THIRD ADDENDUM
TO
GOLF COURSE MANAGEMENT AGREEMENT

THIS THIRD ADDENDUM TO INDIAN WELLS RESORT GOLF COURSE MANAGEMENT AGREEMENT (the "**Third Addendum**") is executed as of January 1, 2014, by and 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. City and Troon are parties to that certain Indian Wells Resort Golf Course Management Agreement dated as of June 1, 2009 ("**Agreement**") and that certain Restaurant Lease Agreement dated as of June 1, 2009 ("**Lease**").

B. On May 1, 2012, City and Troon entered into that certain First Addendum to the Agreement extending the term of the Agreement and the Lease to May 31, 2014. On March 21, 2013, City and Troon entered into that certain Second Addendum to the Agreement extending the term of the Agreement and the Lease to May 31, 2015.

B. City and Troon desire to extend the term of the Agreement and the Lease and make other revisions to the Agreement in accordance with the terms and conditions set forth herein.

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

1. Recitals. The foregoing recitals are incorporated herein by this reference. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

2. Effective Date. The Effective Date of this Third Addendum shall be January 1, 2014.

3. Definition of Management Fee. The definition of "Management Fee" in Section 1.1 is hereby deleted and shall hereafter mean the Annual Base Fee.

4. Extension of Term. The Term of the Agreement and Lease (pursuant to the Second Addendum) expires on May 31, 2015. Section 6.1 of the Agreement and Section 1.1 of the Lease (as amended) shall be amended by deleting the reference to "May 31, 2015" as the termination date and inserting "June 30, 2019" as the termination date in its place. The Agreement may extend for an additional term of three (3) years to and including June 30, 2022 upon mutual agreement of City and Troon. Troon shall provide written notice to City on or about

June 30, 2018 regarding the June 30, 2019 expiration date of the Agreement and Lease and thereafter, City shall respond to Troon's written notice on or before September 30, 2018, notifying Troon of its intent to renew or not renew the Agreement and Lease. In the event the term is extended to June 30, 2022, the Agreement and Lease may be extended for additional successive terms of three years each by complying with the 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 to such notice on or before ninety days after receipt of the written notice from Troon.

5. Annual Base Fee. Section 7.1 of the Agreement shall be deleted in its entirety and replaced with the following:

> "Commencing on January 1, 2014, City shall pay to Troon a base fee (the "**Annual Base Fee**") equal to Two Hundred Eighty Five Thousand Dollars ($285,000) per full Operational Year (pro-rated for any partial Operational Year). The Annual Base Fee shall be paid in equal monthly installments of $23,750 each, with such payments to be made in advance on the first (1st) day of each month during the Term. The Annual Base Fee shall be comprehensive of all of Troon's administrative expenses. Except as expressly set forth herein (e.g. Section 3.10 regarding Centralized Services), in the Annual Plan, or as otherwise approved by City, no administrative expenses or additional overhead or other direct or indirect costs of Troon shall be billed directly or indirectly to the Golf Resort. Beginning on January 1, 2016 and on each January 1 thereafter, the Annual Base Fee amount for the immediately preceding Operational Year shall be increased by the lesser of (a) three percent (3%), or (b) the amount of the percentage increase, if any, in the CPI for the immediately preceding Operational Year. For purposes hereof, "**CPI**" means the Consumer Price Index for All Urban Consumers (1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics. If such index shall be discontinued, then it shall mean such substitute index as shall be designated by Troon, and approved by Owner, which approval shall not be unreasonably withheld."

6. Annual Incentive Fee. Section 7.2 of the Agreement shall be deleted in its entirety. No Annual Incentive Fee shall be payable to Troon for the 2013-2014 Operational Year or any year thereafter.

7. Employees. Article V of the Agreement shall be deleted in its entirety and replaced with the following:

> "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 the City's right (as set forth in this Agreement) to approve the hiring or termination of any Executive Employee, 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 the City approval of policies and procedures is intended to ensure Troon Golf Quality Standards and compliance with Troon's obligations pursuant to this Agreement and that Troon remains responsible for Golf Resort 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 are provided by Troon 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 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 Section 9.1, Troon shall not be entitled to any reimbursement by 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 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 Damages to the extent that such 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 Lease. Troon acknowledges that the obligations of Troon pursuant to this Article V shall apply to all employees who are engaged in F/B Operations pursuant to the Restaurant Lease Agreement between the City and Troon."

8 Troon's Indemnity. Section 11.1 of the Agreement shall be deleted in its entirety and replaced with the following:

"11.1 Troon's Indemnity. Troon agrees to indemnify 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;

(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 **(ii)** 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 Section 11.1 shall not apply to Claims which are covered by the indemnity in Section 5.2 or to any acts taken (or omissions not taken) either at the written direction of City or with the 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."

9. Competitive Pricing. The following provision shall be inserted in the Agreement as follows:

"16.13 Competitive Pricing. Beginning on January 1, 2014 and continuing throughout the remaining Term of this Agreement, should Troon and/or its Affiliates, without the prior written consent of City, enter into, amend or renew any agreement to manage any other daily fee/resort golf facility within the continental United States that **(i)** has annual gross revenues greater than Ten Million Dollars ($10,000,000) and **(ii)** the ratio (expressed as a percentage) of the annual base management and incentive fee under such agreement to the annual gross revenues (determined in a manner consistent with Gross Revenues) of such other facility is less than the ratio (expressed as a percentage) of the annual Management Fee under this Agreement to the annual Gross Revenues of the Facility (the "**Facility Percentage**") then City will have its Management Fee reduced to such lower fee for the remainder of the Term. Troon shall warrant annually that it has complied with this undertaking. For example, if, at the applicable time of determination, the annual Base Management Fee under this

Agreement is $285,000 and the annual Gross Revenues of the Facility are $13,000,000, then the Facility Percentage would be two percent (2%) [i.e., 285,000/13,000,000]. If Troon were presented with the opportunity to manage another daily fee/resort golf facility within the continental United States with annual gross revenues equal to or greater than Ten Million Dollars ($10,000,000) and the negotiated Facility Percentage was lower than 2% (2% is used for purposes of this example only) for such facility, Troon would be required to adjust City's fees to the lower applicable percentage as of the date of entering into the agreement with the other party."

10. No Other Changes

Except as set forth in this Third Addendum, all terms and conditions of the Agreement and the Lease shall remain in full force and effect during the Term.

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

"CITY"

CITY OF INDIAN WELLS,
a California Municipal Corporation

By: Wade G. McKinney
Name: Wade G. McKinney
Its: City Manager

Approved as to form:

By: Stephen P. Deitsch
Stephen P. Deitsch, City Attorney

Attest:

By:
Anna Grandys, Chief Deputy City Clerk

"TROON"

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

By:
Name: Tim Schantz
Its: Executive Vice President/
Global Development Officer

SECOND ADDENDUM
TO
GOLF COURSE MANAGEMENT AGREEMENT

THIS SECOND ADDENDUM TO INDIAN WELLS RESORT GOLF COURSE MANAGEMENT AGREEMENT (the "**Second Addendum**") is executed as of March 21, 2013, by and 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. City and Troon are parties to that certain Indian Wells Resort Golf Course Management Agreement dated as of June 1, 2009 ("**Agreement**") and that certain Restaurant Lease Agreement dated as of June 1, 2009 ("**Lease**").

B. On May 1, 2012, City and Troon entered into an Addendum to the Agreement extending the term of the Agreement and the Lease to May 31, 2014.

C City and Troon desire to further extend the term of the Agreement and the Lease in accordance with the terms and conditions set forth herein.

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

1. Extension of Term.

Pursuant to Section 6.1 of the Agreement and Section 1.1 of the Lease, the Extension Term of the Agreement and the Lease is hereby extended from May 31, 2014 to May 31, 2015.

2. No Other Changes

Except as set forth in this Second Addendum, all terms and conditions of the Agreement and the Lease shall remain in full force and effect during the Extension Term.

[signature page follows]

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

"CITY"

CITY OF INDIAN WELLS,
a California Municipal Corporation

By: Wade G. McKinney
Name: Klade G. McKinney
Its: City Manager

"TROON"

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

By:
Name: TIM SCHANTZ
Its: EVP

Approved as to form:

By:
Stephen P. Deitsch, City Attorney

ATTEST:

Chief Deputy City Clerk

ADDENDUM
TO
GOLF COURSE MANAGEMENT AGREEMENT

THIS ADDENDUM TO INDIAN WELLS RESORT GOLF COURSE MANAGEMENT AGREEMENT (the "**Addendum**") is executed as of May 1, 2012, by and 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. City and Troon are parties to that certain Indian Wells Resort Golf Course Management Agreement dated as of June 1, 2009 ("**Agreement**") and that certain Restaurant Lease Agreement dated as of June 1, 2009 ("**Lease**").

B. City and Troon desire to extend the term of the Agreement and the Lease in accordance with the terms and conditions set forth herein.

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

1. Extension of Term.

The initial Term of the Agreement and Lease expire on May 31, 2012. Pursuant to Section 6.1 of the Agreement and Section 1.1 of the Lease, the Term of the Agreement and the Lease is hereby extended to May 31, 2014 ("Extension Term").

2. Change in Scope of IT Services

During the initial Term, the City provided the services of a City employee as IT manager for the oversight of information technology at the Golf Resort. Troon and the City have agreed that during the Extension Term, Troon shall provide such IT management services in addition to the Technology Oversight which is already provided by Troon pursuant to Section 3.10(v) of the Agreement. Such additional services may be provided by Troon through a third party vendor. The City has agreed to provide additional funding of $22,000 for such services in the Annual Plan for the Operational Year commencing July 1, 2012.

3. No Other Changes

Except as set forth in this Addendum, all terms and conditions of the Agreement and the Lease shall remain in full force and effect during the Extension Term.

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

"CITY"

CITY OF INDIAN WELLS,
a California Municipal Corporation

By: Rodrick J. Wood
Name: Rodrick J. Wood
Its: City Manager

"TROON"

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

By:
Name: DANA R. GARMANY
Its: PRESIDENT & CEO

Approved as to form:

By: Stephen P. Deitsch
Stephen P. Deitsch, City Attorney

ATTEST:

Chief Deputy City Clerk

GOLF COURSE MANAGEMENT AGREEMENT

between

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 GOLF COURSE MANAGEMENT AGREEMENT

THIS INDIAN WELLS RESORT GOLF COURSE MANAGEMENT AGREEMENT (the "**Agreement**") is executed as of June 1, 2009, by and 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. 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, golf shop, maintenance facility and Callaway Golf Center (collectively, the "**Golf Resort**").

B. 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 set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing Recitals, the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which 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 Section 7.1 of this Agreement.

"Annual Incentive Fee" shall have the meaning ascribed to that term in Section 7.2 of this Agreement.

"Annual Plan" shall have the meaning ascribed to that term in Section 3.4 of this Agreement.

"City" shall mean the City of Indian Wells, a California Municipal corporation.

"City Hotels" shall mean the Renaissance Esmeralda, the Hyatt Grand Champions Hotel, the Indian Wells Resort Hotel and the Miramonte Resort and Spa.

"City Manager" shall mean the person holding the position of City Manager of the City of Indian Wells.

"City Representative" shall mean the individual designated by City to whom Troon shall report.

"Compensation" shall mean the direct salaries and wages (excluding bonus and incentive payments unless authorized in advance by the City) 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 severance benefits unless approved in advance by the City.

"Easement Agreement" shall mean that certain Easement Agreement by and between the Redevelopment Agency of the City of Indian Wells and certain property owners, 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.

"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.

"Executive Employees" shall mean the Golf Resort's General Manager, Director of Golf, Golf Course Superintendent and Controller.

"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 which are consistent with the Troon Golf Quality Standards.

"Golf Committee" shall mean the group consisting of two (2) City Council members, the City Manager or his or her designee, the General Manager of the Golf Resort, and the general managers of the City Hotels. The composition of the Golf Committee may, from time to time, be altered in size of membership by the 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 specifically identified as "Golf Resort Expenses" in this Agreement; and **(d)** all other expenses agreed to by the City.

"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 principals 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, pay phone operators or concessionaires, except to the extent such proceeds are compensation for amounts that would otherwise constitute Gross Revenue hereunder; and

(f) Interest income and revenues from 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.

"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 principals 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; and

(b) 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.

"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.

"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 governmental 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 foregoing relating in any way to hazardous materials or hazardous waste.

"Management Fee" shall mean the combination of the Annual Base Fee and the Annual Incentive Fee.

"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 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 mean the period of time commencing June 1, 2009, and continuing until the date upon which this Agreement is terminated in accordance with the terms hereof. See particularly Articles VI (Term) and Article XI (Default) hereinafter.

"Troon" shall mean Troon Golf, L.L.C.

"Troon Golf Quality Standards" shall mean a level of service which is suitable to a First-Class golf resort and which is above average in customer response, quality of service, 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 and approved by City and any amendment to such standards that will be implemented at the Facility shall require the approval of City, which approval shall not be unreasonably withheld provided that a comparable standard of service is maintained.

1.2 Accounting Terms. For purpose 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
Retention of Troon

2.1 Agreement to Manage. City hereby appoints and retains Troon, and Troon hereby accepts such appointment and retention to act as 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.

2.2 Standards of Performance; Relationship Between City and Troon. Troon accepts the relationship of trust and confidence established between Troon and City by the terms of this Agreement. Troon shall report to City Manager or City Representative 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 in a manner which maintains 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 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 so as to maximize all Gross Revenues and minimize all Golf Resort Expenses, both as set forth 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 set forth 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 pursuant to 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. In no event shall Troon 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 provide a comprehensive analysis of all aspects of the existing goals in place for maintenance, operations and marketing of the Golf Resort. Troon will work closely with City in defining the ongoing goals and visions for the Golf Resort and will provide a new Annual Plan (as defined in Section 3.4 hereinafter) based upon these conclusions.

(b) Troon will maintain a copy of the Troon Golf Quality Standards at the Golf Resort at all times during the Term.

(c) 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.

(d) 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 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 on-site Golf Course Superintendent, 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 and achieve such conditions at the lowest possible cost.

(ii) Maximize Troon's national account buying power to save on Equipment and Supplies, including golf carts used in the operation of the Golf Resort.

(iii) Maximize playability while featuring the design strategy.

(iv) Maximize presentation of the Golf Course in keeping with the overall theme of the Golf Resort.

(b) Troon will 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 to properly identify opportunities to sell services and products to such customers.

(c) Troon will implement a premier outside services program which recognizes that the front-line employees will usually have the most interaction with the customer. Troon will build upon the existing theme presented by the staff.

(d) Troon will provide a premier and comprehensive employee training program for all employees at the Golf Resort embodying the Troon Golf Quality Standards philosophy. This training program shall provide all staff with such on-going 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 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 Section 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 work closely with the City Manager or his/her designee to implement the following marketing and brand management program, which shall be approved by the City Manager or his/her designee (the "**Marketing and Brand Management Program**"). The Marketing and Brand Management Program shall require approval of the City Manager or his/her Designee.

(a) Troon will assist with the preparation of a progressive and specially tailored marketing campaign maximizing all promotional opportunities, including utilization of 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, special events, promoting use of the Golf Resort by City residents, marketing to the City Hotels and their guests, and increasing 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 promote 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' staff to discuss marketing and sales, stay and play packages, and to develop new ideas and strategies.

(c) Troon will retain a sales and marketing director to support the Golf Resort. The sales and marketing director will oversee sales associates and will assign tasks to appropriate members of the existing golf operations staff. 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 coordinate the preparation of creative advertisement concepts, whether for print, radio, direct mail, internet, etc., working when necessary with a designated graphic artist or ad firm agreed upon by the City and Troon.

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

(g) In cooperation with the City, Troon will be responsible for the development of all necessary marketing collateral pieces such as brochures, promotional fliers, scorecards, yardage books, etc. Troon will work with a designated graphic artist or ad firm in the development of these materials.

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

(i) Troon will make recommendations for competitive events which would bring exposure and prestige to the Golf Resort at a reasonable cost. Troon will also consider TV events or other innovative promotional concepts which 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 local residents of City, which programs may include privileges or preferences for residents which are reasonably requested by City, and solicit corporate group outings of all sizes.

(l) Troon shall work with City to develop 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/or Affiliated Facilities;

(iii) representation at golf industry sales and trade shows;

(iv) inclusion on, and a hyperlink from, the Troon world wide web site to the Golf Resort world wide web site; 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. City shall pay the first (1st) assessment on the date of this Agreement (pro-rated 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 to pay, 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 over seeding 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, and **(vi)** a capital improvement program for the next Operational Year. 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 City shall discuss the Annual Plan at one or more public meetings. The City shall adopt the Annual Plan prior to July 1 of each year. In the event the Annual Plan are 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.

(c) Troon shall comply, to the extent reasonably and commercially practical, with the applicable Annual Plan. Without the prior written consent of the City, the actual

amount expended by Troon for Golf Resort Expenses shall not exceed the amount set forth in the Annual Plan. Transfers of budgeted line item expenditures shall be approved by the City's Finance Director. 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 situation which threatens public health and safety or an imminent threat of substantial damage to the Golf Resort. In the event of an emergency which does not threaten 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 normal 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 request.

(d) The parties acknowledge and agree that all capital improvement projects are in the City's sole control and discretion, and all costs and expenses of capital improvement projects shall be paid from the City funds, and not considered Golf Resort Expenses.

(e) The City Finance Director and Troon shall meet quarterly to discuss the operating and financial performance of the Golf Resort, and in connection therewith, any amendments or modifications to the Annual Plan to take into consideration variables, circumstances, or events that did not exist, or could not be anticipated by Troon or the City at the time the then current Annual Plan was approved. Any material amendments or revisions to the Annual Plan shall be approved by the City Council.

3.5 Human Resources.

(a) Troon will coordinate all human resource issues, legal issues and matters regarding Golf Resort employees, and offer its advice on improvements and direction.

(b) Troon shall employ all Golf Resort employees, the number of which shall be no more than 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, supervise the recruiting, hiring, training, discharge, promotion and work of all other employees of the Golf Resort. The Compensation to be paid 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 Section 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. Troon shall provide City with a schedule of the cost of having Golf Resort employees participate in the benefits offered by Troon to employees of Affiliated Facilities, which the City shall approve in its sole discretion. With respect to those benefits approved by City, Troon shall make available such benefits to eligible employees of the Golf Resort, and the allocable share of such employee benefits accruing while working at the Golf Resort shall be a Golf Resort Expense. .

(c) The General Manager of the Golf Resort shall be responsible for the day-to-day management and operation of the Golf Resort. The Golf Course Superintendent 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. Troon shall not change the General Manager, Golf Course Superintendent, or Director of Golf without the City'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 therefore. City shall have the right to approve in advance any individual Troon intends to hire for these positions, which approval shall not be unreasonably withheld.

3.6 Management Services Generally.

(a) In performing the services set forth in Sections 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, City shall provide Troon with a copy of any and all applicable documents related to regulatory agreements, community agreements and/or 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. 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 City relating to the Golf Resort. Such promotion shall include providing complimentary golf privileges to those individuals deemed appropriate by City in connection with the marketing and promotion 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 an expansion of the existing business with the hotel guests at the Golf Resort.

(vi) Institute incentive and bonus programs for all Golf Resort employees as approved by the City and as adopted as part of the Annual Plan by the City. Any bonus and incentive programs will be established annually as a part of the Annual Plan based upon goals set by the City. Payment of any and all bonus or incentives requires written approval of the City.

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

(viii) Subject to prior written approval of City, establish fee schedules for the Golf Courses and related services.

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

(x) Diligently pursue the collection of all sums due and owing to City from all purchasers of goods and/or services relating to the Golf Resort. Subject to technological availability, develop point of sale charging system integrated with all City Hotels which allows hotel guests to charge for services and merchandise at the Golf Resort.

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

(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) 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 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.

(xiv) 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, and upon approval by City of any action recommended by Troon promptly take, or cause to be taken, such actions.

(xv) 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.

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

(xvii) 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 or the City Representative either personally or by telephone conference call on an as frequent as needed basis to assure the successful performance of Troon's duties hereunder, and of the operations of the Golf Resort. 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.

3.8 Golf Shop Inventory. For the purpose of merchandise sales in the golf shop, Troon agrees to keep Golf Shop Inventory on hand at an amount contemplated in the Annual Plan. This inventory amount will be exclusive of 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 this 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 on a daily basis all year and shall not be closed on holidays. Notwithstanding the foregoing, with the consent of City, the Golf Resort may be closed to play by the general public for special events such as the "skins game". The Golf Courses and driving range shall be kept fully open from dawn to dusk to adequately serve the public utilizing the Golf Resort, except for instances in which normal maintenance requires temporary closure. After prior notice to the City and the general managers of the City Hotels, one Golf Course and the driving range may be closed at the same time 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. 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.

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

(d) Dress Code. With the approval of City, Troon shall adopt and enforce a dress code for play and for the food and beverage venues which is 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 City.

(f) Handicap Service. During the Term, 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 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 as part of its benefits any privileges to use the Golf Courses, 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 order to maintain golf play at acceptable levels.

(h) Valet Parking and Golf Club Pick-Up. Premier valet parking services shall be provided at the Golf Resort year round. 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. Pick-up and delivery of golf clubs and bags to and from the clubhouse entrance (or to and from the golfer's car when valet parking is available) shall be provided at all times. There shall be no charge to the Golf Resort customers for valet parking services or golf club pick-up and delivery. Appropriate Golf Resort employees may accept gratuities from customers for such services.

(i) Club Cleaning. Golf club cleaning services shall be provided to golfers prior to and 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 as determined by the City from time to time. "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 reservations for tournaments. 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 manner so as to potentially accommodate two (2) full shotguns per day - one in the morning and one in the afternoon. In order to schedule a full shotgun tournament, a minimum of 100 green fees 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 shall 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. If requested, Troon shall arrange for food and beverage services including box lunches and beverage carts. Troon may charge a separate fee (but shall not make this fee mandatory as part of the tournament package) if the tournament group wants any of the following services: bag handling, merchandise, food and beverage services, scoring, shuttle service between hotels and the Golf Resort, videotaping, portraits, shoe cleaning services, or club cleaning services.

(m) Golf Shop. The golf shop shall be open from dawn to dusk every day that the Golf Courses are open for play. 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 between 7:30 a.m. and 5:00 p.m., or such later hour as agreed upon by the City Manager and the General Manager of the Golf Resort, each day that the Golf Courses are open for play. 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 as independent contractors, golf instructors to provide golf lessons and golf 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 that will offer individual and group lessons, video instruction, golf clinics, junior golf clinics, and golf schools. This golf instructional program shall be used to complement golf package promotions offered by local hotels. A golf professional shall only be allowed to conduct golf lessons at the Golf Resort if he or she has first obtained the approval to do so by Troon; such

approval may be conditioned on payment of an appropriate fee.

(o) Golf Driving Range. The driving range shall be open from dawn to dusk every day that the Golf Courses are open 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 the City 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 name of the hotel guest printed on the bag tag. The fee for golf bag storage shall be set by the City.

(q) Golf Carts. Golf cart rentals shall be required for all golfers on the Golf Courses. Troon shall not permit the use of private golf carts on the Golf Courses. A minimum of 160 electrically powered golf carts shall be maintained at the Golf Resort. Golf carts shall be new when acquired and shall be manufactured by a reputable firm. The entire golf cart fleet shall be replaced with new units at least every five (5) years. All golf carts shall be 4-wheel vehicles, and shall be equipped with canopies, windshields, coolers and sand containers and holders. Troon shall employ a full time on-site cart mechanic who is 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 allow for the efficient administration of the Golf Resort business. The General Manager of the Golf Resort shall represent the Golf Resort as a member of the Indian Wells Golf Committee. 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 in strict confidence, subject to applicable public records disclosure laws. Troon shall maintain at the Golf Resort or its corporate office (e.g. human resource and personnel records) copies of all Troon corporate policies and procedures, as such may be changed from time to time.

(t) Safety and Security. The Golf Resort shall comply with all safety regulations of federal, state and local governmental agencies, including without limitation any requirements imposed by California Labor Code Section 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

for seven (7) days computer back-up tapes for all accounts payable and accounts receivable information. All records at the Golf Resort shall be kept in fireproof files.

(u) Customer Forms. Forms shall be visible and readily available to customers of the Golf Resort to present their comments or complaints regarding the Golf Resort. Completed forms shall be made available to the City upon request.

(v) Troon Golf Quality Standards Training Program. Prior to 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 an annual budget in connection therewith. Based upon the annual agreed upon budget, the Golf Resort shall invoice the City monthly for the cost to maintain the landscaping.

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's, 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 cost of insurance 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. 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.

Troon may from time to time 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. Any modification to the foregoing list of Centralized Services shall be made by Troon in conjunction with the Annual Plan.

(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 in accordance with the following respective allocation methods:

(i) "Payroll Administration" costs shall be allocated among Affiliated Facilities on a 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 on a 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 on a 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 on a 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 on a 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 in an equitable fashion from time to time by Troon.

(d) Costs of Centralized Services shall be payable monthly a Golf Resort Expenses and shall be included in the Annual Plan. City may at any reasonable time review the records of Troon pertaining to such charges. In addition, if 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 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. 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 is 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 specific 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 non-affiliated third party vendors in an arms-length transaction.

ARTICLE IV
Restricted Activities of Troon

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) Except for the Operating Contracts which are approved by the City or the Annual Plan, enter into any agreement relating, directly or indirectly, to the Golf Resort.

(c) 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.

(d) Make, execute or deliver in the name of the City, or with respect to 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.

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

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

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

(h) Make any deletion, addition, modification, improvement or other alteration to the Golf Resort other than as expressly authorized hereunder or as contemplated in the applicable Annual Plan.

(i) Expend any funds, except as expressly contemplated in the then current Annual Plan or this Agreement, or as otherwise agreed upon by the City.

(j) Make any amendments or alterations to, or fail to comply with, any reservation policy approved by the City.

(k) 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.

(l) Hire anyone as a Golf Resort employee at Compensation in excess of that agreed to by the City in the then-current Annual Plan, unless approved in advance by the City prior to the hiring of such individual.

ARTICLE V
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 the City's right (as set forth in this Agreement) to approve the hiring or termination of any Executive Employee, 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 the City approval of policies and procedures is intended to ensure Troon Golf Quality Standards and compliance with Troon's obligations pursuant to this Agreement and that Troon remains responsible for Golf Resort 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 are provided by Troon in accordance with the terms of this Agreement.

Troon shall be 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 resulting from violations by (a) Troon's corporate office, (b) an Executive Employees, and/or (c) Golf Resort supervisory staff, of federal, state or local laws, ordinances or regulations governing the employment or working conditions of the employees at the Golf Resort ("Damages"). Except for the proceeds of any insurance coverage described in Section 9.1, Troon shall not be entitled to any reimbursement by City for such Damages unless such Damages were (a) the result of a policy or procedure which was required in writing by the City, or (b) the result of working conditions at the Golf Resort which were identified in writing as non-compliant by Troon and City failed to provide the requisite funding to remedy such conditions after written notice to City.

ARTICLE VI
Term

6.1 Term. Subject to such earlier termination as set forth in Section 6.2, this Agreement shall terminate on May 31, 2012. This Agreement may extend for an additional term of three (3) years to and including May 31, 2015, subject to negotiation and approval by both parties.

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 hereunder, in the event that **(i)**

Troon has committed an Event of Default which has not been cured in accordance with the terms of Section 12.1 hereof, **(ii)** Troon engages in conduct which materially impacts adversely the reputation of the Golf Resort 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.

6.3 Transition to New Management Company or Operator. Subsequent to Troon receiving written notification of the termination or expiration of this Agreement pursuant to Sections 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 reasonable 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 this Section 6.3 shall be a material default under Section 6.2 (ii) of this Agreement.

ARTICLE VII
Management Fees

7.1 Annual Base Fee. The City shall pay to Troon a base fee (the "**Annual Base Fee**") equal to Two Hundred Sixty Thousand Dollars ($260,000) per full Operational Year (pro-rated for any partial Operational Year). The Annual Base Fee shall be paid in equal monthly installments of $21,667 each with such payments to be made in advance on the first (1st) day of each month during the Term, beginning on June 1, 2009. The Annual Base Fee shall be comprehensive of all of Troon's administrative expenses. Except as expressly set forth herein (e.g. Section 3.10 regarding Centralized Services), in the Annual Plan, or as otherwise approved by City, no administrative expenses or additional overhead or other direct or indirect costs of Troon shall be billed directly or indirectly to the Golf Resort.

7.2 Annual Incentive Fee. In addition to the Annual Base Fee, the City shall pay to Troon for each Operational Year during the Term an annual incentive fee (the "**Annual Incentive Fee**"); provided, however, in no event shall the Annual Incentive Fee exceed one hundred percent (100%) of the Annual Base Fee in any Operational Year. The Annual Incentive Fee shall be calculated separately for each Operational Year. The Annual Incentive Fee shall be calculated based upon three and one-half percent (3.5%) of the Gross Revenues generated at the Golf Resort above an agreed minimum revenue base for both Gross Golf Revenues as described in Section 1.1 of this Agreement (i.e. Gross Revenues related to the Golf Resort other than those derived from food and beverage sales) and Gross Food & Beverage Revenues (the "**Gross Revenue Minimum**"). The annual Gross Revenue Minimum for Gross Revenues pursuant to this Agreement (i.e. golf Gross Revenues) is $9,000,000. The annual Gross Revenue Minimum for Food & Beverage Revenues pursuant to this Agreement is $4,000,000. The Gross Revenue Minimum for both Gross Revenues and Food & Beverage Revenues shall not increase over the Term. The Annual Incentive Fee shall be calculated separately and independently respective to both Gross Revenues and Food & Beverage Revenues.

No Annual Incentive Fee will be payable in any Operational Year with respect to Gross Revenues if: **(i)** the net income (determined in accordance with GAAP and consistently applied) of the Golf Resort (i.e. excluding income from the Food & Beverage operations) is less than zero dollars ($0.00); **(ii)** payment of the Annual Incentive Fee results in net income of the Golf Resort (i.e. excluding the Food & Beverage operations) to be less than zero dollars ($0.00); or **(iii)** Troon is in material breach of its obligations to comply with and meet the Troon Golf Quality Standards after written notice and an opportunity to cure as provided in Section 6.2(ii) above. No Annual Incentive Fee will be payable in any Operational Year with respect to the Food & Beverage Revenues if: **(w)** the net income (determined in accordance with GAAP and consistently applied) from the Food & Beverage operations is less than zero dollars ($0.00); **(x)** payment of the Annual Incentive Fee results in net income from the Food & Beverage operations to be less than zero dollars ($0.00); **(y)** Troon is in material breach of its obligations to comply with and meet the Troon Golf Quality Standards after written notice and an opportunity to cure as provided in Section 6.2(ii) above; or **(z)** City exercises its right to terminate Troon as the provider of Food and Beverage operations pursuant to the terms of the Restaurant Lease Agreement. The parties acknowledge that Troon's ability to earn an Annual Incentive Fee with respect to either the Golf Resort operations or the Food & Beverage operations shall operate independently, such that failing to earn an Annual Incentive Fee with respect to one of such operations will not impact whether Troon earns an Annual Incentive Fee with respect to the other operation.

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

8.1 Accounts.

(a) Troon shall establish a bank account for the Golf Resort at a banking institution or institutions reasonably approved by the City (which banking institution or institutions shall have branches 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. The funds in the Operating Account shall be disbursed by Troon for the purposes set forth in Subsections 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 in petty cash funds at the Golf Resort.

(b) In addition to the Operating Account, a payroll account shall be established by Troon 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 is 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 June 1, 2009, 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 bi-weekly 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). 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. City agrees to provide all funds as shall be 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 the account of, 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 assure the uninterrupted and efficient operation of the Golf Resort. The intent of this provision is to insure that any shortfall is made up, if necessary, on a month-by-month basis after review and projection of 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 Net Income 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. 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 full 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, or to the City Representative, 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. The cash registers used by Troon shall be approved by 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 Section 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; specifically including:

(i) all revenues or other funds received, expenses and disbursements made, by 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 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.

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

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 normal 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 City under this Section 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 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 Section 9.3, all insurance provided for under this Article IX shall be effected by policies issued by insurance companies that have sound financial strength and maintain a 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 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 applicable) 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 named 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 endorsed specifically to the effect that the proceeds of any building, contents or business interruption losses shall be made payable to City (except for the proceeds of any business interruption insurance which shall be payable to Troon as set forth herein). All such policies of insurance shall also be endorsed specifically to the effect that such policies shall not be canceled or materially changed without 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 shall be sent to City and/or Troon, as applicable, at the addresses shown in Section 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 property (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) per occurrence;

(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 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) 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.

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, 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 $[TBD]. Such policy shall also cover all equipment, fixtures, motors, machinery, furnishings and furniture installed and owned or leased by 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 Section 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 Section 9.2(a).

(c) City shall provide the insurance described in Section 9.3(a) pursuant to its self insured retention program administered by the California Joint Powers Insurance Authority ("**JPIA**"), a third party administrator that handles claims against the City. The City also maintains excess liability coverage for claims in excess of $5,000,000. City shall keep in full force and effect during the Term its existing self insured retention program or similar coverage with limits of insurance and coverages as required by this Section 9.3. City agrees to provide Troon, upon reasonably 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 Section 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 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 Section 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 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 Section 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 and hold harmless the 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;

(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 an Executive Employee, employment claims arising out of the improper acts or omissions of an Executive Employee, or 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 the City; or

(b) which result from any action taken by Troon or an Executive Employee relating to the Golf Resort **(i)** that is expressly prohibited by this Agreement, or **(ii)** 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 Section 11.1 shall not apply to any acts taken (or omissions not taken) either at the written direction of the City or with the approval of the City, provided, however, that the approval of the Annual Plan, or any other general operating policy or procedure by the 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. The act or omission of a Golf Resort employee who is not an Executive Employee shall constitute an act or omission of Troon under this Section 11.1 only if Troon's home office or regional staff, or an Executive Employee, acted with negligence or gross negligence in employing, training, supervising and/or continuing the employment of such employee.

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) which result from any act or omission by Troon in connection with the management and operation of the Golf Resort **(i)** that is expressly authorized 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 Section 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 Section 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 is 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 a period of 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 a period of 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 to the Agency. The City may also assign and transfer its rights under this Agreement to a purchaser or new owner of the Golf Resort that assumes the obligation of City 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 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, City grants to Troon a non-exclusive 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 approval of 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 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. 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. 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. 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 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 termination of this Agreement, City and any successor operator of the Golf Resort may continue to use any property with the Troon Marks which has been paid for by City 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 to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained. No covenant, term or condition of this Agreement shall be deemed to have been waived by City or Troon, unless such waiver is in writing 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
Fascimile: 760-346-0407

If to Troon:

Troon Golf, L.L.C.
15044 N. Scottsdale Road, Suite 300

Scottsdale, Arizona 85254
Attention: Legal Department
Phone: 480-606-1000
Facsimile: 480-606-1010

or at such other address as from time to time designated by the party receiving the notice in accordance with this Section 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 to Troon copies of all such materials for such purpose not less than twenty (20) days prior to the delivery of such materials to the addresses set forth in Section 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 not have any right, power or authority to subcontract its services, or any portion thereof, without 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 both 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.

16.13 Intentionally Omitted.

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 Mediation, Arbitration and Dispute Resolution.

(a) Resolution by the Parties. The parties hereto desire, pursuant to the provision of this Section 15.20, to establish procedures to facilitate the informal an inexpensive resolution of any disputes arising out of or relating to this Agreement by mutual cooperation and without resort 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 sections 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 Subsection (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. 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 to JAMS or AAA. The notice must contain a description of 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 specifically provided herein.

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: Greg Johnson
Its: City Manager

"TROON"

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

By: _____
Name: TIMOTHY S. SCHANTZ
Its: EVP

Approved as to form:

By: Stephen P. Deitsch
Stephen P. Deitsch, City Attorney