



**CITY OF PACIFIC GROVE**  
300 Forest Avenue, Pacific Grove, California 93950

**AGENDA REPORT**

**TO:** Honorable Mayor and Members of City Council

**FROM:** Thomas Frutchey, City Manager

**DATE:** May 7, 2014

**SUBJECT:** Transition Agreement with Pacific Grove Golf Links, LLC for the Operation and Maintenance of the Pacific Grove Golf Links

**CEQA STATUS:** An agreement for the operation and management of the Golf Links is exempt from CEQA under Section 15301 of the CEQA Guidelines (Class 1) – Existing Facilities.

**RECOMMENDATION**

Approve the transition agreement with Pacific Grove Golf Links, LLC, an affiliate of CourseCo, Inc., for management, improvement, maintenance, and operation of the Pacific Grove Golf Links.

**DISCUSSION**

At its March 2, 2014 meeting the City Council held second reading and approved an ordinance adopting a lease for the operation and maintenance of the Pacific Grove Golf Links. On April 2, the Council approved the interim agreement necessary to provide for the management, improvement, maintenance, and operation of the Pacific Grove Golf Links until the current tax-exempt certificates of participation are replaced, so that the lease can be implemented.

The City has been concurrently working with bond counsel Cameron Weist to explore refinancing opportunities for the certificates of participation issued in 2005 to finance construction of the Club House and Pro Shop. Mr. Weist projects that, in today's market, refinancing could potentially result in \$200,000 in savings to the City over the life of the bonds. He estimates refinancing can be accomplished in 6 months.

The attached transition agreement has a 6-month term, so that the original lease can go into effect at that time.

**OPTIONS**

1. Do nothing.
2. Direct the City Manager to renegotiate one or more provisions in the interim agreement or in this transition agreement.

**FISCAL IMPACT**

Minimal. The primary impact has been the opportunity costs of the time invested by both CourseCo and City staff in fully developing the two interim agreements. Given that the need for an interim agreement arose due to City strictures, the City is agreeing to reimburse CourseCo for the time required of its outside legal counsel to draft and approve this transition agreement.

**ATTACHMENTS**

1. Proposed Transition Agreement, with its exhibits: the Lease; the First Interim Agreement; and the Interim Plan

RESPECTFULLY SUBMITTED:



---

Thomas Frutchey  
City Manager

**LEASE TRANSITION AGREEMENT**  
**between**  
**The City of Pacific Grove**  
**and**  
**Pacific Grove Golf, LLC**

This Lease Transition ("Transition Agreement") is entered into this 7th day of May, 2014, by and between the City of Pacific Grove, a Charter City of the State of California ("CITY"), and Pacific Grove Golf, LLC, a California limited liability company ("PGG LLC").

**RECITALS**

A. City owns an 18-hole golf course known as Pacific Grove Municipal Golf Course Links located in the City of Pacific Grove, County of Monterey ("**Golf Course**").

B. PGG LLC and City have extensively negotiated, and have agreed upon the terms of a written Golf Course Lease pertaining to the Golf Course in the form and substance attached hereto Exhibit One (the "**Golf Course Lease**") and had intended and agreed that the Golf Course Lease would go into effect on April 1, 2014.

C. On or about March 25, 2014, City informed PGG LLC that City had been advised and had determined that commencing the Golf Course Lease would raise certain legal issues and would have potential adverse consequences pertaining to certain outstanding bonds issued by City to finance prior improvements to the Golf Course (the "**Legal Complications**") and, that therefore the City would like to defer the effective date of the Golf Course Lease.

D. In anticipation of the commencement of the Golf Course Lease on April 1, 2014, both City and PGG LLC had undertaken preparations, commitments and other actions necessary to turn over operation of the Golf Course to PGG LLC pursuant to the Golf Course Lease on that date.

E. City and PGG LLC desire to defer the commencement of the Golf Course Lease and have entered into a written Interim Golf Course Management Agreement dated April 1, 2014 in the form attached hereto as Exhibit Two (the "**Interim Agreement**") to provide the parties with time and opportunity to negotiate and agree upon a related "Lease Transition Agreement" as referenced in Article 5 of the Interim Agreement, which would extend the term of the Interim Agreement, augment and amend certain provision therein, and provide the City additional time to address and resolve the City's Legal Complications.

F. In the normal course of business, and absent the extraordinary circumstances set forth above, neither the City nor PGG LLC would enter into a near-term agreement such as the Interim Agreement or this Transition Agreement, but are now willing to do so to preserve their respective expectations and benefits under the Golf Course Lease subject to the additional terms conditions and agreements set forth below.

## AGREEMENT

Therefore, for valuable consideration, including the mutual agreements and promises herein, PGG LLC and City agree as follows:

1. PGG LLC and City hereby, effective upon execution of this Transition Agreement, extend the term of the Interim Agreement to August 31, 2014 and hereby amend the Interim Agreement as follows: The term of the Interim Agreement shall commence on April 1, 2014 and shall, unless sooner terminated as provided herein, end on September 31, 2014 (the “**Termination Date**”), and all references in the Interim Agreement to the term of the Interim Agreement (including but not limited to the “Initial Term” and the “Extension Term”) shall mean a term commencing upon April 1, 2014 and ending on the Termination Date.

2. During the term of the Interim Agreement as amended, City agrees to use its best diligent and good faith efforts to resolve or otherwise remove the impediments of Legal Complications prior to the Termination Date.

3. Upon resolution or removal of the Legal Complications to the reasonable satisfaction of the City prior to the Termination Date, City and PGG LLC agree to thereupon terminate the Interim Agreement, and concurrent with such termination ratify and confirm the Golf Course Lease which lease shall then become effective immediately upon termination of the Interim Agreement, and thereafter shall govern the relationship of the parties and their respective rights and obligations regarding the Golf Course, subject to the following limitations and adjustments:

(a) If and only if the Golf Course Lease is ratified and confirmed and goes into effect not later than the Termination Date, then the parties agree, retroactively to April 1, 2014 and thereafter, to account for all items of income, expense and capital expenditures during the term of the Interim Agreement as if the Golf Course Lease had been in effect (instead of the Interim Agreement) from and after April 1, 2014, and to make all adjustments reasonably necessary to re-characterize and reconcile all accounting matters as if the Golf Course Lease, instead of the Interim Agreement, had been in effect from and after April 1, 2014. By way of illustration, the City would transfer, assign, credit and pay to PGG LLC all net income received from the Golf Course operations during the term of the Interim Agreement, less amounts that would have been paid in rents by PGG LLC to City had the Golf Course Lease been in effect during the term of Interim Agreement. Any amounts paid for Fixed Management Fees and Accounting Fees (as those terms are used in the Interim Agreement) would be credited to overall net income assigned to PGG LLC.

(b) The parties agree that the retroactive application of the terms of the Golf Course Lease, and applicable adjustment of all accounting matters, will be accomplished reasonably and equitably in recognition that the deferral of the commencement of the Golf Course Lease was and is an accommodation to the City and so as to avoid any detrimental impact on PGG LLC for any resulting delay in performance of obligations arising under the Lease and which are not obligations under the Interim Agreement with respect to capital

contributions, capital improvements (unless funded by the City during the Interim Agreement) and the development, presentation, approval, performance and timing of capital improvement plans.

(c) The time for PGG LLC to perform its obligations under the Golf Course Lease will be extended by a period equal to the time between April 1, 2014 and the termination of the Interim Agreement.

(d) In the event, for any reason, the Interim Agreement terminates without being replaced immediately by the Golf Course Lease, then none of the provisions set forth in this Section 3, subsections (a) through (c) above will be of any force or effect, and the parties' rights and liabilities will be as set forth in the Interim Agreement as amended by this Transition Agreement.

4. Pursuant to Section 5.0 of the Interim Agreement, the parties hereby approve the Interim Plan which is attached hereto as Exhibit Three (which includes a Direct Cost Budget, a schedule of Projected Net Operating Income, Net Operating Income Budget, and Course Maintenance Plan) for the term of this Transition Agreement attached hereto as Exhibit Four, all of which are incorporated herein by this reference.

5. City agrees to reimburse PPG LLC, upon submission of supporting invoice, for its attorneys' fees incurred in connection with the negotiation and preparation of the Interim Agreement and this Transition Agreement in an amount not to exceed \$6,000.

6. The terms and provision set forth in this Transition Agreement are incorporated into the Interim Agreement and shall augment and amend the Interim Agreement which shall remain in full force and effect, and which together with this Transition Agreement shall be a single integrated Agreement. In the event of any conflict or inconsistency between the provisions contained in this Transition Agreement and the Interim Agreement, this Transition Agreement shall control.

CITY:

PGG LLC:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Schedule of Exhibits**

<b>Exhibit One</b>	<b>Golf Course Lease</b>
<b>Exhibit Two</b>	<b>Interim Agreement</b>
<b>Exhibit Three</b>	<b>Interim Plan</b>



**GOLF COURSE LEASE**

**Pacific Grove Golf Links**

Landlord: **City of Pacific Grove**

Tenant: **Pacific Grove Golf, LLC an affiliate of CourseCo, Inc**

Premises: **77 and 79 ASILOMAR AVENUE, LOCATED IN THE CITY OF PACIFIC GROVE,  
CALIFORNIA**



Contents

ARTICLE 1 BASIC LEASE INFORMATION ..... 7

ARTICLE 2 DEFINITIONS..... 9

ARTICLE 3 LEASE OF PREMISES AND PERSONAL PROPERTY ..... 16

    3.1 Lease ..... 16

    3.2 Condition of Premises ..... 16

    3.3 Personal Property ..... 16

    3.4 Personal Property As-Is..... 17

    3.5 Golf Carts..... 17

    3.6 Advance Deposits..... 17

    3.7 Resale Inventory ..... 17

ARTICLE 4 TERM; OPTIONS TO EXTEND ..... 18

    4.1 Term of Lease..... 18

    4.2 Extension Options ..... 18

ARTICLE 5 RENT..... 18

    5.1 Base Rent ..... 18

    5.2 Adjustments to Base Rent..... 19

    5.3 Percentage Rent..... 19

    5.4 Late Charge ..... 20

    5.5 Default Interest ..... 20

ARTICLE 6 TAXES, ASSESSMENTS AND OTHER EXPENDITURES ..... 20

    6.1 Taxes and Assessments, Licenses, Permit Fees and Liens ..... 20

    6.2 Other Expenditures ..... 21

    6.3 Evidence of Payment of Taxes ..... 22

ARTICLE 7 USE; COVENANTS TO PROTECT PREMISES AND CITY FACILITIES ..... 22

    7.1 Tenant’s Permitted Use ..... 22

    7.2 Covenants Regarding Use ..... 22

ARTICLE 8 CAPITAL INVESTMENT; IMPROVEMENTS..... 24

    8.1 Tenant's Capital Investment ..... 24

    8.2 Construction of Improvements..... 24

    8.3 Capital Improvement Program ..... 25

ARTICLE 9 REPAIRS AND MAINTENANCE ..... 26

    9.1 Tenant’s Responsibility for Maintenance and Repair ..... 26

    9.2 Utilities; Roads ..... 26

    9.3 Maintenance Standards ..... 27

ARTICLE 10 LIENS ..... 27

ARTICLE 11 COMPLIANCE WITH LAWS ..... 27

    11.1 Compliance with Laws ..... 27

    11.2 Regulatory Approvals..... 27

ARTICLE 12 FINANCING; ENCUMBRANCES; SUBORDINATION ..... 28

    12.1 Encumbrance of Landlord’s Fee Interest ..... 28

ARTICLE 13 DAMAGE, DESTRUCTION OR ROAD CLOSURE ..... 28

    13.1 Insured Damage or Destruction to the Premises or Improvements..... 28

    13.2 Uninsured or Underinsured Damage or Destruction..... 28

    13.3 Abatement in Rent..... 29

    13.4 Waiver ..... 29

ARTICLE 14 EMINENT DOMAIN ..... 29

    14.1 General..... 29

    14.2 Total Taking; Automatic Termination ..... 29

    14.3 Partial Taking..... 29

    14.4 Collection and Distribution of Condemnation Awards ..... 30

    14.5 Temporary Taking ..... 31

    14.6 Award of Subtenants ..... 32

    14.7 Participation in Eminent Domain Process..... 32

    14.8 Eminent Domain Proceeds Initiated by City ..... 32

    14.9 Reversion to United States of America ..... 32

ARTICLE 15 ASSIGNMENT AND SUBLETTING ..... 32

    15.1 Assignment..... 32

    15.2 Notice of Proposed Transfer ..... 33

ARTICLE 16 DEFAULT; REMEDIES ..... 33

    16.1 Events of Default..... 33

    16.2 Remedies..... 34

ARTICLE 17 WAIVER OF CLAIMS; INDEMNIFICATION ..... 35

17.1 Waiver of Claims ..... 35

17.2 Tenant’s Indemnity ..... 35

ARTICLE 18 INSURANCE ..... 36

18.1 Tenant’s Insurance..... 36

18.2 General Requirements ..... 37

18.3 Proof of Insurance..... 37

18.4 Review of Insurance Requirements ..... 38

18.5 No Limitation on Indemnities ..... 38

18.6 Lapse of Insurance ..... 38

18.7 Tenant’s Personal Property..... 38

18.8 City’s Self Insurance ..... 38

18.9 Waiver of Subrogation ..... 38

ARTICLE 19 ACCESS BY CITY ..... 39

19.1 Access to Premises by City ..... 39

ARTICLE 20 ESTOPPEL CERTIFICATES ..... 39

ARTICLE 21 SURRENDER OF THE PREMISES ..... 40

ARTICLE 22 HAZARDOUS MATERIALS ..... 40

22.1 No Hazardous Materials..... 40

22.2 Tenant’s Environmental Indemnity ..... 41

22.3 Landlord’s Environmental Indemnity..... 41

ARTICLE 23 SECURITY DEPOSIT ..... 41

ARTICLE 24 GENERAL PROVISIONS ..... 41

24.1 Notices; Reasonable Approvals..... 41

24.2 Amendments..... 42

24.3 Authority ..... 42

24.4 Interpretation of Lease ..... 42

24.5 Successors and Assigns ..... 43

24.6 Brokers ..... 43

24.7 Severability..... 43

24.8 Governing Law ..... 43

24.9 Entire Agreement..... 43

24.10 Attorneys’ Fees and Costs..... 44

24.11 Holding Over ..... 44

24.12 Cumulative Remedies ..... 44

24.13 Transition Procedures ..... 44

24.14 Survival of Indemnities..... 45

24.15 Relationship of Parties ..... 45

24.16 Transfer by City ..... 45

24.17 Non-Liability of City Officials, Employees and Agents ..... 46

24.18 Consents, Approvals, Elections and Options ..... 46

24.19 Counterparts ..... 46

24.20 Waiver ..... 46

24.21 Voluntary Agreement; Authority to Execute. .... 46

## **GOLF COURSE**

Landlord: **City of Pacific Grove**

Tenant: **Pacific Grove Golf, LLC an affiliate of CourseCo, Inc**

### **77 and 79 ASILOMAR AVENUE, LOCATED IN THE CITY OF PACIFIC GROVE, CALIFORNIA**

THIS GOLF COURSE LEASE ("Lease") dated for reference purposes as of February 19, 2014 ("Effective Date"), is by and between the CITY of Pacific Grove, a Charter City of the State of California ("City" or "Landlord"), and Pacific Grove Golf, LLC, a California limited liability company ("Tenant").

### **RECITALS**

A. City owns certain real property commonly known as the Pacific Grove Municipal Golf Course Links located in the City of Pacific Grove, County of Monterey, State of California, as more particularly described in **Exhibit A** attached hereto, which includes an operating 18-hole golf course, driving range, irrigation system, club house, restaurant, parking areas and related facilities.

B. The Golf Course is currently being operated and managed by the City and the restaurant and food and beverage services are being operated by an independent third party under contract with the City.

C. City has determined that Tenant has the necessary experience, qualifications, and community values to manage, operate and maintain the Golf Course to the mutual advantage of Tenant and the City, and to enhance and maximize the public use thereof by providing a safe and attractive place to enjoy the game of Golf.

D. City and Tenant wish to enter into this lease as the most cost-effective and beneficial means for City to satisfy its desire to improve, operate and maintain Golf Course as a high-value recreational opportunity and economic development resource for the residents and visitors to the city.

E. Tenant desires to lease from City and City desires to lease to Tenant, the Premises described herein upon and subject to the terms and conditions set forth below in this Lease.

Therefore, for mutually acknowledged valuable consideration, the Parties hereby covenant and agree as follows:

**ARTICLE 1  
BASIC LEASE INFORMATION**

The following is a summary of basic lease information applicable to the Lease. Each item below shall be deemed to incorporate all of the terms set forth in this Lease pertaining to such item. In the event of any conflict between the information in this Article and any more specific provision of this Lease, the more specific provision shall control.

<b>Landlord:</b>	<b>City of Pacific Grove</b>
<b>Tenant:</b>	<b>Pacific Grove Golf, LLC, a California limited liability company</b>
<b>Premises:</b>	Land (as defined herein) located in Pacific Grove, owned by City, as more particularly described in <b>Exhibit A</b> attached hereto, together with the existing <b>Golf Course</b> and related <b>Improvements</b> thereon, as those terms are defined herein.
<b>Effective Date:</b>	February 19, 2014
<b>Commencement Date:</b>	April 1, 2014
<b>Term:</b>	The initial Term of this Lease shall commence on the Commencement Date and shall end on the Expiration Date unless extended or sooner terminated.
<b>Expiration Date (initial Term):</b>	March 31, 2024
<b>Extension Options:</b>	Two (2) contingent options to extend the Term for five (5) years each (10 years total) as provided in <b>Article 4.2</b>
<b>Initial Base Rent:</b>	\$300,000.00 per year (The Base Rent shall be payable in monthly installments on or before the first day of each month as provided in <b>Article 5.1</b> )
<b>Fixed Adjustments to Base Rent:</b>	Base Rent adjusted commencing on the date as set forth in <b>Article 5.2</b> and annually thereafter in accordance with <b>Article 5.2</b>
<b>Percentage Rent:</b>	Percentage Rent shall be paid in addition to Base Rent calculated on Gross Golf Revenue as described in <b>Article 5.3</b> .
<b>Permitted Use:</b>	Operation of public golf course, driving range and related facilities.
<b>Security Deposit:</b>	<b>\$25,000</b> (See Article 23)
<b>Tenant's Capital Investment Sum:</b>	<b>\$100,000</b> (See Article 8.1)

**Tenant's Contribution to Capital Improvement Fund:** **1% of Gross Revenues adjusted to 1.5% after 2<sup>nd</sup> year (See Article 8.3)**

**City's Contribution to Capital Improvement Fund:** **1% of Gross Revenues adjusted to 1.5% after 2<sup>nd</sup> year (See Article 8.3)**

**Notice Address of City:** **City Manager**  
City of Pacific Grove  
300 Forest Avenue  
Pacific Grove, CA 93950

**Telephone:** (831) 648-3106

**Facsimile:** (831) 657-9361

**Notice Address of Tenant:** **Pacific Grove Golf, LLC**  
Post Office Box 5668  
Petaluma, California 94953-1019  
Fax: (707) 763-8355

**with a copy to:** Mr. John C. Telischak  
Corte Madera Business Center  
45 Koch Road, Suite A  
Corte Madera, California 94925-1250  
Fax: (415) 945-9909

**Primary Tenant Contact:** Tom Isaak

**Telephone:** (707) 763-0335

**Alternate Tenant Contact:** John Telischak

**Telephone:** (415) 945-9982

**List of Exhibits and Schedules:** **Exhibit A Description of Premises**  
**Exhibit B Maintenance Standards**  
**Exhibit C Schedule of Personal Property**

## **ARTICLE 2 DEFINITIONS**

For purposes of this Lease, the following capitalized terms shall have the meanings ascribed to them in this Article:

**“Additional Charges”** means any and all real and personal property taxes, possessory interest taxes and other costs, impositions and expenditures described in Article 6 hereof or otherwise payable by Tenant under this Lease.

**“Advance Deposits”** means and includes any payments for reservations or other events which have been received by Landlord prior to the Commencement Date but not yet earned. Advance Deposits shall include, but are not limited to, outstanding gift certificates, annual passes, and other vouchers.

**“Affiliate of Tenant”** means any person or entity which directly or indirectly, through one or more intermediaries, controls, is controlled by or is under the common control with, Tenant. As used above, the words “control”, “controlled” and “controls” mean the right and power, directly or indirectly through one or more intermediaries, to direct or cause the direction of substantially all of the management and policies of a person or entity through ownership of voting securities or by contract, including, but not limited to, the right to fifty percent (50%) or more of the capital or earnings of a partnership or, alternatively, ownership of fifty percent (50%) or more of the voting stock of a corporation.

**“Agents”** means, when used with reference to either Party to this Lease, the officers, directors, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.

**“Alterations”** means any alterations, installations or additions to any Improvements or to the Premises, but excluding maintenance and repair work.

**“Assignment”** has the meaning given in Article 15.1 hereof.

**“Award”** means all compensation, sums or value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

**“Base Rent”** means the annual Base Rent specified in the Basic Lease Information and described in Article 5.1 hereof.

**“Basic Lease Information”** means the information with respect to this Lease summarized in Article 1 hereof.

**“Capital Improvement Fund”** means the account described in Article 8.3 and all moneys deposited therein and interest accrued thereon.

**“City”** means the City of Pacific Grove, a charter city of the State of California.



"City Manager" means the City Manager of the City.

"Commencement Date" means the date described as such on the Basic Lease Information.

"CPI" means the Consumer Price Index, All Urban Consumers, San Francisco-Oakland-San Jose area; base years 1982-1984 = 100 published by the U.S. Dept. of Labor or any comparable replacement or successor index.

"Date of Taking" means the earlier of (i) the date upon which title to the portion of the Premises taken passes to and vests in the condemner or (ii) the date on which Tenant is dispossessed pursuant to an order of possession issued in the subject eminent domain proceeding.

"Default Rate" means a rate of interest equal to eight percent (8%) per annum.

"Effective Date" means the date set forth as such in the Basic Lease Information.

"Encumber" means create any Encumbrance; "Encumbrance" means any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance.

"Encumbrancer" means a mortgagee, beneficiary of a deed of trust or other holder of an Encumbrance.

"Environmental Laws" means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including any permitted Improvements) and any other property, including, without limitation, soil, air and groundwater conditions.

"Event of Default" means any one of the events of default described in Article 16.1 hereof.

"Expiration Date" means the date which is 10 years from the Commencement Date unless and as extended in accordance with Article 4.2.

"Force Majeure" means circumstances that delay or prevent the performance of obligations hereunder due to acts of God, and/or other circumstances beyond the reasonable control of Tenant.

"Golf Course" means the 18-hole golf course, driving range, club house, pro shop, parking areas and related facilities currently existing and being operated on the Premises. Notwithstanding the foregoing or anything to the contrary in this Lease, the term "Golf Course" as used in this Lease shall specifically exclude, for all purposes, the restaurant, the interior of

the restaurant building (except for the portion of such building constituting the rest rooms and the cart barn which is located beneath the restaurant and which portion shall be deemed part of the Golf Course and the Premises), food and beverage facilities, and related equipment, improvements and appurtenances.

“Gross Golf Revenues” means the gross revenues derived from admission fees, entry fees, green fees, tournament fees, advance booking fees, membership and club dues and other fees and dues of any kind including nonrefundable deposits, driving range use fees and ball fees, rental fees for motorized golf carts. Gift certificates, or similar vouchers, shall not be included until such time as they shall have been converted into a sale by redemption.

“Gross Revenues” means Gross Golf Revenues, plus revenues from lessons, classes or other instructional fees (net of amounts paid to the golf professional staff), and from the selling price of merchandise, golf clubs and other golf equipment, golf supplies, goods and, clothing or delivered in or from the Premises by Tenant, whether for cash or on credit (whether collected or not), including the gross amount received by reason of orders taken on the Premises although filled elsewhere, provided however that, for purposes of inclusion in Gross Revenues, there shall be subtracted from such selling price of merchandise, goods, clothing and equipment, the cost of goods sold. Gross Revenues and Gross Golf Revenues in credit card transactions shall include only the actual amount received by Tenant from the credit card issuer. Gross Revenues shall not include, or if included there shall be deducted (but only to the extent they have been included), the following: (a) the selling price of all merchandise returned by customers and accepted for full credit, or the amount of discounts, refunds, and allowances made on such merchandise; (b) merchandise returned to sources or transferred to another store or warehouse owned by or affiliated with Tenant; (c) sums and credits received in the settlement of claims for loss of or damage to merchandise; (d) the price allowed on all merchandise traded in by customers for credit or the amount of credit for discounts and allowances made instead of acceptance of merchandise; (e) gift certificates, or similar vouchers, until such time as they shall have been converted into a sale by redemption; and (f) sales and use taxes, so-called luxury taxes, consumers’ excise taxes, gross receipts taxes, and other similar taxes now or in the future imposed on the sale of merchandise or services.

“Gross Golf Revenue Baseline” means, for the period from April 1, 2014 through December 31, 2014, the seasonally adjusted sum of \$1,938,750, and thereafter, the sum of \$2,350,000 per calendar year increased on January 1<sup>st</sup> of each year during the Term beginning on January 1, 2015 in the same proportion as changes in the Consumer Price Index, All Urban Consumers, San Francisco-Oakland-San Jose area; base years 1982-1984 = 100 published by the U.S. Dept. of Labor, (“CPI”) shall have occurred since January 1<sup>st</sup> of the preceding year and the adjusted amount shall be effective for the following twelve months. If the CPI is discontinued or revised during the Term such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised. If no replacement index is promulgated the Landlord and Tenant shall mutually select another government index measuring changes in the cost of living

in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued, and the same shall thereafter be used in adjusting Base Rent hereunder.

“Hazardous Material” means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a “hazardous substance,” or “pollutant” or “contaminant” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”, also commonly known as the “Superfund” law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any “hazardous waste” listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Land, any Improvements to be constructed on; the Land by or on behalf of Tenant, or are naturally occurring substances on, in or about the Land; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids.

“Hazardous Material Claims” means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, together with any and all Losses made or threatened by any third party against City, its Agents, or the Premises or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and attorneys’ fees and consultants’ fees and experts’ fees and costs.

“Improvements” means any and all buildings, structures, fixtures and other improvements constructed, installed or placed on the Premises by or on behalf of Tenant pursuant to this Lease, including, without limitation, any signs, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping. Notwithstanding the foregoing or anything to the contrary in this Lease, the term “Improvements” as used in this Lease shall specifically exclude, for all purposes, the restaurant, the restaurant building (except for the restrooms and for the portion of such restaurant building constituting the cart barn which is located beneath the restaurant and which portions shall be deemed Improvements as that terms is used herein<sup>1</sup>), food and beverage facilities, and related equipment, improvements and appurtenances.

---

<sup>1</sup> Responsibility for the cost of repair, maintenance and operation of the portions of the building containing the restaurant, cart barn and restrooms shall be reasonably and equitably allocated between Tenant on the one hand and the operator of the restaurant on the other. The operator of the restaurant shall be responsible for cleaning

“Indemnified Parties” means the Party being indemnified and such Party's officers, Agents, shareholders, partners, employees, and their respective Agents, heirs, legal representatives, successors and assigns.

“Indemnify” means indemnify, protect, defend and hold harmless forever.

“Institutional Lender” means any commercial, national or savings bank, savings and loan association, trust company, insurance company, real estate investment trust or pension or retirement fund or similar source of funds.

“Investigation” when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion thereof or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

“Invitees” when used with respect to Tenant means the clients, customers, invitees, guests, members and licensees, assignees and subtenants of Tenant.

“Land” means the real property located in Pacific Grove, more particularly described in the attached **Exhibit A**. Notwithstanding the foregoing or anything to the contrary in this Lease, the term “Land” as used in this Lease shall specifically exclude, for all purposes, the restaurant, the restaurant building, food and beverage facilities, and related equipment, improvements and appurtenances.

“Landlord” means the City.

“Law” means any law, statute, ordinance, resolution, regulation, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.

“Lease” means this Lease as it may be amended in accordance with its terms.

“Lease Year” is a calendar year, except that the first Lease Year of the Original Lease shall commence on the Commencement Date and the last Lease Year shall end on the date this Lease expires or terminates.

---

and maintaining the restrooms, and shall be responsible for all repairs, maintenance and operational costs of the interior of the restaurant and related fixtures, improvements, and equipment, including related electrical and plumbing. Tenant shall be responsible for normal repair and maintenance of the exterior of the building and the landscaping and shall be responsible for any repair of the restrooms.

“Losses” means any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenditures, including, without limitation, reasonable attorneys’ and consultants’ fees and costs.

“Maintenance” means maintenance of the Premises including maintenance of the greens, tees, fairways, rough, cart paths and other turf areas comprising the Golf Course in accordance with the provisions of **Exhibit B**.

“Official Records” means the official records of Monterey County.

“Party” means City or Tenant; “Parties” means both City and Tenant.

“Percentage Rent” means additional rent payable by Tenant in the amounts calculated as a percentage of Gross Golf Revenue as more particularly described and provided in Article 5.3 hereof.

“Percentage Rent Period” means each calendar year or portion thereof following the Effective Date of the Lease (as set forth in the Basic Lease Information), whether or not consisting of twelve (12) months.

“Personal Property” means all of the furnishings, fixtures, equipment, tools, golf carts and other moveable personal property used to operate the Golf Course as described and referenced in Article 3.3.

“Premises” means the Land and the Improvements, together with any additions, replacements, modifications or other Alterations thereto permitted hereunder and together with and including, any and all riparian rights, water and water rights (subject to compliance by Tenant with any applicable requirements of law generally applicable to the use of such water rights), including, but not limited to (i) any and all surface water and surface water rights, including, without limitation, riparian rights and appropriative water rights to surface streams and the underflow of streams, and (ii) any and all groundwater and subterranean water rights; provided, however, subject to the right of Tenant’s first priority for the use of the foregoing water rights in respect of the Premises, City may use such additional water as may be available at its sole cost and expense and without interference with Tenant’s use of the Premises including the foregoing water rights. Notwithstanding the foregoing or anything to the contrary in this Lease, the term “Premises” as used in this Lease shall specifically exclude, for all purposes, the restaurant, the restaurant building (except for the portion of such building constituting the cart barn which is located beneath the restaurant and which portion shall be deemed part of the Premises), food and beverage facilities, and related equipment, improvements and appurtenances.

“Release” when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping,

leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed hereunder by or on behalf of Tenant, or in, on, under or about the Premises.

“Remediation” when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment. Remediate includes, without limitation, those actions included within the definition of “remedy” or “remedial action” in California Health and Safety Code Section 25322 and “remove” or “removal” in California Health and Safety Code Section 25323.

“Rent” means the Base Rent, as adjusted pursuant to the provisions of Article 5.2 hereof, together with Percentage Rent calculated pursuant to the provisions of Article 5.3 hereof, and any and all Additional Charges.

“Resale Inventory” means unsold current merchandise and items held for sale to customers of the pro shop.

“Taking” means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under Law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

“Tenant” means the Party identified as Tenant in the Basic Lease Information and the successors and assigns of Tenant’s interests under this Lease, provided that the rights and obligations of Tenant’s successors and assigns shall be limited to only those rights and obligations that this Lease permits to be transferred and that have been transferred in accordance with this Lease.

“Tenant's Capital Investment Sum” means the sum of \$100,000, in cash or cash equivalent, which Tenant shall expend on capital acquisitions and improvements for the Premises as provided in Article 8.1.

“Term” means the term of this Lease (including the term of any validly exercised extension option) as determined under Article 4.1 hereof.

“Transfer” means any Assignment or Sublease.

“Transferee” means any recognized assignee of any part of Tenant’s leasehold interest hereunder or any recognized subtenant of any portion of the Premises, pursuant to a Transfer that complies with Article 15 hereof.

### **ARTICLE 3 LEASE OF PREMISES AND PERSONAL PROPERTY**

3.1 Lease. City hereby leases to Tenant and Tenant hereby leases from City, the Premises, the Improvements and the Personal Property, subject to all of the terms, covenants and conditions set forth in this Lease.

3.2 Condition of Premises.

(a) City Disclosure. City represents to Tenant that City has provided Tenant with all documents and information in the possession and control of the City concerning the physical condition of the Premises including the presence of any Hazardous Material. To the best knowledge of the City, no Hazardous Material is present on or has been released from the Premises in amounts or under circumstances which violate Environmental Laws and there are no Hazardous Material Claims pending or threatened in respect of the Premises.

(b) Premises As-Is. Except as expressly provided in subparagraph (a) above or elsewhere in this Lease, Tenant acknowledges and agrees that the Premises are being leased and accepted in their present condition, without representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy, management, operation and possession of the Premises.

3.3 Personal Property. All of the Personal Property specifically described and itemized on **Exhibit C** shall be purchased by Tenant from Landlord for fair market value as determined by an independent third party appraiser as of the Commencement Date, such purchase price to be paid by Tenant to Landlord in 60 equal monthly installments, without interest. All other miscellaneous Personal Property (other than such property itemized on **Exhibit C**) on the Premises and Improvements as of the Commencement Date shall remain the property of Landlord, but is leased to Tenant pursuant to the terms of this Lease. All items purchased by Tenant shall at all times remain the property of Tenant and may be removed and retained by Tenant at the termination of this Lease. Tenant, at its sole cost and expense shall insure, repair and maintain all Personal Property during the term of this Lease. Tenant agrees to keep said Personal Property in safe and good condition and repair, and to obtain policies of casualty insurance for such Personal Property in an amount equal to their full insurable value. As to any personal property of which Landlord is the owner, during the term of this Lease, Tenant shall have the right to dispose of any of said Personal Property provided concurrently Tenant replaces same with additional Personal Property having the same or greater value and having substantially the same use. Any Personal Property acquired by Tenant in replacement of any of the specific Personal Property which is itemized on **Exhibit C** shall belong to Tenant during the term of this Lease and upon expiration or termination hereof. Upon the termination of the Lease only Personal Property consisting of hand tools, replacement parts, supplies, and miscellaneous small items shall be surrendered to Landlord and shall thereupon, without further consideration, belong to Landlord (but subject to wear and tear and to any lease financing which may be applicable to any of the Personal Property). Any and all additional Personal Property acquired by Tenant during the Term for the exclusive use in connection with

the operation of the Premises, shall be owned by Tenant during the Term and shall, upon the expiration or termination of this Lease, not be surrendered to Landlord but shall belong to Tenant (but subject to any lease financing which may be applicable to any of the Personal Property).

3.4 Personal Property As-Is. Tenant acknowledges that (a) Landlord is not the manufacturer of the Personal Property or manufacturer's agent; (b) Tenant has accepted the Personal Property based solely on Tenant's inspection, and expressly disclaims any reliance upon any statements or representations made by Landlord, and (c) that the Personal Property is of a design, size, fitness and capacity acceptable to Tenant and that Tenant is satisfied that the same is suitable and fit for its use and purposes. Tenant is leasing the Personal Property "AS-IS" without warranty, express or implied, including but not limited to the fitness for any particular purpose, use, quality, design, condition, durability, suitability, merchantability or any other matter. Tenant specifically waives all right to make any claim against Landlord for breach of any warranty of any kind whatsoever. Tenant agrees that Landlord is not responsible to Tenant for any loss, damage, claim or expense of any kind or nature caused, directly or indirectly by the Personal Property, the use thereof, the failure of operation thereof, the repairs, services, or adjustments thereto or by any interruption of service or loss of business or damage whatsoever and howsoever caused, including, but not limited to, any personal injury related thereto or other third party claim, and also including any product liability claims. No defect or unfitness of the Personal Property shall relieve Tenant of the obligation to pay rent or of any of the other obligations under this lease.

3.5 Golf Carts. Tenant shall assume, pay or reimburse to Landlord, and will indemnify Landlord, for all lease payments and other amounts which become due under the existing golf cart lease after the Commencement Date and during the term of this Lease. Upon expiration of the existing golf cart lease, Tenant shall procure new or additional power-driven golf carts in sufficient numbers to reasonably meet the public demand. Upon expiration or termination of this Lease, Landlord will assume, pay or reimburse to Tenant and will indemnify Tenant, for all lease payments and other amounts which become due after such expiration or termination upon any then existing golf cart lease.

3.6 Advance Deposits. Upon the Commencement Date, Landlord shall deliver to Tenant a written accounting and description of all Advance Deposits. Tenant shall be entitled to a credit toward the purchase price of the Personal Property described on **Exhibit C**, in the full amount of any outstanding and unused Advance Deposits on the Commencement Date including the pro rata amount of outstanding annual passes. Landlord will include true, correct and complete copies of any written agreements or commitments pertaining to the Advance Deposits and Landlord represents and warrants to Tenant that Landlord's written account and description of Advance Deposits and copies of all agreements and commitments will be complete, true, and correct. Tenant agrees to honor all such Advance Deposits.

3.7 Resale Inventory. Upon the Commencement Date, Landlord shall sell and deliver to Tenant all undamaged Resale Inventory together with invoices showing Landlord's acquisition



cost thereof, and Tenant shall pay to Landlord an amount equal to 80% of Landlord's actual cost for such Resale Inventory delivered to Tenant.

**ARTICLE 4**  
**TERM; OPTIONS TO EXTEND**

4.1 Term of Lease. The initial Term of this Lease shall commence on the Commencement Date specified in the Basic Lease Information and shall end on the Expiration Date unless and as extended in accordance with Article 4.2 below.

4.2 Extension Options.

(a) Options; Exercise. Tenant shall have two (2) consecutive options to renew and extend the Term of this Lease, each for a period of five (5) years (each, a "Renewal Term") upon and subject to the following terms and conditions: Not later than 270 days before the last day of the then-expiring Term, Tenant shall give Landlord written notice exercising the option to extend the Lease, and within 90 days thereafter, Landlord shall notify Tenant in writing whether or not Landlord agrees to such extension. If Landlord does not agree to such extension, the Lease shall terminate at the end of its term without extension. Landlord shall not negotiate with any other prospective Tenant unless and until Landlord shall have notified Tenant following Tenant's notice of exercise, as provided herein, that Landlord does not agree to Tenant's extension

(b) Renewal Term. In the event Tenant elects and is entitled to exercise the first option to renew and extend the Lease Term, the period of the first Renewal Term shall be five (5) years. In the event Tenant elects and is entitled to exercise the second option to renew and extend the Lease Term, the period of the second Renewal Term shall be five (5) years. Each such renewal shall be an opportunity for either Party to identify potential improvements in the lease, designed to benefit any stakeholder, including either or both Parties, the golfing public, the environment, and the community as a whole, and to negotiate with the other Party to achieve mutual agreement, such agreement to be incorporated in a revised lease.

(c) Terms of Lease Renewal. In the event the Lease is renewed and extended as herein provided, all of the terms and conditions of this Lease shall remain in effect during the Renewal Term and shall continue to determine the rights and obligations of Landlord and Tenant.

**ARTICLE 5**  
**RENT**

5.1 Base Rent. Subject to the terms and conditions set forth herein, Tenant shall, beginning on the Commencement Date, pay to City during the Term of this Lease, the annual Base Rent specified in the Basic Lease Information (the "Base Rent"). The Base Rent shall be payable on or before the first day of each month in the amount of \$20,000.00 for the months of

October, November, December, January, February and March and \$30,000.00 for the months of April, May, June, July, August and September.

5.2 Adjustments to Base Rent. The Base Rent shall be adjusted as follows: on the 3<sup>rd</sup> anniversary of the Commencement Date and thereafter upon each subsequent anniversary of the Commencement date during the term of the Lease the annual Base Rent shall be increased by the sum of \$5,000.00.

5.3 Percentage Rent. In addition to the Base Rent, Tenant, commencing at the end of the each calendar year following the Commencement Date, shall pay Percentage Rent subject to the following terms and conditions:

(a) Payment. Commencing for the Percentage Rent Period beginning on the Commencement Date and ending on December 31<sup>st</sup> thereafter, and for each Percentage Rent Period thereafter during the Term, Tenant shall pay Percentage Rent in addition to Base Rent to the extent that Percentage Rent is greater than zero. Percentage Rent shall be equal to 65% of the amount, if any, by which Gross Golf Revenues during the Percentage Rent Period exceeds the Gross Golf Revenues Baseline. Tenant shall not be required to accrue or pay Percentage Rent for any period prior to the Commencement Date of the Lease. Tenant shall compute and pay to City, the Percentage Rent for each Percentage Rent Period on or before the forty fifth (45th) day following the close of each Percentage Rent Period. Percentage Rent shall be in addition to the Base Rent that Tenant has paid during the Percentage Rent Period.

(b) Reports. Tenant shall furnish to City a statement of Gross Revenues and Gross Golf Revenues within twenty (20) days after the end of each calendar quarter and an annual statement of Gross Revenues and Gross Golf Revenues within forty-five (45) days after the end of each Lease Year. Such statements shall be in a form acceptable to City. Each statement shall be signed and certified to be correct by a duly authorized officer of Tenant. In addition, each annual statement shall be reviewed by an independent certified public accountant, at Tenant's expense, reasonably acceptable to City. Tenant shall keep at the Premises or at Tenant's business office in Petaluma, California, complete and accurate books of account, records, cash receipts and other pertinent data, in accordance with good accounting practices and in a form approved by City, showing its Gross Golf Revenues and Gross Revenues, including without limitation, accurate records of every sale and other transaction made from the Premises and any Improvements. Such books of account, records, cash receipts and other pertinent data shall be kept for a period of ten (10) years after the end of each Lease Year. The receipt by City of any statement, or any payment of Percentage Rent for any period, shall not bind City as to the correctness of the statement or payment.

(c) Inspection and Audit. City shall be entitled at any time and from time to time during the Term and within three (3) years after the Expiration Date or other termination of this Lease, to inspect, examine, copy and audit Tenant's books, records and, cash receipts as related to Gross Golf Revenues and Gross Revenues. The purpose

of such examination is to enable City to ascertain, clearly and accurately, Tenant's Gross Golf Revenues and Gross Revenues and to verify that the form and method of Tenant's record keeping provide adequate and proper control and check of all such revenues. Tenant shall cooperate fully with City and City's Agents in making the examination. City shall also be entitled at City's option, once during each Lease Year and once after the Expiration Date or other termination of this Lease, to cause an independent audit of such records to be performed by a certified public accountant designated by City. The audit shall be conducted during usual business hours at the Premises. If the audit shows that there is a deficiency in the payment of any Percentage Rent, then Tenant shall immediately upon notice pay the deficiency to City, together with interest thereon at the Default Rate, which interest shall accrue from the date on which such deficient amount would have been due until such deficiency is paid. City shall pay the costs of the audit unless the audit shows that Tenant understated Gross Golf Revenues or Gross Revenues by more than two percent (2%), in which case Tenant shall pay all City's costs of the audit. Tenant's understatement of Gross Golf Revenues or Gross Revenues for any Lease Year by more than five percent (5%) due to Tenant's gross negligence or willful misconduct shall constitute an Event of Default

5.4 Late Charge. If Tenant fails to pay any Rent within fifteen (15) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to five percent (5%) of the unpaid amount in each instance. The late payment charge has been agreed upon by City and Tenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Tenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and Tenant shall promptly pay such Late Charge to City together with the unpaid Rent.

5.5 Default Interest. If any Rent is not paid within ten (10) days following the due date, such unpaid amount shall bear interest from the due date until paid at the Default Rate. However, interest shall not be payable on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant.

## **ARTICLE 6 TAXES, ASSESSMENTS AND OTHER EXPENDITURES**

### 6.1 Taxes and Assessments, Licenses, Permit Fees and Liens.

(a) Possessory Interest Tax. Tenant recognizes and agrees that this Lease may create a possessory interest subject to property taxation and Tenant shall be obligated to pay possessory interest property taxes. Tenant's obligation to pay possessory interest property taxes shall be limited to those assessed on the Premises as described herein, and Tenant will not be obligated to pay such taxes on or relating to the restaurant, food

and beverage facilities, or related equipment, improvements and appurtenances (the "F&B Possessory Interest"). Landlord will cooperate in attempting to have the F&B Possessory Interest separately assessed. Unless and until Landlord and Tenant are unable to have the F&B Possessory Interest separately assessed, then Landlord will cause the operator/tenant of the restaurant and food and beverage possessory interest to reimburse Tenant for the share of the possessory interest property taxes allocable to the F&B Possessory Interest and Landlord agrees to indemnify Tenant for such possessory interest taxes on the F&B Possessory Interest. In addition, Tenant shall pay any and all Tenant's personal property taxes, assessments, licenses, and permit fees levied on personal property. Tenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency, subject to Tenant's right to contest the validity of such charge pursuant to subsection (b) below.

(b) No Liens. Tenant shall not allow or suffer a lien for any taxes payable by Tenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without promptly discharging the same. Tenant may have a reasonable opportunity to contest the validity and or amount of any such taxes. Tenant shall Indemnify City, the other Indemnified Parties, and the Premises from and against any Losses arising out of any proceeding or contest provided for hereunder.

6.2 Other Expenditures. Tenant shall be responsible for any and all other costs and expenditures for garbage pickup, utilities, cable television, internet services or other services for its use, occupancy, operation or enjoyment of the Premises or any Improvements permitted thereon. Notwithstanding the foregoing:

(a) During the first three (3) years of the term of this Lease, Tenant shall pay up to \$600,000.00 per year for water supplied to the Premises up to 27,200,000 gallons per year. Landlord shall pay the cost of water supplied to the Premises up to 27,200,000 gallons per year to the extent such cost exceeds \$600,000.00. Tenant shall be solely responsible for the cost of all water used in excess of 27,200,000 gallons per year regardless of the cost per gallon. Notwithstanding the foregoing, to encourage Tenant to use the most efficient water conservation and management practices, to the extent Tenant consumes less than 27.2 million gallons of irrigation water in any year, the monetary savings from this reduced water consumption (effective water rate for the year times the number of gallons used which are less than 27.2 million gallons) shall be split 50/50 between City and Tenant.

(b) After the third anniversary of the Commencement Date, Tenant shall pay up to \$443,332.00 per year (which sum shall be increased by 2% upon each anniversary of the Commencement Date commencing on the fourth anniversary of the Commencement Date and yearly thereafter) for water supplied to the Premises up to 27,200,000 gallons per year. Landlord shall pay the cost of water supplied to the premises up to 27,200,000 gallons per year to the extent such cost exceeds \$443,332.00

(as such sum is increased as provided above). Tenant shall be solely responsible for the cost of all water used in excess of 27,200,000 gallons per year regardless of the cost per gallon. Notwithstanding the foregoing, to encourage Tenant to use the most efficient water conservation and management practices, to the extent Tenant consumes less than 27.2 million gallons of irrigation water in any year, the monetary savings from this reduced water consumption (effective water rate for the year times the number of gallons used which are less than 27.2 million gallons) shall be split 50/50 between City and Tenant.

6.3 Evidence of Payment of Taxes. Tenant shall, upon City's request, furnish to City within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to City, evidencing payment thereof.

## **ARTICLE 7 USE; COVENANTS TO PROTECT PREMISES AND CITY FACILITIES**

7.1 Tenant's Permitted Use. Tenant may use the Premises and any Improvements allowed hereunder only for the use specified in the Basic Lease Information, as more fully described in this Article 7, and for no other purpose.

7.2 Covenants Regarding Use. As a material inducement to City to enter into this Lease, Tenant covenants with City as follows:

(a) No Unlawful Uses or Nuisances. Tenant shall not use or occupy any of the Premises or any Improvements, or permit the use or occupancy thereof, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy or hazardous use or any use in violation of the conditions of any certificate of occupancy, or zoning code. Tenant shall take all precautions to eliminate immediately any nuisances or hazards relating to its activities, or activities of third parties, on or about the Premises or any Improvements permitted hereunder.

(b) Covenant Against Waste. Tenant shall not cause or permit any waste, damage or injury to the Premises.

(c) Covenant Against Dumping; Waste Disposal. Tenant shall not cause, or permit, or suffer the dumping or other disposal on, under or about the Premises or any Improvements of landfill, refuse, Hazardous Material or other materials that are unsightly, illegal, or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment.

(d) Golf Course Operation. Tenant shall operate the Golf Course and related facilities located on the Premises as a public golf course. Tenant shall operate the Golf Course and related facilities located on the Premises every day of the year at least from dawn to dusk, except in the event of emergency or inclement weather. Tenant shall at

all times operate the Premises and conduct all operation on the Premises in a good and businesslike manner and at least comparable to the standards of comparable golf courses. Tenant shall provide services customarily associated with the operation of a golf course and the related facilities located on the Premises, including, without limitation, the rental of golf-related equipment, provision of golf instruction, and sale of golf supplies, apparel and equipment, but specifically **excluding** food and beverage service. The quality and grade of service shall be equal to or greater than the quality and grade of service of the Comparable Courses as established from time-to-time pursuant to Article 7.2(h).

(e) Use by City for Non-Golf Events. Tenant shall make the Golf Course available for the use of the City, or as directed by City, for a non-cumulative maximum of 3 days per calendar year on the following conditions. For this purpose, a “day” shall mean a 24-hour period during which more than 50% of Golf Play is interrupted or displaced by reason of the City’s use of the Golf course. (i) City shall notify Tenant in writing not less than 60 days in advance of such use and may not schedule such any use during, or in conflict with, any other special event or tournament previously scheduled by Tenant. (ii) Tenant shall receive a rent credit equal to one half (50%) of the daily average gross income for that month multiplied by the number of event days. (iii) City shall pay all direct costs relating to each such use, including, but not limited to clean up, trash removal and disposal, and security services. (iv) City shall pay for any and all repair and/or replacement of any damage caused during such use, including damage caused by invitees.

(f) Inventory and FF&E. Without limiting any other provision contained in this Lease, Tenant shall, at its sole expense (except for allowable use of the Capital Improvement Fund), acquire and maintain throughout the Term sufficient furniture, fixtures, equipment, and inventory as are required to operate the Golf Course and related facilities located on the Premises as contemplated by this Lease.

(g) Golf Carts. Tenant shall provide, through purchase or lease at its sole cost and expense, a sufficient number of golf carts to meet the public demand therefor at the Premises. Tenant shall provide all maintenance, repair and service required by such golf carts, and shall replace them as reasonably required or appropriate. Tenant shall charge reasonable market fees for golf cart use.

(h) Golf Course Fees and Prices. The Golf Course and related facilities shall be open to the public at rates established by Tenant. Such rates shall be determined based on the economics of the Premises and the competitive market, and may include a temporary surcharge, if needed. Tenant may vary the rates by season, by time of day, and by any other appropriate factor. Tenant may also develop stay and play packages with local hoteliers. City and Tenant will meet and confer if a problem arises with any aspect of the rate structure, as determined by either Party.

(i) Golf Use Reserved to City. During times when the Golf Course is open to the public and Tenant is not conducting any special tournament or event, Tenant shall, upon proof of identity and affiliation reasonably acceptable to Tenant, provide complimentary no-charge golf rounds (limited to one 18-hole round per month per eligible person on a non-cumulative and non-transferable basis) to:

- (1) active Coast Guard members; and
- (2) current City employees or retired City employees whose names are on a written list provided from time to time by the City.

In addition, former Mayor Morris Fisher shall have the right to play the Golf Course pursuant to the Stipulation and Judgment between him and the City, dated January 18, 2008.

Users of complimentary golf rounds will be subject to all rules, policies, restrictions, regulations, and other limitations applicable to all users and may be denied use for failure to abide by such rules, policies, restrictions, regulation, and limitations.

## **ARTICLE 8 CAPITAL INVESTMENT; IMPROVEMENTS**

8.1 Tenant's Capital Investment. Tenant shall contribute the sum of \$100,000 to the Capital Improvement Fund to be established pursuant to Article 8.3 below. Tenant will perform an inspection of the Golf Course irrigation system within sixty (60) days of the Commencement Date to determine, in its reasonable judgment, whether any of the \$100,000 initial contribution should be used to repair or upgrade the system. In addition, Tenant agrees to pay directly, the cost of completing the dune restoration project on the Golf Course as generally described in the 2012 Annual Dune Restoration and Monitoring Report dated November 19, 2012 prepared by Rana Creek Habitat Restoration, up to the maximum sum of \$75,000. These sums shall be in addition to the periodic contributions made by Tenant and City as provided in Article 8.3 below. Except for Tenant's obligation to contribute to the Capital Improvement Fund and to contribute to the cost of completing the dune restoration project as described above, Tenant shall not be obligated to expend moneys for improvements, additions or upgrades to the Premises and all such improvements, additions and upgrades shall be funded solely from the Capital Improvement Fund.

8.2 Construction of Improvements. Except as otherwise expressly provided in this Lease, Tenant shall not construct or install any Improvements nor make or permit any Alterations in, to or about the Premises or any Improvements, without City's prior written consent in each instance, which City shall not unreasonably withhold or delay; provided, however, such requirement to obtain the City's prior written consent shall not apply to any work that costs \$25,000 or less. Subject to City's consent as provided above, any permitted Improvements or Alterations shall be done at Tenant's sole expense (i) in strict accordance with plans and specifications approved in advance by City in writing, (ii) by Tenant or duly licensed contractors, (iii) in a good and professional manner, and (iv) in strict compliance with all Laws,

including but not limited to, the City's Building Code. Tenant acknowledges that the City's role as landlord hereunder is separate and distinct from its role as the issuer of building permits, grading permits, etc., and that the terms and conditions of this Lease pertain to the review and reasonable approval by City of plans for Improvements and construction in its capacity as landlord hereunder.

### 8.3 Capital Improvement Program.

(a) On the Commencement Date Tenant shall, on behalf of City, establish and maintain a separate, interest-bearing trust account (the "Capital Improvement Fund") for the funding of capital acquisitions and improvements to the Premises. Commencing on and after July 1, 2014, Tenant and City shall, each quarter, on or before the twentieth day following each date upon which Tenant furnishes to City the statement of Gross Revenues as required by Article 5.3(b), each separately deposit into the Capital Improvement Fund an amount equal to one percent (1%) of the Gross Revenues from the preceding calendar quarter (combined contribution will equal 2% of Gross Revenues). Commencing on April 1, 2016 and thereafter, the contributions of Tenant and City to the Capital Improvement Fund shall each increase to one and one-half percent (1.5%) of the Gross Revenues from the preceding calendar quarter (combined contribution will equal 3% of Gross Revenues).

(b) All such funds are to be held by Tenant in trust for the benefit of the City's interest in the Premises, including its reversionary interest in the Premises upon the expiration or earlier termination of this Lease. Interest earned on funds held in such account shall become part of the Capital Improvement Fund and all amounts remaining in the Capital Improvement Fund at the end of the Term or any earlier termination of this Lease shall be remitted to City. City and Tenant will develop written procedures for approval and release of funds from the Capital Improvement Fund, including the accounting and auditing procedures with respect thereto.

(c) Funds held in the Capital Improvement Fund shall be used exclusively for additional capital items or the repair and replacement of capital items which are needed to repair or replace, over time, capital items which are subject to wearing out after a useful life and which are included in, located on or used in connection with the Premises, and which if not replaced or repaired, could adversely affect the City's interest in the Premises, including Gross Revenues and its reversionary interest upon the expiration or earlier termination of this Lease, and for the reimbursement of funds advanced for such purposes by Tenant in accordance with Article 8.3(e) below. Funds held in the Capital Improvement Fund may be expended only in accordance with a Capital Improvement Plan approved by City in accordance with Article 8.3(c).

(d) Not later than the first June 30 following the creation of the Capital Improvement Fund and thereafter on April 1st of every second year of the Term thereafter, Tenant shall submit to City a biannual plan for the use of the Capital Improvement Fund moneys in the subsequent two Lease Years (each, a "Capital



Improvement Plan”). Each Capital Improvement Plan shall include the description of each proposed expenditure of Capital Improvement Fund monies, the purpose for each expenditure, and the proposed timeframe for such expenditure. City shall review each Capital Improvement Plan and shall not unreasonably withhold its consent thereto. The failure of City to respond within forty-five (45) days of delivery of any proposed Capital Improvement Plan shall be deemed to be the consent of City to such plan.

(e) Notwithstanding the provisions hereof, Tenant shall be entitled to be reimbursed (with interest at the prime rate) from the Capital Improvements Fund for any expenditure incurred by Tenant prior to the accumulation of funds for such expenditures in the Capital Improvement Fund if, and to the extent, such expenditures otherwise meet the requirements of Article 8.3(c) and would have been appropriate to be approved (including the approval of the City as provided in subparagraph (c) above) for inclusion in the Capital Improvement Plan if there had been sufficient funds in the Capital Improvement Fund at the time such expenditures were made.

**8.4 Disruption of Play due to Capital Projects.** Certain City projects, including but not limited to street improvements, undergrounding of utilities, and construction of the City’s Local Water Project, may impact access to the Premises or portions of the Premises. The City will ensure that City staff and contractors coordinate with Tenant to minimize any negative impacts of these projects, to the extent reasonable.

**ARTICLE 9  
REPAIRS AND MAINTENANCE**

9.1 Tenant’s Responsibility for Maintenance and Repair. City shall not be obligated to perform any repairs, changes or alterations to the Premises or Improvements, nor shall City be liable for the cost thereof. Tenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises and any permitted Improvements or Alterations, from and after the Commencement Date; provided, however, this obligation shall not include the assumption of any liability or responsibility by Tenant for the presence of any Hazardous Materials or underground tanks or the failure of the Premises to comply with any Environmental Laws, in each case as of the Commencement Date. In addition, if any portion of the Premises or any of City’s property located on or about the Premises is damaged by any of the activities conducted by Tenant or its Agents or Invitees hereunder, Tenant shall repair any and all such damage and restore the Premises or City’s property to its previous condition.

9.2 Utilities; Roads. City shall be responsible for maintaining and repairing access roads and sewer and water facilities providing sewer and water service to the Premises, except for access roads that are located on the Land and sewer and water facilities that solely or primarily benefit the golf course.

9.3 Maintenance Standards. Tenant shall perform the Maintenance of the greens, tees, fairways, rough, cart paths and other turf areas comprising the Golf Course in accordance with the standards for Maintenance described on **Exhibit B**.

**ARTICLE 10  
LIENS**

Tenant shall keep the Premises and all of City’s property free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. In the event Tenant does not, within five (5) days following the recordation of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have in addition to all other remedies provided herein and by Law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenditures it incurs in connection therewith (including, without limitation, reasonable attorneys’ fees) shall be payable to City by Tenant upon demand. City shall have the right at all times to post and keep posted on the Premises any notices permitted or required by Law or that City deems proper for its protection and protection of the Premises and City’s property, from mechanics’ and materialmen’s liens. Tenant shall give City at least fifteen (15) days’ prior written notice of the commencement of any repair or construction on any of the Premises. Notwithstanding the foregoing, Tenant shall have the right, upon posting of an adequate bond or other security acceptable to the City Manager, to contest any such lien, and in such case City shall not seek to satisfy or discharge such lien unless Tenant has failed to do so within ten (10) days after final determination of the validity thereof. Tenant shall Indemnify City, the other Indemnified Parties and the Premises against any and all Losses arising out of any such contest.

**ARTICLE 11  
COMPLIANCE WITH LAWS**

11.1 Compliance with Laws. Tenant shall promptly, at its sole expense, maintain the Premises and Tenant’s use and operations thereon in compliance with all Laws, including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. and Title 24 of the California Code of Regulations, and all Environmental Laws with respect to Hazardous Materials first released on the Premises during the Term.

11.2 Regulatory Approvals. Tenant understands and agrees that Tenant’s use and operation of the Premises and construction of the Improvements and Alterations permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any and all such regulatory approvals and City shall use its best efforts to cooperate with Tenant and expedite the processing of such regulatory approvals.

**ARTICLE 12**  
**FINANCING; ENCUMBRANCES; SUBORDINATION**

12.1 Encumbrance of Landlord's Fee Interest. The following provisions shall apply notwithstanding anything to the contrary contained in this Lease.

(a) Encumbrance by City. To the extent permitted by applicable Law, City may at any time sell or otherwise transfer or encumber its fee estate in any portion of the Premises provided that (i) any such sale or Encumbrance shall be subject and subordinate to all of the terms of this Lease and the leasehold estate created hereby, (ii) the right of possession of Tenant to the Premises shall not be affected or disturbed by any such sale or Encumbrance, or by the exercise of any rights or remedies by any purchaser or Encumbrancer arising out of any instrument reflecting such sale or Encumbrance.

(b) Encumbrance By Tenant. Tenant shall not under any circumstances whatsoever Encumber in any manner the Landlord's interest in the Premises, the City Facilities, City's estate in the Premises or any adjoining property, City's interest under this Lease, or any portion thereof.

**ARTICLE 13**  
**DAMAGE, DESTRUCTION OR ROAD CLOSURE**

13.1 Insured Damage or Destruction to the Premises or Improvements. In the case of insured damage to or destruction of the Premises or Improvements by fire or any other casualty, Tenant shall, with reasonable promptness and diligence and as soon as reasonably possible, restore, repair, replace or rebuild the Premises as nearly as possible to the same condition, quality and class the Premises and Improvements were in immediately before such damage or destruction.

13.2 Uninsured or Underinsured Damage or Destruction. In the case of uninsured damage to or destruction of the Premises or Improvements by fire or any other casualty, or in the event available insurance proceeds are not sufficient to effect such repair, Tenant shall contribute the shortage in proceeds up to a maximum of \$2,000,000. If the insurance proceeds together with Tenant's contribution as provided herein are not sufficient to effect such repair, Tenant may elect by written notice to Landlord within 10 days after such determination to: (i) contribute the shortage in proceeds necessary to make such restoration and repair, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. In either case, Tenant shall contribute any available insurance proceeds, along with the aforementioned maximum contribution, to the repair or reconstruction of the Premises. In the event Tenant elects to terminate this Lease under this provision, Landlord shall have the right within 30 days after receipt of the termination notice from Tenant to give written notice to Tenant of Landlord's commitment to pay for the repair of such damage without reimbursement from Tenant. In such event this Lease shall continue in full force and effect, and Tenant shall proceed to make such repairs at Landlord's expense as soon as reasonably

possible. If Landlord does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

13.3 Abatement in Rent. The Base Rent (but not Percentage Rent) payable hereunder during the period from the date of the casualty until completion of the restoration, repairs, replacement or rebuilding shall be abated and Tenant shall be entitled to abatement of Base Rent in the event of, and for so long as, damage to or closure of Asilomar Avenue materially interferes with access to the Premises by Tenant's customers for two (2) or more consecutive days; provided, however, any such abatement in rent shall be limited to the extent to which Tenant does not receive proceeds from business interruption insurance in respect of the occurrence that would otherwise entitle Tenant to abatement of rent.

13.4 Waiver. The Parties understand and agree that the foregoing provisions of this Article are intended to govern fully the rights and obligations of the Parties in the event of any damage or destruction of the Premises or Improvements, and City and Tenant each hereby waives and releases any right to terminate this Lease in whole or in part under sections 1932 subdivision 2 and 1933 subdivision 4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

#### **ARTICLE 14 EMINENT DOMAIN**

14.1 General. If during the Term, any Taking of all or any part of the Premises or any interest in this Lease occurs, the rights and obligations of the Parties hereunder, and, to the extent applicable, Tenant's Encumbrancer, shall be determined pursuant to this Article. City and Tenant intend that the provisions hereof govern fully in the event of a Taking and accordingly, the Parties each hereby waives any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar Law now or hereafter in effect.

14.2 Total Taking; Automatic Termination. If a Total Taking of the Premises occurs, then this Lease shall terminate as of the Date of Taking. For purposes of this Article 14 a "Total Taking" shall occur when the whole of the Premises shall be permanently taken by exercise of the right of eminent domain or if so much of the area of the Golf Course is taken that it is not reasonably feasible to operate a golf course in the Premises, or at Tenant's election, where the fair market value of the Premises as golf courses as a consequence of the Taking is seventy-five percent (75%) or less after the Taking then before the Taking. In the event of a Total Taking, Tenant shall continue to pay Rent hereunder and observe all of the terms and conditions of this Lease until the Date of Taking, but not thereafter, provided that Tenant and City shall remain subject to those provisions of this Lease which expressly survive the termination of this Lease.

14.3 Partial Taking. In case of a condemnation of a portion of the Premises that is not a Total Taking (a "Partial Taking"), this Lease shall remain in full force and effect as to the portion of the Premises remaining immediately after such taking, without any abatement or reduction of Rent (other than Base Rent, as set forth below) or any other sum payable hereunder, and,

Tenant shall promptly repair, reconstruct and restore the Premises so as to render the same as nearly as possible a complete and satisfactory architectural unit of the same type and class immediately preceding such Partial Taking. In the event of a Partial Taking, Tenant and any Tenant's Encumbrancer shall be entitled to participate in such condemnation proceedings if, and to the extent, Tenant and/or Tenant's Encumbrancer is entitled to any award or compensation as provided herein.

Effective as of the date of any such Partial Taking, the Base Rent payable by Tenant during the remainder of the term of this Lease shall be reduced in proportion to the reduction in the fair market value of the Premises as a golf course as a consequence of such Partial Taking, provided however, that in no event shall the monthly Base Rent be reduced to less than seventy-five percent (75%) of the monthly Base Rent immediately prior to the Date of Taking. Any Base Rent becoming due and payable hereunder between the date of any such Partial Taking and the date of final determination of the amount of the Base Rent reduction, if any, to be made in respect thereof, shall, subject to correction upon such final determination, be temporarily adjusted so that Tenant shall pay, in the interim, as Base Rent, a sum of money equal to such portion of the then current Base Rent as shall be reasonably estimated by Landlord in accordance with the foregoing proportion formula; provided, however, that after such final determination Landlord, within fifteen (15) days after Tenant's request, shall pay to Tenant an amount equal to the amount by which any Base Rent theretofore paid by Tenant for such interim period shall exceed the amount of the Base Rent for such period as so finally determined; provided further, that in the event such final determination shall disclose that the Base Rent paid during such interim period was at a rate less than that finally determined, Tenant covenants and agrees to pay the deficiency as Rent within fifteen (15) days after Landlord's request therefor.

14.4 Collection and Distribution of Condemnation Awards. If this Lease shall terminate pursuant to the provisions of Article 14.2 or if there is a Partial Taking as described in Article 14.3, the total award in the condemnation proceedings for the taking shall be apportioned and paid, to the extent available, in the following order of priority:

(a) Tenant shall be entitled to its expenditures and charges, including, without limitation, reasonable attorneys' fees incurred in connection with the prosecution of its claims with the condemning authority;

(b) If the taking is a Partial Taking, from the remaining portion of the award Tenant shall be paid (1) the cost of restoring the affected portion of the Premises, provided Tenant actually so restores the Premises and (2) any additional amounts attributable to Tenant's use or occupancy of the Premises;

(c) From the remaining portion of the award, Landlord shall be entitled to an amount equal to the value, on the date of the taking, of its reversionary interest in the whole or the affected portion of the Premises taken;

(d) From the remaining portion of the award, Tenant's Encumbrancer shall be paid the amount of any indebtedness then owed by Tenant to Tenant's Encumbrancer up to the value of the Tenant Improvements or portion thereof taken and not restored, valued as of the date of the taking, less the value of the Landlord's reversionary interest in the Tenant Improvements;

(e) From the remaining portion of the award (i) Landlord shall be paid the value of its reversionary interest in improvements made by Tenant pursuant to Article 8 ("Tenant Improvements") on the Premises or that portion thereof taken and not restored, such reversionary interest being determined on the basis of the unexpired Term and (ii) Tenant shall be entitled to an amount equal to the value, on the date of the taking, of its remaining interest in the leasehold of the Premises, such remaining interest being determined on the basis of the unexpired Term, provided, however, if there is not sufficient funds available to pay all of the amounts provided for in this subparagraph (e), Landlord and Tenant shall share the amounts pro rata based upon the amounts they would have been entitled to under clauses (i) and (ii) if sufficient funds were available.

Tenant shall also be entitled to apply for a separate award made with respect to a taking of its personal property and/or to compensate Tenant for Tenant's loss of good will and its removal or relocation costs, so long as such award does not otherwise reduce Landlord's award.

14.5 Temporary Taking. If the temporary use of the whole or any part of the Premises shall be taken by any lawful power or authority by the exercise of the right of condemnation or eminent domain, or by agreement between Tenant and those authorized to exercise such right, Tenant shall promptly so notify Landlord, the Term shall not be reduced or affected in any way, Tenant shall continue to pay in full the Rent and other charges herein reserved, without reduction or abatement, and, except to the extent that Tenant is prevented from so doing by reason of any order of the condemning authority, shall continue to perform and observe all of the other covenants, conditions and agreements of this Lease to be performed or observed by Tenant as though such taking had not occurred; and Tenant shall be entitled to receive for itself any and all awards or payments attributable to Tenant's use or occupancy of the Premises during the Term; provided, however, that if possession of the whole or any such part of the Premises as shall have been taken for such temporary use shall revert to Tenant prior to the expiration or earlier termination of the Term, Tenant promptly shall, at Tenant's sole cost and expense, repair any damage to the Premises, or any part thereof; resulting from such taking and shall restore the Tenant Improvements as nearly as may be reasonably possible to the condition existing prior to the taking. The proceeds of any award or payment, up to the total rent owing by Tenant for the period of the Taking, shall be made available for such restoration and shall be paid to Tenant for such purposes. City shall be entitled to receive the balance of any award.

14.6 Award of Subtenants. Any provision in this Article 14 to the contrary notwithstanding, in the event any subtenant, licensee or concessionaire of Tenant or anyone hold under Tenant shall become entitled to any portion of the award or awards in any condemnation proceedings or by the exercise of any right to eminent domain as provided in this Lease, such award or the aggregate thereof, together with any additional sums to which any such Person, its legal representatives, successors or assigns shall become entitled in connection therewith, shall be deducted entirely from the share of Tenant in each and every instance, and Landlord's share not in any way or in any instance be affected or decreased thereby.

14.7 Participation in Eminent Domain Process. Landlord shall not prevent Tenant from participating in any eminent domain proceeding to the extent participation is provided for or otherwise available under applicable law and is consistent with the terms and conditions of this Article 14.

14.8 Eminent Domain Proceeds Initiated by City. The provisions of this Article 14 shall not apply to any eminent domain proceeding initiated in respect of Tenant's interest in the Premises of the City. Any such eminent domain proceedings initiated by the City shall be treated as a breach of the Lease by the City.

14.9 Reversion to United States of America. If, during the Term, the United States of America or any official agency thereof exercises any right of reversion or any right reserved in the "Quitclaim Deed" dated September 17, 1951 or the "Quitclaim Deed" dated August 23, 2006, each recorded in the official records of Monterey County, which exercise materially interferes with the ability of Tenant to efficiently and economically operate the Golf Course on the Premises or any portion thereof, Tenant shall have the right in its sole election to terminate this Lease upon not less than 60 days written notice to Landlord subject to the transition provisions set forth in Section 24.13 hereof.

## **ARTICLE 15 ASSIGNMENT AND SUBLETTING**

15.1 Assignment. Subject to Article 12.1 relating to Leasehold Encumbrances, Tenant may assign its interest in this Lease, sublet any portion of the Premises (each, and "Assignment"), only with Landlord's written consent, which shall not be unreasonably withheld. For purposes of this provision, the term "Assignment" shall include the transfer of any interest in the ownership of Tenant which results in a change of control of Tenant to any person other than, Tom Isaak or John Telischak or Michael Sharp. In the event of the death or disability of both Tom Isaak and John Telischak, and continued major ownership and active management by Michael Sharp, no assignment shall be deemed to occur if the Lease is thereupon assigned to CourseCo Inc. or a wholly owned subsidiary of CourseCo Inc. Tenant agrees that it shall not be unreasonable for Landlord to condition its approval, among other things, upon the proposed assignee or subtenant having a financial net worth, according to a current financial statement prepared by a certified public accountant, which is reasonably acceptable to Landlord, upon the proposed assignee having a reputation for, and qualifications and at least five (5) years'

experience in, operating and maintaining golf course properties comparable to the Premises, and upon the proposed assignee having a first-class business reputation. Tenant shall promptly provide Landlord with any information reasonably requested by Landlord relating to the identity of any proposed assignee, the nature of such assignee's business and the proposed assignee's financial responsibility.

15.2 Notice of Proposed Transfer. If Tenant desires to enter into an assignment or a sublease, then it shall give not less than 30 days written notice (a "Notice of Proposed Transfer") to City of its intention to do so. The Notice of Proposed Transfer shall identify the Transferee and state the terms and conditions under which Tenant is willing to enter into such proposed Assignment or Sublease, including a copy of the proposed assignment or sublease agreement. Tenant shall provide City with financial statements for the proposed Transferee and such additional information regarding the proposed Transfer as City may reasonably request. In connection with any assignment, to be effective, the assignee shall be obligated to assume all of the obligations of Tenant hereunder accruing from and after the effective date of such assignment.

## **ARTICLE 16 DEFAULT; REMEDIES**

16.1 Events of Default. Any of the following shall constitute an event of default ("Event of Default") by Tenant hereunder:

(a) Rent. Any failure to pay any Rent or other sums as and when due, provided Tenant shall have a period of three (3) business days from the date of written notice of such failure from City within which to cure any default in the payment of Rent or other sums.

(b) Covenants, Conditions and Representations. Any failure to perform or comply with any other covenant, condition or representation made under this Lease (including Tenant's obligation to make the deposits into the Capital Improvement Fund pursuant to Article 8.3 and perform the Maintenance pursuant to Article 9.3, provided Tenant shall have a period of thirty (30) days from the date of written notice of such failure from City (or if such matter was the subject of any court proceeding, then following final resolution of such proceeding) within which to cure such default under this Lease, or, if such default is not capable of cure within such 30-day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such 30-day period and thereafter diligently prosecutes the same to completion and Tenant uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from City;

(c) Vacation or Abandonment. Any vacation or abandonment of the Premises for more than fourteen (14) consecutive days; and



(d) Bankruptcy. The appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days.

16.2 Remedies. Upon the occurrence of an Event of Default by Tenant, City shall have the following rights and remedies in addition to all other rights and remedies available to City at Law or in equity:

(a) Terminate Lease and Recover Damages. The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Tenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Base Rent and Additional Charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. City's efforts to mitigate the damages caused by Tenant's breach of this Lease shall not waive City's rights to recover damages upon termination.

(b) Continue Lease and Enforce Rights. The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as City does not terminate Tenant's right to possession, if Tenant has the right to sublet or assign, subject only to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of Tenant's right of possession: acts of maintenance or preservation; efforts to relet the Premises or the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment or Sublease, or terminating an Assignment or Sublease, if the withholding or termination does not violate the rights of Tenant specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Tenant shall be immediately liable for payment to City of, in addition to Base Rent and Additional Charges due hereunder, the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Base Rent and Additional Charges owing hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount to be paid as Base Rent and Additional Charges for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this subsection shall be deemed a waiver of any default by Tenant and,

notwithstanding any such subletting without termination, City may at any time thereafter elect to terminate this Lease for such previous default.

(c) Self Help. After final adjudication of Tenant's default in respect of any obligation hereunder, City may (but shall not be obligated to) perform the obligation that Tenant failed to perform in respect of such adjudication and charge Tenant for the reasonable cost and expenditures, including attorneys' fees, incurred by City in connection therewith.

## **ARTICLE 17 WAIVER OF CLAIMS; INDEMNIFICATION**

17.1 Waiver of Claims. Tenant covenants and agrees that City shall not be responsible for or liable to Tenant for, and, to the fullest extent allowed by law, Tenant hereby waives all rights against City and releases City from, any and all losses, including, but not limited to incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises from any cause whatsoever except for (i) a breach of this Lease by City, (ii) the negligence or willful misconduct of City or its employees, Agents or contractors, or (iii) the presence of any Hazardous Materials or underground tanks or the failure of the Premises to comply with any Environmental Laws, in each case in respect of this clause (iii) as of the Commencement Date (collectively "Exceptions").

17.2 Tenant's Indemnity. Tenant shall indemnify, defend with counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Tenant's performance of work hereunder or its failure to comply with any of its obligations contained herein, and including, without limitation, any and all claims for injuries or damages to persons and/or property incurred in connection with or arising directly or indirectly, whole or in part, out of (a) the use of the Premises; (b) a condition of the Premises arising after the Commencement Date; (c) any construction or other work undertaken by Tenant; (d) any acts, omissions or negligence of Tenant, its Agents or Invitees; (e) any accident, injury to or death of a person, including Agents and Invitees of Tenant. except for the Exceptions described in Article 17.1 above. Should conflict of interest principles preclude a single lawyer from representing both City and Tenant, or should City otherwise find Tenant's legal counsel unacceptable, then Tenant shall reimburse the City its costs of defense, including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The Tenant shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Lease.

## **ARTICLE 18 INSURANCE**

18.1 Tenant's Insurance. Tenant shall procure and maintain throughout the Term of this Lease and pay the cost thereof, insurance in the following amounts and coverages:

(a) Property insurance, on an all-risk form, excluding earthquake and flood, for 100% of the full insurable value of the Premises and the permitted Improvements, with any deductible not to exceed \$10,000 each occurrence. Such insurance shall be in Tenant's name and City shall be named as additionally insured, as their respective interests may appear. With respect to the City's interests, such insurance shall include rental interruption coverage in an amount equal to twelve months Base Rent. "Full insurable value" shall mean the actual replacement cost of the Improvements and the existing improvements which are included in the Premises (excluding foundation and excavation costs but without deduction for physical depreciation).

(b) Boiler and Machinery insurance, comprehensive form, covering damage to pressure vessels, heating and air conditioning systems, electrical apparatus and similar property in an amount not less than One Million Dollars (\$1,000,000) each occurrence, including Tenant and City as named insureds as their respective interests may appear, with any deductible not to exceed \$10,000 each accident. Effective April 1, 2024, insurance coverage under this provision shall increase to an amount not less than Two Million Dollars (\$2,000,000) each occurrence.

(c) Comprehensive or commercial general liability insurance with limits not less than Five Million Dollars (\$5,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Broad form Property Damage, Independent Contractors, Liquor Liability, Personal Injury, Products and Completed Operations. Effective April 1, 2024, insurance coverage under this provision shall increase to an amount not less than Ten Million Dollars (\$10,000,000) each occurrence.

(d) Comprehensive Builder's Risk insurance, on an all-risk form, excluding earthquake and flood, for 100% of the completed value of any Improvements, Alterations or other new construction, including materials in transit and storage off-site, in the event that such construction is beyond the scope of coverage in the property policy for remodeling or renovation. Such policy shall include as named insureds Tenant, City, any contractor in connection with such construction and subcontractors of all tiers, with any deductible not to exceed \$10,000 each occurrence.

(e) Worker's compensation insurance with coverage in compliance with State statutory limits.

(f) Comprehensive or Business Automobile Liability Insurance Code 1 (any auto) with limits not less than Two Million Dollars (\$2,000,000) each occurrence Combined

Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

18.2 General Requirements. All insurance provided for under this Lease shall be affected under valid enforceable policies issued by insurers of recognized responsibility (with an A.M. Best Rating of A.VII or higher, or its equivalent) and reasonably approved by the City Manager.

(a) Should any of the required insurance be provided under a claims-made form, Tenant shall maintain such coverage continuously throughout the Term of this Lease and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claim investigation or legal defense costs are included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(c) All General Liability and Automobile Liability Insurance policies shall be endorsed to provide the following:

(i) Name Tenant as the insured and the City, its officers, Agents and employees (and unpaid City volunteers), as Additional Insured, as their respective interests may appear hereunder.

(ii) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act, or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(d) All policies shall be endorsed to provide thirty (30) days' advance written notice by certified mail to City of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for City set forth in the Basic Lease Information.

18.3 Proof of Insurance. Tenant shall deliver to City certificates of insurance and endorsements in form and with insurers satisfactory to City, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates and

endorsements or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates, the City Manager may, at its option, procure the same for the account of Tenant, and the cost thereof shall be paid to City within five (5) days after delivery to Tenant of bills therefor.

18.4 Review of Insurance Requirements. Tenant and City shall periodically review the limits and types of insurance carried pursuant to this Article. If the general commercial practice in the City is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Tenant with respect to risks comparable to those associated with the Premises, then, at the City Manager's option, Tenant shall increase at its sole cost the amounts or coverages carried by Tenant to conform to such general commercial practice.

18.5 No Limitation on Indemnities. Neither Tenant's compliance with the provisions of this Article, nor any approval by City of Tenant's insurance coverage, shall in any way relieve or decrease Tenant's indemnification obligations under Articles 17.2 above and 22.2 below, or any of Tenant's other obligations or liabilities under this Lease.

18.6 Lapse of Insurance. Notwithstanding anything to the contrary in this Lease, this Lease shall terminate immediately, at the City Manager's election, made in his or her sole and absolute discretion by delivery of written notice to Tenant, upon the lapse of any required insurance coverage, unless Tenant reinstates the required insurance coverage within thirty (30) days of such lapse and no event shall have occurred which gives rise to any Claim.

18.7 Tenant's Personal Property. Tenant shall be responsible, at its expense, for separately insuring its personal property.

18.8 City's Self Insurance. Tenant acknowledges that City self-insures against casualty, property damage and public liability risks and agrees City shall not be required to carry any third party insurance with respect to the Premises or otherwise.

18.9 Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, City and Tenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises or other City property and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, other City property or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises or other City property carried by Tenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Tenant shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against City or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

**ARTICLE 19  
ACCESS BY CITY**

19.1 Access to Premises by City.

(a) General and Emergency Access. City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all reasonable times for any of the following purposes:

(i) To determine whether the Premises are in good condition and to inspect the Premises (including, without limitation, soil borings or other Hazardous Material Investigations);

(ii) To determine whether Tenant is in compliance with its obligations hereunder and to cure or attempt to cure any such default in accordance with the provisions of Article 16.1 hereof;

(iii) To serve, post or keep posted any notices required or allowed under any of the provisions of this Lease;

(iv) To do any maintenance or repairs to the Premises that City has the right or the obligation, if any, to perform hereunder; and

(v) To show it to any prospective purchasers, brokers, Encumbrancers or public officials, or, during the last year of the Term of this Lease, exhibiting the Premises to prospective tenants, bidders, proposers, operators or other occupants, and to post any "for sale" or "for lease" signs in connection therewith.

(b) Minimize Disruption. City shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Article in a manner that, to the extent practicable, will minimize any disruption to Tenant's use hereunder.

**ARTICLE 20  
ESTOPPEL CERTIFICATES**

Either Party hereto shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other Party, execute, acknowledge and deliver to the other Party, or such persons or entities designated by such other Party, a statement in writing certifying: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), (d) the dates, if any, to which the Rent has been paid, and (e) any other information that may be reasonably required by any such persons or entities. Any such certificate delivered pursuant to the provisions hereof may be relied upon by

the other Party or any prospective purchaser or Encumbrancer of its estate. The City Manager shall be authorized to execute, acknowledge and deliver any such certificate on behalf of City.

## **ARTICLE 21 SURRENDER OF THE PREMISES**

Upon the Expiration Date or any earlier termination of this Lease pursuant hereto, Tenant shall surrender to City the Premises, in as good condition as it was on the Commencement Date (subject to ordinary wear and tear), order and repair, free from debris and hazards, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Tenant. On or before the Expiration Date or any earlier termination hereof, Tenant shall, at its sole cost, remove any and all of Tenant's personal property from the Premises. In addition, Tenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Improvements or Alterations which are removed. In connection therewith, Tenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Tenant's obligations under this Article shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's personal property remaining on or about the Premises after the Expiration Date of this Lease may, at City's option, be deemed abandoned and in such case City may dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law.

## **ARTICLE 22 HAZARDOUS MATERIALS**

22.1 No Hazardous Materials. Tenant covenants and agrees that neither Tenant nor any of its Agents shall cause any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or any Improvements or transported to or from the Premises or any Improvements, provided that Tenant may store and use such substances in the Premises and any Improvements in such limited amounts as are customarily used for general office purposes (such as copy toner and supplies) or for maintenance, equipment and supplies for power golf carts, so long as such storage and use is at all times in full compliance with all applicable Environmental Laws and further provided Tenant may use and store quantities of pesticides and herbicides customarily used in connection with the operation and maintenance of golf courses. Tenant shall immediately notify City if and when Tenant learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises or any Improvements. City may from time to time request Tenant to provide adequate information for City to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and Tenant shall promptly provide all such information. City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Tenant (except in the event of an emergency).

22.2 Tenant’s Environmental Indemnity. If Tenant breaches any of its obligations contained in Article 22.1 above, and such breach results in any Release of Hazardous Material in, on, under or about the Premises, without limiting Tenant’s general Indemnity contained in Article 17.2 above, Tenant, on behalf of itself and its successors and assigns, shall Indemnify City and the Indemnified Parties, and each of them, from and against all Hazardous Materials Claims arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or any other City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other City property.

22.3 Landlord’s Environmental Indemnity. Landlord agrees to indemnify and hold harmless Tenant from and against any and all and losses, liabilities and claims arising out of the presence, use, generation, storage, release, or disposal of Hazardous Materials occurring prior to the Commencement Date or by Landlord, its agents or contractors whether before or after the Commencement Date. In no event shall Tenant be liable or responsible for any Hazardous Materials existing at the Premises prior to the Commencement Date.

**ARTICLE 23  
SECURITY DEPOSIT**

Upon execution of this Lease Tenant shall deposit with City the sum specified for the security deposit in the Basic Lease Information as security for the faithful performance of all terms, covenants and conditions of this Lease. Should City use any portion of the Security Deposit to cure any Event of Default by Tenant hereunder, Tenant shall immediately replenish the Security Deposit to the original amount, and Tenant’s failure to do so within ten (10) days of City’s notice shall constitute a material Event of Default under this Lease. City’s obligations with respect to the Security Deposit are solely that of debtor and not trustee. City shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to any interest on such Security Deposit. The amount of the security deposit shall not be deemed to limit Tenant’s liability for the performance of any of its obligations under this Lease. If Tenant is not in default at the expiration or termination of this Lease, Landlord shall return the Security Deposit to Tenant.

**ARTICLE 24  
GENERAL PROVISIONS**

24.1 Notices; Reasonable Approvals.

(a) Except as otherwise expressly provided in this Lease, any notice given hereunder shall be effective only if in writing and given by delivering the notice in person, or by sending it first-class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant (i) at Tenant’s address set forth in the Basic Lease Information, if



sent prior to Tenant's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to Tenant's taking possession of the Premises, or (iii) at any place where Tenant or any Agent of Tenant may be found if sent subsequent to Tenant's vacating, abandoning or surrendering the Premises; or (b) City at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Article at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first-class or certified mail, one day after the date it is made if sent by commercial overnight courier or upon the date personal delivery is made. For convenience of the Parties, copies of notices may also be given by telefacsimile to the telephone number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

(b) Wherever the approval or consent (or similar words or phrases) of either party is required hereunder, such party shall not unreasonably withhold or delay such approval or consent.

24.2 Amendments. Neither this Lease nor any term or provisions hereof may be changed, waived, discharged, terminated or amended, except by a written instrument signed by the Parties hereto.

24.3 Authority. If Tenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon City's request, Tenant shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

24.4 Interpretation of Lease. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to

limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as “without limitation” or similar words, are used.

24.5 Successors and Assigns. Subject to the provisions of Article 12 and Article 15 hereof relating to Leasehold Encumbrances and Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by City named herein (or by any subsequent landlord) of its interest in the Premises as owner or lessee, including any transfer by operation of Law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

24.6 Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder’s fee in connection with the lease contemplated herein except as identified in the Basic Lease Information, whose commission, if any is due, shall be paid pursuant to a separate written agreement between such broker and the party through which such broker contracted. In the event that any other broker or finder perfects a claim for a commission or finder’s fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Article shall survive any termination of this Lease.

24.7 Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by Law.

24.8 Governing Law. This Lease shall be construed and enforced in accordance with the Laws of the State of California. Venue for any action shall be in the County of Monterey.

24.9 Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Lease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Lease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Tenant hereby acknowledges that neither City nor City’s Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

24.10 Attorneys' Fees and Costs. If any action is commenced which arises out of or related to this Lease, the prevailing party shall be entitled to recover from the other party such sums as the court may adjudge to be reasonable attorneys' fees, expert fees, and expenditures in the action, in addition to costs and expenditures otherwise allowed by law. In any matter arising out of or relating to the bankruptcy of Tenant, Tenant agrees to pay all of Landlord's costs and expenditures, including attorneys' fees and expert fees, which may be incurred in enforcing or protecting Landlord's rights or interests.

24.11 Holding Over. Any holding over after the expiration of the Term with the express consent of the City Manager shall be construed to automatically extend the Term of this Lease on a month-to-month basis only, at a Base Rent equal to one hundred twenty-five percent (125%) of the latest Base Rent payable by Tenant hereunder prior to such expiration, together with an amount estimated by City for the monthly Additional Charges payable under this Lease, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term). Any holding over without City's consent shall constitute a default by Tenant and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term of the Lease. Nothing in this Article 24.11 shall preclude City from initiating an unlawful detainer action where appropriate.

24.12 Cumulative Remedies. All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

24.13 Transition Procedures. Upon the expiration of the Term or earlier termination of this Lease, for whatever reason, Tenant and City shall do the following (and the provisions of this Article 24.13 shall survive the expiration or termination of this Lease until they have been fully performed) and, in general, shall cooperate in good faith to effect an orderly transition of the management of the Premises.

(a) Transfer of Licenses. Upon the expiration or earlier termination of the Lease, Tenant shall use its best efforts (i) to transfer to City or City's nominee all licenses, operating permits and other governmental authorizations and all contracts which City elects to assume, including contracts with governmental or quasi-governmental entities and management contracts, that may be necessary for the operation of the Premises and completion of any repairs, maintenance, Improvements or Alterations (collectively, "Licenses"), or (ii) if such transfer is prohibited by law or City otherwise elects, to cooperate with City or City's nominee in connection with the processing by City or City's nominee of any applications for all Licenses; provided, in either case, that the costs and expenditures of any such transfer or the processing of any such application shall be paid by City or City's nominee.

(b) Leases and Concessions. Tenant shall assign to City or City's nominee simultaneously with the termination of this Lease, and the assignee shall assume all

leases, subleases, and concession agreements in effect with respect to the Premises then in Tenant's possession, which City or City's nominee elects to assume.

(c) Books and Records. All books and records for the Premises kept by Tenant shall be delivered promptly to City or City's nominee, simultaneously with the termination of this Lease, but such books and records shall thereafter be available to Tenant at all reasonable times for inspection, audit, examination, and transcription for a period of one year and Tenant may retain (on a confidential basis) copies or computer records thereof.

(d) Personal Property. Tenant shall negotiate in good faith with City or City's nominee for the sale of all or any portion of Tenant's personal property which City or City's nominee elects to purchase.

24.14 Survival of Indemnities. Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof. Tenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, Tenant has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter.

24.15 Relationship of Parties. City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Tenant's business, or joint venture or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder, and neither party shall have any authority to commit or bind the other party without such party's consent as provided herein. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Lease by City does not constitute authorization or approval by City of any activity conducted by Tenant on, in or relating to the Premises. Tenant, its employees, assignees, subcontractors, or agents shall at no time be deemed employees of City.

24.16 Transfer by City. If City sells or otherwise transfers the Premises, City shall be released from its obligations hereunder arising on or after the date of such sale or transfer and Tenant shall look solely to the successor-in-interest to City. Upon a sale of the Premises by City, Tenant shall attorn to the purchaser or transferee, such attornment to be effective and self-operative without the execution of any further instruments on the part of the parties to this Lease. This Lease shall not be deemed to constitute any commitment by City, or create any priority or right in favor of Tenant, with regard to any future sale or other disposition of the Premises, or any portion thereof.

24.17 Non-Liability of City Officials, Employees and Agents. No elective or appointive board, commission, member, officer, employee or other Agent of City shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City under this Agreement.

24.18 Consents, Approvals, Elections and Options. Any consent or approval required by the City, or any election or option exercisable by the City, must be given or exercised by the City Manager of the City.

24.19 Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

24.20 Waiver. No waiver of any default by Tenant hereunder shall be implied from any acceptance by City of any rent or other payments due hereunder or any omission by City to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than as specified in said waiver. The consent or approval of City to any act by Tenant requiring City's consent or approval shall not be deemed to waive or render unnecessary City's consent or approval to any subsequent similar acts by Tenant.

24.21 Voluntary Agreement; Authority to Execute. City and Tenant each represent that they have read this Lease in full and understand and voluntarily agree to all provisions herein. The Parties further declare that prior to signing this Lease they each had the opportunity to apprise themselves of relevant data, through sources of their own selection, including consultation with legal counsel of their choosing if desired, in deciding whether to execute this Lease. The signatories to this Lease represent that they have the proper authority to execute this Lease on behalf of the respective Party.

City and Tenant have executed this Golf Course Lease in triplicate as of the date first written above.

TENANT:

By: \_\_\_\_\_ Its: \_\_\_\_\_

By: \_\_\_\_\_ Its: \_\_\_\_\_

CITY:

By: \_\_\_\_\_ City Manager

Per Ordinance No. \_\_\_\_\_, adopted by the City Council at its meeting of March 5, 2014.

APPROVED AS TO FORM:

By: \_\_\_\_\_ City Attorney

**Exhibit A**

**Description of Premises**

**Exhibit B**  
**Maintenance Standards**

**Exhibit C**  
**Schedule of Personal Property**

	<b>Year</b>	<b>Condition</b>	<b>Hours</b>
<b>Greens Mowers</b>			
1. 7 Greensmaster 1000	1993-1997	Fair – Good	N/A
2. Toro 3150	2005	Fair	4,090
<b>Collar/Tees/Approach Mowers</b>			
1. Toro 3150 3wd	2007	Good	2,544
2. John Deere 2243	1998	Fair	3,605
<b>Fairway Mowers</b>			
1. John Deere 8700	2008	Good	3,302
2. John Deere 3235c	2006	Fair	2,834
<b>Rough Mowers/ Green Banks</b>			
1. Jacobson AR-5	2005	Fair	2,115
2. Toro GM 3500-D	2004	Good	2,909
3. Toro GM 3500	2002	Good	2,354
<b>Utility Vehicles</b>			
1. Toro Workman HD	1997	Fair	5,976
2. Toro Workman HD	1998	Fair	6,925
3. Toro Workman HD	1999	Fair	4,148
4. Toro Workman HD	2002	Good	3,867
5. Toro Workman HD	2003	Good	2,564
6. Toro Workman MD	2011	Excellent	353
<b>Miscellaneous Equipment</b>			
1. Cushman Truckster/GA 60	1999	Excellent	320
2. Cushman Corehaviestor	1993	Fair	899
3. Buffalo Turbine Blower	2002	Good	N/A
4. Toro Greens Aerifier	2001	Good	N/A
5. Toro Greens Aerifier	2003	Good	N/A
6. John Deere 1800 Sprayer	1995	Fair	N/A
7. Hahn Top dresser	1991	Bad	N/A



**INTERIM**

**GOLF COURSE MANAGEMENT AGREEMENT**

**BETWEEN**

**The City of Pacific Grove,  
a Charter City of the State of California**

**AND**

**Pacific Grove Golf, LLC  
(an affiliate of CourseCo, Inc.)**

**TABLE OF CONTENTS**

<b>CONTENTS</b>	<b><u>PAGE</u></b>
1.0 DEFINITIONS.....	1
2.0 TERM .....	6
3.0 MANAGEMENT OF GOLF COURSE .....	6
4.0 APPROVALS .....	18
5.0 LEASE TRANSITION AGREEMENT.....	18
6.0 MANAGEMENT FEE.....	22
7.0 FINANCIAL AND ACCOUNTING PROCEDURES .....	23
8.0 BUSINESS RECORDS .....	26
9.0 INSURANCE AND INDEMNIFICATION .....	28
10.0 DEFAULT .....	31
11.0 CONTRACT ENDING TRANSITION PROCEDURES.....	33
12.0 WORK STOPPAGES, DAMAGE OR DESTRUCTION .....	34
13.0 SUBMISSION OF PAYMENTS, REPORTS AND NOTICES.....	35
14.0 DISPUTE RESOLUTION.....	36
15.0 MISCELLANEOUS PROVISIONS.....	37

**Interim  
Golf Course Management Agreement  
between**

**The City of Pacific Grove,  
a Charter City of the State of  
California**

**and**

**Pacific Grove Golf LLC,  
a California limited liability company**

This Interim Golf Course Management Agreement ("Agreement") is entered into this 31st day of March, 2014, by and between the City of Pacific Grove, a Charter City of the State of California ("CITY"), and Pacific Grove Golf LLC, a California limited liability company ("PGG LLC").

**RECITALS**

1. CITY is the owner of the real property commonly known as the Pacific Grove Municipal Golf Course Links located in the City of Pacific Grove, County of Monterey, State of California, as more particularly described in Exhibit A attached hereto, which includes an operating 18-hole golf course, driving range, irrigation system, club house, restaurant, parking areas and related facilities (the "Golf Course").
2. CITY desires, initially on an interim short term basis, to utilize the services of PGG LLC for the overall management, maintenance and operation of the Golf Course, collection of fees and other related golf services.
3. The restaurant and food and beverage services located on the Golf Course are being operated by an independent third party under contract with the City and are not included in this Agreement.
3. PGG LLC represents that it has the necessary experience and qualifications to manage, operate, and maintain the Golf Course.
4. CITY and PGG LLC agree that the primary objectives for PGG LLC's performance under this Agreement are to provide high quality golf, to employ high quality maintenance practices, and to use reasonable efforts to generate revenues sufficient to cover expenses of the golf course and produce net profits to CITY.

NOW, THEREFORE, in consideration for the mutual promises hereinafter set forth, the parties hereto agree to as follows:

**1.0 DEFINITIONS.**

The following terms shall be defined as follows for the purposes of this Agreement:

1.01 **Accounting Fee.** "Accounting Fee" is defined in Section 6.04.

1.02 **Affiliate.** "Affiliate" is any and all corporations, partnerships, trusts and other entities directly or indirectly controlled by, controlling or subject to direct or indirect common control of an entity or person.

1.03 **Reserved.**

1.04 **Reserved.**

1.05 **Capital Expenditures.** "Capital Expenditures" are any equipment or alteration, addition, improvement, repair, replacement, rebuilding or renovation to the Golf Course, the cost of which is equal to or exceeds Five Thousand Dollars (\$5,000.00) and which has a useful life of more than one (1) year.

1.06 **Cart Storage Area.** "Cart Storage Area" is the area on the golf course to be used for storage of golf carts and related activities.

1.07 **Reserved.**

1.08 **Reserved.**

1.09 **Compensation.** "Compensation" is the direct salaries and wages paid to or accruing for the benefit of the management staff and all other persons employed by PGG LLC at the Golf Course, 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.

1.10 **Cost of Goods Sold.** "Cost of Goods Sold" is defined as beginning Resale Inventory plus purchases for Resale Inventory minus ending Resale Inventory for a given accounting period.

1.11 **Course Maintenance Plan.** "Course Maintenance Plan" is defined in Section 5.02(e).

1.12 **Crew.** "Crew" is the Golf Course maintenance staff employed by PGG LLC.

1.13 **CITY.** "CITY" is the City of Pacific Grove, a Charter City of the State of California and owner of the Golf Course.

1.14 **CITY Representative.** "CITY Representative" is the person responsible for, and duly authorized and empowered by CITY to exercise all of CITY's management and decision making powers and authority with respect to the Golf Course and this Agreement. Unless CITY otherwise notifies PGG LLC in writing, the CITY Representative.

1.15 **Direct Cost Budget.** "Direct Cost Budget" is defined in Section 5.08.

1.16 **Direct Costs.** "Direct Costs" is defined in Section 5.06.

1.17 **Effective Date.** "Effective Date" is defined in Section 2.01.

1.18 **Environmental Laws.** "Environmental Laws" are defined in Section 3.24.1.

1.19 **Extension Term.** "Extension Term" is defined in Section 2.02.

1.20 **Facilities.** "Facilities" are the buildings, structures, Improvements, irrigation system and controls, cart paths, fencing, fixtures, trade fixtures, Furnishings and Equipment, Pro Shop, Maintenance Area, parking lots, and utility systems located on the Golf Course.

1.21 **Fixed Management Fee.** "Fixed Management Fee" is defined in Section 6.02.

1.22 **Reserved.**

1.23 **Force Majeure.** "Force Majeure" is defined in Section 12.04.

1.24 **Furnishings and Equipment.** "Furnishing and Equipment" are all furniture, furnishings, trade fixtures, apparatus and equipment, including without limitation, course maintenance vehicles and equipment, golf carts, driving range pickers and pullers, mats, range ball baskets, cash registers, rental golf clubs and bags, ball washers, benches, uniforms, kitchen equipment, appliances, china, glassware, silverware, office equipment, computers, copy machines, facsimile machines, telephone systems (not including pay telephones), and other personal property used in or held in storage for use in the operation of the Golf Course, other than Resale Inventory.

1.25 **GCSAA.** "GCSAA" is the Golf Course Superintendents Association of America.

1.26 **General Manager.** "General Manager" is an employee of PGG LLC who oversees the operations of the entire Golf Course.

1.27 **Golf Course.** "Golf Course" or "Course" is the golf course owned by CITY, including but not limited to the land, the Pro Shop and other Improvements and the other Facilities.

1.28 **Golf Course Expenses.** "Golf Course Expenses" are all costs and expenses incurred in the operation, management, and maintenance of the Golf Course, including: (a) all expenditures

incurred by CITY for the benefit of the Golf Course; (b) the "Combined Management Fee" paid to PGG LLC pursuant to Section 6.01 of this Agreement; (c) all expenses specifically identified as "Direct Costs" in this Agreement; and (d) all other expenses incurred by PGG LLC in connection with the Golf Course or this Agreement, which expenses were not reasonably anticipated by the parties or otherwise provided in this Agreement and which are consistent with the operation of a golf course and were approved in writing by the CITY Representative.

1.29 **Golf Professional.** "Golf Professional" is an employee of PGG LLC who is a Class "A" PGA or LPGA golf professional and supervises the golf operations at the Golf Course under the direction of the General Manager.

1.30 **Gross Revenues.** "Gross Revenues" are all money received on account of or as a result of the operation of the Golf Course and the sale of goods and services at the Golf Course, determined on an accrual basis in accordance with generally accepted accounting principles consistently applied. The deposit of Gross Revenues pursuant to Section 7.02 shall include, but are not limited to all green fees; rental fees for golf carts, golf clubs and bags, and other rental items; range balls; membership fees, card fees, reservation fees; fees for golf handicap service; rental and concession payments; revenue generated from space rentals and from golf-related meetings, banquets, parties, tournaments, and other group gatherings; merchandise sales; golf instruction fees; revenues from golf schools; gross receipts received by licensees or concessionaires; proceeds from insurance; any amount received by PGG LLC in connection with any claim, demand, or lawsuit; and all other revenues generated by the Golf Course. Gross Revenues shall be reduced by any cash refunds or credits allowed on returns by purchasers. Gross Revenues shall not include the following: (a) the amount of any gratuities to Golf Course employees, or service charges added to customer billings which represent gratuities to Golf Course employees; (b) proceeds of any borrowings by PGG LLC or CITY; (c) initial operating funds in the Operating Bank Account and funds subsequently provided by CITY to satisfy the working capital needs of the Golf Course pursuant to Section 7.03; (d) refunds for the value of merchandise, Supplies or equipment returned to shippers, suppliers or manufacturers; or (e) unearned or deferred revenues such as gift certificates/cards, nonrefundable tournament and event deposits.

1.31 **Hazardous Materials.** "Hazardous Materials" are defined in Section 3.24.1.

1.32 **Impositions.** "Impositions" are all taxes and assessments (including without limitation real property taxes and assessments, possessory interest taxes, and personal property taxes), water, sewer or other similar rents, rates and charges, levies, license fees, permit fees, inspection fees and other authorization fees and charges, which at any time may be assessed, levied, confirmed or imposed on the Golf Course or the operation of the Golf Course.

1.33 **Improvements.** "Improvements" is defined in Section 3.12.

1.34 **Reserved.**

1.35 **Initial Term.** "Initial Term" is defined in Section 2.01.

1.36 **Insurance Requirements.** "Insurance Requirements" are all requirements of each insurance policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to the Golf Course or the operation of the Golf Course.

1.37 **Interim Plan.** "Interim Plan" is defined in Section 5.0.

1.38 **Invitee.** "Invitee" is anyone present on the Golf Course for golfing, dining or other lawful purpose.

1.39 **Legal Requirements.** "Legal Requirements" are all laws, statutes, ordinances, orders, rules, regulations, permits, licenses, authorizations, directives and requirements of all governments and governmental authorities, which now or hereafter may be applicable to the Golf Course or the operation of the Golf Course, including, but not limited to, the Americans with Disabilities Act and implementing regulations as well as other federal, state and local laws and regulations governing access and 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.

1.40 **Lesson Expenses.** "Lesson Expenses" are defined in Section 5.09.

1.41 **Maintenance Standards.** "Maintenance Standards" are the standards for maintenance of the Golf Course.

1.42 **Maintenance Area.** "Maintenance Area" is the area utilized for the storage and maintenance of equipment and supplies including underground devices, storage facilities, and related items.

1.43 **Management Staff.** Management Staff is defined in Section 3.01.1.

1.44 **Marketing and Promotional Plan.** "Marketing and Promotional Plan" is defined in Section 5.02(f).

1.45 **Operating Bank Account.** "Operating Bank Account" is defined in Section 7.01.

1.46 **Net Operating Income.** "Net Operating Income" is the difference between the Gross Revenue and all expenses permitted under this Agreement, including Direct Costs, other Golf Course Expenses, and Fixed Management Fees.

1.47 **PGG LLC.** "PGG LLC" is a Limited Liability Company, which is wholly owned by CourseCo, Inc.

1.48 **PGA/LPGA.** "PGA" is the Professional Golfers' Association of America. "LPGA" shall mean the Ladies Professional Golfers' Association of America.

1.49 **Pro Shop.** "Pro Shop" is the retail outlet building located on the Golf Course.

1.50 **Resale Inventory.** “Resale Inventory” is Pro Shop merchandise.

1.51 **Superintendent.** "Superintendent" is an employee of PGG LLC who is in charge of Golf Course maintenance.

1.52 **Supplies.** “Supplies” are consumable items not for Resale and used in or held in storage for use in the operation of the Golf Course, including but not limited to, scorecards and cart tickets, driving range balls, locker room and bathroom supplies, towels, fuel, cleaning materials, fertilizers, pesticides, seed, maintenance parts and supplies, office supplies, and other similar items.

1.53 **USGA.** "USGA" is the United States Golf Association.

1.54 **Working Capital.** “Working Capital” is the amount of cash necessary to have on hand to pay Direct Costs and Golf Course Expenses on a current basis and which is not immediately available from undisbursed Gross Revenues.

**2.0 TERM.**

2.01 **Term.** The “Initial Term” of this Agreement shall be for 30 days commencing on April 1, 2014 (the “Effective Date”) and expiring on April 30, 2014, unless this Agreement is extended or is sooner terminated pursuant to the terms hereof.

2.02 **CITY Termination Right.** Anything in this Agreement to the contrary notwithstanding, during the Initial Term, CITY may, at its option by written notice to PGG LLC, terminate this Agreement effective thirty (30) days from the date of such written notice upon the CITY’s ratification and confirmation of the written “Golf Course Lease”.

**3.0 MANAGEMENT OF GOLF COURSE.**

**3.01 Retention of PGG LLC.**

3.01.1 **Role of PGG LLC.** Subject to the terms of this Agreement, CITY hereby retains PGG LLC as an independent contractor, and PGG LLC agrees, to: (i) implement the policies, standards, and schedules for the operation and maintenance of the Golf Course and all matters affecting customer relations, in accordance with this Agreement, including; (ii) hiring, training, and supervising the General Manager, Golf Course Superintendent and Golf Professional (collectively "Management Staff") and all Golf Course employees; (iii) supervise and direct all phases of advertising, sales, and business promotion for the Golf Course; (iv) establish accounting and payroll procedures and functions for the Golf Course in accordance with CITY policies; and (v) procure and maintain all equipment necessary and appropriate for the profitable and efficient operation of the Golf Course. The parties understand that costs of undertaking the services above are reimbursed pursuant to Section 5 of this Agreement. PGG LLC agrees to work with CITY to adjust Direct Cost budget, as necessary, to provide for a profitable operation and a positive Net Operating Income.



3.01.2 **Goal of Agreement.** It is the intent and goal of CITY that during the term of this Agreement the Golf Course be operated in a professional, efficient and productive manner, achieve the desired results of an effective maintenance program on the Golf Course and Pro Shop, and achieve or exceed the budgeted results for the Golf Course.

3.02 **Overall Responsibilities of PGG LLC.** PGG LLC shall perform the following services, or cause the same to be performed for the Golf Course as applicable during the term of this Agreement, and all expenditures of PGG LLC and costs and expenses incurred by PGG LLC in performing these services shall be Direct Costs:

- a) consummate arrangements with intended users of the Golf Course, subject to the terms of Section 3.03 below;
- b) enter into such contracts for the furnishing of utilities and building maintenance and other services to the Golf Course as shall be reasonably necessary for maintenance of the Golf Course in good order, condition and repair, subject to the terms of Section 7.08;
- c) make all repairs, decorations, replacements, additions, revisions, alterations and improvements to the Golf Course as shall be reasonably necessary for maintenance of the Golf Course in good order, condition and repair, subject to the terms of Section 3.05 of this Agreement;
- d) administer such expenditures as shall be reasonably necessary for the proper operation and maintenance of the Golf Course, including without limitation purchase or rental expenses for Furnishings and Equipment;
- e) maintain a level of Resale Inventory reasonably necessary for the effective operation of the Golf Course consistent with the terms of Section 3.03.1;
- f) apply for, and obtain and maintain, all licenses and permits required of PGG LLC in connection with the operation and management of the Golf Course during the term of this Agreement; and CITY agrees to execute any and all applications and such other documents as shall be reasonably required and to otherwise cooperate, in all reasonable respects, with PGG LLC in the application for, and obtaining and maintenance of, such licenses and permits;
- g) do, or cause to be done, all such acts and things in and about the Golf Course as shall be reasonably necessary to comply with all Insurance Requirements and Legal Requirements, and PGG LLC shall not knowingly permit any activities that are illegal or in violation of private restrictions or covenants to be conducted on or about the Golf Course;
- h) administer payment of all Golf Course Expenses, Impositions and insurance premiums incurred by PGG LLC, when due, and at the request of CITY, to administer any appeals of tax appraisals or assessments;

- i) maintain a level of Supplies reasonably necessary for the effective operation of the Golf Course consistent with the terms of Section 3.01.2.

**3.03 Golf Professional Services.** PGG LLC shall, as a Direct Cost, provide golf starter services; sell and rent golf equipment; sell golf-related clothing and supplies; provide instructional services in the playing of golf and rent golf carts. Such services shall be provided by or under the on-premises direct supervision of the Golf Professional.

**3.03.1 Pro Shop and Merchandise.** The Pro Shop shall be open during the normal operating hours of the golf course. PGG LLC shall procure and maintain in the Pro Shop such inventory of golf merchandise as reasonably necessary or appropriate to adequately meet public demand and consistent with the goal in Section 3.01.2.

**3.03.2 Golf Instruction.** PGG LLC shall provide for golf instruction by qualified instructors supervised by the Golf Professional. All instructors shall be PGA or LPGA golf professionals or apprentices, unless otherwise approved by The CITY Representative. All golf instructors shall be employees of PGG LLC, unless PGG LLC proposes an alternative plan that is approved by the CITY Representative. PGG LLC shall cause all golf instructors to comply with the rules and regulations consistent with the goal in Section 3.01.2.

**3.03.3 Golf Carts.** PGG LLC may prohibit the use of golf carts on the Golf Course whenever weather conditions expose the user to danger or the Golf Course to damage. PGG LLC shall employ an on-site mechanic who is able to repair and maintain golf carts. To the extent practicable during the term of this Agreement, PGG LLC shall take over administration and management of the golf carts pursuant to the terms of the Existing Golf Cart Lease and pursuant to the terms of this Section 3.03.3. PGG LLC shall honor the terms of the Existing Golf Cart Lease and shall perform all obligations thereunder during the term of this Agreement, and CITY shall reasonably cooperate with PGG LLC in connection therewith.

**3.03.4 Driving Range.** PGG LLC shall operate and manage all driving range operations, and procure and maintain all equipment and facilities necessary and appropriate to meet the goal set forth in Section 3.01.2.

**3.03.5 Golf Course Starter Services.** PGG LLC shall render and provide Golf Course starter services including, but not limited to, collecting all green and tournament fees in accordance with CITY cash handling procedures, taking reservations from the telephone, online and at the Golf Course and recording the reservations on starter sheets, placing golfers' names on a call sheet as necessary and appropriate, sending golfers to the tee and starting them off at proper intervals, receiving requests from groups for tournaments, booking tournaments and collecting appropriate fees prior to each tournament's starting date, coordinating tournament food and beverage needs, taking all actions as necessary and appropriate to speed play on the Golf Course, entering each golfer's name on the automated tee sheet to the extent feasible, selling/issuing resident cards, verifying resident status when checking in golfers and issuing a receipt to each golfer upon payment of the applicable green fee. PGG LLC shall install a Point of

Sale system that tracks all rounds played and fees collected by fee category on a daily basis. Such information shall be made available for review by the CITY Representative, as requested.

3.03.6 **Marshaling Time.** PGG LLC shall procure the services of marshals at such times and in such numbers as necessary and appropriate to expedite play and ensure compliance with all rules and regulations consistent with the provisions of Section 3.01.2.

3.03.7 **Suspension of Play.** Temporary suspension of play shall be determined by PGG LLC in cases where weather or other conditions expose the user to danger or the golf course to damage.

3.03.8 **Special Events.** PGG LLC shall use reasonable efforts to obtain and maintain appropriate exposure for and usage of the Golf Course, including without limitation, as appropriate, conducting golf tournaments, clinics, exhibitions and other special events.

3.04 **Facilities Maintenance Services.** At all times, as a Direct Cost, PGG LLC shall maintain and operate the Pro Shop, Pro Shop restrooms, and Cart Storage Area and all other facilities and services offered. PGG LLC shall keep all fixtures, furnishings and equipment within the facilities clean, neat, safe, and sanitary, in good order and in a manner. PGG LLC shall maintain and operate the Pro Shop and other facilities reasonably in accordance with the highest standards of cleanliness and shall keep the Pro Shop and other facilities clean and free from rubbish.

PGG LLC shall, during the term of this Agreement maintain and keep in good order, condition and repair the interior nonstructural portions of the Pro Shop and other facilities, including, but not limited to, the following: the interior surface of exterior walls; all windows, doors, door frames, and door closures; all plate glass, storefronts and showcases; all carpeting and other floor covering; HVAC, all electrical systems, and equipment; the grease trap; and all interior plumbing and sprinkler systems, doors, door locks, plate glass, display windows, window casements, exterior restaurant light fixtures, light bulbs, ballast transformers and electrical panel if any, installed therein. PGG LLC expressly agrees that the use of roof areas shall be limited to ingress for maintenance purposes only, and that said roof areas shall not be used for storage of inventory or for any other use. All reasonable costs associated with cleaning and maintenance of the Pro Shop and other facilities in accordance with this Agreement shall be Direct Costs.

PGG LLC agrees to enter into preventative and regular maintenance contracts, with providers approved by the CITY Representative, for services to include, but not be limited to, pest control, refrigeration, window cleaning, carpet cleaning, hood cleaning, and grease trap. All costs associated with these service contracts shall be Direct Costs.

3.05 **Grounds Maintenance Services.** At all times, as a Direct Cost, PGG LLC shall maintain and operate the Golf Course during the term of this agreement. PGG LLC shall provide grounds maintenance services to the Golf Course, including, but not limited to, the obligation to mow, edge, trim, overseed, fertilize, aerate, sod, change cups, service tees, top-dress, raise divots, rake traps, spray, spot irrigate, syringe and renovate turf and shrub areas, as well as to provide weed, disease and pest control, litter control and rubbish removal, parking lot sweeping,

tree maintenance, maintenance of irrigation systems including mainlines, pumps, boosters and controllers, to keep swales in good repair and to provide the necessary and appropriate maintenance of any appurtenant structures and equipment, and to maintain the lakes. PGG LLC shall replace or change any supplies, materials, or procedures used by PGG LLC that are found reasonably objectionable by the CITY Representative, within ten (10) calendar days after receipt of the CITY Representative's written request for such replacement or change. PGG LLC shall comply with all applicable local, state and federal clean water regulatory requirements, including but not limited to all federal EPA and National Pollutant Discharge Elimination System requirements.

**3.05.1 Chemical Herbicides and Pesticides.** PGG LLC shall ensure that employees are trained and knowledgeable about best management practices for using fertilizers, herbicides and pesticides to prevent any Hazardous Materials release and how to handle any such accidental release. PGG LLC shall obtain any required federal, state or local pesticide applicator licensing, permits and submit any required reports related to the use of permitted biocides, defoliants, chemical fertilizers, pesticides, herbicides or other agri-chemicals.

**3.05.2 Water.** Unless otherwise specifically directed in writing by CITY, PGG LLC shall not engage in any activity that causes any change, disturbance, fill, alteration or impairment to the bed, bank, canal or channel of any natural water course, wetland or other body of water on, in, under, or about the Golf Course; nor shall PGG LLC engage in any activity that would pollute or degrade the surface or subsurface waters or result in the diminution or drainage of such waters.

**3.05.3 Protection of Facilities and Utilities.** At all times during the Term of this Agreement, PGG LLC shall use its reasonable best efforts to protect the Facilities and utilities located on the Golf Course from any damage, injury or disturbance. If PGG LLC or any of its agents or Invitees damages, injures or disturbs any of the foregoing Facilities or utilities, PGG LLC shall immediately notify CITY of that occurrence, and PGG LLC shall be responsible to make needed repairs or replacements which shall be considered Direct Costs, unless and to the extent such damages result from the intentional misconduct or gross neglect of PGG LLC.

**3.05.4 Trees and Other Plant Materials.** PGG LLC shall maintain all trees and other plant materials on the Golf Course in a manner equal to or better than other golf courses in California with comparable green fees during the term of this agreement.

**3.05.5 Maintenance Personnel.** PGG LLC shall employ and maintain in its employ a Class "A" Golf Course Superintendent and Crew at the Golf Course daily during normal working hours. PGG LLC shall employ sufficient personnel to perform all work required.

**3.06 Parking Lot Maintenance Services.** PGG LLC shall keep all parking lots on the Golf Course in a clean and good condition, and shall provide normal (non-capital) parking lot maintenance services. All reasonable costs of such parking lot maintenance will be Direct Costs.

**3.07 Reserved.**

### 3.08 Personnel.

3.08.1 **General.** PGG LLC, as a Direct Cost, shall employ all of the employees of the Golf Course and set all terms and conditions of the employment. PGG LLC shall make all decisions relating to the hiring of employees, the employment of its employees and the direction of its work force. The number of PGG LLC's employees shall be no more than reasonably necessary to efficiently operate the Golf Course. PGG LLC shall recruit, hire, train, discharge, promote and supervise the Management Staff of the Golf Course defined as the General Manager, Superintendent of the Golf Course and Golf Professional, and all other employees of PGG LLC. All employees of the Golf Course shall be properly qualified for their positions. PGG LLC may at its expense assign management trainees to the Golf Course, who shall remain under supervision of PGG LLC's on-site Management Staff. PGG LLC shall provide reports showing all employees and their job titles, as requested by the CITY Representative.

PGG LLC shall retain at all times on the Golf Course during hours of operation a manager who will be responsible for the Golf Course in matters pertaining to the performance of the duties and obligations in this Agreement. PGG LLC shall during operating hours have sufficient personnel on the Golf Course to provide a level of service in accordance with Section 3.01.02 and to provide a level of service customary in the industry.

All outside service, golf and banquet employees shall be identifiable by wearing a shirt or jacket with a course logo and an easily readable name badge. Employees of PGG LLC shall be courteous and neat in appearance at all times. If any employee fails to meet this standard, is negligent in performance of his/her responsibilities, and PGG LLC is unable after a reasonable period of time to bring the employee up to this standard, PGG LLC shall take reasonable actions to remove the employee from employment at the Golf Course.

3.08.2 **Compensation.** Compensation of PGG LLC'S employees shall be no greater than that paid at other golf courses managed by PGG LLC, unless specifically approved by the CITY Representative, taking into consideration the budget, recognizable differences in scope of work and cost of living at other golf courses. All employees of PGG LLC, other than the Management Staff, shall use a time clock to keep track of the hours worked.

3.08.3 **Employee Benefits.** PGG LLC shall have the obligation to provide all legally mandated employee benefits to its employees. PGG LLC shall have the right to provide its eligible employees with benefits now or hereafter available to employees of other golf courses operated or managed by PGG LLC, and the allocable share of such employee benefits accrued while working at the Golf Course shall be a Direct Cost.

3.08.4 **Temporary Assignment of Other PGG LLC Personnel.** If the positions of General Manager, Course Superintendent or Golf Professional are not filled for whatever reason, PGG LLC shall fill those positions within 90 days of vacancy. Upon approval of the CITY Representative, PGG LLC may temporarily assign to these positions the staff of other golf courses and country clubs operated or managed by PGG LLC. During such time as these employees are temporarily assigned to the Golf Course, all such employees will be paid their

regular Compensation, and the pro-rata share of such employees' Compensation equal to the actual time such employees worked at the Golf Course shall be a Direct Cost.

**3.08.5 Compliance with Labor Laws.** PGG LLC shall comply at all times with all applicable labor and employee laws, rules and regulations.

**3.08.6 Drug Free Workplace.** PGG LLC will establish and keep in place employee policies and procedures designed to provide a safe workplace, discourage alcohol and drug abuse and encourage treatment, recovery and the return to work of those employees with such abuse problems.

**3.09 Management Staff.** The Management Staff shall be the following positions, which may be combined with CITY approval, that will be solely dedicated to and resident at the Golf Course:

The General Manager; Golf Course Superintendent; and Golf Professional. CITY shall approve, said approval not to be unreasonably withheld, the Management Staff before hire and shall be informed prior to the termination or transfer of any of the Management Staff. Contact information (name, cell phone number and email address) for all Management Staff shall be provided, in writing, to CITY and shall be current at all times.

- A. General Manager.** The General Manager of the Golf Course shall be responsible for the day-to-day management and operation of the Golf Course. The General Manager shall be reasonably available during normal working hours to meet with the CITY Representative. After normal working hours, the General Manager shall be reasonably available to appear at the Golf Course or CITY meetings, if deemed necessary by the CITY Representative.
- B. Superintendent.** The Superintendent for the Golf Course shall be at a minimum a superintendent member in good standing with the Golf Course Superintendents Association and have a Qualified Applicators License. Prior experience as a golf course superintendent is desired. The Superintendent shall be responsible for the maintenance of the buildings, equipment and grounds of the Golf Course.
- C. Golf Professional.** The Golf Professional shall be a " member in good standing with the PGA or LPGA. The Golf Professional shall be responsible for golf instruction, golf services, Driving Range operations and the Pro Shop. The Golf Professional shall report directly to the General Manager. The Golf Professional's lesson plan shall be submitted quarterly to the CITY Representative.

**3.10 Equipment, Supplies and Materials.** PGG LLC shall procure and maintain (as a Direct Cost) all necessary and appropriate equipment, supplies and materials of good quality and in sufficient number to fulfill the maintenance requirements of this Agreement, but expenditures shall not exceed the amounts allocated in the Direct Cost Budget without the prior consent of the CITY Representative. The required equipment, supplies and materials shall include, but not be limited to:

- a) All equipment necessary and appropriate to operate the Golf Course;
- b) All necessary and appropriate gas, oil, maintenance and operating supplies, and spare and replacement parts for all equipment used at the Golf Course;
- c) All necessary and appropriate topdressing, seed, fertilizers, pesticides, fungicides, insecticides and herbicides for maintenance of the Golf Course and other landscaped areas on the Golf Course and in compliance with Section 3.05;
- d) Parts, supplies and equipment necessary for the repair and maintenance of all Golf Course irrigation systems;
- e) Tee towels, soaps, ball washers, putting green cups and flags, benches, trap rakes, tee markers, tee mats, trash receptacles, trash receptacle liners, cleat brushes, distance markers on sprinkler heads and all other pertinent golf course equipment;
- f) Materials for the installation and maintenance of French drains;
- g) Sand for traps on an as-needed basis; and
- h) Procurement of all necessary retail and concession inventory and consumable supplies such as janitorial cleaning supplies, paper products, soap, etc.

3.11 **Intrusions.** PGG LLC shall treat non-Invitee users with consideration and courtesy even when they may be wrongfully on the Golf Course, but shall have the right to deny use of the Golf Course for unauthorized purposes. CITY reserves the right from time to time during the term of this Agreement, to promulgate such reasonable rules and regulations concerning the use of the Golf Course and any part or parts thereof, as CITY, in its reasonable discretion, shall deem appropriate.

3.12 **Improvements.** Except in the event of an emergency threatening imminent injury to persons or damage to property, PGG LLC shall make no improvements, additions, alterations or changes to the Golf Course (“Improvements”) in excess of which would meet the definition of Capital Expenditure in Section 1.05, unless PGG LLC: (i) obtains the prior approval of the CITY Representative, which approval may be granted or withheld in the sole and absolute discretion of the CITY Representative; (ii) complies with such terms and conditions as may be imposed by the CITY Representative; (iii) secures all applicable licenses, permits and other governmental approvals for the Improvements; and (iv) causes the Improvements to be designed and constructed so as to be consistent with the architecture and design of the currently-existing Golf Course, unless otherwise specifically approved by the CITY Representative. Any such Improvements shall be shown on as-built drawings that shall be delivered to the CITY Representative within thirty (30) days of completion of the work.

3.13 **Days and Hours of Operation; Complimentary Golf Use.**

**3.13.1 Minimum Hours.** The minimum hours of operation shall be Dawn to Dusk. PGG LLC shall make no changes in the days and hours for operation of the Golf Course without the prior approval of the CITY Representative.

**3.13.2 Complimentary Golf Use.** Operator shall, upon proof of identity and affiliation reasonably acceptable to Operator, provide complimentary no-charge golf rounds (limited to one 18-hole round per month per eligible person on a non-cumulative and non-transferable basis) to: (1) active Coast Guard members; and (2) retired and current CITY employees whose names are on a written list provided to Operator from time to time by the CITY. Retired CITY employees who were notified by the CITY as having been awarded privileges to play an unlimited number of courtesy golf rounds and whose names are on a written list provided to CourseCo from time to time by the CITY shall have the right to play an unlimited number of rounds on the Golf Course on a non-transferable basis. In addition, former Mayor Morris Fisher shall have the right to play the Golf Course pursuant to the Stipulation and Judgment between him and the CITY, dated January 18, 2008. Users of complimentary golf rounds will be subject to all rules, policies, restrictions, regulations, and other limitations applicable to all users, as well as any additional restrictions (on such matters as ability to make reservations and on hours of play) as may be necessary to ensure the business model envisioned in this Agreement is maintained. Users of complimentary golf rounds and may be denied use for failure to abide by such rules, policies, restrictions, regulations, and other limitations.

### 3.14 Technology.

**3.14.1 Technology Systems.** PGG LLC, as a Direct Cost, shall procure and maintain telephones, wiring, computers, software, data circuits, voice circuits, Internet circuits and all equipment necessary and appropriate to operate and support telephone communications to and within the Golf Course, automated tee sheet and starter functions, Point-of-Sale for all Pro Shop operations, and a website which provides public, on-line access to golf reservations. PGG LLC shall use such systems to market, record all Golf Course sales, retain customer and sales transaction data and produce all documents and reports necessary to effectively operate the Golf Course and comply with CITY's reporting and auditing requirements. Technology systems shall satisfy CITY's and other government requirements for security and internal controls, including but not limited to, security of credit card and other customer data.

**3.14.2 Scoring Terminal.** A scoring terminal shall be provided in a convenient location at the Pro Shop.

**3.14.3 Security of Data.** PGG LLC shall notify CITY immediately upon any known or suspected loss, theft or disclosure of CITY data, including but not limited to loss of customer personal or credit data.

**3.14.4 Security Procedures.** PGG LLC will be solely responsible for the selection, implementation, and maintenance of security procedures, anti-virus, and similar defensive measures and policies that are sufficient to ensure that (a) PGG LLC'S technology systems are secure and used only for authorized purposes; and (b) PGG LLC'S business records and data,



and any data kept on behalf of CITY, are protected against improper access, use, loss, alteration or destruction. All credit care systems shall meet PCI standards.

3.15 **Waste Disposal.** PGG LLC shall provide adequate trash facilities on the Golf Course and shall promptly empty the containers regularly. PGG LLC shall use its best efforts to reduce the amount of trash and waste generated from Golf Course and to acquire products for use on the Golf Course that reuse or recycle packaging. PGG LLC shall make every effort to initiate and operate a recycling program. PGG LLC shall not permit the burning, dumping or other disposal on, under or about the Golf Course of landfill, refuse, hazardous materials or other materials, with the exception of Golf Course clippings that can be dispersed on the Golf Course. PGG LLC shall dispose of all wastes in compliance with Legal Requirements and Environmental Laws and shall be the responsible party for same during the term of this Agreement.

3.16 **Emergency Services.** PGG LLC shall provide the CITY Representative with contact information for all Management Staff in order that they can respond to any emergency on a twenty-four hour basis. During periods of severe inclement weather conditions, PGG LLC will provide reasonably sufficient personnel for the purpose of sandbagging, keeping drains clear, and/or any other tasks required to prevent serious damage to Golf Course improvements and Facilities. Costs for emergency services shall be a direct cost.

3.17 **Nondiscrimination.** During the performance of this Agreement, PGG LLC and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment, or customer, because of race, color, ancestry, religion, sex, national origin, marital status, age, physical disability, mental disability, medical condition or sexual orientation. Equal opportunity for employees extends to, but is not limited to, recruitment, compensation, benefits, layoff, termination, and all other conditions of employment. PGG LLC and subcontractor shall ensure that the evaluation and treatment of their employees, applicants for employment and Invitees are free of such discrimination.

3.18 **Signs.** PGG LLC, as a Direct Cost, shall be responsible for installing and maintaining all signage necessary for the Golf Course operations.

3.19 **Publicity.** Any commercial advertisements, press releases, articles, or other media information not provided for in the Budget shall be subject to the prior approval of CITY, which approval shall not be unreasonably withheld.

3.20 **Utilities.** PGG LLC shall be responsible for arranging for transfer of utility service for the Golf Course, including but not limited to water, gas, electric, sewer and trash removal to PGG LLC no later than the effective date of this agreement. PGG LLC shall ensure such utility service is provided to effectively operate the Golf Course. PGG LLC's costs for such utility service, as well as PGG LLC's costs incurred in correcting any defect, deficiency or impairment of any utility system, water system, water supply system, drainage system, water system, heating or gas system or electrical apparatus or wires serving the Golf Course, shall be Direct Costs.

3.21 **Safety and Security.** PGG LLC shall exercise caution at all times for the protection of persons and property. PGG LLC shall install adequate safety guards and protective devices for all equipment and machinery. PGG LLC shall post appropriate caution signs to alert personnel or the public of unsafe conditions. PGG LLC shall comply with all applicable laws relating to safety precautions.

3.22 **Use of Golf Course; Restrictions.** Unless PGG LLC has obtained the prior approval of the CITY Representative, which approval may be withheld or conditioned in the sole and absolute discretion of the CITY Representative, PGG LLC shall not conduct, authorize or permit any events or activities requiring the exclusive use of the Golf Course or any portion thereof, other than normal shotgun golf tournaments.

3.23 **Meetings.** Representatives of PGG LLC and the CITY Representative shall meet on an as needed basis to review PGG LLC's performance under this Agreement, review the monthly financial reports submitted by PGG LLC in accordance with Section 7.04.

3.24 **Hazardous Materials.**

3.24.1 **Definition of Hazardous Materials.** Hazardous Materials shall mean a) petroleum; b) asbestos; c) polychlorinated biphenyls; d) radioactive materials; e) any and all substances, products, by-products, waste or other materials of any nature or kind which is or becomes listed, regulated or addressed by any federal, state or local laws, statutes, ordinances, regulations, resolutions, decrees, rules, regulations, directives, orders, guidelines or court decisions (collectively "Environmental Laws"); f) any materials, substances, products, by-products, waste or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products or waste give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decision of the state or federal court; or g) any substances, products, by-products, waste or other materials which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety or general welfare conditions.

3.24.2 **Use and Storage of Hazardous Materials Prohibited.** PGG LLC shall not permit the use and storage of any Hazardous Materials on the Golf Course except in full compliance with all federal, state and local laws pertaining thereto.

- A. PGG LLC may park and use vehicles and equipment on the Golf Course in connection with Golf Course activities under this Agreement, which vehicles may contain gasoline, petroleum products, batteries, diesel fuel, and oil of those kinds and quantities normally contained in such vehicles and equipment. PGG LLC shall ensure that employees are trained and knowledgeable about best management practices for operating and maintaining such vehicles and equipment to prevent any Hazardous Materials release and how to handle any such accidental release.

- B. PGG LLC may use and store fertilizers, herbicides, fungicides and pesticides on the Golf Course in a manner consistent with the Maintenance Standards outlined in Section 3.05 and Environmental Laws. Biocides, defoliants, chemical fertilizers, pesticides, herbicides, fungicides or other agri-chemicals shall be stored in the Maintenance Area in an appropriate structure or location. PGG LLC shall ensure that employees are trained and knowledgeable about best management practices for using fertilizers, herbicides and pesticides to prevent any Hazardous Materials release and how to handle any such accidental release.

3.24.3 **PGG LLC's Responsibility.** PGG LLC shall be responsible for the cleanup, removal and disposal for any Hazardous Materials release on the Golf Course resulting from PGG LLC's activities or any Hazardous Materials release caused or exacerbated by PGG LLC's activities, including but not limited to a release of gasoline, petroleum products, diesel fuel or oil from vehicles or equipment parked or used on the Golf Course in connection with PGG LLC's activities, or releases of fertilizers, herbicides, fungicides or pesticides into the sewage or storm drain systems or into groundwater or any natural or man-made surface waters arising out of PGG LLC's operation and maintenance of the Golf Course. PGG LLC shall timely comply with all requirements of regulatory agencies.

3.24.4 **Indemnification for Hazardous Materials.** PGG LLC shall indemnify, hold harmless and defend CITY, its officers, officials, employees, volunteers and agents from all loss, damage, liability and expense resulting from the unlawful presence, use or release of Hazardous Materials by PGG LLC or arising from Golf Course operations under the control of PGG LLC. PGG LLC shall not be responsible for, nor shall it indemnify, hold harmless or defend CITY, its officers, officials, employees, volunteers and agents from any loss, damage, liability and expense resulting from the presence, use or release of Hazardous Materials prior to the earlier of the Effective Date or the date PGG LLC assumes responsibility for maintenance of the Golf Course, unless and to the extent exacerbated by PGG LLC's activities or neglect.

#### **4.0 APPROVALS.**

4.01 **Standard for Approvals.** Any approval required by the CITY Representative under this Agreement must be in writing unless expressly stated otherwise, and any such approval may be withheld or conditioned in the reasonable discretion of the CITY Representative. In the event that either party refuses to give its consent or approval to any request by the other, such refusing party shall indicate by written notice to the other the reason for such refusal unless this Agreement permits the consent or approval to be withheld without cause or in the sole discretion of either party.

#### **5.0 LEASE TRANSITION AGREEMENT.**

5.01 **Preparation of the Lease Transition Agreement.** PGG LLC shall submit to CITY a proposed Lease Transition Agreement for the Golf Course for the anticipated term of this Agreement ("Lease Transition Agreement") no later than thirty (30) days after execution of this Agreement and shall be approved, subject to any reasonable changes, by the CITY Representative within fifteen (15) days after submittal. In conjunction with this process, PGG

LLC shall provide changes to the Lease Transition Agreement as requested by the CITY Representative.

**5.02 Contents of the Lease Transition Agreement.** The Lease Transition Agreement shall include, without limitation:

- a) Operating budget (the “Direct Cost Budget”) showing (to the extent made available by CITY) Golf Course Expenses for previous year, and current year to date, estimates of all Golf Course Expenses for the term of this Agreement, including, but not limited to expenditures for: (i) labor, (ii) operations and maintenance, (iii) repairs, replacements, and alterations which do not constitute Capital Expenditures, (iv) Furnishings and Equipment and Cost of Goods Sold, and (v) advertising, sales, and business promotion;
- b) Projected Net Operating Income (as that term is used in generally accepted accounting principles);
- c) Net Operating Income Budget projected for the term of this Agreement. Net Operating Income budget shall contain Gross Revenue and all expenses, including Direct Costs, and Fixed Management Fees; and
- d) A “Course Maintenance Plan” for the term of this Agreement.

**5.03 Approval of the Lease Transition Agreement.** The CITY Representative shall, once the Lease Transition Agreement is submitted by PGG LLC and approved by the CITY Representative, make a recommendation for approval or disapproval. Any requested change to green, driving range, golf cart and equipment fees will be submitted for approval with the Lease Transition Agreement.

**5.04 Compliance.** PGG LLC shall use best reasonable efforts to comply with the applicable Lease Transition Agreement. Without the prior consent of the CITY Representative, the actual amount expended for Direct Costs shall not exceed the program budget, including budget adjustments, approved by CITY.

**5.05 Payment from Bank Account.** Costs of operating and maintaining the Golf Course (“Direct Costs,” as more particularly defined in Section 5.06) shall be paid by PGG LLC from the Operating Bank Account pursuant to Section 7.03.

**5.06 Direct Costs.** Direct Costs shall be those costs which are directly related to the resident staff, operation and maintenance of the Golf Course and which are established by the Direct Costs Budget, including, but not limited to the following:

- a) Employee salaries.
- b) Employee benefits including vacation, sick leave, health insurance, disability insurance, worker’s compensation insurance and retirement benefits.
- c) Purchase, lease and/or rental of equipment necessary for the operation of the Golf Course. If the CITY Representative determines that purchasing any item of equipment would be most cost effective, then the annual Direct Cost associated

with that equipment shall be PGG LLC's actual cost, provided the CITY Representative gives advance written approval of the amount of such cost, in the CITY Representative's sole and absolute discretion.

- d) Repair and maintenance of golf carts, irrigation systems and other equipment used solely in the operation of the Golf Course.
- e) Fuel, oil and lubricants.
- f) Fertilizers, pesticides, chemicals and grounds maintenance supplies as described in Section 3.05 of this Agreement.
- g) Uniforms, laundry and linens.
- h) Operating supplies, office supplies, cleaning supplies and other miscellaneous supplies.
- i) Accounting and audit expenses.
- j) Advertising and marketing expenses.
- k) Mileage reimbursement and travel related expenses.
- l) Training expenses.
- m) Telephone, postage and freight.
- n) Fees for permits and licenses.
- o) Utilities, including natural gas, water, electric power, telephones, propane, garbage, trash collection and recycling.
- p) Insurance premiums.
- q) Credit card processing and related services.
- r) Parking lot maintenance expenses.
- s) Cost of Resale Inventory.
- t) Lesson Expenses as defined in Section 5.10.
- u) Taxes and assessments arising out of PGG LLC's operations at the Golf Course, including, without limitation, possessory interest taxes, if any, and personal property taxes, but only to the extent attributable to equipment and other items of personal property used exclusively at the Golf Course.
- v) Professional (including approved legal services) and Consulting services.
- w) Contract services including removal of hazardous materials, trees and debris.
- x) Computer equipment and software.

5.07 **Excluded Costs.** The following costs are not considered Direct Costs, shall not be reimbursed and shall not be included in the Direct Cost Budget:

- a) Any penalties or fines imposed by any governmental agency, except for those penalties or fines caused by the act or omission of CITY or not reasonably related to the acts or omissions of PGG LLC.
- b) Expense of PGG LLC's corporate office, except for the Accounting Fee.
- c) Employee salaries or any Compensation of any corporate or regional employee of PGG LLC.

5.08 **Direct Cost Budget.** The Direct Cost Budget is the total sum budgeted annually for Direct Costs pursuant to Section 5.02 of this Agreement. PGG LLC is responsible for monitoring adherence to the Direct Cost Budget.

5.09 **Lesson Expenses.** All payment for lessons shall be processed through the Pro Shop cash register and shall be included in the daily Gross Revenue Deposits in accordance with the cash handling procedures which meet CITY's security and internal control policies. Lesson Expenses are defined as, and limited to, that portion of golf lesson fees that are paid to golf instructors and shall be paid twice monthly to the instructors, if they are Contractors of the PGG LLC. The portion of the golf lesson fees that may be paid to the golf instructors shall not exceed 85% unless otherwise approved of by the CITY Representative. If the golf instructors are employees of PGG LLC, the portion of the golf lesson fees that may be paid to the golf instructors in addition to salaries shall not exceed 85 % of the golf lesson fees and shall be paid with the regular payroll.

5.10 **Capital Expenditures.** Capital Expenditures are expenditures for equipment, improvements to existing Facilities or construction of new Facilities, the cost of which is equal to or in excess of Five Thousand Dollars (\$5,000) and have a useful life of more than one (1) year.

- a) All Capital Expenditures are in CITY's sole control and discretion, and all costs and expenses of Capital Expenditures shall be paid from CITY funds. PGG LLC shall not make any Capital Expenditure prior to obtaining the approval of the CITY Representative, in his or her sole and absolute discretion. Capital Expenditures shall not be included in any category of the Direct Cost budget, unless expressly approved by the CITY Representative.
- b) Except in the event of an emergency threatening imminent injury to persons or damage to property, the parties acknowledge and agree that this Agreement imposes no responsibilities or obligations on the part of PGG LLC with respect to any aspect of a Capital Expenditure project, including design, construction, or supervision. In the event CITY desires PGG LLC to be involved in any capacity in a Capital Expenditure project, the parties will enter into a separate agreement setting forth the terms and conditions of such involvement, including without limitation fees to be received by PGG LLC for such involvement.

5.11 **Reserved.**

**Comment [A1]:** This section was deleted.

## 6.0 **MANAGEMENT FEE.**

6.01 **Management Fee.** CITY shall pay to PGG LLC a Fixed Management Fee as provided in Section 6.02 and 6.03.

6.02 **Fixed Management Fee.** CITY shall pay to PGG LLC a base "Fixed Management Fee" in the amount of \$12,000.00 Monthly, prorated for any partial month.

6.03 **Payment of Fixed Management Fee.** The Fixed Management Fee shall be paid monthly not later than the twentieth (20<sup>th</sup>) day of the month for the current month. Prior to the Effective Date, and as a condition to PGG LLC's obligations under this Agreement,

6.04 **Accounting Fee.** In addition to management services described herein, PGG LLC shall provide accounting services to the Company, including services pertaining to payroll, payment disbursement, and financial reporting. PGG LLC may provide these services or may employ the accountants or outside payroll services to provide some or all of such services. For these accounting and administrative services CITY shall pay PGG LLC, in addition the Fixed Management Fee, a separate "Accounting Fee" in the amount of Two Thousand Dollars (\$2,000.00) per month during the term of this Agreement. The Accounting Fee will be paid at the same time as the Fixed Management Fee.

6.05 **Project Management/Capital Improvements.** If CITY determines it is in its best interest to have PGG LLC provide project management of capital improvements, a management fee shall be negotiated between the parties.

## **7.0 FINANCIAL AND ACCOUNTING PROCEDURES.**

7.01 **Bank Account.** PGG LLC will establish and maintain a bank account for the purposes of accepting deposits of the Gross Revenues (the "Operating Bank Account"). The Operating Bank Account shall (i) be in a bank approved by the CITY Representative, (ii) provide that CITY is a joint owner with full privileges (such that, upon any termination of this Agreement, CITY can take over management of the Operating Bank Account without further action from PGG LLC), and (iii) otherwise be on terms reasonably acceptable to CITY.

7.02 **Deposits.** PGG LLC shall deposit all cash and check receipts into the Operating Bank Account. All payments from credit card companies shall be directly deposited into the Operating Bank Account. Cash on hand for register tills, petty cash, and the change bank shall not exceed \$5,000.00, and shall be deposited in the on-site drop safe nightly. Deposits shall be reconciled to the Point-of-Sale daily transaction reports. The consolidated Point-of-Sale daily transaction reports will be made available to the CITY Representative as requested. PGG LLC shall establish reasonable practices and procedures for verifying identification for checks and securing credit card authorization. PGG LLC shall not be responsible for reimbursing CITY for any returned checks/credit cards and associated fees unless with respect to any such items PGG LLC has failed to obtain prior electronic screening and bank approval for credit card use, or has failed to follow established policies and procedures for screening and verifying identity in connection with acceptance of checks and fails to report bad check to appropriate law enforcement authority for prosecution.

7.03 **Payment of Direct Costs.** PGG LLC shall pay all budgeted Direct Costs (or other costs as approved by the CITY Representative) from the Operating Bank Account. PGG LLC shall have access to the Operating Bank Account for the purpose of paying Direct Costs and other amounts permitted or required under this Agreement. Payment of all legitimate claims shall be made in a timely manner.

7.04 **Supplies, Inventory, Working Capital and Operating Equipment.** CITY shall provide PGG LLC from time to time, as necessary, Working Capital sufficient to meet the budgeted Direct Costs. The amount of the Working Capital provided by CITY shall be proportionately increased to reflect increases in Direct Costs and Golf Course Expenses set forth in any Approved Interim Plan by mutual agreement by the CITY Representative and PGG LLC. Subject to the Annual Approved Business Plan, Manager shall utilize the Working Capital to acquire, obtain or fund, as the case may be, inventory, supplies, Direct Costs and Golf Course Expenses that are reasonably necessary and appropriate in connection with the operation of the Golf Course and performance of the Services hereunder. PGG LLC shall have no obligation whatsoever to advance its own funds for supplies, inventory, Direct Costs, or Golf Course Expenses; or for capital alterations or improvements to the Golf Course or Pro Shop.

7.05 **Replenishment of Working Capital.** CITY shall replenish the Working Capital for all Direct Costs and Golf Course Expenses pursuant to this Agreement, providing however, that CITY's obligation to make such replenishment is expressly conditioned upon the requirement that Expenses must be consistent with the Approved Interim Plan including any specific or general contingencies included within such Approved Interim Plan. Documentation supporting each invoice shall be maintained by PGG LLC. The provision of adequate Working Capital shall constitute an obligation of CITY to PGG LLC and Working Capital shall be deposited into the Operating Account on or before the 20th day of the calendar month in which written demand from PGG LLC is received by CITY.

7.06 **Financial Reports.** PGG LLC shall cause to be prepared such additional financial reports concerning the Golf Course, as CITY may reasonably request within five (5) days of request.

7.07 **Cash Registers.** All financial transactions shall be processed through a point of sale ("POS") system. POS system registers shall display to the customer the amount of each transaction and shall be equipped with dual tape, which provides a receipt to the customer and a record of each transaction including transaction number and sales detail. Each POS system register shall lock in sales totals and transaction records and use counters that cannot be reset. PGG LLC shall record POS system readings at the beginning of each day. Receipts shall be issued to all customers. PGG LLC shall establish procedures which satisfy CITY's security and internal control requirements.

7.08 **Contracts and Agreements.** All third-party contracts relating to the operation and maintenance of the Golf Course (including without limitation golf professional contracts, contracts for maintenance and repair services, pest control, supplies, and landscaping services, and contracts for tournaments, banquets, and other group functions) shall abide by the requirements in this section. Except as provided in this Agreement, all leases and financing



agreements for Furnishings and Equipment, and all contracts and agreements relating to the operation and maintenance of the Golf Course entered into during the term of this Agreement, shall be entered into by PGG LLC as the contracting party. If the term of the lease, financing agreement, or other contract or agreement is for more than one year or extends beyond the expiration date of this Agreement or if the date for performance under such contract is after the expiration date of this Agreement, then approval of the CITY Representative is required. All such leases, financing agreements and other contracts and agreements, regardless of whether the term or date for performance extends beyond the expiration date of this Agreement, shall allow assignment to CITY without approval of the other party. Upon any termination of this Agreement, PGG LLC shall assign to CITY and CITY will assume all such leases, financing agreements and other contracts and agreements that have been approved, or deemed approved, by CITY.

#### 7.08.1 Contracting Procedures.

- A. **Purchases over \$10,000.** For purchases over \$10,000, excluding Resale Inventory, PGG LLC shall obtain at least three (3) informal bids, except those purchases that are part of an PGG LLC national pricing contract or otherwise justified and approved by the CITY Representative. PGG LLC shall retain records related to the informal bids for review by CITY.
- B. **Emergency Expenditures.** PGG LLC shall be entitled to make additional expenditures not authorized under the then applicable Interim Plan in the event of an emergency, which may result in immediate damage or danger to life or property, or in order to comply with any immediate Legal Requirements or Insurance Requirements, provided, however, even in the event of an emergency PGG LLC shall advise CITY of the situation and need to for additional expenditure as soon as reasonable possible (before such expenditure if reasonably possible).
- C. **Purchases by PGG LLC for CITY's Account.** PGG LLC shall take advantage of all available discounts and other prompt pay strategies. In connection with any purchases made by PGG LLC or an Affiliate of PGG LLC for the account of CITY, PGG LLC or such Affiliate may perform services as a representative of the manufacturer to secure the benefits of lower costs, and that any resulting savings, including representatives' fees, shall be passed on to CITY when the benefit is realized.
- D. **Trade Discounts, Rebates, Refunds and National Accounts.** All trade discounts, rebates and refunds, including national accounts, pertaining to the benefit of CITY. CITY shall be paid its pro rata share of discounts, rebates and refunds accruing to PGG LLC for purchases that benefit the Golf Course and other golf courses operated or managed by the PGG LLC when those discounts, rebates and refunds are received by the PGG LLC.

- E. **Purchases from PGG LLC Affiliates.** If any purchases of goods or services for the Golf Course are made from or through an Affiliate of PGG LLC, the charges to the Golf Course for such goods or services shall be on the same terms as those made to other golf courses and country clubs operated by PGG LLC and such charges shall not exceed the invoice prices for such goods and services.

7.08.2 **Approval of CITY.** If a contract has not been approved through the Annual Budget or exceeds the budgeted amount for the item or service, approval of the CITY Representative is required.

7.08.3 **Requirements for Third-Party Contracts.** Subcontractors, lessees, concessionaires, tenants and any other third-party contractors shall:

- a) Maintain and carry insurance in the amounts set forth in Article 9.0 with the CITY named as additional insured by endorsement, unless covered by the PGG LLC's insurance.
- b) Comply with the requirements of this Operating Agreement, including but not limited to the nondiscrimination provision set forth in Section 3.17, the drug free workplace provision in Section 3.08.6 and the labor laws requirements in Section 3.08.5, which shall be included in all subcontracts, leases, concessionaire and other third-party contracts.

**8.0 BUSINESS RECORDS.**

8.01 **Types of Records.** PGG LLC shall maintain a modified accrual method of accounting that complies with generally accepted accounting principles for all the revenues and expenses (including without limitation, Gross Revenues and Direct Costs) in connection with the operation of the Golf Course. PGG LLC shall establish and implement adequate internal controls for the operation of the Golf Course. The accounting, books and records for the operation of the Golf Course shall be separate from the accounting, books and records for any other business operated or managed by PGG LLC. Such accounting, books and records shall include the keeping of at least the following documents:

- a) Regular books of account such as general ledgers showing all assets, liabilities including cash balances, accounts payable, deposits, accounts receivables, fixed assets and equipment inventory;
- b) Journals, including, without limitation, any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.;
- c) Cash register reports that will enable identification of day-to-day sales; and

- d) Any other accounting, books and records for the operation of the Golf Course that CITY, in its sole discretion, deems necessary or appropriate for proper reporting of Gross Revenues and Direct Cost disbursements;
- e) PGG LLC shall maintain a computerized system, showing all information on the number and types of rounds of golf played and the corresponding revenues and fee categories, customer addresses and associated data, resident versus non-resident status, and the fee paid per round; and
- f) Logs showing the dates and times of golf play and lessons must be maintained and available at the site for inspection by CITY at any time. In the event driving range equipment that tracks dates and times of play is not available at a price acceptable to the CITY Representative, PGG LLC shall maintain and keep available documentation sufficient to facilitate an audit of driving range revenues.

8.02 **Audit of Records.** All documents, books and accounting and financial records kept by PGG LLC pursuant to this Article 8, and relating in any manner to the Golf Course, shall be open for inspection by CITY at any reasonable time during the term of this Agreement and for at least three (3) years thereafter. In addition, CITY or its authorized representatives may, from time to time, conduct an audit of the books of the operation of the Golf Course, observe the operation of the business and review internal controls, security, and cash handling procedures for adequacy. CITY shall use reasonable efforts to minimize the interruption to the normal operation of the Golf Course during any inspection or audit performed pursuant to the provisions of this Section.

8.03 **Financial Statements.** If requested in writing by the CITY Representative, PGG LLC shall submit audited financial statements for the operation of the Golf Course, including an independent auditor's report and corresponding audit management letter, to CITY within ninety (90) days after the end of the term of the Interim Plan. The audit shall be performed by an independent certified public accountant acceptable to CITY, and the cost of the audit shall be included as a Direct Cost.

8.04 **Public Records.** All information obtained in connection with CITY's inspections of PGG LLC's records or audits, with respect to the Golf Course, may be or become subject to public inspection and/or reproduction as public records.

8.05 **Comparable Market Data.** PGG LLC undertakes a fiduciary role for CITY, and covenants to treat CITY's Golf Course in an equitable manner vis-à-vis any other golf course it may lease or operate. With a reasonable request of CITY, PGG LLC shall provide non-confidential, comparable market data or information regarding a certain Golf Course Expense or Fee item. The market data or information may not specifically identify a particular golf course. If the information being provided is not a public record, then CITY shall keep this information confidential to the extent allowed by law Public Records Act.

8.06 **Monthly Reports.** Within twenty (20) calendar days after the end of each calendar month, PGG LLC shall provide CITY with year-to-date (from the Effective Date) balance sheet and income and expense statement, including but not limited to, unearned and deferred revenues,

all Direct Costs for that month and Gross Revenues for that month (itemizing each source of Gross Revenues including, without limitation, green fees, golf cart rentals, Pro Shop sales, lesson fees, banquet food and beverage sales, driving range operations, resident cards).

**9.0 INSURANCE AND INDEMNIFICATION.**

9.01 **Insurance.** PGG LLC shall at all times during the term hereof, produce and continue in force Comprehensive General Liability Insurance, Automobile Insurance and Workers' Compensation Insurance as follows.

**A. Minimum Scope of Insurance.** Coverage shall be at least as broad as:

- 1) General Liability Insurance.
- 2) Automobile Liability Insurance.
- 3) Liquor Liability Insurance and Workers' Compensation insurance.
- 4) PGG LLC may provide any of the insurance herein required by means of an endorsement on a blanket liability policy or policies.

**B. Minimum Limits of Insurance.**

PGG LLC shall maintain policy limits no less than:

- 1) Comprehensive General Liability: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the required occurrence limit.
- 2) Automobile Liability: \$2,000,000 combined single limit per accident for bodily injury and property damage.
- 3) Liquor Liability: PGG LLC shall procure and maintain for the duration of the agreement Liquor Liability insurance in the amount of \$2,000,000 each occurrence. CITY is to be named as an additional insured on Liquor Liability insurance.
- 4) Other: Such other coverage as may be appropriate from time to time for the Golf Course as PGG LLC may determine or as CITY may reasonably require.

**C. Deductibles and Self Insured Retentions.**

Any deductibles in excess of Five Thousand Dollars (\$5,000) or self-insured retentions must be declared to and approved by CITY. At the option of CITY either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees and volunteers, or (2) PGG LLC shall guarantee payment of losses and related investigations, claim administration and defense expenses.

**D. Other Insurance Provisions.**

The policies shall contain, or be endorsed to contain, the following provisions:

- 1) CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insured's under all insurance policies covering matters for which CITY, its officers, officials, employees, agents and volunteers, could have liability, specifically including, without limitation, matters as respects: (i) liability arising out of activities performed by or on behalf of PGG LLC (including food and beverage sales); (ii) products and completed operations of PGG LLC; (iii) premises owned, occupied, managed or used by PGG LLC (including the Golf Course); (iv) automobiles owned, leased, hired or borrowed by PGG LLC; and (v) worker's compensation. The Coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents, or volunteers.
- 2) PGG LLC's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, agents or volunteers shall be the excess of PGG LLC's insurance and shall not contribute with it.
- 3) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officers, officials, employees, agents, or volunteers.
- 4) PGG LLC's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 5) The insurer shall waive all rights of subrogation against CITY, its officers, officials, employees, and volunteers for losses arising from the acts, omissions or use of the Golf Course by PGG LLC.
- 6) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by first class mail, return receipt requested, has been given to CITY

(except that ten (10) days' notice shall be sufficient for any cancellation due to non-payment by PGG LLC.

- 7) Insurance is to be placed with insurers with a Best's Insurance Reports rating of no less than B+

**9.02 Insurance Issuers and Policies.** All insurance required to be carried by PGG LLC hereunder shall be issued by responsible insurance companies, qualified to do the business of issuing the applicable types of policies in the State of California and reasonably acceptable to CITY and PGG LLC. Copies of all policies, and original endorsements evidencing the existence and amounts of such insurance, shall be delivered by PGG LLC to CITY as soon as possible, but no later than five (5) business days prior to the effective date of such policies/endorsements, and shall be subject to CITY's reasonable approval. No such policy shall be cancelable or substantially reduced in limits or coverage except after thirty (30) days written notice to the other party. PGG LLC shall, at least (30) thirty days prior to the expiration of such policy, furnish CITY with renewals or "binders" thereof together with original endorsements, or CITY may order such insurance and charge the cost thereof to PGG LLC, which amount shall be payable by PGG LLC upon demand. Any insurance required hereunder may be carried under so-called "blanket coverage" form of insurance policies. The coverage afforded will not be materially reduced or diminished or otherwise materially different from what would exist under a separate policy meeting all of the requirements of this Section 9.0.

**9.03 Commercial Crime Insurance.** PGG LLC shall obtain and keep in full force and effect during the term of this Agreement a commercial crime policy which includes, without limitation, a blanket bond for all employee dishonesty in the amount of \$ 250,000; coverage for theft, disappearance and destruction of monies and securities in or on the Golf Course or outside the Golf Course in an amount not less than \$35,000; and depositor's forgery in the amount of \$250,000. PGG LLC shall obtain the CITY Representative's written permission before individually bonding any individual employee and if allowed shall be in an amount not less than \$500,000.

**9.05 Indemnification and Hold Harmless.**

**9.05.1 PGG LLC Indemnification.** PGG LLC shall, except to the extent of the gross negligence or willful misconduct of CITY, CITY Representative or CITY's officers, agents or employees, fully defend, indemnify and hold harmless CITY and its officers, agents, and employees, from and against any and all damages, liabilities, claims, costs or expenses, including but not limited to reasonable attorneys' fees and costs, for economic damage to third parties, property damage or bodily injury, including but not limited to death which result from any act or omission by PGG LLC or any officer, manager, employee, agent or subcontractor of PGG LLC in connection with PGG LLC's performance, or non-performance, under this Agreement or operation of the Golf Course, or which result from PGG LLC's violation of Insurance Requirements or Legal Requirements or which in any manner relate to an employee, or prospective employee, of PGG LLC, or a breach by PGG LLC under this Agreement or under any contract, lease or other agreement to which PGG LLC is a party. PGG LLC shall also, except to the extent of the gross negligence or willful misconduct of CITY, CITY Representative or

CITY's officers, agents or employees, fully defend, indemnify and hold CITY, CITY Representative and CITY's officers, agents, and employees, harmless from and against any fines imposed by administrative or regulatory bodies for actions caused by PGG LLC or its officers, managers, employees, agents or subcontractors. **THE FOREGOING INDEMNITY OBLIGATIONS ON THE PART OF PGG LLC PROTECT CITY, CITY REPRESENTATIVE AND CITY'S OFFICERS, AGENTS AND EMPLOYEES EVEN AGAINST THEIR OWN NEGLIGENCE (BUT NOT GROSS NEGLIGENCE).**

The foregoing indemnification shall not apply to any damages or other liability caused by the gross negligence or willful misconduct of CITY, nor shall it limit any right of PGG LLC hereunder to pursue any remedy for CITY's failure to pay the Management Fee or to terminate this Agreement for any breach by CITY in accordance with Section 10 below.

**9.05.2 CITY Indemnification.** CITY shall, except to the extent of the negligence or willful misconduct of PGG LLC or PGG LLC's officers, managers, agents, employees or subcontractors, fully defend, indemnify and hold harmless PGG LLC and its officers, agents, and employees, from and against any and all damages, liabilities, claims, costs or expenses, including but not limited to reasonable attorneys' fees and costs, for economic damage to third parties, property damage or bodily injury, including but not limited to death which result from any act or omission by CITY, CITY Representative, or any officer, employee or subcontractor of CITY in connection with CITY's performance under this Agreement or in connection with the Golf Course. CITY shall also, except to the extent of the negligence or willful misconduct of PGG LLC, or PGG LLC's officers, managers, agents, employees or subcontractors, fully defend, indemnify and hold PGG LLC and its officers, agents, and employees, harmless from and against any fines imposed by administrative or regulatory bodies for actions caused by CITY or its officers, employees or agents.

The foregoing indemnification shall not apply to any damages or other liability caused by the negligence or willful misconduct of PGG LLC or PGG LLC's officers, managers, agents, employees or subcontractors, nor shall it limit any right of CITY hereunder to pursue any remedy for PGG LLC's failure to perform under this Agreement or to terminate this Agreement for any breach by PGG LLC pursuant to Section 10 below.

**9.05.3 Notice to CITY.** PGG LLC agrees to promptly report any and all accidents, incidents, claims, damage and loss that would be relevant to any of the provisions of this Article 9 to CITY (except for de minimus items). PGG LLC shall take no action (such as admission of liability) which would, in its reasonable judgment, prejudice CITY or the insurance carrier in the defense of any such claims.

## **10.0 DEFAULT.**

**10.01 PGG LLC'S Default.** PGG LLC's breach of any provision of this Agreement or the failure to keep, observe or perform any material covenant including, without limitation, the occurrence of any one or more of the following events, shall constitute a default and breach of this Agreement by PGG LLC:

- a) PGG LLC's abandonment or vacation of the Golf Course;
- b) PGG LLC's use of any Operating Bank Account funds for any purpose not expressly provided for by this Agreement or approved by the CITY Representative in writing;
- c) The levy of a writ of attachment or execution on this Agreement or on any of the property of PGG LLC located in or on the Golf Course and such levy or execution is not stayed prior to the enforcement of such writ of attachment or execution; or
- d) An event of bankruptcy or insolvency including but not limited to: (i) PGG LLC applies for or consents to the appointment of a receiver, trustee or liquidator of PGG LLC or of all or a substantial part of its assets; (ii) PGG LLC files a voluntary petition in bankruptcy or commences a proceeding seeking reorganization, liquidation, or an arrangement with creditors; (iii) PGG LLC files an answer admitting the material allegations of a bankruptcy petition, reorganization proceeding, or insolvency proceeding filed against PGG LLC; (iv) PGG LLC admits in writing its inability to pay its debts as they come due; (v) PGG LLC makes a general assignment for the benefit of creditors; or (vi) an order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating PGG LLC a bankrupt or insolvent or approving a petition seeking reorganization of PGG LLC or appointing a receiver, trustee or liquidator of PGG LLC or of all or a substantial part of its assets, and such order, judgment or decree continues unstayed and in effect for any period of thirty (30) consecutive days.
- (e) The repeated violation of any provision of this Agreement for which PGG LLC is promptly given written notice by CITY, on more than ten (10) occasions, regardless of whether the violations were cured.
- (f) Any of PGG LLC's warranties in Section 15.02 shall be untrue in any material respect.
- (f) PGG LLC is formally charged with or is convicted of any criminal act or commits any act of fraud.

10.02 **CITY'S Default.** CITY'S breach of any provision of this Agreement or the failure to keep, observe or perform any material covenant including, without limitation, the covenant to pay the Management Fee or to fund Working Capital, shall constitute a default and breach of this Agreement by CITY.

10.03 **Curing Default.** Except as otherwise expressly stated in this Agreement, the defaulting party shall have ten (10) days after receipt of written notice from the other party to cure any monetary default under this Agreement. The defaulting party shall have thirty (30) days after receipt of written notice from the other party or the specific time permitted under this Agreement



to cure any default under any other covenant, condition or agreement contained in this Agreement or, in the event that any such default is of a nature such that it cannot be cured within thirty (30) days, the defaulting party shall immediately commence to cure and thereafter diligently pursue such cure to completion, provided that such default must in any event be cured within sixty (60) days. Notwithstanding the foregoing, PGG LLC shall be in default under this Agreement, with or without written notice from CITY, upon the occurrence of any event specified under subsections 10.01(a), 10.01(b), 10.01(c), 10.01(d), 10.01(e) or 10.01(f), and such default shall not be curable.

#### 10.04 Remedies.

10.04.1 **PGG LLC's Right to Advance Working Capital.** If reasonably necessary, PGG LLC may, but shall not be obligated to, advance Working Capital in the event that CITY is obligated to do so hereunder but fails to do so following 20 days written notice from PGG LLC. Any Working Capital advanced by PGG LLC shall bear interest until repaid in full at the rate of 6% per annum, but not exceeding the maximum rate permitted by law. CITY's failure to timely provide Working Capital shall constitute a material default of this Agreement.

10.04.2 **Termination of the Agreement.** In the event the defaulting party fails to cure any default of this Agreement within the applicable cure period, the other party may terminate this Agreement upon ten (10) days' written notice to the defaulting party (unless the default is stated to be not curable, in which case no such prior written notice shall be required).

If CITY terminates this Agreement pursuant to this Section 10.04.2 or pursuant to any other provision of this Agreement, or if this Agreement terminates by its terms, CITY shall have the following rights:

- a) to take sole possession of the Operating Bank Account;
- b) to take sole possession of all Facilities, including all equipment and materials;
- c) to take assignment of any licenses, leases, contracts and other agreements;
- d) to pursue any and all other appropriate civil and criminal remedies;
- (e) to collect from PGG LLC any and all monies owing CITY under this Agreement through the date of termination;
- (f) to take any and all other reasonable actions to facilitate the transition of management of the Golf Course from PGG LLC to CITY or CITY's designee; and.

PGG LLC shall be entitled to any unpaid portion of the Fixed Management Fee attributable to performance that occurred prior to PGG LLC's default, and to the repayment of any Working Capital advanced by PGG LLC pursuant to Section 10.04.1 above that has not previously been reimbursed, less any damages and related costs and expenses (including, without

limitation, reasonable attorneys' fees, court costs, etc.) incurred by CITY as a result of PGG LLC's default.

If PGG LLC terminates this Agreement pursuant to this Section 10.04.2, PGG LLC shall have the right to collect from CITY any and all monies owing PGG LLC under this Agreement.

Regardless of who terminates this Agreement, upon any such termination PGG LLC agrees to reasonably cooperate, but without material cost to PGG LLC, with CITY in connection with any all of the foregoing termination rights and also the termination procedures set forth in Section 11 below in order to ensure a smooth management transition.

10.04.3 **Remedies Cumulative.** Neither the right of termination, nor the right to sue for damages, nor any other remedy available to a party under this Agreement shall be exclusive of any other remedy given under this Agreement or now or hereafter existing at law or in equity.

10.05 **Effect of Termination.** The termination of this Agreement under the provisions of this Article 10 shall not affect the rights of the terminating party with respect to any damages it has suffered as a result of any breach of this Agreement, nor shall it affect the rights of either party with respect to any liability or claims accrued, or arising out of events occurring, prior to the date of termination. Any provisions of this Agreement that are expressly intended to be performed after termination (e.g., CITY's audit rights in Section 8.02) shall survive the termination of this Agreement.

## **11.0 TERMINATION PROCEDURES.**

11.01 **Contract Termination.** Upon termination of this Agreement:

- a) PGG LLC shall deliver to CITY all records and information related to tournaments, banquets and other events booked at the Golf Course for the Contract Transition Period or any time thereafter.
- b) PGG LLC shall deliver to CITY current copies of all contracts, permits and licenses affecting Golf Course operations, including without limitation, leases for golf carts and other Golf Course equipment.
- c) All real and personal property that is currently located at the Golf Course, together with any real or personal property purchased or leased in accordance with the Direct Cost Budget or otherwise with CITY funds is and shall remain the property of CITY. PGG LLC shall transfer possession of the Golf Course, Facilities, Furnishings and Equipment, supplies, software, databases, books, records and materials purchased, prepared or maintained under this Agreement to CITY or as CITY shall direct.
- d) PGG LLC shall transfer all keys, convey all alarm codes and vacate the Golf Course.

- e) PGG LLC shall assign to CITY and CITY shall assume PGG LLC's obligations under any loans and leases incurred or entered into by PGG LLC with respect to Furnishings and Equipment or supplies then in use at the Golf Course, provided that the following conditions are met unless waived by CITY: (i) PGG LLC shall have delivered to CITY written documentation acceptable to CITY showing that PGG LLC has fully performed its obligations under such loans and leases through the date CITY assumes such obligations, and (ii) with respect to any agreements in excess of one year or whose term extended beyond the expiration date of this Agreement, CITY shall have given its written approval to the agreement.
- f) PGG LLC shall promptly transfer the liquor license for the Golf Course to CITY's designee for the sum of \$1.00. CITY shall bear the cost of the escrow fees.
- g) PGG LLC shall cooperate with CITY to ensure that CITY receives the benefit of its termination rights set forth in Section 10.04.

11.02 **Termination Upon Sale.** If CITY sells, conveys, leases, swaps, contributes (to a partnership, joint venture or otherwise) or otherwise transfers or encumbers the Golf Course or any or all of CITY's interest therein, the provisions of Sections 2.03 and 15.10 shall apply.

## **12.0 WORK STOPPAGES, DAMAGE OR DESTRUCTION.**

12.01 **Work Stoppages.** In the event concerted activities by labor groups (e.g., picketing, strikes, etc.) result in PGG LLC's employees not entering and working at the Golf Course, Premises, PGG LLC shall, if the CITY Representative so requests in writing, seek appropriate administrative or court orders to return operations to normal. During such period, PGG LLC shall operate the Golf Course Premises on a best efforts basis until labor relations are normalized. If and only if the CITY Representative gives PGG LLC a written request to seek administrative or court orders will the cost of doing so shall be a Direct Cost.

12.02 **Damage or Destruction.** Should the Golf Course be destroyed or substantially damaged by fire, flood, acts of God, or other casualty, CITY, by written notice to PGG LLC, shall have the right to cancel this Agreement pursuant to Article 12 on the basis that CITY does not choose to rebuild or restore the Golf Course, 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 cancellation. For the purpose of this Section 12.02, the Golf Course shall be deemed to have been substantially damaged if the estimated length of time required to restore the Golf Course substantially to its condition and character just prior to the occurrence of such casualty shall be in excess of six (6) months or if the estimated uninsured cost thereof exceeds \$500,000. If this Agreement is not cancelled in the event of damage to the Golf Course either because (a) the damage does not amount to substantial damage as described above, or (b) notwithstanding destruction of or substantial damage to the Golf Course, and CITY elects, in its sole and absolute discretion, to restore the Golf Course, then CITY may proceed, at CITY's own expense, to commence and complete restoration of the Golf Course to substantially the condition and character just prior to the occurrence of such casualty.

If as a result of any damage or destruction to the Golf Course as provided in this Section 12.02, the responsibilities of PGG LLC under this Agreement are substantially changed, then the parties shall meet and discuss in good faith appropriate modifications to this Agreement including the Combined Management Fees. Any insurance proceeds made available after such damage or destruction shall be payable to CITY.

**12.03 Eminent Domain.** If all of the Golf Course shall be taken through the exercise of the power of eminent domain, or by agreement in lieu of the exercise of eminent domain, then upon the date that CITY shall be required to surrender possession of the Golf Course (or upon such earlier date as CITY may elect if surrender of possession has been legally determined to be imminent within one (1) year), 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. Likewise, if such a substantial portion of the Golf Course is taken through the exercise of eminent domain, or an agreement in lieu of the exercise of eminent domain, so to make it unfeasible, in the reasonable opinion of CITY, to restore and continue to operate the remaining portion of the Golf Course for the purposes contemplated in this Agreement, then upon the date that CITY shall be required to surrender a substantial portion of the Golf Course (or upon such earlier date as CITY may elect if surrender of possession has been legally determined to be imminent within one (1) year), 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 Course shall not make it unfeasible, in the sole and absolute discretion of CITY, to restore and continue to operate the remaining portion of the Golf Course for the purposes contemplated in this Agreement, then this Agreement shall not terminate, and CITY may proceed, at CITY's own expense, to alter or modify the Golf Course so as to render it a complete architectural unit which can be operated as a golf course of substantially the same type and character as before. If as a result of any alteration or modification of the Golf Course as provided in this Section 3.13, the responsibilities or rights of PGG LLC under this Agreement are substantially changed, then the parties shall meet and discuss in good faith appropriate modifications to this Agreement including the Combined Management Fee. Any award pursuant to a taking by right of eminent domain shall belong to and be paid to CITY.

**12.04 Force Majeure Events.** As used in this Agreement, the term "Force Majeure" 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, shortages of materials, or any other event not within the control of PGG LLC and not caused by the negligence or intentional wrongful conduct of PGG LLC or CITY.

If PGG LLC or CITY is unable by reason of Force Majeure to carry out any obligation under this Agreement, such obligation shall be suspended only so far as it is physically affected by such Force Majeure. The party unable to perform shall give the other party prompt notice of such Force Majeure with a detailed explanation and the probable extent to which it will be unable to perform or be delayed in performing such obligation. The party unable to perform shall use all possible diligence to remove such Force Majeure as quickly as possible. The requirement that any Force Majeure shall be removed with all possible diligence shall not require the settlement

by the party unable to perform because of strikes, lockouts or other labor disputes or the meeting of any claims of or demands by any supplier or government entity which reasonably may be harmful to the best interests of CITY or PGG LLC.

Costs incurred as a result of a Force Majeure shall be reimbursed by CITY, only if the expenditure was approved in advance by the CITY Representative, which approval will not be unreasonably withheld.

If as a result of the occurrence of a Force Majeure, the responsibilities of PGG LLC under this Agreement are substantially changed, then the parties shall meet and discuss in good faith appropriate modifications to this Agreement including the Combined Management Fee.

**13.0 SUBMISSION OF PAYMENTS, REPORTS AND NOTICES.**

13.01 **Payments and Financial Reports.** Any payments and financial reports and documents required by this Agreement shall be submitted to:

Finance Director  
City of Pacific Grove  
300 Forest Avenue  
Pacific Grove, CA 93950

13.02 **Other Notices.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and shall be deemed given as of the time of hand delivery to the addresses set forth below, or three (3) days after deposit into the United States mail, postage prepaid, by first class mail. Unless notice of a different address has been given in accordance with this Article 13, all such notices shall be addressed as follows:

If to CITY:

City Manager  
City of Pacific Grove  
300 Forest Avenue  
Pacific Grove, CA 93950  
Telephone: (831) 648-3106                      Fax: (831) 657-9361

If to PGG LLC:

Pacific Grove Golf, LLC  
Post Office Box 5668  
Petaluma, California 94953-1019  
Fax: (707) 763-8355

with a copy to: Mr. John C. Telischak  
Corte Madera Business Center  
45 Koch Road, Suite A  
Corte Madera, California 94925-1250  
Fax: (415) 945-9909

#### **14.0 DISPUTE RESOLUTION.**

14.01 **Controversies Subject to Mediation.** Any controversy between the parties regarding the construction or application of this Agreement, and any claim arising out of this Agreement or its breach, may first be submitted to mediation, but only if agreed to by the parties.

14.02 **Selection of Mediator.** The parties may agree on a mediator. If they cannot agree on a mediator within ten (10) days after service of the request for mediation, either party may request the American Arbitration Association to provide a list of three (3) possible mediators with each party having the right to strike a name on an alternating basis until one name remains. If either party delays beyond five (5) days in striking a name, then the other party may choose anyone from the remaining list to serve as mediator.

14.03 **Mediation Schedule.** The mediation shall take place before the mediator at the time and place selected by the mediator unless the parties agree otherwise. The mediator shall select the time and place promptly and shall give each party written notice of the time and place at least ten (10) days before the date selected; provided that the meeting shall take place not less than thirty (30) days after the request for mediation.

14.04 **Cost of Mediation.** Each party hereto shall bear the attorneys' fees, costs, and expenses incurred by it in connection with such mediation, and both parties shall share equally the costs and expenses attributable to the services of the mediator.

14.05 **Other Proceedings.** If mediation does not prove successful, either party may institute a proceeding in a court of law or the parties may agree to nonbinding or binding arbitration.

#### **15.0 MISCELLANEOUS PROVISIONS.**

15.01 **Ownership.** Ownership of the Golf Course, all Improvements, Facilities, Furnishings and Equipment, Resale Inventory and Supplies acquired by CITY or acquired by PGG LLC on behalf of CITY, and all alterations, additions or betterments thereto, shall remain the property of the CITY. Any acquisitions by PGG LLC of any such items shall be in the name of CITY.

##### **15.02 Warranties.**

15.02.1 **PGG LLC Warranties.** PGG LLC warrants and represents that it has full power and authority to enter into this Agreement and perform the obligations in this Agreement; that consummation of this Agreement will not create a default under any other agreement and will not violate any law, regulations, order, judgment, decree or rule; that PGG LLC has conducted its own review of the plans and specifications for the Golf Course prior to execution of this Agreement; and that PGG LLC is not relying on any representation of CITY in connection with the execution of this Agreement. PGG LLC warrants and represents that it is authorized to transact business in the State of California and that all of PGG LLC's employees are, and at all times will be, properly licensed and trained for their respective positions and responsibilities.

15.02.2 **CITY Warranties.** CITY warrants and represents that it has full power and authority to enter into this Agreement and perform the obligations in this Agreement and that consummation of this Agreement will not create a default under any other agreement and will not violate any law, regulations, order, judgment, decree or rule. CITY warrants and represents that it is authorized to transact business in the State of California. CITY warrants and represents that the CITY Representative has been and is duly authorized and empowered to bind CITY and act or CITY in all matters concerning the Golf Course and this Agreement.

### 15.03 **Golf Course.**

15.03.1 **CITY's Right of Possession.** This Agreement does not constitute a lease and the right of possession of the Golf Course shall at all times remain with CITY. CITY and its authorized representatives shall have the right to enter the Golf Course at any time without notice and for any purpose, including, without limitation, the following: (i) to determine whether the Golf Course are in good condition and whether PGG LLC is complying with its obligations under this Agreement; (ii) to do any necessary maintenance and to make any restoration to the Golf Course that CITY has the right to perform; to serve, post or keep posted any notices required or allowed under the provisions of this Agreement; (iii) to show the Golf Course to prospective brokers, agents, buyers, tenants, lenders, partners and others any time during the term of the Agreement; and (iv) to undertake emergency maintenance, repairs or restoration. CITY reserves the right to (i) establish, grant or utilize easements or rights-of-way over, under, along and across the Golf Course, (ii) grant liens and other restrictions encumbering the Golf Course, and (iii) to sell, convey, lease, swap, contribute (to a partnership, joint venture or otherwise) or otherwise transfer or encumber the Golf Course or any or all of CITY's interest therein, subject to Section 15.10.

15.03.2 **Condition of Golf Course.** PGG LLC acknowledges that, except as expressly set forth in this Agreement, CITY has made no representations or warranties concerning the condition of the Golf Course and PGG LLC agrees to commence operations on the Golf Course on the Effective Date of this Contract, as determined by the CITY Representative. This Agreement is subject to all easements, restrictions, liens and other interests affecting title to the Golf Course, whether or not they are of record.

15.04 **Waiver.** No delay or failure on the part of any party in exercising any right hereunder shall impair any such right or any remedy of the party so delaying or failing. No waiver of any provision of this Agreement shall be binding unless executed in writing by the party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

15.05 **Integration.** This agreement is the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, representations and understanding of the parties concerning the subject matter hereof.

15.06 **Modification of Agreement.** No modification, amendment or supplement to this Agreement shall be binding unless executed in writing by both of the parties.

15.07 **Severability.** If any court of competent jurisdiction holds that any provision of this Agreement is void, voidable, illegal or unenforceable, or that this Agreement would be void, voidable, illegal or unenforceable unless any provision of it were severed, that provision shall be severable from and shall not affect the continued operation of the rest of this Agreement; provided that if the provision to be severed is a material part of this Agreement, the foregoing shall not apply, and the parties shall in good faith renegotiate such provision.

15.08 **Time of the Essence.** Time is of the essence in the performance of all obligations under this Agreement for which specific time periods have been specified.

15.9 **Cumulative Remedies.** The remedies granted under the terms of this Agreement shall not be exclusive but shall be cumulative and in addition to all other remedies allowed under law.

15.10 **Assignment.** PGG LLC shall not subcontract or assign or delegate all or any part of its rights or obligations under this Agreement without the prior express written approval of CITY. Any change in the control of PGG LLC, including, without limitation, any transfer or acquisition of a controlling percentage of PGG LLC's equity or stock or a controlling percentage of the equity or stock of CourseCo, Inc., shall constitute a prohibited assignment for purposes of this Agreement.

15.11 **Time References.** Except as otherwise specifically provided in this Agreement, all references to "days" herein shall mean calendar days and not business days.

15.12 **No Third Party Beneficiaries.** This Agreement is not intended for the benefit of any specific person, entity or third party beneficiary other than the named parties hereto and no person or entity who is not specifically named as a party herein shall have any right to enforce the provisions of this Agreement.

15.13 **Golf Course Names.** The Golf Course shall be known by such trade name and/or trademark or logo as may from time to time be determined by CITY. The parties acknowledge and understand that the names, logos, and designs used in the operation of the Golf Course, together with appurtenant goodwill, are the exclusive property of CITY. PGG LLC may identify the Golf Course as a golf course managed and operated by PGG LLC.

15.14 **Independent Contractor.** The parties do not intend that this Agreement constitute, and this Agreement shall not be interpreted under any circumstances as, a partnership, joint venture or other business association, nor shall this Agreement be interpreted as creating a landlord-tenant relationship. The relationship of the parties is solely that of owner - management company. PGG LLC shall at all times be considered an independent contractor under this Agreement, and all employees shall be employees of PGG LLC, not CITY. Nothing contained in this Agreement shall be construed to be or create a partnership or joint venture between CITY and its successors and assigns, on the one part, and PGG LLC and its successors and assigns, on the other part. PGG LLC agrees to be solely responsible for its own matters including payment



of its employees, compliance with Social Security, withholding and other such personnel regulations. PGG LLC'S employees shall not be entitled to any salary, fringe benefits, pension, workers' compensation, sick leave, insurance or any other benefit or right connected with employment with CITY.

15.15 **Headings.** The Article, Section and Subsection headings contained in this Agreement are for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

15.16 **Survival of Covenants.** Any covenant, term or provision of this Agreement which in order to be effective must survive the termination of this Agreement shall survive any such termination.

15.17 **Applicable Law.** This Agreement shall be construed and interpreted in accordance with, and shall be governed by, the laws of the State of California.

15.18 **No Presumption Regarding Drafter.** The language of each and all paragraphs, terms and/or provisions of this Agreement, shall, in all cases and for any and all purposes, and in any way and all circumstances whatsoever, be construed as a whole, according to its fair meaning. CITY and PGG LLC acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between CITY and PGG LLC, and that this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem either CITY or PGG LLC to be the drafter of this Agreement, and therefore no presumption for or against the drafter shall be applicable in interpreting or enforcing this Agreement.

15.19 **Counterparts.** This Agreement and any amendment may be executed in counterparts, and upon all counterparts being so executed each such counterpart shall be considered as an original of this Agreement or any amendment and all counterparts shall be considered together as one agreement.

15.20 **Authority.** The parties represent for themselves that (a) such party is duly organized and validly existing, (b) the person or persons executing this Agreement on behalf of such party is/are duly authorized to execute and deliver this Agreement on behalf of such party, (c) by so executing this Agreement, such party is formally bound to the terms and provisions of this Agreement, and (d) the execution of this Agreement does not violate any provision of any other agreement to which such party is bound.

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date first above written.

CITY:

PGG LLC:

By: \_\_\_\_\_

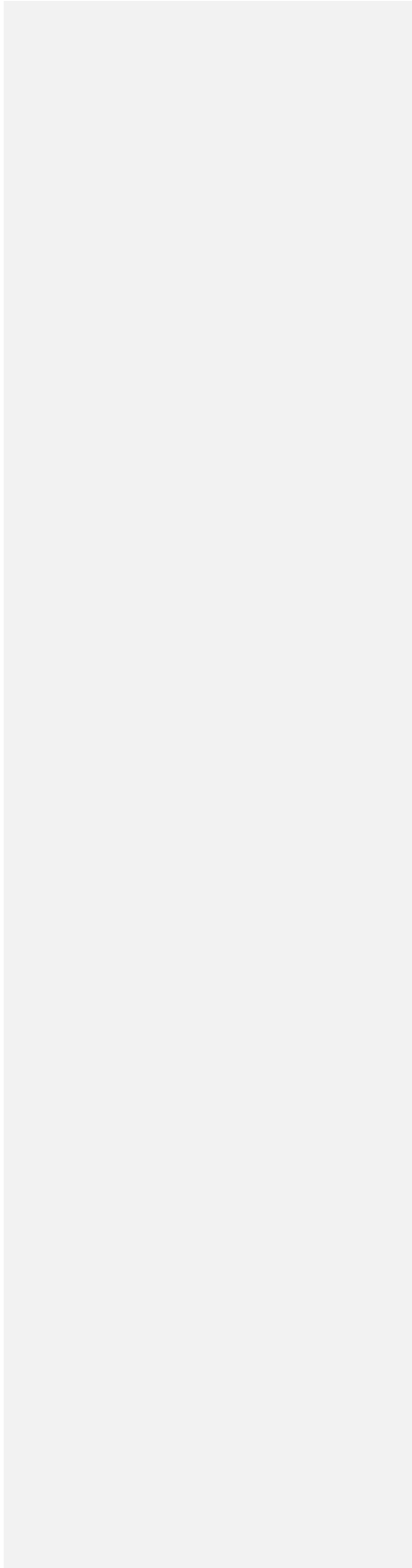
By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



Pacific Grove  
2014 Interim Plan

	TOTAL	January	February	March	April	May	June	July	August	September	October	November	December	
<b>Open Play &amp; Tournament Rounds</b>	<b>31,360</b>				<b>5,600</b>	<b>6,160</b>	<b>6,720</b>	<b>6,720</b>	<b>6,160</b>					
Open Play & Tourn Rounds - Course 2	-	-	-	-	-	-	-	-	-	-	-	-	-	
Member Rounds	-	-	-	-	-	-	-	-	-	-	-	-	-	
<b>TOTAL PAID ROUNDS</b>	<b>31,360</b>				<b>5,600</b>	<b>6,160</b>	<b>6,720</b>	<b>6,720</b>	<b>6,160</b>					
Comp Rounds	-	-	-	-	-	-	-	-	-	-	-	-	-	
<b>TOTAL ROUNDS</b>	<b>31,360</b>				<b>5,600</b>	<b>6,160</b>	<b>6,720</b>	<b>6,720</b>	<b>6,160</b>					
<b>REVENUE</b>														
Green Fees	\$ 972,160				\$ 173,600	\$ 190,960	\$ 208,320	\$ 208,320	\$ 190,960					
<i>Average per Round</i>	<i>31.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>31.00</i>	<i>31.00</i>	<i>31.00</i>	<i>31.00</i>	<i>31.00</i>					
Green Fees - Course 2	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -					
<i>Average per Round</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>					
Membership Dues / Fees	-	-	-	-	-	-	-	-	-					
<i>Average per Round</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>					
Carts	244,608				43,680	48,048	52,416	52,416	48,048					
<i>Average per Round</i>	<i>7.80</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>7.80</i>	<i>7.80</i>	<i>7.80</i>	<i>7.80</i>	<i>7.80</i>					
Merchandise Sales	174,675				31,192	34,311	37,430	37,430	34,311					
<i>Average per Round</i>	<i>5.57</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>5.57</i>	<i>5.57</i>	<i>5.57</i>	<i>5.57</i>	<i>5.57</i>					
Food & Beverage	-	-	-	-	-	-	-	-	-					
<i>Average per Round</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>					
Driving Range	30,733				5,488	6,037	6,586	6,586	6,037					
<i>Average per Round</i>	<i>0.98</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.98</i>	<i>0.98</i>	<i>0.98</i>	<i>0.98</i>	<i>0.98</i>					
Lessons	5,800	-	-	-	1,000	1,200	1,200	1,200	1,200					
<i>Average per Round</i>	<i>0.19</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.18</i>	<i>0.19</i>	<i>0.18</i>	<i>0.18</i>	<i>0.19</i>					
Other Miscellaneous Rev	44,531				7,952	8,747	9,542	9,542	8,747					
<b>GROSS OPERATING REVENUE</b>	<b>1,472,735</b>				<b>262,958</b>	<b>289,349</b>	<b>315,540</b>	<b>315,540</b>	<b>289,349</b>					FALSE
<i>Revenue per Round</i>	<i>46.96</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>46.95</i>	<i>46.96</i>	<i>46.95</i>	<i>46.95</i>	<i>46.96</i>					
<b>COST OF GOODS SOLD</b>														
Merchandise	122,273				21,834	24,018	26,201	26,201	24,018					
Lessons	5,220	-	-	-	900	1,080	1,080	1,080	1,080					
Food & Beverage	-	-	-	-	-	-	-	-	-					
<b>Total Cost of Goods Sold</b>	<b>127,493</b>				<b>22,734</b>	<b>25,098</b>	<b>27,281</b>	<b>27,281</b>	<b>25,098</b>					FALSE
<b>NET OPERATING REVENUE</b>	<b>\$ 1,345,015</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 240,178</b>	<b>\$ 264,205</b>	<b>\$ 288,213</b>	<b>\$ 288,213</b>	<b>\$ 264,205</b>					FALSE
<b>OPERATING EXPENSES</b>														
<b><u>General &amp; Administrative</u></b>														
Labor Wages/Salaries	\$ 37,064				\$ 6,739	\$ 10,108	\$ 6,739	\$ 6,739	\$ 6,739					FALSE
Personnel Expenses - Taxes, Benefits, etc.	9,436				1,820	2,157	1,820	1,820	1,820					FALSE
Non Labor Costs	133,375				38,883	21,761	22,635	25,285	24,811					FALSE
Equipment Lease	-				-	-	-	-	-					TRUE
Subtotal	179,875	-	-	-	47,442	34,026	31,194	33,844	33,370					
<b><u>Golf Operations</u></b>														
Labor Wages/Salaries	101,916				16,851	28,188	18,959	18,959	18,959					FALSE
Personnel Expenses - Taxes, Benefits, etc.	15,997				2,832	3,984	3,061	3,061	3,061					FALSE
Non Labor Costs	28,820				3,304	12,804	4,804	3,604	4,304					FALSE

**Pacific Grove  
2014 Interim Plan**

	TOTAL	January	February	March	April	May	June	July	August	September	October	November	December	
Equipment/Vehicle Lease	31,400				6,000	6,350	6,350	6,350	6,350					FALSE
Subtotal	178,133	-	-	-	28,987	51,326	33,174	31,974	32,674					
<b><u>Course Maintenance</u></b>														
Labor Wages/Salaries	121,740	-	-	-	12,174	36,522	24,348	24,348	24,348					FALSE
Personnel Expenses - Taxes, Benefits, etc.	41,754				7,133	9,568	8,351	8,351	8,351					FALSE
Non Labor Costs	182,870	-	-	-	14,700	72,920	14,050	68,600	12,600					FALSE
Water	411,036	-	-	-	31,324	87,970	81,576	94,566	115,600					FALSE
Equipment Lease	16,500	-	-	-	3,300	3,300	3,300	3,300	3,300					FALSE
Subtotal	773,900	-	-	-	68,631	210,280	131,625	199,165	164,199					
<b><u>Food &amp; Beverage</u></b>														
Labor Wages/Salaries	-	-	-	-	-	-	-	-	-					TRUE
Personnel Expenses - Taxes, Benefits, etc.	-	-	-	-	-	-	-	-	-					TRUE
Non Labor Costs	-	-	-	-	-	-	-	-	-					TRUE
Equipment Lease	-	-	-	-	-	-	-	-	-					TRUE
Subtotal	-	-	-	-	-	-	-	-	-					
<b>Total Operating Expense</b>	<b>1,131,908</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>145,060</b>	<b>295,632</b>	<b>195,992</b>	<b>264,982</b>	<b>230,242</b>					
<b>NOI Before Mgmt Fee, Rents, Debt Service</b>	<b>213,106</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>95,118</b>	<b>(31,427)</b>	<b>92,221</b>	<b>23,231</b>	<b>33,963</b>					
<b><u>Management Fees/Rents</u></b>														
Accounting Fee	10,000				2,000	2,000	2,000	2,000	2,000					FALSE
Fixed	60,000				12,000	12,000	12,000	12,000	12,000					FALSE
Dunes Restoration (amortized over 9 months)	38,889	-	-	-	7,778	7,778	7,778	7,778	7,778					FALSE
Rent	-	-	-	-	-	-	-	-	-					TRUE
Percentage Rent	-	-	-	-	-	-	-	-	-					TRUE
Initial Capital Fund Contribution	-	-	-	-	-	-	-	-	-					
Capital Improvement Rent Contribution	-	-	-	-	-	-	-	-	-					TRUE
<b>Total Management Fees/Rents</b>	<b>108,889</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>21,778</b>	<b>21,778</b>	<b>21,778</b>	<b>21,778</b>	<b>21,778</b>					
<b>NOI After Mngmt Fee and Rents</b>	<b>\$ 104,217</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 73,340</b>	<b>\$ (53,205)</b>	<b>\$ 70,443</b>	<b>\$ 1,453</b>	<b>\$ 12,185</b>					
<b><u>Debt Service</u></b>														
Principal Payments	-	-	-	-	-	-	-	-	-					
Interest Payments	-	-	-	-	-	-	-	-	-					
<b>Total Debt Service</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>					
<b>NET PROFIT/(LOSS)</b>	<b>\$ 104,217</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 73,340</b>	<b>\$ (53,205)</b>	<b>\$ 70,443</b>	<b>\$ 1,453</b>	<b>\$ 12,185</b>					