7.1 Annual Base Fee. The City shall pay to Troon for each Operational Year during the Term an annual base fee (the "Annual Base Fee"), which is equal to (i) one and one-half percent (1.5%) of Gross Revenues in the event that Troon delivers between 0%-90.0% of budgeted Annual Plan; (ii) one and three-quarters percent (1.75%) of Gross Revenues in the event that Troon delivers between 90.1%-95.0% of budgeted Annual Plan; (iii) two percent (2%) of Gross Revenues in the event that Troon delivers between 95.1%-99.9% of budgeted Annual Plan; or (iv) two and one-half percent (2.5%) of Gross Revenues in the event that Troon equals or exceeds 100% of budgeted Annual Plan.

7.2. F&B Incentive Fee. Increasing Food & Beverage covers and customer service satisfaction is extremely important to the City. In the event the Gross Food and Beverage Revenues for an Operational Year exceed the budgeted Gross Food and Beverage Revenues in the Annual Plan, Troon shall be entitled to additional compensation of One Percent (1.0%) of Gross Food and Beverage Revenues, provided, however, that such amount shall not exceed ten percent (10%) of the total combined Annual Base Fee and Annual Incentive Fee for the applicable Operational Year (the “**F&B Incentive Fee**”).

The Annual Base Fee, and the F&B Incentive Fee shall each be paid yearly, within thirty (30) days after the City receives annual financial statements prepared in accordance with Article 8.6, subject to appropriate adjustments for City-sponsored events hosted in accordance with Article 3.6(xiii).

ARTICLE VIII

Accounts; Working Funds; Disbursement Of Funds; Records And Reports

8.1 Accounts.

Troon shall establish a bank account for the Golf Resort at a banking institution located in close proximity to the Golf Resort, such account to be in Troon’s name (the “**Operating Account**”). Troon will deposit in the Operating Account all monies received from the operation of the Golf Resort and all monies furnished by the City as working funds under this Agreement. Troon shall disburse the funds in the Operating Account for the purposes set forth in Articles 8.2, 8.4, and 8.5 below. Notwithstanding the provisions of the foregoing sentence, Troon shall be entitled to maintain funds in reasonable amounts in “cash register banks” or petty cash funds at the Golf Resort.

In addition to the Operating Account, Troon shall establish a payroll account, which shall be under the sole ownership and control of Troon or its designee. Amounts disbursed or to be disbursed by Troon from its payroll account shall be paid to and transferred by Troon from the Operating Account. Such payment and transfer of funds may occur at such time (whether prior or subsequent to the release by Troon of checks drawn on its payroll account) as Troon determines necessary to assure that it will have sufficient funds from Gross Revenues to satisfy its liabilities to the employees of the Golf Resort. Notwithstanding the foregoing, as continuing security for City’s obligation to pay the payroll and related costs for the Golf Resort employees, City shall, on or before July 1, 2023, deposit into Troon’s account and thereafter maintain throughout the Term an amount equal to at least one (1) bi-weekly payroll period’s total payroll and payroll-related costs (calculated based upon the average annual biweekly payroll and payroll-related costs, as determined using the then current Annual Plan, which amount shall be adjusted in January of each Operational Year based upon such Operational Year’s Annual Plan). The City agrees to replenish any deficiency in such funds within ten (10) calendar days following Troon’s request therefor.

8.2 Working Capital Funds and Working Capital Shortfalls. The City agrees to provide all funds as necessary to pay for all Golf Resort Expenses relating to the Golf Resort and to perform and satisfy City’s covenants and responsibilities under this Agreement. The performance of all activities by Troon hereunder shall be for and on account of the City. As approved in the Annual Plan or as otherwise provided in accordance with the terms of this Agreement, Troon shall be entitled to be reimbursed for all

costs and expenses incurred by Troon as a result of Troon's performance under this Agreement. Within five (5) days after Troon's request, the City shall provide funds to be deposited in the Operating Account sufficient at all times to ensure the uninterrupted and efficient operation of the Golf Resort. This provision intends to ensure that any shortfall is made up, if necessary, on a month-by-month basis after reviewing and projecting an individual month's operating results. If Troon is unable to perform any of its obligations under this Agreement because of the failure on the part of City to provide the funds in accordance with this Article VIII, such failure of performance on the part of Troon shall not be deemed a default on the part of Troon and shall not give rise to any right to termination, damages or any other remedy against Troon.

8.3 Disbursements. From the Operating Account (or, if appropriate, from "cash register banks" or petty cash funds available at the Golf Course), Troon is authorized to pay the following:

- (i) the Management Fee; and
- (ii) all Golf Resort Expenses when incurred.

All payments made by Troon hereunder shall be made from the Operating Account and petty cash funds. Troon shall not be required to make any advance or payment to or for the account of City or the Golf Resort except out of such funds, and Troon shall not be obligated to incur any liability or obligation for City's or the Golf Resort's account without assurances that City shall provide all necessary funds for the discharge thereof.

8.4 Excess Income transferred to City. If after payment of the Management Fee and all Golf Resort Expenses, and provided there are sufficient funds available in the Operating Account to satisfy the daily working capital needs of the Golf Resort, then any excess funds in the Operating Account shall be disbursed by Troon to the City. Troon shall maintain at all times, in its reasonable judgment, sufficient funds in the Operating Account to satisfy the daily working capital needs of the Golf Resort for the thirty (30) days following the disbursement. Troon shall calculate and process Excess Income on a monthly basis. Upon the expiration or earlier termination of this Agreement, all funds remaining in the Operating Account after payment of the Golf Resort Expenses and the Management Fee shall be disbursed by Troon to the City.

8.5 Books and Records. Troon shall keep complete and accurate books of account and such other records as are necessary to reflect the results of the operation of the Golf Resort. For this purpose, Troon agrees it will make available to the City, all books and records in Troon's possession relating to the Golf Resort, including contract documents, invoices, and construction records. All books and records for the Golf Resort shall be located either at the Golf Resort or at Troon's corporate office. All accounting records shall be maintained in accordance with generally accepted accounting principles and shall be maintained in an accrual format for each Operating Year. All such books, records, and reports shall be maintained separately from other facilities operated by Troon. Troon agrees to maintain reasonable and necessary accounting, operating, and administrative controls relating to the financial aspects of the Golf Resort, and such controls shall provide checks and balances designed to protect the Golf Resort, Troon, and the City. Troon shall deliver to City all of the financial and accounting books and records of the Golf Resort upon the expiration or earlier termination of this Agreement, and the City shall have the right to inspect and audit such books and records during such period as provided in Article 8.7 below.

8.6 Reports to City. Troon shall deliver to the City the following financial statements in a form reasonably acceptable to the City:

(a) Within twenty (20) days after the end of each calendar month, a profit and loss statement, balance sheet, cash flow statement, and budget variance report showing the results of operation of the Golf Resort for such month and for the Operational Year to date, which statement shall include sufficient detail to reflect all Gross Revenues and Golf Resort Expenses; explicitly including:

(i) all revenues or other funds received expenses, and disbursements made by the relevant category of the Annual Plan and, in the case of unbudgeted revenues, receipts, expenses, and disbursements, an itemized list;

(ii) a comparison of the amounts received and expended with the estimated receipts and expenses set forth in the Annual Plan, both for the preceding month and year-to-date;

(iii) a statement of all delinquent receivables and other charges for the use of the Golf Resort; and

(iv) include bank reconciliations.

(b) Within thirty (30) days after the end of each Operational Year, a profit and loss statement showing the result of the operation of the Golf Resort for such Operational Year, which statement shall include sufficient detail to reflect all Gross Revenues and Golf Resort Expenses, including Management Fee. If requested by the City, and at the sole expense of the City, these financial statements shall be certified by an independent certified public accountant acceptable to the City.

(c) In addition to the foregoing, all Golf Resort department heads will prepare a monthly variance report for their respective departments compared to the Annual Plan to be reviewed by the City and Troon. Troon shall hold weekly departmental staff meetings to monitor all Golf Resort Expenses closely.

8.7 Inspection. Upon seven (7) days prior written notice to Troon, which notice shall set forth the date and time that the City desires to inspect the books and records, the City or its authorized agents, auditors, or representatives shall have the right during regular business hours to review, inspect, audit, and copy the books, records, deposit receipts, canceled checks, and other accounting and financial information maintained by Troon in connection with the operation of the Golf Resort. All such books and records shall be made available to the City at the Golf Resort unless the City and Troon agree upon another location. The City, at its own expense, shall have the right to retain an independent accounting firm to audit the books and records of the Golf Resort on an annual basis. The inspection right of the City under this Article 8.7 shall remain in effect for a period of one (1) year following the termination or expiration of this Agreement.

ARTICLE IX

Insurance

9.1 Insurance Requirements.

(a) Unless otherwise agreed in writing, the parties' obligations with respect to the procurement and maintenance of the property, commercial general liability, and other insurance coverage for the Golf Resort throughout the Term (or at such other times during the Term as shall be appropriate depending upon the type of insurance required to be procured), shall be as set forth in this Article IX.

(b) Except as set forth in Article 9.3, all insurance provided under Article IX shall be effected by policies issued by insurance companies with sound financial strength and maintain a minimum rating of A:VII in Am Best's Key rating guide or equivalent. If agreed to in writing by City and Troon, such insurance may be carried under Troon's comprehensive country club insurance program covering the Golf Resort and other locations provided the policies within such program otherwise comply with all of the requirements set forth in this Article IX.

(c) Certificates of insurance and endorsements shall be delivered to City or Troon, as applicable, on or before the date of this Agreement, and all insurance policies shall be renewed (or replaced, as appropriate) prior to their respective expiration dates.

(d) All applicable insurance policies described in this Article IX shall be written in the name of Troon or City, with the other included as an additional insured thereon (as its interests may appear), except for worker's compensation insurance and any other insurance with respect to which it is impractical or inappropriate to name City, or any other parties as a named insured or an additional insured.

(e) All property insurance policies shall be explicitly endorsed to the effect that the proceeds of any building, contents, or business interruption losses shall be made payable to the City (except for the proceeds of any business interruption insurance, which shall be payable to Troon as set forth herein). All such insurance policies shall also be explicitly endorsed to the effect that such policies shall only be canceled or materially changed with at least thirty (30) calendar days prior written notice to City and Troon.

(f) So long as this Agreement remains effective, Troon and the City shall have no rights of subrogation and respectively waive (i) any right to enforce any remedy which the other now has or hereafter may have hereunder or otherwise under applicable law, and (ii) any benefit of, and any right to participate in, any security interest(s) the other may now or hereafter hold in relation to such remedies. Neither City nor Troon shall have any claim against the other with respect to the failure of any insurance carrier to provide the coverage or protection placed with such carrier as contemplated by this Agreement.

(g) Certificates of insurance and endorsements shall be sent to City and/or Troon, as applicable, at the addresses shown in Article 15.3 below.

(h) City and Troon shall review all coverage limits and deductible amounts set forth in this Article IX from time to time for the purpose of determining the coverage limits and deductible amounts then appropriate for properties similar in type and construction to the Golf Resort and for the nature of the business being conducted.

9.2 Insurance to be Maintained by Troon on Behalf of Golf Resort. At all times during the Term, Troon shall procure and maintain, as a Golf Resort Expense, the following insurance coverages:

(a) Comprehensive or commercial general liability insurance written on an “occurrence” basis against claims for personal injury (including bodily injury and death) and property damage, with a combined single limit for bodily injury and property damage of at least Two Million Dollars (\$2,000,000);

(b) Fidelity bonds, with reasonable limits and deductibles approved by City, covering employees at the Golf Resort in job classifications normally bonded in the other Affiliated Facilities or as otherwise required by law, and comprehensive crime insurance;

(c) Owned, hired, and non-owned automobile liability insurance covering all use of all automobiles, trucks, and other motor vehicles utilized by Troon and Troon’s employees in connection with this Agreement with a combined single limit for bodily injury and property damage of at least One Million Dollars (\$1,000,000) per occurrence;

(d) Employment practices liability coverage with a combined single limit of at least Two Million Dollars (\$2,000,000.00) to cover any Golf Resort employees on Troon’s payroll and the Troon Executive Employees;

(e) Workers’ compensation and employer’s liability insurance of at least One Million Dollars (\$1,000,000.00) per accident or disease as may be required under applicable laws covering all of Troon and its Affiliates’ employees employed at the Golf Resort;

(f) Umbrella or excess liability coverage with a limit of not less than Ten Million Dollars (\$10,000,000.00), which limit is applicable only to the Golf Resort and not shared with other facilities managed by Troon;

(g) Intentionally omitted;

(h) Intentionally omitted;

(i) Pollution insurance policy (not limited to Herbicide and Pesticide coverage) with a limit of not less than One Million Dollars (\$1,000,000) per single occurrence, including coverage for on-site and off-site clean up as well as third-party coverage for on-site and off-site third party claims for bodily injury and property damage;

(j) As of the date of this Agreement, liquor liability insurance having coverage terms at least as broad as those found in standard ISO forms. Such policy shall have an aggregate limit of at least One Million Dollars (\$1,000,000) per single occurrence and in the aggregate.

Troon shall be entitled, from time to time, to designate such higher limits as it deems reasonably necessary (or as required under any loan and/or plan documents). In the event that Troon, or Troon's Affiliate, holds the liquor license for the Golf Resort, Troon shall be the named insured (and City shall be an additional insured) with respect to the foregoing insurance coverage; and

(k) Professional liability (errors and omissions) insurance with a limit of not less than Two Million Dollars (\$2,000,000.00) per claim. Any inception date, continuity date, or retroactive date must be before the effective date of this Agreement and Troon agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Agreement.

(l) Such other insurance in amounts as Troon and City, in their reasonable judgment, deem advisable for protection against claims, liabilities, and losses arising out of or in connection with the operation of the Golf Resort.

(m) Subcontractor Insurance. Troon shall ensure that its subcontractors provide and maintain types and limits of insurance appropriate for the risks involved with the subcontractor's scope of work and services.

9.3 Insurance to be Maintained by City for the Golf Resort.

(a) At all times during the Term, City shall procure and maintain "all-risk" property insurance for the full replacement value covering physical loss or damage to all buildings and improvements now existing or hereafter erected at the Golf Resort, which shall include extended coverage against such perils of fire, lightning, windstorm, collapse, and sprinkler leakage. Such policy shall also provide (i) comprehensive boiler and machinery coverage, including pressure vessels, air tanks, boilers, machinery pressure piping, heating, and air conditioning, (ii) earthquake coverage, if applicable and available at commercially reasonable rates in the region where the Golf Resort is located, (iii) flood coverage in an amount not to exceed \$1,000,000 if the Golf Resort is not in a special flood hazard zone, and, if the Golf Resort is in a special flood hazard zone, flood coverage in an amount available at commercially reasonable rates through the applicable governmental agency, and (iv) business interruption insurance providing coverage against the loss of Gross Revenues of the Golf Resort in an amount no less than \$1,000,000. Such policy shall also cover all equipment, fixtures, motors, machinery, furnishings, and furniture installed and owned or leased by the City and used in connection with the Golf Resort or with the buildings and improvements upon or above the Site, including all alterations, rebuilding, replacements, and additions thereto (as hereinafter defined) at the option of City. If any insurer, or any governmental agency or authority having jurisdiction over the Golf Resort, shall at any time require that the foundations be insured in order to relieve the insured from the responsibility as a co-insurer or for any other purpose, the obligations with respect to insurance herein shall henceforth be increased to the extent so required.

(b) To the extent not excluded under the insurance described in Article 9.3(c), the City shall provide comprehensive or commercial general liability insurance against claims for

personal property (including bodily injury and death) and property damage, provided, however, that such coverage shall be secondary to the insurance policy described in Article 9.2(a).

(c) City shall provide the insurance described in Article 9.3(a) pursuant to its self-insurance program administered by the California Joint Powers Insurance Authority (“**JPIA**”). This municipal risk pool handles claims against the City. The City also maintains excess liability coverage for claims in excess of \$5,000,000. The City shall keep in full force and effect during the Term its existing self-insurance retention program or similar coverage with limits of insurance and coverages as required by this Article 9.3. The city agrees to provide Troon, upon reasonable request, pertinent information regarding its coverage. For purposes of this Agreement: (i) Troon shall be included and/or treated as if it were an additional named insured under any self-insurance program maintained by the City or any excess liability coverage, and (ii) in connection with any self-insurance program maintained by the City, the City shall be deemed to have undertaken all duties, liabilities, and obligations which a reputable and recognized insurer would have had if insurance had been maintained instead of the self-insurance program.

ARTICLE X

Damage or Destruction; Eminent Domain; Force Majeure Events

10.1 Damage or Destruction. Should the Golf Resort be destroyed or substantially damaged by fire, flood, acts of God, or other casualty, the City, by written notice to Troon given within sixty (60) days following the occurrence of such event, shall have the right to terminate this Agreement on the basis that the City does not choose to rebuild or restore the Golf Resort, and in such event, neither party shall have any further obligation to the other party under this Agreement, except with respect to liabilities accruing, or based upon events occurring, prior to the effective date of such termination. For the purpose of this Article 10.1, the Golf Resort shall be deemed to have been substantially damaged if the estimated length of time required to restore the Golf Resort substantially to its condition and character just prior to the occurrence of such casualty shall be in excess of six (6) months, as indicated by an architect’s certificate or other evidence reasonably satisfactory to Troon. If this Agreement is not terminated in the event of damage to the Golf Resort either because (i) the damage does not amount to substantial damage as described above, or (ii) notwithstanding the destruction of or substantial damage to the Golf Resort, the City elects to restore the Golf Resort, then the City shall proceed, at the City’s own expense, with all due diligence to commence and complete restoration of the Golf Resort to its condition and character just prior to the occurrence of such casualty. If, as a result of any damage or destruction to the Golf Resort as provided in this Article 10.1, the responsibilities of Troon under this Agreement are substantially changed, then the parties shall meet and discuss in good faith appropriate modifications to this Agreement, including the Management Fees.

10.2 Eminent Domain. If all of the Golf Resort (or such a substantial portion of the Golf Resort so to make it unfeasible, in the reasonable opinion of the City, to restore and continue to operate the remaining portion of the Golf Resort for the purposes contemplated in this Agreement) shall be taken through the exercise (or by agreement in lieu of the exercise) of the power of an eminent domain, then upon the date that the City shall be required to surrender possession of the Golf Resort or of that substantial portion of the Golf Resort, this Agreement shall terminate, and neither party shall have any further

obligation to the other party under this Agreement except with respect to liabilities accruing, or based upon events occurring, prior to the effective date of such termination. If such taking of a portion of the Golf Resort shall not make it unfeasible, in the reasonable opinion of the City, to restore and continue to operate the remaining portion of the Golf Resort for the purposes contemplated in this Agreement, then this Agreement shall not terminate, and the City shall proceed, at the City's own expense, with all due diligence to alter or modify the Golf Resort so as to render it a complete architectural unit which can be operated as a golf resort of substantially the same type and character as before. If, as a result of any alteration or modification of the Golf Resort as provided in this Article 10.2, the responsibilities of Troon under this Agreement are substantially changed, then the parties shall meet and discuss in good faith appropriate modifications to this Agreement including the Management Fees.

10.3 Force Majeure Events. As used in this Agreement, the term "**Force Majeure Event**" means declared or undeclared war, acts of terrorism, sabotage, riot or acts of civil disobedience, acts or omissions of governmental agencies, accidents, fires, explosions, floods, earthquakes, or other acts of God, strikes, labor disputes, shortages of materials, or any other event not within the control of Troon and not caused by the gross negligence or intentional wrongful conduct of Troon. For purposes of this Agreement, any disruption to the operation of the Golf Resort caused by a capital improvement project shall also constitute a Force Majeure Event. If, as a result of the occurrence of a Force Majeure Event, the responsibilities of Troon under this Agreement are substantially changed, then the parties shall meet and discuss in good faith appropriate modifications to this Agreement including the Management Fees.

ARTICLE XI Indemnification

11.1 Troon's Indemnity. Troon agrees to indemnify, defend, and hold harmless City and its officials, officers, employees, agents and volunteers from and against any and all claims, demands, actions, lawsuits, proceedings, damages liabilities, judgments, penalties, fines, attorneys' fees, costs, and expenses, as follows:

- (a) which result from any act or omission constituting active or passive negligence (including acts or omissions that do not meet industry standards), gross negligence, fraud or willful misconduct by a Troon employee; or
- (b) which result from any action taken by Troon or a Troon employee relating to the Golf Resort (i) that is expressly prohibited by this Agreement, or that is not within the scope of Troon's duties under this Agreement, or (iii) that is not within Troon's delegated authority under this Agreement; or
- (c) subject to Article V above, which result from Troon's material breach of any covenant or obligation contained in this Agreement. For purposes of this Section, the term "material" shall mean any breach resulting in liability in excess of \$5,000.00.

Troon's indemnity obligations under this Article 11.1 shall not apply to Claims which are covered by the indemnity in Article 5.2 or to any acts taken (or omissions not taken) either at the written direction of City or with the express approval of City, provided, however that the approval of the Annual Plan, or

any other general operating policy or procedure by City shall not be interpreted as "direction" or "approval" of a specific act or omission unless such act or omission is clearly and unambiguously contemplated thereby."

11.2 City's Indemnity. The City agrees to indemnify and hold harmless Troon and its owners, officers, directors, employees, members and managers from and against any and all claims, demands, actions, lawsuits, proceedings, damages, liabilities, judgments, penalties, fines, attorneys' fees, costs, and expenses:

(a) that result from an act or omission by Troon in connection with the management and operation of the Golf Resort (i) that is expressly directed by this Agreement, or (ii) that is within the scope of Troon's duties under this Agreement, or (iii) that is within Troon's delegated authority under this Agreement, or (iv) that was either at the direction of the City or with the written approval of the City unless, in each case, such act or omission would be an event for which Troon is required to indemnify the City under Article 11.1 above; or

(b) which result from the City's breach of this Agreement or any act or omission constituting active or passive negligence, gross negligence, or willful misconduct by the City or any officer, director, employee, or agent of the City; or

(c) which otherwise arise from the operation or condition of the Golf Course or any activity occurring thereon unless, in each case, such matter would be an event for which Troon is required to indemnify the City under Article 11.1 above.

11.3 Nature of Indemnity. The indemnity obligations of Troon and the City set forth in this Article XI shall be offset to the extent of any applicable insurance proceeds paid to the indemnified party or on its behalf.

ARTICLE XII

Default

12.1 Events of Default. The occurrence of any one or more of the following events which are not cured in the time permitted shall constitute a default under this Agreement ("**Event of Default**"):

(a) *Failure to Pay Sums Due*. Either party's failure to pay any sums payable under this Agreement when due and such failure shall continue for ten (10) days after written notice to the defaulting party specifying the item not paid.

(b) *Failure to Comply*. Either party's failure to comply with any of the material covenants, agreements, terms, or conditions of this Agreement or such failure shall continue for thirty (30) days after written notice to the defaulting party specifying in detail the nature of such failure. Notwithstanding the foregoing, in the event any failure cannot with due diligence be cured within such thirty (30) day period, if the defaulting party proceeds promptly and diligently to cure the same and thereafter diligently prosecutes the curing of such failure, the

time within which the failure may be cured shall be extended for such period as may be reasonably necessary for the defaulting party to cure the failure.

(c) *Breach of Restaurant Lease Agreement.* The occurrence of an Event of Default under the Restaurant Lease Agreement.

ARTICLE XIII Representations and Warranties

13.1 Troon's Representations. As a material inducement to the City to enter into this Agreement, Troon represents and warrants the following:

(a) Troon is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Delaware; that it is duly qualified to do business and is in good standing in the State of California; that it has all necessary power and authority to enter into this Agreement and to carry out the transactions contemplated herein; and that the execution and delivery hereof and the performance by Troon of Troon's obligations hereunder will not violate or constitute a default under the terms and provisions of any agreement, law or court order to which Troon is a party or by which Troon is bound.

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

(c) The person(s) executing this Agreement on behalf of Troon have full power and authority to bind Troon to the terms hereof.

13.2 City's Representations. As a material inducement to Troon to enter into this Agreement, the City represents and warrants the following:

(a) The City is a California municipal corporation, validly existing and in good standing under the laws of the State of California; that it is duly qualified to do business and is in good standing in the State of California; that it has all necessary power and authority to enter into this Agreement and to carry out the transactions contemplated herein; and that the execution and delivery hereof and the performance by the City of City's obligations hereunder will not violate or constitute a default under the terms and provisions of any agreement, law or court order to which the City is a party or by which the City is bound.

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

(c) The persons executing this Agreement on behalf of the City have full power and authority to bind the City to the terms hereof.

ARTICLE XIV Transfers and Assignments

14.1 Limitation on Troon. Troon 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 (except for Troon's rights to receive payments hereunder), without the prior written consent of the City; provided, however, Troon may assign this Agreement to an entity that is similarly engaged in the golf management business and that employs the principal members of the current Troon management team.

14.2 Limitation on City. The City may assign or transfer this Agreement to a governmental agency related to the City or the Agency. The City may also assign and transfer its rights under this Agreement to a purchaser or new Golf Resort owner that assumes the City's obligation hereunder. Otherwise, the City may not assign or transfer its rights hereunder.

ARTICLE XV Intellectual Property

15.1 Intellectual Property

(a) During the Term, the Golf Resort shall be known by such tradename as may from time to time be determined by City (the "**Golf Resort Tradename**"). Troon acknowledges that the Golf Resort Tradename, together with any other names, service marks, trademarks, slogans, logos, designs, or the like owned by City or created by City during the Term that are now or hereafter used in the ownership or operation of the Golf Resort (together with the Golf Resort Tradename, the "**City Marks**") are and shall continue to be the property of City. Troon shall not contest the City's unrestricted and exclusive ownership of the City Marks or its right to grant others licenses to use the City Marks. During the Term, the City grants Troon a nonexclusive license to identify the Golf Resort as a golf facility managed by Troon on its website or in connection with advertising or other marketing materials used in connection with the promotion of the Golf Resort or in connection with marketing programs with Affiliates, which license shall expire upon the termination or expiration of this Agreement. Notwithstanding the foregoing, any use of the City Marks in advertising, promotional, or marketing materials shall be subject to the approval of the City, which approval shall not be unreasonably withheld. Except as permitted above, Troon shall not use the Troon Marks (as defined below) in connection with the operation of the Golf Resort and shall not sell or place any items or equipment branded with the Troon Marks at the Golf Resort without the prior written consent of City.

(b) City acknowledges that the trademarks and/or service marks "Troon®," "Troon Golf®," and "Prive®" are and shall continue to be the sole property of Troon, together with any other names, service marks, trademarks, slogans, logos, designs or the like owned by Troon

or its Affiliates or created by Troon or its Affiliates that are now or hereafter used in Troon's management business (collectively, the "**Troon Marks**"). During the Term, as directed by the City, Troon may, subject to the prior written approval of the City on a case-by-case basis, display the Troon Marks at the Golf Resort in designated locations and on specified inventory, supplies, amenities, etc. The City shall not contest Troon's unrestricted and exclusive ownership of the Troon Marks or its right to grant others licenses to use the Troon Marks.

(c) City shall have the sole right and responsibility to handle disputes with third parties concerning the use of all or any part of the City Marks, and Troon shall, at City's reasonable expense, cooperate with City in all such matters. The City need not initiate suit against imitators or infringers and may settle any dispute by grant of a license or otherwise. Troon shall not initiate any suit or proceeding to enforce or protect the City Marks. Both parties shall make every effort consistent with the foregoing to protect, maintain, and promote the City Marks and their distinguishing characteristics as standing for the Golf Resort.

(d) Troon shall have the sole right and responsibility to handle disputes with third parties concerning the use of all or any part of the Troon Marks, and City shall, at Troon's reasonable expense, cooperate with Troon in all such matters. Troon need not initiate suit against imitators or infringers and may settle any dispute by grant of a license or otherwise. The City shall not initiate any suit or proceeding to enforce or protect the Troon Marks. Both parties shall make every effort consistent with the foregoing to protect, maintain, and promote the Troon Marks and their distinguishing characteristics as standing for golf facilities being operated or developed by, or by authorization from, Troon under the Troon Marks.

(e) Upon any termination or expiration of this Agreement for any reason whatsoever, unless Troon, in its sole discretion, authorizes the City in writing to continue to use the Troon Marks, City shall cease all use of the Troon Marks. Upon any termination or expiration of this Agreement for any reason whatsoever, unless City, in its sole discretion, authorizes Troon in writing to continue to use the City Marks, Troon shall immediately cease all use of the City Marks. In addition, Troon shall cease all use of the Troon Marks at the Golf Resort and shall remove from the Golf Resort any signs or FF&E, operating equipment, operating supplies, inventory, amenities, supplies, or any other items containing the Troon Marks, or any similar designation on or prior to the termination date. Troon shall use reasonable efforts to minimize interruption to Golf Resort operations by reason of such removal. Notwithstanding the foregoing, after the termination of this Agreement, City and any successor operator of the Golf Resort may continue to use any property with the Troon Marks that City has paid for until it is consumed unless Troon elects to purchase such property at its book value.

ARTICLE XVI

Miscellaneous

16.1 Waiver. The waiver by either the City or Troon of any breach of any term, covenant, or condition herein contained shall not be deemed a waiver of any subsequent breach of the same or any other term, covenant, or condition. No covenant, term, or condition of this Agreement shall be

deemed waived by City or Troon unless such waiver is in writing and signed by the party against whom such waiver is asserted.

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

16.3 Notices. Notices, statements, and other communications to be given under the terms of this Agreement shall be delivered in a timely fashion (and in any event within any time limits established elsewhere in this Agreement) and shall be in writing and delivered by hand (including pre-paid courier) or sent by a reputable overnight delivery service such as Federal Express and addressed as follows:

If to City:

City of Indian Wells
44-950 Eldorado Drive
Indian Wells, California 92210
Attention: City Manager
Phone: 760-346-2489

If to Troon:

Troon Golf, L.L.C.
15044 N. Scottsdale Road, Suite 300
Scottsdale, Arizona 85254
Attention: Legal Department
Phone: 480.477.0439

or at such other address as from time to time designated by the party receiving the notice in accordance with this Article 16.3. The date of service of such notices shall be the date such notices are delivered to the party to whom the notice is given.

16.4 City Bonds. In connection with the City's issuance or refunding of any bonds or certificates of participation, Troon shall have the right to approve, which approval shall not be unreasonably withheld, any description of Troon or any description of this Agreement or of the City's relationship with Troon under this Agreement, which description is contained in any prospectus or similar materials delivered in connection with such bonds or certificates of participation. The City agrees to furnish Troon copies of all such materials for such purpose at least twenty (20) days before delivering such materials to the addresses set forth in Article 15.3 above.

16.5 Interest. Interest shall accrue on any sums owed by either party hereto to the other party starting from the first date of delinquency and continuing until the full amount, including such interest is paid. Such interest shall accrue at a rate equal to the lesser of (a) the maximum rate of interest allowed by applicable law or (b) the rate of interest announced by Bank of America National Trust and Savings

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

16.6 Successors and Assigns. This Agreement is personal to the City and Troon, and except as otherwise provided herein, Troon shall have no right, power, or authority to assign this Agreement, or any portion hereof or any monies due or to become due hereunder, or to delegate any duties or obligations arising hereunder, either voluntarily, involuntarily or by operation of law, without the prior written approval of the City. Except as otherwise provided herein, Troon shall only have the right, power, or authority to subcontract its services, or any portion thereof, with the prior written approval of the City. Any approval by the City of any subcontract of Troon’s services or any part thereof shall not be construed to make the City a party to such subcontract or to expose the City to any claims or liabilities arising thereunder. Without waiver of the foregoing provisions, all of the rights, benefits, duties, liabilities, and obligations of the parties hereto shall inure to the benefit of and be binding upon their respective successors and assigns.

16.7 Persons Indemnified. All agreements by either Troon or the City 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 elected officials, directors, officers, members, managers, employees and agents of any of the foregoing.

16.8 Applicable Law. This Agreement and all provisions thereof, irrespective of the place of execution or performance, shall be construed and enforced in accordance with the laws of the State of California. Venue for any action arising out of this Agreement shall be Riverside County.

16.9 Cumulative Rights. The rights and remedies conferred upon the City and Troon in this Agreement and by law are cumulative.

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

16.11 Attorney’s Fees. If any party fails to perform any of its obligations under this Agreement or if any dispute arises between the parties concerning the meaning or interpretation of any provision of this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by any other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorney’s fees and disbursements. Any such attorney’s fees and other expenses incurred by any party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorney’s fee obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment.

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

16.14 Easements. Troon shall recognize and comply with all easements of record affecting the Golf Resort.

16.15 Publicity. Any commercial advertisements, press releases, articles, or other media information using the City's name shall be subject to the prior approval of the City, which approval shall not be unreasonably withheld.

16.16 Possessory Interest. Pursuant to California Revenue and Taxation Code Section 107.6, the City hereby informs Troon that this Agreement may create a possessory interest subject to property taxation, and in such event, Troon may be subject to the payment of property taxes levied on such interest. The parties agree that in the event possessory interest property taxes are levied against Troon in connection with this Agreement, such taxes shall be considered a Golf Resort Expense and shall be paid from the Operating Account.

16.17 Conflict of Interest. The parties hereto hereby covenant that during the term of this Agreement, they will not employ any person to administer any portion of this Agreement that has an interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement.

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

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

16.20 No Inconsistent Tax Position. Troon agrees that it is not entitled to and will not take any tax position that is inconsistent with being a service provider to the City with respect to the Golf Resort.

16.21 Mediation, Arbitration, and Dispute Resolution.

(a) Resolution by the Parties. The parties hereto desire, pursuant to the provision of this Article 16.21, to establish procedures to facilitate the informal and inexpensive resolution of any disputes arising out of or relating to this Agreement by mutual cooperation and without resorting to litigation. To accomplish this objective, the City and Troon agree to follow the procedures set forth below. If a dispute arises under this Agreement, the complaining party shall write a description of the alleged breach of contract or complaint and send it to the other party by certified or registered mail. This letter shall explain the nature of the complaint and refer to the relevant articles of the Agreement upon which the complaint is based. The complaining party shall also set forth a proposed solution to the problem, including a reasonably specific time frame within which the parties must act. The party receiving the letter must respond in writing within ten (10) days with an explanation, including references to the relevant parts of the Agreement and a response to the proposed solution. Within ten (10) days of receipt of this response, the parties must meet and discuss options for resolving the dispute. The complaining party must initiate the scheduling of this resolution meeting.

(b) Arbitration. If the dispute is not settled by the parties pursuant to the procedure set forth in Article 16.21(a) above, the parties agree to submit the dispute to binding arbitration

with Judicial Arbitration & Mediation Services, Inc. (“**JAMS**”) or the American Arbitration Association (“**AAA**”), if JAMS does not have an office in Riverside County, California. The arbitration shall be held in Riverside County, California. The aggrieved party may initiate arbitration by sending written notice of an intention to arbitrate by registered mail or certified mail to all parties and JAMS or AAA. The notice must describe the dispute, the amount involved, and the remedy sought. Either party may seek equitable relief from the arbitration in addition to monetary damages. The parties may agree on a retired judge from the JAMS or AAA panel. If they are unable to agree, JAMS or AAA will provide a list of three (3) available judges, and each party may strike one. The remaining judge will serve as the arbitrator at the settlement conference. The arbitration shall be held in accordance with the provision of California law, except as expressly provided herein.

[Signatures Appear on the Following Page]

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

“CITY”

CITY OF INDIAN WELLS,
a California Municipal Corporation

By: _____

Name: _____

Its: _____

Approved as to form:

By: _____

“TROON”

TROON GOLF, L.L.C.,
a Delaware limited liability company

By: _____

Name: _____

Its: _____

