

**MEMORANDUM FROM THE OFFICE OF THE
CITY ATTORNEY**

DATE: November 14, 2013
TO: Honorable Mayor and Council Members
FROM: Stephen P. Deitsch, City Attorney
SUBJECT: Establishment of Resident Guest Golf Fee

QUESTION PRESENTED

Does the establishment of a resident guest golf or green fee ("Fee") at the Indian Wells Golf Resort ("Golf Resort") require approval from the City Council or the City Manager, or may Troon Golf, L.L.C. ("Troon"), as manager of the Golf Resort, establish the Fee without need for further approval?

ANSWER

Troon has authority to establish the Fee, without approval by the City Council or City Manager.

BACKGROUND

By Easement Agreement entered into on April 8, 1985 ("1985 Easement Agreement"), the predecessor property owners of the current Hyatt and Esmeralda Hotels ("Hotels") granted to the Redevelopment Agency of the City of Indian Wells ("Agency") an easement for purposes of constructing two golf courses adjacent to the Hotels. The 1985 Easement Agreement provided, among other matters, that, "green fees and other charges for use of the Golf Resort by guests of the Hotels shall be set at an amount which provides sufficient revenue to maintain and operate the Golf Resort . . . but which is not so excessive that it discourages the play of Grantors' hotel guests."

On January 7, 1993, the Hotels, the City of Indian Wells ("City") and American Golf Corporation, as "Golf Course Operator" entered into a Complimentary Golf Policy for the Indian Wells Golf Resort Agreement ("1993 Complimentary Golf Agreement"). Among other provisions, the 1993 Complimentary Golf Agreement provided that, "The discretion of the General Manager of the Indian Wells Golf Resort with respect to generation of daily golf fees will govern the professional and commercial decisions made in the granting of any reduced or free green fee or cart fee." Among other

policies, the 1993 Complimentary Golf Agreement established an Indian Wells Property Owner green fee not to exceed \$35.

On April 17, 1997, the Hotels and the Agency entered into a Reduced Golf Fee Policy for the Golf Resort at Indian Wells Agreement ("1997 Complimentary Golf Agreement"), which amended and restated the 1993 Complimentary Golf Agreement. The 1997 Complimentary Golf Agreement essentially repeated the above-referenced provisions set forth in the 1993 Complimentary Golf Agreement, among other provisions.

On April 17, 1997, the Hotels and the Agency also entered into an Easement Agreement Amendment ("1997 Easement Amendment") amending the 1985 Easement Agreement. The 1997 Easement Amendment provided, in pertinent part, that,

"Except as provided in the Complimentary Golf Agreement, Agency acknowledges and agrees that there shall be no special discounts at the Golf Resort available to any person or group, which restriction includes, without limitation, the prohibition of complimentary playing privileges at the Golf Resort. Moreover, except as provided in the Complimentary Golf Agreement, Grantors and their hotel guests shall never be required to pay more for any of the services or projects provided at the Golf Resort (including, but not limited to, green fees, cart fees, club rental fees, and golf lesson fees) than any other person using the Golf Resort.

"Complimentary golf and reduced rates may be offered by the Agency or the City of Indian Wells as agreed to by the parties from time to time in a separate Complimentary Golf Agreement concerning such play"

On June 1, 2009, the City and Troon entered into an Indian Wells Resort Golf Course Management Agreement ("Troon Agreement"). Pursuant to the Troon Agreement, Troon is an independent contractor which has responsibility for acting as manager of the Golf Resort. Section 3.9(b) of the Troon Agreement provides that,

"The City shall approve in writing all fees and charges for use of the Golf Courses, golf carts, bag storage, club rental and driving range, pursuant to Section 28.4 of the Easement Agreement. Such fees and charges shall be comparative and competitive with other First-Class golf resorts in the Coachella Valley. All other 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."

None of the foregoing agreements specifically establish the Fee. Troon establishes golf or green fees on a daily basis depending on the existing circumstances, such as supply and demand, all within the parameters of the foregoing agreements. Troon has never sought, and the City has never given, specific approval for each of the daily fee adjustments, other than as generally provided to Troon in the Troon Agreement.

ANALYSIS

Troon is given broad authority to manage the Golf Resort as an independent contractor. The limitations in its authority to set golf fees are those set forth in the Troon Agreement, and by direct and indirect reference in the Troon Agreement, the 1997 Easement Amendment and the 1997 Complimentary Golf Agreement.

Section 3.9(b) of the Troon Agreement provides that Troon must obtain City approval for fees and charges for use of the Golf Resort in accordance with Section 28.4 of the 1997 Easement Amendment. Section 3.9(b) provides that all other fees may be established by Troon, without City approval.

The 1997 Easement Amendment generally provides protections for the Hotels' guests in not paying more for golf fees than any other persons using the Golf Resort. Anything to the contrary would require agreement by the Hotels and the City under the 1997 Easement Amendment. The requirement for such an agreement has an exception, however. The fees established by and provisions contained in the 1997 Complimentary Golf Agreement are controlling. The 1997 Complimentary Golf Agreement already contains City approval for the specific fees set forth therein. Also included in the 1997 Complimentary Golf Agreement is a broad provision, of course agreed to by the Hotels and the Agency, that with respect to generation of daily golf fees, the general manager of the Golf Resort will govern the professional and commercial decisions made in the granting of any reduced or free green fee.

In accordance with the foregoing, with respect to Section 3.9(b) of the Troon Agreement, the City has already approved the fees specifically set forth in the 1997 Complimentary Golf Agreement. Troon would be required to obtain approval by the City only if there were any alteration to those specific fees. The fees set forth therein do not include the Fee. Thus, there must be a further determination about whether Troon needs City approval for establishment of the Fee, which is not established in the 1997 Easement Amendment, which in turn includes as an exception the 1997 Complimentary Golf Agreement.

Section 3.9(b) goes on to expressly provide that separate and apart from fees and charges which are established pursuant to the 1997 Easement Agreement, Troon may proceed to establish fees and charges comparative and competitive with other First Class golf resorts in the Coachella Valley, without any expressed requirement that there be City approval for those. This is clearly separate treatment from the other category of fees requiring city approval under Section 3.9(b) of the Troon Agreement – those established in accordance with the 1997 Complimentary Golf Agreement.

It should also be noted that in the 1997 Complimentary Golf Agreement itself, the City and the Hotels have agreed upon the broad discretion of the general manager of the Golf Resort to establish daily golf fees, in part based on the general manager's professional and commercial decisions to establish reduced or free green fees. That

broad discretion would surely include the Fee. The broad discretion granted to Troon in Section 3.9(b) of the Troon Agreement is consistent with this provision in the 1997 Complimentary Golf Agreement. Thus, the City has already indicated in two documents that its Golf Resort general manager has authority to establish fees such as the Fee without need for further City approval.

For the foregoing reasons, and reading all of the foregoing agreements together in their entirety, it is reasonable to conclude that Troon has authority to establish the Fee without any requirement for approval of the Fee by either the City Council or the City Manager.

cc: Wade G. McKinney, City Manager