

ATTACHMENT #1

INDIAN WELLS RESORT 2024 PLAYERS COURSE RENOVATION FUNDING AGREEMENT

This *Indian Wells Resort 2024 Players Course Renovation Funding Agreement* (“Funding Agreement”), effective **November 7, 2024** (the “Effective Date”), is between the City of Indian Wells, a California municipal corporation and charter city (“City”) 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

- A. The City and Troon entered into a Golf Course Management Agreement, effective September 7, 2023 (“Management Agreement”).¹ Under the Management Agreement, Troon manages the City’s Golf Resort. In that role, Troon sometimes oversees capital replacements and major capital improvements.
- B. The City hired John Fought Design (“John Fought”) to re-design the City’s Players Course; the re-design is further described in the construction plans and technical specifications that were prepared by John Fought and authorized by the City on October 24, 2024 (“Plans”).
- C. Troon has expertise in golf-course construction projects, and Troon has offered to manage and oversee construction of the project described in the Plans (the “Renovation Project”). Given Troon’s expertise and Troon’s familiarity with the Golf Resort and Players Course, the City desires to use Troon to manage and oversee the Renovation Project.
- D. The parties therefore desire to enter into this Funding Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually understood and agreed by City and Troon as follows:

TERMS AND CONDITIONS

1. Incorporation of Recitals; Documents.

- 1.1 The parties hereby agree that the above recitals are true and correct and are therefore incorporated into this Funding Agreement.

¹ Capitalized terms in this Funding Agreement have the same meaning as in the Management Agreement, unless otherwise indicated.

- 1.2 The Management Agreement is hereby incorporated into this Funding Agreement and governs the Renovation Project, except to the extent that there is any conflict between this Funding Agreement and the Management Agreement regarding the Renovation Project, in which case this Funding Agreement governs.
 - 1.3 The Plans are hereby incorporated into this Funding Agreement by this reference.
 - 1.4 The City Council must approve any material change in the Plans or in the Substantial Completion Date or Final Completion Date.
 - 1.5 Troon will provide the City with construction updates at least twice a month and will include City representatives in weekly construction meetings.
2. **Construction of the Renovation Project.** Subject to Funding as set forth herein, Troon will manage, oversee and contract with a selected contractor (“Contractor”) for the Renovation Project, including, but not limited to, all labor, materials, equipment, tools, utility services, and transportation, in accordance with all local, state, and federal laws and regulations, as well as coordinating with the staff of City to arrange the required inspection of the Renovation Project including all costs and expenses therefor. City may, but is not obligated to, monitor the contracting process, and may, but is not obligated to, assist Troon as the City deems appropriate.
 3. **Award of Contracts.** Troon will exercise due diligence in contracting the Contractor for construction and installation of the Renovation Project by the Substantial Completion Date and Final Completion Date (as defined herein). Troon is solely responsible for securing appropriate bids and awarding contracts for construction and installation of the Renovation Project. Troon will obtain bids from qualified and properly licensed, insured, and bonded contractors reasonably approved by City for construction of the Renovation Project. The City will not charge for inspections or permits. In the event Troon is unable to successfully enter into a contract with a contractor to complete the Renovation Project on the terms described herein, this Agreement shall be immediately void and have no legal effect and both parties shall be excused from performing the obligations contained herein.
 4. **Bonds.** Before construction of the Renovation Project starts, Troon will cause the Contractor to provide Troon with a faithful performance bond and a payment bond (and accompanying multiple obligee rider) substantially in the form set forth in Exhibit A, in an amount equal to no less than 100 percent of the total cost of the Renovation Project. The bonds must be provided by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business in the State of California and reasonably satisfactory to the City. The faithful performance and payment bonds must also expressly list the Troon and City as dual-obligees thereunder. For the avoidance of doubt, Troon has no obligation to obtain a bond for its services under this Funding Agreement.

5. **Renovation Project Completion Dates; Delay Damages.** Through its contract with the Contractor, Troon will require the Contractor to substantially complete the Project (where substantial completion means that all grassing by Contractor has been completed) on or before **September 1, 2025** (“Substantial Completion Date”) and to complete all remaining punch-list items by **October 1, 2025** (“Final Completion Date”). Time is of the essence in this Funding Agreement, and Troon will ensure that time is expressly stated to be of the essence in its contract with the Contractor. Troon will in its contract with the Contractor ensure that the Contractor will be liable to Troon and the City for liquidated damages in an amount of \$2,000.00 per day for each calendar day beyond the Substantial Completion Date that the Renovation Project is not substantially completed per the Plans. Troon will take commercially reasonable efforts, at no cost to Troon, to enforce the liquidated damages provision, and Troon will either deduct liquidated damages that are owed from payments to the Contractor or, if the Project is complete, will recover the liquidated damages and pay them to the City. For the avoidance of doubt, Troon has no liability or obligation to pay liquidated damages to the City independent of what Troon recovers from the Contractor .
6. **Construction Costs and Expense Reimbursement.**
- 6.1 **Renovation Project Reimbursement.** City will reimburse Troon an amount not to exceed \$15,000.00 for Troon’s actual expenses related to the Renovation Project (“Expense Reimbursement”). City will pay the Expense Reimbursement to Troon upon acceptance of the completed Renovation Project.
- 6.2 **Construction Costs.** City will fund the actual design and constructions costs of completing the Renovation Project, not to exceed \$12,150,000.00, subject to any authorized change orders (“Funding Agreement Price”). Troon has no obligation to fund or pay the Contractor using its own funds for material or services for the Renovation Project. Any increase in material or other construction costs must be approved by the City through the change-order process described in this Funding Agreement. Troon waives any right to reimbursement for the Renovation Project except as contained in this Funding Agreement.
- 6.3 **Additional Costs.** Any additional costs for consultation (e.g., engineering and landscape design) or for landscaping beyond the scope of the project or other costs beyond the Funding Agreement Price must be authorized in writing by the City Manager before they are incurred by a contractor engaged by Troon.

(A) **Accurate Invoices.**

- (1) Within one week of Troon's receipt of an invoice from the Contractor for material or a service for the Renovation Project, Troon forward the invoice to the City.
- (2) By sending an invoice to the City, Troon certifies that the invoice is accurate and proper, and that the invoiced material or service is in accordance with the Plans.
- (3) Troon will, through its contract with the Contractor, ensure that the Contractor will provide to Troon and the City any document or information in the Contractor's possession or under the Contractor's control that City may reasonably request with regard to the Renovation Project. Additionally, Troon will require the Contractor to provide Troon and the City with labor and material releases from all contractors performing work on, or furnishing materials for, the Renovation Project prior to final payment by City.

(B) **Funds Transfer.**

- (1) The City will review each invoice submitted by Troon and if there is no dispute as to the accuracy of the invoice, it will transfer the invoiced amount to a new special-projects account for the Golf Resort (to which Troon will have access) within five business days of receipt.
- (2) If Troon or the City disputes the accuracy of an invoice, Troon will give Contractor written notice of the dispute as soon as practicable. Thereafter, Troon will meet and confer with the Contractor in good faith within five days of the notice to resolve the dispute.

7. **Billings; Records.** Troon will maintain complete and accurate records with respect to all costs and expenses pertaining to this Funding Agreement. All such records must be clearly identifiable. Troon will allow a representative of City, during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents, proceedings, and activities related to the Funding Agreement for a period of three years from the termination of this Funding Agreement.

8. **Differing Site Conditions.**

8.1 A Differing Site Condition for purposes of this Funding Agreement means any of the following conditions:

- (A) Material that the Contractor demonstrates may be hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;
- (B) Subsurface or latent physical conditions at the Renovation Project site differing from those indicated in the Plans; or
- (C) Unknown physical conditions at the Renovation Project site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Plans.

8.2 By contract, Troon will ensure that the Contractor notifies Troon and the City within seven calendar days of discovering a Differing Site Condition. City and Troon will promptly investigate the conditions, and if the City finds that the conditions do constitute a Differing Site Condition that causes a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Renovation Project, the City may issue a change order under the procedures described in this Funding Agreement.

8.3 If a dispute arises between the Contractor and Troon or City as to whether conditions constitute a Differing Site Condition that causes a decrease or increase in Contractor's cost of, or time required for, performance of any part of the Renovation Project, Troon will by contract ensure that the Contractor must use commercially reasonable efforts to proceed with all work to be performed to complete the Renovation Project as soon as possible.

9. Change Orders.

9.1 All changes to the Project scope, cost, or timing, including compensation increases and time extensions, must be through a written change order in accordance with this Section. Troon will by contract ensure that no dispute, disagreement, or failure of the parties to reach agreement on the terms of a change order relieves the Contractor from the obligation to proceed with performance of the work promptly and expeditiously.

9.2 The Funding Agreement Price may not be modified except in the event of the following circumstances:

- (A) The City directs and authorizes a change which is related solely to City discretionary changes (the foregoing excludes changes resulting from the acts, omissions or other conduct of Troon);

- (B) Differing Site Conditions encountered by Contractor;
- (C) Changes are directed by a governmental agency with jurisdiction over the Renovation Project or portions thereof, that could not have been reasonably foreseen or anticipated by Contractor at prior to entering into the construction agreement;
- (D) Changes are necessitated by amendment to or enactment of applicable federal, state, or local laws that could not have been reasonably anticipated or foreseen by Troon prior to entering into this Funding Agreement; or
- (E) Changes resulting from emergencies not caused, in whole or in part, by an act, omission, or other conduct of Troon or its employees, agents, or representatives.

9.3 No extension of the Substantial Completion Date or Final Completion Date is allowed unless, and then only to the extent that, the delay is related to the one of the circumstances in Section 9.2 above and extends the critical path beyond the respective Completion Date. Troon will by contract ensure that liability to the Contractor for delays for which the City or Troon is responsible is limited to only an extension of time unless such delays were unreasonable under the circumstances.

9.4 City may direct changes in the Renovation Project by delivering a written directive to Troon, which Troon will forward to the Contractor. Troon will by contract ensure that:

- (A) To the extent that a work directive results in a change to compensation or time, the Contractor must request a change order within seven calendar days of the written directive;
- (B) Notwithstanding issuance of a work directive, the Contractor's failure to timely request a change order constitutes a waiver by the Contractor of any adjustment to compensation or time extension for work performed under the directive;
- (C) The City is not liable to the Contractor for work performed or omitted by Contractor or Troon in reliance on verbal orders; and
- (D) The City may order changes in the work by a unilateral change order setting forth City's determination of the reasonable additions or savings in the contract price or contract time.

- 9.5 Troon will by contract ensure that before initiating a change order request the Contractor must provide Troon with written notice of the underlying facts and circumstances that gave rise to the proposed change within seven calendar days of discovering the circumstances that led to the change order request. If Troon agrees that the change order request is proper, Troon will then submit the change order request to the City. If the City denies the change order request, it will notify Troon, and City will provide its opinion of the appropriate price adjustment or time extension, if any.
- 9.6 Troon will by contract require the Contractor to accompany each request for a change order with detailed supporting documentation, including but not limited to payroll records, invoices, schedules, and any other documentation requested by City for the purpose of determining the additional costs or the impact of any delay. Nothing herein prevent the parties from agreeing to a lump sum cost.
- 9.7 Troon will by contract ensure: that the Contractor recognizes and acknowledges that timely submittal of a formal written notice of change or delay and of a change order request, whether or not the circumstances of the change are known to the City or available to the City through other means, is not a mere formality but is of crucial importance to the ability of City to promptly identify, prioritize, evaluate, and mitigate the potential effects of changes; and that a failure to provide a complete and timely notice of change or delay or a change order request, or to comply with any other requirement of this section 9, constitutes a waiver by the Contractor of the right to a contract adjustment on account of such circumstances and a waiver of any right to further recourse or recovery by reason of or related to such change by means of the claims dispute resolution process or by any other legal process otherwise provided for under applicable laws.

10. Standard of Care; Safety. Troon will ensure that the contract with the Contractor requires the following:

- 10.1 All work on the Renovation Project is performed in substantial compliance with the Plans and this Funding Agreement subject to modifications approved by Troon and City, and that all work is performed in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals and contractors in the same discipline in the State of California. For clarity, in accordance with standard practices in golf-course development, and given the aesthetic and design components inherent in such projects, the Project will be developed in substantial compliance with the approved Plans, though not necessarily in exact compliance. Neither Troon nor the City will authorize the golf-course designer to implement any design modification that would increase either

the contract price or the project duration unless the change was first approved in writing by both Troon and the City.

- 10.2 All employees and subcontractors working on the Renovation Project must have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform such work on the Renovation Project, and all such licenses and approvals must be maintained throughout the term of their work on the Renovation Project.
- 10.3 The Contractor will execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out the work, the Contractor must at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.
- 10.4 Any employee who is determined by Troon or the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Renovation Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform his or her work in a manner acceptable to the City, must be promptly removed from the Renovation Project.
- 11. Control and Payment of Subordinates; Independent Contractor.** All work on the Renovation Project must be performed under Troon's supervision. Troon and the Contractor will each determine the means, methods and details of performing its work subject to the requirements of this Funding Agreement. The City retains Troon on an independent-contractor basis and not as an employee. Troon will by contract ensure that the Contractor performs work as an independent contractor and not as an employee of the City. Any additional person performing work under this Funding Agreement on behalf of Troon or the Contractor is also not an employee of City, and must at all times be under the exclusive direction and control of Troon or the Contractor. All wages, salaries and other amounts due such personnel in connection with their performance of work under this Funding Agreement and as required by law must be paid by Troon or the Contractor. Such entities are responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance. For the avoidance of doubt, Troon's role in the Renovation Project is that of a project manager and not a general contractor.
- 12. Regular Reporting.** Troon will provide the City with a status report of the Renovation Project at least twice a month.

- 13. Inspection and Transfer of Renovation Project.** City may inspect and test the Renovation Project. City must have access to the Renovation Project site at all times to conduct any tests or inspections. Troon will require its employees, contractors and agents to comply with all instructions given by the City during inspection of the Renovation Project. Any deficiency in the Renovation Project must be corrected by the Contractor at its sole cost and expense. Upon completion of the Renovation Project to the satisfaction of the City, the Renovation Project must be presented to the City for acceptance. The City will accept the Renovation Project if it determines that it was constructed in accordance with the Plans, all unconditional waivers and releases of mechanics' liens have been provided, and that all other requirements of this Funding Agreement have been satisfied. Upon acceptance of the Renovation Project, Troon will assign to City all of Troon's rights and remedies, including warranties, as set forth in the contract documents with the Contractor to complete the Renovation Project.
- 14. Liability for Renovation Project Prior to Renovation Project Acceptance.** Until acceptance of the Renovation Project by City, Troon will by contract ensure that the Contractor remains solely responsible for all damage to the Renovation Project, regardless of cause, and for all damages or injuries to any person or property at the work site, except damage or injury due to the sole or active negligence or willful misconduct of the City, its agents or employees.
- 15. Guarantee.** Troon will by contract ensure the following:
- 15.1 That the Contractor guarantees all work and materials for the Renovation Project to be free from all defects due to faulty materials or workmanship for a period of one year after the date of the acceptance of the Renovation Project by City.
 - 15.2 That the Contractor will repair or remove and replace any and all such work, together with any other work that may be displaced in so doing, that is found to be defective in workmanship or materials within the one-year period, without any expense whatsoever to the City.
 - 15.3 That if the Contractor fails to comply with the above-mentioned provisions within 30 days after being notified in writing (or in cases of emergency, immediately), City is authorized to proceed to have the defects remedied and made good at the sole cost and expense of the Contractor, who must be contractually bound to pay the costs and charges therefor immediately upon demand. Such action by the City will not relieve the Contractor of the guarantee required by this section. This section does not, in any way, limit the liability of the Contractor or any other party for any latent and patent design or construction defect in the work that is subsequently discovered by City.

- 16. Record Drawings.** Troon will by contract require that the Contractor provide the City with one copy of accurate record drawings showing as-built conditions prior to acceptance of the Renovation Project by the City.
- 17. Labor/Prevailing Wages.** Troon will by contract ensure that Contractor is aware of the requirements of California Labor Code Sections 1720 *et seq.* and 1770 *et seq.*, and the implementing regulations promulgated thereunder (collectively, “Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements if it is determined that the Renovation Project is a “public works” project under the Prevailing Wage Laws. Troon will by contract ensure that the Contractor and each of its subcontractors hired to construct the Renovation Project complies with all applicable requirements of the Prevailing Wage Laws. Troon will by contract require that the Contractor defend, indemnify, and hold Troon and the City and its officials, officers, employees, and agents free and harmless from any claim or liability including, without limitation, damages, penalties, attorneys’ fees and court costs, arising from Contractor’s failure or alleged failure to comply with these provisions of the Labor Code, including the Prevailing Wage Laws.
- 18. Indemnification.**
- 18.1 Troon will by contract ensure that the Contractor indemnify, defend, and hold harmless Troon and the City and its official, officers, employees, agents and volunteers.
- 18.2 For the avoidance of doubt, Troon has no indemnity obligations to the City, except as to its own negligence. Nothing in this Funding Agreement limits Troon’s indemnity obligations under the Management Agreement.
- 19. Insurance.**
- 19.1 Troon will by contract require all persons performing work on the Renovation Project, including the Contractor its consultants, contractors, and subcontractors, to procure and maintain, at their expense, until full and adequate completion of the Renovation Project, insurance against claims for injuries to persons or damages to property which may arise out of or in connection with the performance of their work or that of their agents, representatives, employees or subcontractors, pursuant to the insurance requirements in the Management Agreement.
- 19.2 For the avoidance of doubt, Troon is not required to procure or maintain insurance specific to the Renovation Project, except that Troon will obtain builder’s risk insurance as a Project cost, contingent on the City giving prior written approval of

the associated expense. Nothing in this Funding Agreement limits Troon's insurance obligations under the Management Agreement.

20. **Third-Party Beneficiary.** City will not be a party to any contract between Troon and the Contractor, but Troon must include a short statement in each of its contracts indicating that the City is an expressly intended third-party beneficiary.
21. **Termination.** If either party defaults in the performance of any of its obligations under this Funding Agreement, or materially breaches any of the provisions of this Funding Agreement, the other party has the option to terminate this Funding Agreement giving 30-day prior written notice to the defaulting party.
22. **Integration.** This Funding Agreement represents the entire understanding of City and Troon as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises, or representations with respect to those matters covered hereunder.
23. **Assignment.** In no event may Troon assign or transfer any portion of this Funding Agreement without the prior express written consent of City, which consent may be given or withheld in City's sole discretion.

**SIGNATURE PAGE TO INDIAN WELLS RESORT 2024 PLAYERS COURSE
RENOVATION FUNDING AGREEMENT**

IN WITNESS WHEREOF, the parties have executed this Funding Agreement as the dates set forth below.

TROON GOLF, LLC,
a Delaware limited liability company

THE CITY OF INDIAN WELLS,
a California municipal corporation

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

ATTESTED TO:

By: _____
City Clerk

APPROVED AS TO FORM:
Best Best & Krieger LLP

By: _____
City Attorney

EXHIBIT A

FORM OF PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the Troon Golf, LLC (hereinafter referred to as "Troon") has awarded to _____, (hereinafter referred to as the "Contractor") an agreement for _____ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by the Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of the Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the Troon in the sum of _____ DOLLARS, (\$_____), the sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the Troon, its officers and agents, as stipulated in the Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Project, unless otherwise provided for in the Contract Documents, the guarantee obligation shall hold good for a period of one (1) year after the acceptance of the work by Troon, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect Troon from loss or damage resulting from or caused by defective materials or faulty workmanship the above

obligation in penal sum thereof shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit Troon's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by Troon in enforcing such obligation.

Whenever Contractor shall be, and is declared by Troon to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at Troon's option:

1. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

2. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and Troon, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by Troon under the Contract and any modification thereto, less any amount previously paid by Troon to the Contractor and any other set offs pursuant to the Contract Documents.

3. Permit Troon to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by Troon under the Contract and any modification thereto, less any amount previously paid by Troon to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that Troon may reject any contractor or subcontractor that may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if Troon, when declaring the Contractor in default, notifies Surety of Troon's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of Contract. including but not limited to the provisions of Sections 2819 and 2845 of the California Civil Code.

DRAFT

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

CONTRACTOR/PRINCIPAL

Name

By _____

SURETY:

By: _____
Attorney-In-Fact

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$_____.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

(Name and Address of Agent or Representative for service of process in California, if different from above) _____

(Telephone number of Surety and
Agent or Representative for service
of process in California)

DRAFT

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

Title(s)

Title or Type of Document

- Partner(s) Limited
- General

Number of Pages

- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

FORM OF PAYMENT BOND (LABOR AND MATERIALS)

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the Troon Golf, LLC (hereinafter designated as the “Troon”), has awarded to _____ hereinafter designated as the “Principal,” a contract for the work described as follows: Contract No. _____ (the “Project”); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as “Contract Documents”), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the Troon in the penal sum of _____ Dollars (\$_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Civil Code Section 9100, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Revenue and Taxation Code Section 18663, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the Troon in such suit, including reasonable attorneys’ fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating

to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or the Troon and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Civil Code Section 9100, and has not been paid the full amount of his claim.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of Contract, including but not limited to, the provisions of Sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
 Corporate Officer

Title(s)

Title or Type of Document

- Partner(s) Limited
 General

Number of Pages

- Attorney-In-Fact
 Trustee(s)
 Guardian/Conservator
 Other:

Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above