

## RESTAURANT LEASE AGREEMENT

**THIS RESTAURANT LEASE AGREEMENT** (the "**Agreement**") is made and entered into effective June 1, 2009, by and between **CITY OF INDIAN WELLS**, a California Municipal corporation, (hereinafter referred to as "**City**"), and **TROON RESTAURANT HOLDINGS, LLC**, a Delaware limited liability company (hereinafter referred to as "**Troon**"), as follows:

### **RECITALS:**

A. City is the owner 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, a driving range, clubhouse complex, golf shop, maintenance facility and Callaway Golf Center (collectively, the "**Golf Resort**").

B. City and Troon Golf, L.L.C., a Delaware limited liability company ("**Troon Golf**") have entered into a Golf Course Management Agreement of even date herewith under which Troon Golf will manage the Golf Resort for the City (the "**Management Agreement**").

C. City and Troon Golf now desire to provide for Troon to operate and manage the food and beverage services at the Golf Resort, including the sale of alcoholic beverages for onsite consumption at the Golf Resort (the "**F/B Operations**"), pursuant to a lease of the F/B Premises (as defined below) of the Golf Resort to Troon upon the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, for and in consideration of the mutual covenants, promises, and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, City and Troon hereby agree as follows:

### **ARTICLE 1** **TERM**

1.1 **Term**. The term of this Agreement shall begin on June 1, 2009 and shall terminate on May 31, 2012, unless sooner terminated according to the provisions hereof (the "**Term**"). 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.

### **ARTICLE 2** **DEFINITIONS**

"**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.

“Agency” shall mean the Indian Wells Redevelopment Agency.

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

“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 11722, 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 in the F/B Operations, including, without limitation, the equipment described in Section 3.1 below.

“Executive Employees” shall mean the Chef, Director of Food & Beverage, and Banquet Manager.

“First Class” shall have the meaning set forth in the Management Agreement.

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

“F/B Premises” shall have the meaning ascribed to that term in Section 3.1 below.

“Operational Standards” shall mean the standards developed by Troon Golf in connection with its food and beverage management business, a copy of which have been provided to City. City has approved such Operational Standards and any modification or amendment of such standards shall be subject to City approval, which approval shall not be unreasonably withheld provided that a comparable level of quality is maintained.

“Operational Year” shall mean June 1 to May 31 of each year during the Term of this Agreement.

### **ARTICLE 3**

#### **LEASE OF F/B OPERATIONS**

3.1 **Lease of the Golf Resort Food and Beverage Premises and Operations.** City hereby leases to Troon and Troon leases from City that portion of the Golf Resort necessary to conduct the F/B Operations (the “**F/B Premises**”). The F/B Premises shall include the restaurant, bar, kitchen, equipment, and related facilities and any areas contiguous thereto where food and beverage is to be served at the Golf Resort. Troon shall also have the right to enter upon and traverse the Golf Resort to dispense food and beverage from the food and beverage service golf cart, provided that at all times Troon shall comply with all laws, ordinances, rules, regulations, orders, requirements and demands of all duly constituted authorities, including, without limitation, any applicable prohibition on the sale or dispensing of liquor within regulated

distances of a church or a primary or secondary school building or yard. "Equipment" shall mean the service golf cart and all other equipment used or useful in the operation of the restaurant, bar, kitchen, and service cart, including without limitation refrigerators, freezers, cooking utensils, dishwashers, cutlery, dishes, silverware, cutting boards, linens, tables, chairs, stoves, microwave ovens, heat lamps, bar utensils and glassware.

3.2 **Possession and Use of the F/B Premises.** Troon's right to possession of the F/B Premises and its obligations hereunder shall commence June 1, 2009.

#### **ARTICLE 4** **TROON SERVICES**

4.1 **Standards of Performance.** Troon acknowledges that the quality and reliability of the F/B Operations is important to the Golf Resort, and covenants with City to operate and manage the food and beverage operations of the Golf Resort in accordance with the Operational Standards.

4.2 **Revenues; Expenses.** Troon shall pay all costs and expenses relating to the F/B Operations and shall maintain an appropriate number of food and beverage service employees and an appropriate level of inventory. Troon will collect for its account all revenues from the sale of food and beverages on the F/B Premises. City shall have no interest or claim to income from the sale of food and beverages on the F/B Premises or from F/B Operations. City shall pay the costs for all utilities (including but not limited to electric, gas, telephone and cable), maintenance, taxes, insurance and other similar expenses associated with the Golf Resort and the F/B Premises as provided in the Management Agreement.

4.3 **Repairs and Maintenance.** City shall pay all costs associated with the repair and maintenance to the Equipment, the Golf Resort and the F/B Premises, including, but not limited to the heating, air conditioning, plumbing and electrical units, provided, however, that in no event shall City be obligated to make any capital improvements with respect to the Equipment, the Golf Resort and the F/B Premises unless otherwise agreed pursuant to the Management Agreement.

4.4 **Employees.** Troon shall (i) determine manpower requirements, recruitment schedules, and compensation levels, (ii) furnish Troon descriptions, performance appraisal procedures, employee benefit programs, and operational and procedural manuals for all personnel, and (iii) establish forms and procedures for employee compensation and incentive programs. Troon shall hire, promote, discharge, and supervise all operating personnel, department heads, and ancillary and supportive employees performing services in any manner related to the F/B Operations. All such employees shall be employees of Troon Golf. Upon being hired, such employees shall be subject to such health regulations and examinations as any applicable governmental authority may require in connection with their employment. Troon shall further comply with the requirements of Article V of the Management Agreement with respect to all employees of Troon Golf who are working in F/B Operations.

4.5 **Quarterly Meetings.** City has designated the City Manager as the individual who is responsible for administering this Agreement on behalf of the City. A designated

representative of Troon shall meet with the City Manager or the City Manager's designee on a quarterly basis for a formal review of F/B Operations. Troon shall also, as frequently as is reasonably requested by City, report to City concerning F/B Operations and the performance of Troon's obligations hereunder.

4.6 **Licenses, Permits, and Accreditations.** Troon (or its affiliate) shall apply for and use its best reasonable efforts to obtain and maintain, in Troon's (or its affiliate's) name, all licenses, permits, and accreditations required in connection with the management and operation of the F/B Operations. City will cooperate with Troon in applying for, obtaining, and maintaining such licenses, permits, and accreditations.

4.7 **Food and Beverages.** Troon shall develop food and beverage operating concepts (including operational plans, menus, wine lists, and food and beverage control systems) and maintain the master recipe files. All such matters shall be subject to the City's prior approval, which approval shall not be unreasonably withheld. All food and beverages purchased to be sold or distributed at the Golf Resort and all F/B operations shall be of first-rate quality, in accordance with the Operational Standards.

4.8 **Compliance with Law.** Troon shall not use or permit the use of the F/B Premises for any purpose prohibited by law and shall comply with all laws, ordinances, rules, regulations, orders, requirements and demands of all duly constituted authorities with respect to the condition, use and occupancy of the F/B Premises as such may be applicable from time to time during the term of this Agreement.

4.9 **Expenditures Required for Compliance with Law.** In the event, at any time during the Term of this Agreement, repairs, additions, changes, or corrections in the F/B Premises of any nature shall be required by reason of any laws, ordinances, rules, or governmental regulations now or hereafter in force, or by order of any governmental or municipal power, department, agency, authority, or officer, Troon shall consult with City with respect to such repairs pursuant to Section 3.4 of the Management Agreement and any repairs of an emergency nature shall be handled in accordance with Section 3.4(c) of the Management Agreement.

4.10 **Specific Operating Procedures.** Troon shall operate and manage the F/B Operations in accordance with the following operating procedures:

4.12.1 **Hours of Operation.** Food and beverage services at the Golf Resort shall be available on a daily basis all year and shall not be closed on holidays. The operating hours of the various food and beverage venues within the Golf Resort shall be proposed by Troon and approved by City. Both inside and outside food and beverage services at the Golf Resort clubhouse shall be open all year, except as otherwise approved by City. The hours of food and beverage services in the clubhouse restaurant shall be subject to the approval of the City Manager.

4.12.2 **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.

4.12.3 **Operations.** Temporary food stands shall not be installed on the golf courses except for special events. Troon shall comply with all requirements of state and local law governing the sale and distribution of alcoholic beverages. Troon shall obtain and maintain all permits from the County of Riverside Department of Health for all food and beverage services at the Golf Resort. Troon shall comply with all regulations of the County of Riverside Department of Health and all other present and future health laws and regulations as may be established by the federal, state, county, and city governmental agencies. All food service employees shall possess valid food handler cards, and a copy of these cards shall be maintained in the administrative office at the Golf Resort. Troon shall comply with City's municipal code as it relates to tuberculosis testing, and other health and disease testing as now or hereafter required by applicable law, for all food and beverage employees. The parties acknowledge and agree that the food and beverage services at the Golf Resort shall be consistent with the Easement Agreement. Prices of food and beverage services at the Golf Resort shall be comparable to prices charged at other First Class golf resorts in the Coachella Valley.

4.12.4 **Safety and Security.** The F/B Operations shall comply with all safety regulations of federal, state, and local governmental agencies, including without limitation any requirements imposed by California Labor Code Sections 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 food and beverage service employees and customers. Troon shall provide 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 F/B Premises 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 of F/B Operations at the Golf Resort shall be kept in fireproof files.

4.13 **Alterations to Buildings.** Except as provided for in Section 4.11 above, Troon shall not make any alterations, additions, or changes to the appearance or the structural nature of the clubhouse without the prior approval of the City Council.

4.14 **Limitations.** Troon shall use the F/B Premises in the manner described herein and not for any other purpose or purposes whatsoever. All trade names, trademarks, logos, emblems and similar identifying matters related to or used in connection with the Golf Resort and F/B Premises shall be the sole and exclusive property of City, and all use of such marks shall be subject to City's approval in its sole judgment.

## ARTICLE 5 RENT

5.1 **Rent.** Troon shall pay to City as rent during the Term hereof monthly installments in advance on the first day of each month of the Term in accordance with the

Schedule attached hereto as Exhibit A, which shall remain in effect for the first year of the Term. No later than each anniversary of the Term, Troon and City shall agree on a revised rent schedule for the next year, which schedule shall adjust monthly rent payments to take into account the difference in Troon cash flow due to the seasonal nature of business at the Golf Resort. Rent for any period during the Term hereof which is for less than one (1) month shall be a pro-rata portion of the monthly installment. Rent shall be payable without notice on demand and without any deduction, offset, or abatement, at the address stated herein, or to such other persons or at such other places as City may designate in writing.

## **ARTICLE 6**

### **BOOKS AND RECORDS**

6.1 **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 F/B Operations. Troon will make available to City, or to the City Manager, all books and records in Troon's possession relating to the F/B Operations. All books and records for the F/B Operations 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. 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 F/B Operations, and such controls shall provide checks and balances designed to protect the Golf Resort, Troon, and City. The cash registers used by Troon shall be approved by City. Troon shall maintain all financial and accounting books and records for a period of at least three (3) years after the expiration or earlier termination of this Agreement, and City shall have the right to inspect and audit such books and records during such period as provided in Section 6.3 below.

6.2 **Reports to City.** Troon shall deliver to City the following financial statements, in a form acceptable to 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 the F/B Operations for such month and for the Operational Year to date, which statement shall include sufficient detail to reflect all gross revenues and expenses of the F/B Operations; and

(b) Within thirty (30) days after the end of each Operational Year, a profit and loss statement showing the result of the F/B Operations for such Operational Year which statement shall include sufficient detail to reflect all gross revenues and expenses. If requested by the City, and at the sole expense of City, these financial statements shall be certified by an independent certified public accountant acceptable to City.

6.3 **Inspection.** Upon seven (7) days prior written notice to Troon, which notice shall set forth the date and time that 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 F/B Operations. 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 F/B Operations on an annual basis. City's rights under this Section shall continue after termination of this Agreement.

## ARTICLE 7 QUIET ENJOYMENT; NONDISTURBANCE

7.1 **Quiet Enjoyment.** City covenants that so long as there is not existing an Event of Default by Troon under this Agreement, Troon shall, to the extent necessary to manage the F/B Operations and all sales and service related thereto, quietly hold, occupy, possess and enjoy the F/B Premises throughout the Term of this Agreement, free from hindrance, ejection, removal, prohibition, or disturbance by City or any other party claiming under, through, or by right of City.

7.2 **Inspection.** Notwithstanding the foregoing, City and its duly authorized agents, employees and representatives shall have the right to enter upon and inspect the F/B Premises at all reasonable times.

## ARTICLE 8 EVENTS OF DEFAULT

8.1 **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 (hereinafter referred to as an "Event of Default"):

8.1.1 **Failure to Pay Sums Due.** Either party's failure to pay any sums payable under this Agreement when and as the same shall become due and payable and such failure shall continue for a period of fifteen (15) days after written notice (specifying the item not paid) thereof from the other party to the defaulting party.

8.1.2 **Failure to Comply.** Either party's failure to comply with any of the other covenants, agreements, terms, or conditions contained in this Agreement and such failure shall continue for a period of thirty (30) days after written notice thereof from the other party 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 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.

8.1.3 **Liquor License.** If Troon (or its affiliate, as applicable) fails to maintain in good standing any and all liquor and other licenses required under California law to conduct the F/B Operations on the F/B Premises.

8.1.4 **Default under Management Agreement.** The occurrence of an Event of Default under the Golf Course Management Agreement.

## ARTICLE 9 TERMINATION

9.1 **Events of Termination.** The Term of this Agreement shall terminate on the occurrence of any of the events set forth below:

9.1.1 Both parties agree in writing to terminate this Agreement;

9.1.2 Upon the expiration or termination of the City's right to possession of the Golf Resort;

9.1.3 Upon the expiration or termination of the Management Agreement;

9.1.4 Upon the expiration or termination of this Agreement according to its terms; or

9.1.5 Upon ninety (90) days written notice from City that City has determined to either take over F/B Operations or transition F/B Operations to a third party.

9.1.6 Immediately upon the occurrence of an Event of Default.

9.2 **Effect of Termination.** Upon termination, (i) Troon shall surrender the F/B Premises, all Equipment and anything used in the F/B Operations to City, (ii) Troon shall cooperate with City in the transfer of Troon's liquor license(s) to City or its designee, and (iii) Troon shall cooperate with City to ensure the uninterrupted sale of alcoholic beverages at the F/B Premises until the transfer is completed.

9.3 **Payment of Sums Owed.** Upon termination, all sums owed by either party to the other shall be paid within thirty (30) days of the effective date of such termination.

## ARTICLE X INSURANCE

10.1 **Insurance.** Insurance for the Golf Resort, F/B Operations and the F/B Premises shall be provided in accordance with Article IX of the Management Agreement.

**ARTICLE XI**  
**DAMAGE OR DESTRUCTION; EMINENT**  
**DOMAIN; FORCE MAJEURE EVENTS**

11.1 **Damage or Destruction.** Should the F/B Premises be destroyed or substantially damaged by fire, flood, acts of God, or other casualty, 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 City does not choose to rebuild or restore the F/B Premises, 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 11.1, the F/B Premises shall be deemed to have been substantially damaged if the estimated length of time required to restore the F/B Premises 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 F/B Premises either because (i) the damage does not amount to substantial damage as described above, or (ii) notwithstanding destruction of or substantial damage to the F/B Premises, City elects to restore the F/B Premises, then City shall proceed, at City's own expense, with all due diligence to commence and complete restoration of the F/B Premises to its condition and character just prior to the occurrence of such casualty. If as a result of any damage or destruction to the F/B Premises as provided in this Section 11.1, 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.

11.2 **Eminent Domain.** If all of the F/B Premises (or such a substantial portion of the F/B Premises so to make it unfeasible, in the reasonable opinion of City, to restore and continue to operate the remaining portion of the F/B Premises 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 City shall be required to surrender possession of the F/B Premises or of that substantial portion of the F/B Premises, 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 F/B Premises shall not make it unfeasible, in the reasonable opinion of City, to restore and continue to operate the remaining portion of the F/B Premises for the purposes contemplated in this Agreement, then this Agreement shall not terminate, and City shall proceed, at City's own expense, with all due diligence to alter or modify the F/B Premises 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 F/B Premises as provided in this Section 11.2, 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.

11.3 **Force Majeure Events.** As used in this Agreement, the term "**Force Majeure Event**" means declared or undeclared war, 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 or the F/B Premises 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 XII INDEMNIFICATION**

12.1 **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) 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 12.1 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 12.1 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.

12.2 **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 12.1 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 12.1 above.

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

### **ARTICLE XIII REPRESENTATIONS AND WARRANTIES**

13.1 **Troon's Representations.** As a material inducement to 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, City represents and warrants the following:

(a) 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 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 City is a party or by which City is bound.

(b) All actions required to be taken by or on behalf of 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 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 City have full power and authority to bind City to the terms hereof.

#### **ARTICLE XIV TRANSFERS AND ASSIGNMENTS**

14.1 **Limitation on Troon.** Troon may assign or transfer this Agreement to an Affiliate, however 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 right to receive payments), other than to an Affiliate, without the prior written consent of City. Provided, however, Troon may assign this Agreement to an entity that is similarly engaged in food and beverage operations and that employs the principal members of the current Troon management team.

14.2 **Limitation on City.** City may assign or transfer this Agreement to a governmental agency related to the City or to the Agency. 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, City may not assign or transfer its rights hereunder.

#### **ARTICLE XV MISCELLANEOUS**

15.1 **Waiver.** The waiver by either 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.

15.2 **Entire Agreement.** This Agreement sets forth all the covenants, promises, agreements, conditions and understandings between City and Troon, oral or written, relating to the subject matter of this Agreement. 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 City and Troon unless reduced to a writing and signed by them.

15.3 **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 certified or registered mail, postage prepaid, return receipt requested, or by telex, telegram, facsimile or other telegraphic means and addressed as follows:

If to City:

City of Indian Wells  
44-950 Eldorado Drive  
Indian Wells, California 92210  
Attention: City Manager

If to Troon:

Troon Restaurant Holdings, LLC  
15044 North Scottsdale Road, Suite 300  
Scottsdale, Arizona 85254  
Attention: Legal Department

or at such other address as from time to time designated by the party receiving the notice in accordance with this Section 15.3. The date of service of such notices shall be the date such notices are delivered to the party to whom the notice is given.

15.4 **City Bonds.** In connection with 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 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. 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.

15.5 **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%).

15.6 **Successors and Assigns.** This Agreement is personal to City and Troon and except as otherwise provided herein, neither party shall have the 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 other party. 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 City. Any approval by City of any subcontract of Troon's services or any part thereof shall not be construed to make City a party to such subcontract or to expose 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.

15.7 **Persons Indemnified.** All agreements by either Troon or 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 directors, officers, members, managers, employees and agents of any of the foregoing.

15.8 **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.

15.9 **Cumulative Rights.** The rights and remedies conferred upon both City and Troon in this Agreement and by law are cumulative.

15.10 **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.

15.11 **Attorneys' 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.

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

15.13 **Trade Names, Royalties and Patents.** All trade names, trademarks, logos, emblems and similar identifying matters related to or used in connection with the Golf Resort, the F/B Operations, and F/B Premises shall be the sole and exclusive property of City, and all matters relating to their use shall be subject to City's approval in its sole judgment. All trade names, trademarks, logos, emblems and similar identifying matters related to Troon and Troon's Affiliates shall be the sole and exclusive property of Troon, and all matters relating to their use shall be subject to Troon's approval in its sole judgment.

15.14 **Easements.** Troon shall recognize all easements of record affecting the Golf Resort.

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

15.16 **Reserved.**

15.17 **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.

15.18 **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.

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

**15.20 Mediation, Arbitration and Dispute Resolution.**

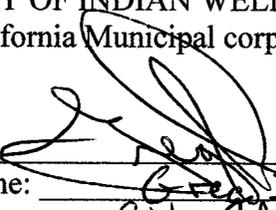
(a) **Resolution by the Parties.** The parties hereto desire, pursuant to the provisions of this Section 15.20, to establish procedures to facilitate the informal an inexpensive resolution of any disputes arising out of or relating to this Agreement by mutual cooperation and without resort to litigation. To accomplish this objective, 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 JAMS or AAA for binding arbitration. 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 provisions of California law, except as specifically provided herein.

In Witness Whereof, City and Troon have executed this Agreement as of the date first above written.

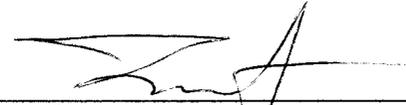
"CITY"

CITY OF INDIAN WELLS, a  
California Municipal corporation

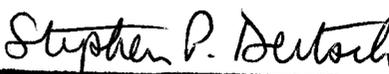
By:   
Name: Greg Johnson  
Its: City Manager

"TROON"

TROON RESTAURANT HOLDINGS, LLC,  
a Delaware limited liability company

By:   
Name: TIMOTHY S. SCHANTZ  
Its: EVF

**APPROVED AS TO FORM**

  
Stephen P. Deutsch  
City Attorney

**EXHIBIT A**

**RENT**

June

July

August

September

October

November

December

January

February

March

April

May