

INDIAN WELLS GOLF RESORT

TRUE-UP AGREEMENT

This TRUE-UP AGREEMENT (the "**Agreement**"), effective as of June 1, 2009, is made by and between the CITY OF INDIAN WELLS, a California municipal corporation ("**City**"), and TROON RESTAURANT HOLDINGS, LLC, a Delaware limited liability company ("**Troon**"), with reference to the facts set forth below.

RECITALS

WHEREAS, City and Troon made and entered into a Restaurant Lease Agreement dated June 1, 2009 (the "**Restaurant Lease**"); and

WHEREAS, City and Troon desire that at the end of each fiscal quarter a true-up is calculated so that the monthly rent under the Restaurant Lease is adjusted to equal the net income from the food and beverage operations of the Golf Resort during such quarter.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, City and Troon agree as follows:

AGREEMENT

1. **Definitions.** Unless otherwise defined herein, capitalized words will have the same meaning as in the Restaurant Lease.

1.1 "**Gross Food and Beverage Revenues**" shall mean, for each fiscal quarter, 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.

1.2 "**Food and Beverage Expenses**" shall mean, for each fiscal quarter, all expenses incurred by Troon in connection with the operation of F/B Operations at the Golf Resort, determined on an accrual basis in accordance with generally accepted accounting principals consistently applied.

1.3 "**Quarterly Net Income**" shall mean the net income derived by subtracting Food and Beverage Expenses from Gross Food and Beverage Revenues.

2. True-Up. Within ten (10) business days from the completion of the financial reports for each fiscal quarter ending on August 30, November 30, February 28 and May 31, of each year during the term of the Restaurant Lease, Troon shall calculate the Quarterly Net Income for the Food and Beverage operations and deliver such report showing the calculations in reasonable detail to City. The difference between the Quarterly Net Income and the aggregate rent paid by Troon to the City under the Restaurant Lease in any given fiscal quarter shall be paid or credited to the appropriate party. In the event the Quarterly Net Income is greater than the aggregate rent paid during the fiscal quarter, Troon shall pay or credit the difference to the City. In the event the aggregate rent paid during the fiscal year exceeds the Quarterly Net Income, City shall pay or credit the difference to Troon. All payments shall be made within five (5) business days of the date the quarterly calculation is completed, subject to the terms of Section 3. The Quarterly Net Income report shall be subject to audit by City in accordance with the inspection right set forth in Section 4(b). Troon shall cooperate with the City to reconcile any discrepancy discovered as a result of such audit and to adjust the Quarterly Net Income accordingly.

3. Reconciliation Account.

(a) In order to allow for the efficient reconciliation of the Quarterly Net Income, Troon shall establish a bank account for the F/B Operations 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 City's name (the "**Reconciliation Account**"). Troon shall appoint at least two (2) designees as the only parties authorized to draw upon the Reconciliation Account, which designees shall be bonded or otherwise insured as City and Troon shall mutually agree. Checks or other items of withdrawal shall be signed only by such designees, acting singly or jointly.

(b) Troon will deposit in the Reconciliation Account all rent due under the Restaurant Lease and all monies furnished by the City as required under this Agreement. Troon shall have the right to withdraw funds from the Reconciliation Account as necessary to pay Food and Beverage Expenses on a current basis. City shall pay in advance of each fiscal quarter the amount of any projected deficiency between the rent due to City under the Restaurant Lease and the projected Quarterly Net Income for such fiscal quarter or such minimum balance amount as City and Troon may agree upon to avoid a deficiency. Within five (5) business days after Troon's request therefor, City shall deposit sufficient funds to restore any deficiency in the Reconciliation Account.

(c) All payments made by Troon hereunder shall be made from the Reconciliation Account and petty cash funds. Troon shall not be required to make any advance or payment to or for the account of City or as it pertains to the Restaurant Lease except out of such funds, and Troon shall not be obligated to incur any liability or obligation for City's or the Reconciliation's Account without assurances that City shall provide all necessary funds for the discharge thereof.

4. Books and Records/Inspection.

(a) 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 F/B Operations. 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 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 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 F/B Operations upon the expiration or earlier termination of this Agreement.

(b) 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 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. The inspection right of City under this Section 4(b) shall remain in effect for a period of one (1) year following the termination or expiration of the Restaurant Lease.

5. Term. This Agreement will remain in effect until the termination of the Restaurant Lease and the last reconciliation and true-up payment under this Agreement.

6. Counterpart and Facsimile Signatures. This Agreement may be executed in one or more counterparts, and by facsimile signature, each of which will be deemed to be an original and all of which, when taken together, will be deemed to constitute one and the same.

7. Governing Law. This Agreement shall be governed by and construed pursuant to the laws of the State of California.

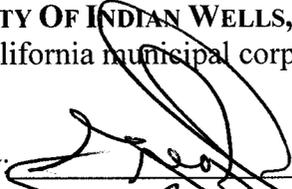
8. Dispute Resolution. Any dispute arising with respect to the terms of this Agreement shall be subject to binding dispute resolution in accordance with the Restaurant Lease.

[signature page follows]

In Witness Whereof, the parties have executed this Agreement as of the day and year first above written.

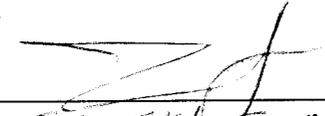
"CITY"

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: EVP

Approved as to form:

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