

Portions of APNS: 008-391-15, 008-391-12, 008-391-05, 005-051-25, 008-011-93, 005-051-13
3999 Centennial Park Drive
Carson City, NV 89706

LATE MATERIAL
MEETING DATE 12/07/17
ITEM # 26A

RIGHT OF ENTRY AGREEMENT FOR THE PURPOSES OF LIMITED OPERATION

This RIGHT OF ENTRY AGREEMENT FOR THE PURPOSES OF LIMITED OPERATION, entered into this _____ day of _____, is made by and between CARSON CITY, NEVADA, a consolidated municipality and political subdivision of the State of Nevada (the "Landowner"), and Duncan Golf Management, Inc. DBA TDS Golf at Eagle Valley LLC (the "Licensee").

1. GENERAL.

1.1 Property. Landowner is the owner of certain land located in Carson City, Nevada, more commonly known as the Eagle Valley Golf Courses which is more particularly shown on Exhibit "A," (the "Property").

1.2. Entry/Improvements. Licensee desires to enter ("Entry") onto a certain portion of the Property for the purposes of completing what is listed in Exhibit B ("Work").

1.3. Consideration. In consideration for Entry, Licensee shall be responsible for all costs and expenses related to the operation of the golf course, including compliance with all applicable erosion control, drainage, reclaimed/effluent water, air quality and dust control measures and license and permitting requirements.

1.4 Status of licensee. Licensee shall have the status of an "Independent Contractor" as defined by NRS 284.173, and shall not be entitled to any of the rights, privileges, benefits, and emoluments of either an officer or employee of Carson City.

2. TERMS OF ENTRY.

2.1 Entry and Work. Subject to compliance with the provisions of this agreement, Licensee is hereby granted the right and license to enter the Property for the purposes of performing the Work. No fee shall be charged by Landowner for Entry.

2.2 Licenses and Permits. Licensee represents that it is licensed by the City and the State of Nevada for the purposes of performing the services it wishes to perform pursuant to this agreement. Licensee shall ensure all of its employees, agents, subcontractors, volunteers or invitees, performing services at the direction, or on behalf of, license, have all valid and current licenses, permits, qualifications, and approvals of any nature, that are legally required to perform the services described in this agreement. The City shall not be responsible for any cost or expense associated with this paragraph. Licensee's business license is incorporated as Exhibit C.

If Licensee, its employees, agents, subcontractors, volunteers or invitees, performing services at the direction, or on behalf of, licensee, performs any work that is contrary to this agreement, Licensee will be solely responsible for any such violation, whether in law or in equity.

2.3 Liability for Work. All Work must be performed and made at Licensee's sole cost and expense unless otherwise specified in this agreement. Licensee shall be strictly liable for all claims of, all activities of, and compliance of, all contractors, subcontractors, vendors, material men, and other third parties involved with the Entry and the Work. Landowner makes no warranty or representation that any material or condition existing on the Property will be fit for Licensee's intended use and is provided in as is where is condition. Licensee shall not excavate fill material from the Property. Dust control shall be maintained by Licensee to Landowner's satisfaction and Licensee shall be responsible for compliance with all applicable air emissions requirements. All access to the Property shall be subject to the Landowner's approval and designation of route. Entry and all Work must be scheduled and coordinated prior to commencement with the Director or designee of the Parks, Recreation and Open Space Department. Licensee shall not traverse, trespass on or disturb other real property owned by Landowner, unless prior written consent from Landowner is obtained.

2.4 Worker's compensation and employer's liability insurance. Licensee shall provide workers' compensation insurance as required by NRS Chapters 616A through 616D inclusive and Employer's Liability insurance with a minimum limit not less than \$1,000,000 for each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease. Licensee waives all rights against City and its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by the workers' compensation and employer's liability or commercial umbrella liability insurance obtained by Licensee pursuant to this Agreement. Licensee shall obtain an endorsement equivalent to WC 00 03 13 to affect this waiver. Licensee's General Liability Insurance and Workers Compensation insurance are incorporated as Exhibit D.

2.5 Property Insurance. The City shall maintain a policy of fire and extended coverage insurance on the Property and all improvements.

Licensee at its expense, shall obtain and keep in force during the term of this Agreement, a policy of fire, theft and other perils insurance covering Licensee's furniture, fixtures, goods, wares, merchandise and other personal property maintained on the Property unless caused by or due to the negligence of the City its agents, servants or employees.

The City shall not be liable to Licensee, or to any person whatsoever, for any damage caused by the acts or omissions of any persons occupying any space adjacent to or adjoining the premises unless the City or its agents caused the loss or damage.

Except for loss or damage caused by the City's sole negligence, the City shall not be responsible or liable to Licensee for any loss or damage resulting to Licensee or Licensee's property from, but not limited to, any natural or manmade disaster, or water, gas or steam; or the bursting, stoppage, or leakage of pipes. Licensee agrees to indemnify and hold the City harmless from and defend the City against any and all such claims or liability for any injury or damage to any person or property whatsoever, occurring in or on the premises or occurring as a result of the use of any of the facilities or appliances anywhere on the premises.

2.6 General Liability Insurance. Licensee must carry policies of insurance conforming to the minimum requirements specified below, unless otherwise agreed to in writing by

the City. Such insurance must be maintained and kept in force for the duration of this Agreement. The City shall have no liability except as specifically provided in this Agreement.

Licensee shall not commence work before: 1) Licensee has provided the required evidence of insurance to the City (Purchasing and Contracts Department) and (2) the City has approved the insurance policies provided by Licensee. The general and specific requirements are described in detail below.

A. GENERAL TERMS

- i.* Neither approval by the City nor failure to disapprove the insurance furnished by Licensee shall relieve Licensee of Licensee's full responsibility to provide the insurance required by this Agreement.
- ii.* Prior approval of the insurance policies by the City shall be a condition precedent to any payment of consideration under this Agreement and the City's approval of any changes to insurance coverage during the course of performance ~~shall constitute is~~ an ongoing condition ~~subsequent to~~ this Agreement. Any failure of the City to timely approve shall not constitute a waiver of the condition.
- iii.* Licensee's insurance policies shall apply on a primary basis. Any insurance or self-insurance available to the City under its coverage(s) shall be in excess of, and not contributing to, the insurance obtained by Licensee. Until such time as the insurance is no longer required by the City, Licensee shall provide the City with evidence of renewal or replacement insurance no less than thirty (30) calendar days before the expiration or replacement of the required insurance.
- iv.* If at any time during the period when insurance is required by this Agreement, an insurer or surety shall fail to comply with the requirements of this Agreement, as soon as Licensee has knowledge of any such failure, Licensee shall immediately notify the City and immediately replace such insurance or bond with an insurer meeting the requirements.
- v.* Compliance with the insurance requirements of this Agreement shall not limit the liability of Licensee, its employees, agents, subcontractors, volunteers or invitees performing Work on behalf of or at the direction of Licensee, to the City or others, and shall be in addition to and not in lieu

of any other remedy available to the City under this Agreement or otherwise.

- vi. The City shall have the right to request and review a copy of any required insurance policy or endorsement at any time to assure compliance with these requirements.

2.7 Commercial General Liability Insurance

Licensee shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 for each occurrence.

A. *Minimum Limits required:*

- i. Two Million Dollars (\$2,000,000.00) - General Aggregate.
- ii. Two Million Dollars (\$2,000,000.00) - Products & Completed Operations Aggregate.
- iii. One Million Dollars (\$1,000,000.00) - Each Occurrence.
- iv. CGL insurance shall be written on ISO occurrence form CG 00 01 04 13 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract [(including the tort liability of another assumed in a business contract)].
- v. City and County of Carson City, Nevada, its officers, employees and immune contractors shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or CG 20 26, or a substitute providing equivalent coverage, and under the commercial umbrella, if any.
- vi. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to City. There shall be no endorsement or modification of the CGL to make it excess over other available insurance; alternatively, if the CGL states that it is excess or pro rata, the policy shall be endorsed to be primary with respect to the additional insured.

- vii. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability assumed under a contract.
- viii. Licensee waives all rights against City and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to this Agreement. Insurer shall endorse the CGL policy as required to waive subrogation against City with respect to any loss paid under the policy.

2.8 Business Automobile Liability Insurance. Licensee shall maintain automobile liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident for bodily injury and property damage.

A. Other Requirements

- i. Such insurance shall cover liability arising out of owned, hired, and non-owned autos (as applicable). Coverage as required above shall be written on ISO form CA 00 01, CA 00 05, CA 00 25, or a substitute form providing equivalent liability coverage.
- ii. Licensee waives all rights against City and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the automobile liability or other liability insurance obtained by Licensee pursuant this Agreement.

2.9 Professional Liability Insurance. Licensee shall maintain professional liability insurance applying to all activities performed under this Agreement with limits not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate.

A. Other Requirements

- i. Retroactive date: One day prior to the commencement of the performance of this Agreement.
- ii. Licensee will maintain professional liability insurance during the term of this Agreement and for a period of three (3) years after termination of this Agreement unless waived by the City. In the event of non-renewal or other lapse in coverage during the term of this Agreement or the three (3) year period described above, Licensee shall purchase Extended

Reporting Period coverage for claims arising out of Licensee' negligent acts, errors and omissions committed during the term of the Professional Liability Policy.

iii. The Extended Reporting Period shall continue through a minimum of three (3) years after termination date of this Agreement.

iv. A certified copy of this policy may be required.

2.10 Certificate Holder. Each certificate shall list Carson City c/o Carson City Purchasing and Contracts, 201 N. Carson Street, Suite 2, Carson City, NV 89701 as a certificate holder.

2.11 Additional Insured. By endorsement to the general liability insurance policy evidenced by Licensee, the City and County of Carson City, Nevada, its officers, employees and immune contractors shall be named as additional insureds for all liability arising from this Agreement.

2.12 Waiver of Subrogation. Each liability insurance policy, except for professional liability, shall provide for a waiver of subrogation in favor of the City.

2.13 Cross Liability Policy. All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.

2.14 Deductibles and Self Insured Retentions. Insurance maintained by Licensee shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the City. Such approval shall not relieve Licensee from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000.00 per occurrence, unless otherwise approved by the City.

2.15 Policy Cancellation. Except for ten (10) calendar days' notice for non-payment of premium, Licensee or its insurers must provide thirty (30) calendar days prior written notice to Carson City Purchasing and Contracts if any policy will be canceled, non-renewed, or if required coverage and/or limits will be reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by mail to Carson City Purchasing and Contracts, 201 N. Carson Street, Suite 2, Carson City, NV 89701. When available, each insurance policy shall be endorsed to provide thirty (30) days' notice of cancellation, except for ten (10) days' notice for non-payment of premium, to City.

2.16 Approved Insurer. Each insurance policy shall be issued by insurance

companies authorized to do business in the State of Nevada or eligible surplus lines insurers under federal and Nevada law and having agents in Nevada upon whom service of process may be made, and currently rated by A.M. Best as “A-VII” or better.

2.17 Evidence of Insurance. Before Licensee begins its performance obligations under this Agreement, the following documents must be provided as evidence of insurance to Carson City Purchasing and Contracts, 201 North Carson Street, Suite 2, Carson City, NV 89701:

- i. Certificate of Insurance: Licensee shall furnish City with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth herein. The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to Carson City Purchasing and Contracts to evidence the insurance policies and coverages required of Licensee.
- ii. Additional Insured Endorsement: An Additional Insured Endorsement (CG20 10 or C20 26), signed by an authorized insurance company representative, must be submitted to Carson City Purchasing and Contracts to evidence the endorsement of the City as an additional insured.
- iii. Schedule of Underlying Insurance Policies: If an Umbrella or Excess policy is evidenced to comply with the minimum limits, a copy of the Underlying Schedule from the Umbrella or Excess insurance policy may be required.

2.18 Non-exclusive Right. The right and license of Entry granted herein is non-exclusive. Landowner may continue to use and to enjoy the Property in any manner not inconsistent with the right of Entry granted herein.

2.19 Costs of Utilities. For the duration of this agreement, the City will assume costs associated with the following: Phone, internet, security system, and costs associated with the Southwest Gas bill, NV Energy bill, and Carson City Utility Bills. The City will also pay to re-key the facility.

~~2.19—Costs of Utilities. The City will assume costs associated with all utilities, security system and re-keying the facility for the duration of this agreement.~~

2.20 Additional Obligation of the City. The City agrees it will cooperate with Licensee on the golf course operational transition.

3. DURATION OF AGREEMENT.

3.1. Commencement and Termination. This agreement shall commence on January 1, 2018, and be binding on the parties until March 31, 2018, unless terminated sooner by a subsequent agreement or with the mutual consent of the parties.

Notwithstanding 3.1, either party shall have the option of terminating this agreement upon 30 days' notice to the other party. In the event the agreement is terminated prior to completion of the Work, Licensee shall restore the Property in accordance with Paragraph 6 prior to vacating the Property.

4. COMPLIANCE WITH REQUIREMENTS.

Licensee shall comply with all applicable licenses, permits, authorizations, laws, rules and regulations of local, state and federal governmental authorities, including, without limitation, reclaimed/effluent water discharge requirements, and all Environmental Laws (hereinafter defined) in performing Work, and shall take every precaution to protect and safeguard the Property.

5. LIENS.

Licensee shall promptly pay all bills and amounts due for labor, services or materials provided for or incorporated in the Property for the Work pursuant to the Entry. Licensee shall remove or cause to be removed within fifteen (15) days after recordation thereof any claims of mechanic's or material men's liens or other charges or encumbrances against the Property that arise from or relate to the Entry and the Work.

6. RESTORATION AND INDEMNITY.

In the event the Agreement is terminated prior to completion of the Work, Licensee shall restore the Property to its original condition, unless the parties mutually agree to leave the property "as is" as of the date of termination.- Licensee's obligation

hereunder to restore the Property shall include, without limitation, the removal of any debris, equipment, structures, fixtures, supplies, materials and other items necessary and incidental to Entry and performance of the Work.

To the fullest extent of NRS Chapter 41 liability limitations, each party shall indemnify, hold harmless and defend, not excluding the other's rights to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorneys' fees and costs, caused by the negligence, errors, omissions, recklessness or intentional misconduct of its own officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described herein.

This indemnification obligation is conditioned upon the performance of the duty of the party seeking indemnification (indemnified party), to serve the other party (indemnifying party) with written notice of actual or pending claim, within 30 calendar days of the indemnified party's notice of actual or pending claim or cause of action. The indemnifying party shall not be liable for reimbursement of any attorney's fees and costs incurred by the indemnified party due to said party exercising its right to participate in legal counsel before said written notice of the actual or pending claim is provided to the indemnifying party. Nor shall the indemnifying party be liable for reimbursement of any attorney's fees and costs incurred by the indemnified party if the indemnified party chooses to hire additional counsel beyond the counsel provided by the indemnifying party-

7. ENVIRONMENTAL.

Licensee will not, nor will Licensee authorize any other person or entity, during the term of this agreement, to manufacture, process, store, distribute, use, discharge, place, or dispose of any Hazardous Substances (hereinafter defined), in, under or on the Property or any property adjacent thereto except in accordance with applicable law and as necessary to operate the golf course. For purposes hereof, "Hazardous Substances" includes: 1) those substances defined as "hazardous substances", "hazardous materials," "toxic substances," "toxic material"; or "regulated substances" under any federal, state or local law, ordinance, regulation, statute or rule; 2) any petroleum based or related products except petroleum products used in construction of the Work performed hereunder; and 3) any other substance, material or waste regulated under

any federal, state or local law, ordinance, regulation, statute or rule relating to the aforementioned, to the environment or to industrial hygiene (collectively, "Environmental Laws").

8. NOTICES.

All notices and demands by any party hereto to any other party, required or desired to be given hereunder must be in writing and must be validly given or made only if personally delivered or deposited in the United States mail, postage prepaid, return receipt requested or if made by Federal Express or other similar delivery service maintaining records of deliveries and attempted deliveries, or if made by facsimile. Service will be conclusively deemed made upon receipt if personally delivered or, if delivered by mail or delivery service, on the first business day delivery is attempted or upon receipt, whichever is sooner.

Any notice or demand to Landowner must be addressed to Landowner at:

Carson City:

Jennifer Budge, Parks and Recreation Director
Parks, Recreation and Open Space Department
3303 Butti Way #9
Carson City, NV 89701

Any notice or demand to Licensee must be addressed to Licensee at:

Licensee:

Thomas P. Duncan, President
Duncan Golf Management, Inc.
DBA TDS Golf at Eagle Valley LLC
101 Palmer Drive Dayton, NV 89403

The parties may change their addresses for the purpose of receiving notices or demands by providing a written notice given in the manner required in this agreement. Notice of change of address will not become effective, however, until the actual receipt of the address change by the parties to this agreement.

9. Miscellaneous.

9.1 Assignment. Neither this agreement nor any rights or obligations of Licensee hereunder may be transferred, assigned or conveyed by Licensee without the written consent of Landowner, provided that Licensee may delegate performance of obligations hereunder to contractors or others performing the Work on the Property. Said delegation will not relieve Licensee of liability hereunder.

9.2 Survival of Covenants. Any of the representations, warranties, covenants and agreements of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination will survive termination and will not be merged therein. In the unlikely event that a long term agreement cannot be successfully negotiated during the term of this temporary agreement, any money received in exchange for memberships or other obligations that extend beyond the terms of this temporary agreement shall be refunded by Licensee on a prorated basis.

9.3 Parties Bound. This agreement is binding upon and inure to the benefit of the parties of this agreement and their respective heirs, executors, administrators, legal representatives, successors and assigns.

9.4 Severability. If any of the terms and conditions in this agreement, for any reason, are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other of the terms and conditions in this agreement. The remaining terms and conditions are to be construed as if such invalid, illegal, or unenforceable term or conditions had never existed.

9.5 Time. Time is of the essence to the performance of any provision of this agreement. If the date for performance of any provisions of the agreement is a Saturday, Sunday, or banking holiday (in the State of Nevada), the date for performance will be extended until the next day that is not a Saturday, Sunday or banking holiday.

9.6 Waiver. Either party may specifically waive any breach of the terms and conditions hereof by the other party, but no waiver specified in this section will constitute a continuing waiver of similar or other breaches of the terms and conditions hereof. All

remedies, rights, undertaking, obligations, and agreements contained herein are cumulative and not mutually exclusive.

9.7 Attorney's Fees. Should either party employ an attorney or attorneys to enforce any of the terms and conditions hereof, or to protect any right, title, or interest created or evidenced hereby, the non-prevailing party in any action pursued in courts of competent jurisdiction shall pay to the prevailing party all reasonable costs, damages, and expenses, including attorney's fees, expended or incurred by the prevailing party.

9.8 Governing Law. The terms and conditions hereof are governed by and construed in accordance with the laws of the State of Nevada, and venue shall be in the First Judicial District Court of Carson City, Nevada.

9.9 Counterparts. This agreement may be executed in counterparts, each of which will be deemed an executed original, and all of which together will constitute one and the same instrument.

9.10 Entirety and Amendments. This agreement, along with the attached exhibits, embody the entire agreement between the parties and supersede all prior agreements and understandings if any, relating to the Entry, the Property, and the Work, and may be amended or supplemented only by an instrument in writing executed by both parties. No oral statements or representations made before or after the execution of this agreement regarding the subject matter of this agreement are binding on a party, nor may any such oral statements or representations be relied on by a party.

9.11 Invalid Provisions. If any provision of this agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision will be fully severable. The agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of the agreement. The remaining provisions of the agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this agreement.

9.12 Headings. Headings used in this agreement are used for reference purposes only and do not constitute substantive matter to be considered in construing the terms of this agreement.

9.13 Not a Partnership. The provisions of this agreement are not intended to create, nor will they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

9.14 No Recordation. Neither this agreement nor any notice hereof will be recorded in the office of the Carson City Recorder.

IN WITNESS WHEREOF, the parties hereto or a representative of either have set their hands and subscribed their signatures as of the date and year indicated.

CITY:
CARSON CITY, NEVADA, A
CONSOLIDATED MUNICIPALITY

LICENSEE:
DUNCAN GOLF MANAGEMENT, INC.
DBA TDS Golf at Eagle Valley LLC

by: _____
Nick Marano, City Manager

by: _____
Thomas P. Duncan, President

Originating City Department:
PARKS AND RECREATION
JENNIFER BUDGE

Approved as to Form:
CARSON CITY DISTRICT ATTORNEY
JASON WOODBURY

By: _____
Jennifer Budge, Director
Department of Parks and Recreation

By: _____
Iris Yowell
Deputy District Attorney

Exhibit B – Scope of Work

- Facility inspections (health, building, fire and other local regulatory agencies)
- Inventory, review and inspect facility, course condition and equipment assessment.
- Conduct a limited golf course operation (general golf course and equipment maintenance, point of sales (memberships, basic food and beverage ~~(no liquor)~~, membership sales)
- Review and obtain operational files, plans and other pertinent data related to the property and operations

[4842-1548-8600, v. 1](#)