

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

Item #: 16a

Meeting Date: 03/01/18

AFTER RECORDING RETURN TO:

CARSON CITY PUBLIC WORKS
Attn: Stephanie Hicks, Real Property Manager
3505 Butti Way
Carson City, Nevada 89701

AND

CARSON CITY PURCHASING AND CONTRACTS
Attn: Laura Rader, Purchasing & Contracts Administrator
Purchasing and Contracts Department
201 North Carson Street, Suite 2
Carson City, Nevada 89701

**LICENSE AGREEMENT BETWEEN
CARSON CITY AND DUNCAN GOLF
MANAGEMENT DBA TDS GOLF AT EAGLE
VALLEY LLC. FOR OPERATION, MANAGEMENT
AND MAINTENANCE OF THE
EAGLE VALLEY GOLF COURSE**

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EXHIBITS

- Exhibit A Duncan Golf Management Proposal
- Exhibit B Property Map and description
- Exhibit C Equipment Inventory, Condition and Value
- Exhibit D Clubhouse Property Inventory

**LICENSE AGREEMENT
FOR PROFESSIONAL MANAGEMENT SERVICES
AT THE EAGLE VALLEY GOLF COURSES**

This license Agreement (the “Agreement”) is entered into this ____ day of 2018, by and between the Consolidated Municipality of Carson City, a political subdivision of the State of Nevada (also referred to as the “City”), and Duncan Golf Management, Inc. DBA TDS Golf at Eagle Valley LLC., (also referred to as the “Licensee”).

W I T N E S S E T H

1. RECITALS

Whereas the City owns the property known as the Eagle Valley Golf Course and the City requires certain golf management services be performed; and

Whereas, in response to a Request for Proposal distributed by the City for such golf management services, the Licensee submitted a proposal and statement of qualifications, outlined in Exhibit A; and

Whereas the Licensee represents that it is qualified, equipped, staffed, ready, willing and able to perform and render such services as shall be necessary, required or desired, for and on behalf of the City,

Whereas, the Licensee was determined to be the most responsive and responsible bidder by the Carson City Board of Supervisors at their December 7, 2017 meeting.

Therefore, in consideration of the above, the parties agree to the following:

2. SCOPE OF SERVICES

During the term of this Agreement, Licensee shall have the exclusive right and license at the Eagle Valley Golf Course (the “Golf Course”) to operate and manage all parts of Golf Course. “Golf Course” is located on portions of six (6) parcels (Assessor Parcel Numbers 008-391-15, 008-391-12, 008-391-05, 005-051-25, 008-011-93, 005-051-13) and is approximately 319-acres, as described in Exhibit B. To operate and manage Golf Course as Licensee deems appropriate and to perform any act deemed necessary or desirable for the operation and management of Golf Course; maintain all the golf course property, operate, manage and supervise daily play, pro shop, food and beverage services, driving range and putting practice greens, maintenance facilities, club house and infrastructure on the property; provide lessons, and maintain all play and maintenance equipment, advertise and promote public play and the sale of merchandise and services.

3. TERM

This Agreement shall be for a period of fifty seven months (57) months, April 1, 2018 through December 31, 2022, with the City's option to renew for an additional five (5) years after December 31, 2020 and a thorough review and evaluation process takes place. Consideration for renewal shall include, but not be limited to, setting the base rent to fair market value and renegotiating capital improvements as set out in paragraph 4.5 below, the Licensee satisfactorily performing professional golf management services herein described, receiving rating of satisfactory-or-above on all evaluations, achieving the performance benchmarks as stated herein and the investment of Licensee and City as provided for herein. Should either party decline to exercise its option to renew this Agreement for an additional five (5) years after the three (3) year review and evaluation process is completed, this Agreement will terminate on December 31, 2022.

4. CONSIDERATION

4.1 In exchange for the license to use the property, the City will receive needed management services for its public golf course. In exchange for the management services, except as otherwise provided in this Agreement the Licensee shall be entitled to retain revenue generated from its operation of the Golf Course during the term of this Agreement.

4.2 The City and the Licensee shall work together to develop a Capital Improvement Plan, provide estimated values and cooperate to prioritize the needs of the public golf course. Both parties will invest in the property.

4.3 Licensee shall be required to acquire capital equipment related to the operation and maintenance of the Golf Course in an amount not less than \$90,000 per year. Accounting records as proof of the investment must be provided to the City.

4.4 Prior to expending funds for such capital equipment, Licensee will submit such proposed capital leases or purchases in writing to Director of Parks and Recreation or its designee ("the Director") for its review and approval, which approval shall not be unreasonably delayed or withheld. The City's failure to respond to a request for approval of any such lease or purchase for more than fourteen (14) calendar days shall be deemed a denial by the City. All equipment acquired by Licensee pursuant to this provision for which the Licensee does not have an outstanding lease or purchase obligation shall be owned by the City and retained by the City upon termination or expiration of this Agreement. Equipment that is acquired for which any outstanding lease or purchase obligation remains will be retained by Licensee, and Licensee shall be responsible for fulfilling those outstanding lease or purchase obligations unless assumed by the City at the City's sole discretion. Straight leases, as opposed to purchase leases, are considered operating expenses and not capital reinvestments.

4.5 In addition to the expenditures for capital equipment as provided for above, after December 31, 2020, Licensee shall contribute 10% of its accumulated net Golf Course operating income from the effective date of this Agreement as additional capital investment in the Golf Course. Such contribution by Licensee shall be contingent upon City matching the amount to be contributed by Licensee as well as the renewal of this Agreement for an additional five (5) year term. The spending of such contributions shall be in accordance with a capital improvement plan prepared by both parties and approved by the Board of Supervisors. In the event that such a capital improvement plan is not approved by Board of Supervisors, neither Licensee nor the City shall be obligated to make the contribution provided for herein.

4.6 The City will collaborate with Licensee to seek grants for the benefit of the public.

5. BUSINESS LICENSE

Licensee represents that it is licensed by the City and the State of Nevada for the purposes of performing the services set forth in this Agreement.

6. STATUS OF LICENSEE

Licensee shall have the status of an "Independent Contractor" pursuant to NRS 608.0155, and shall not be entitled to any of the rights, privileges, benefits, and emoluments of either an officer or employee of the City.

7. CERTAIN DUTIES AND SERVICES TO BE PROVIDED BY LICENSEE

Licensee, its Professional Golf Instructor ("Instructor"), employees and staff shall perform all duties in accordance with the best interest of the City.

Licensee Shall:

7.1 Operate, manage, and maintain the course in a safe and efficient manner. Such operation and management shall include, without limitation, the collection of fees, regulation of play, conduct of persons on course, enforcement of the rules and regulations of golf course, and soliciting and coordinating tournaments.

7.2 Operate, manage, and maintain a satisfactory pro shop in a professional, up-to-date manner to include, but not be limited to, sales, rental, and repair of golf equipment, clothing, and accessories. Stock and maintain an inventory of golf related merchandise, supplies and equipment in keeping with best retail practices. Maintain golf course property including clubhouse, maintenance shop, and all infrastructures of the property, to the standards outlined in Exhibit A and best practices.

7.3 Have the sole right to operate and manage all food and beverage concessions, or to enter into separate agreements for their operation.

7.4 Be responsible for acquiring and maintaining compliance with all necessary permits, fees, rules, and regulations for the sale of food, beverages, including liquor, and must maintain an “A” rating as designated by the local health authority.

7.5 Determine all personnel requirements, recruitment schedules and compensation levels and shall employ, train, promote, discharge and supervise all personnel performing services in and about the Golf Course. Instructor and all staff (including cart staff) shall be required to wear uniforms.

7.6 Have the right and responsibility, subject to limitations set forth below, to establish all fees, including, but not limited to, green fees, cart fees, driving range fees, annual passes, play tickets, tournament fees, merchandise, lessons and all other charges associated with the operation of Golf Course.

7.7 Inform, at least annually, the Director of the intended fee structure for the up-coming year during the last quarter (October-December) of each calendar year as the Golf Course is a public facility.

7.8 Be responsible for all reports, and other pertinent information to be delivered to the Director or designee a minimum of monthly, by paper or electronic means of delivery.

7.9 Computer or print generate all interior signs (absolutely no hand written signs), and display signs neatly and prominently. All exterior signs must comply with the City’s signage master plan, a copy of which will be provided to Licensee upon execution of this agreement.

7.10 Establish accounting, cash collection and payroll procedures in compliance with generally accepted accounting principles as stated in Section 13 “Collection of Receipts and Accounting” of this Agreement.

7.11 Provide community golf lessons and an instruction program under the direction of a PGA Class A Instructor. Licensee shall also provide all other services customarily provided by a golf professional in accordance with demand. It is understood that these services may be provided by the Licensee’s employees, or through other mechanisms such as independent contractor agreements, volunteer agreements or similar instruments.

7.12 Operate, manage, and supervise the use of the driving range and all putting practice greens adjoining said course and control and regulate their use in such a manner as to eliminate or prevent hazards or dangers to any person.

7.13 Furnish, without cost to the City, all equipment necessary for the suitable operation of the driving range and putting practice greens.

7.14 Provide and maintain daily equipment, including mats, golf balls, token or similar machines, and yardage markers for the driving range. Tee area shall be of a quality and quantity acceptable to the Director or designee. Any deficiencies will be noticed to the Licensee in writing and shall be corrected immediately or, in the case of replacement of equipment, within thirty (30) days.

7.15 Provide and supervise all starter and player activity functions, collect green fees and coordinate player starts, and furnish, at no cost to the City, suitable and qualified personnel in adequate number to insure efficient performance of such duties.

7.16 Effectively advertise, market and promote public and tournament play at the Golf Course and the sale of golf-related merchandise and services.

7.17 Furnish and maintain proper facilities, equipment and devices for the repair of golf equipment.

7.18 Provide, maintain and make available to the public at reasonable rental fees an adequate supply of all equipment necessary to play the game of golf including without limitation, golf clubs and golf carts. All carts shall be pre-numbered and maintained in good operating condition. The exterior and interior of all carts shall be maintained in a clean condition.

7.19 Except as otherwise provided herein, assume full responsibility and expense for all electric, gas, water and reclaimed water utilities and repairs, sewer, garbage, telephone service and repair, fire system monitoring, intrusion alarm monitoring and repair, cable TV, electrical or cart service utilities, and maintenance of all cart storage areas.

7.20 Provide all portable display platforms, signs, equipment and/or devices for the purpose of advertising or demonstrating the services, merchandise and/or equipment for sale or rent in the pro shop. Permanent signs shall be reviewed and approved by the Director. Design and material shall comply with applicable City standards, including adopted plans.

7.21 Maintain inventory of golf merchandise, golf supplies and equipment in accordance with best retail practices.

7.22 Be responsible for the preparation and submittal of liability/property loss reports, monthly cash and rounds of play reports, and other reports common to the operation of the business and/or as requested by the City, by paper or electronic means of delivery. Liability/property loss reports shall be submitted to Director as soon as reasonably practicable, but no later than two business days after the incident.

7.23 Coordinate with volunteers, Men's and Women's Clubs, community organizations, junior and golf development programs, and promote youth and senior golf opportunities to enhance golf programs and customer service offerings.

7.24 Promptly pay any and all taxes imposed by the local, state or federal government, utility bills, merchant invoices, and all other liabilities with respect to its operation of the Golf Course.

7.25 Comply with all applicable ordinances, laws, rules, and regulations of the City, state, and federal government; and of any political subdivision or agency, authority or commission thereof, which may have jurisdiction to pass laws, ordinances, or make and enforce rules or regulations with respect to the operations of the golf course, including but without limiting the generality of the foregoing, such rules and regulations of the City as are consistent with the rights herein granted to the Licensee.

7.26 Surrender City property in as good condition as when received, ordinary wear and tear excepted, upon termination of the Agreement

7.27 Operate and manage golf course on Licensee's own credit and hold harmless the City from any and all claims, demands or liability on account thereof. The City shall not be responsible for any debts incurred by the Licensee in the performance of any resulting Agreement.

7.28 Provide and maintain a golf driving range, including turf and sprinkler maintenance.

7.29 Maintain all golf course holes, landscape and planted areas which are part of the course.

7.30 Provide such signs and posters it shall deem necessary for public safety and convenience.

7.31 Provide scorecards, starting sheets, reservation sheets and all other items incidental to business on the golf course.

7.32 Meet with the Director, at least once annually, to review compliance with agreement, including without limitation to: fees, marketing, outreach, course condition, and customer satisfaction.

7.33 Maintain the course to acceptable professional turf maintenance standards as outlined in the maintenance standards described in Exhibit A, realizing quality of the course maintenance is very important to overall operation.

7.34 Maintain all facilities located on the real property that constitutes the Golf Course in good repair and function, including without limitation, the club house maintenance buildings, restrooms, cart barn, drinking fountains, and maintenance yard; domestic water irrigation system, including filters, and pumping facilities. Except as otherwise provided herein, Licensee is responsible for all repairs and maintaining all improvements and modifications to Golf Course that Licensee has installed or caused to be installed. Repairs or improvements made by Licensee shall be subject to the provisions of Section 29 "Alterations and Improvements by Licensee," at their own expense.

7.35 Provide all janitorial services and equipment to all areas of the Golf Course.

7.36 Provide at Licensee's sole expense, reasonable maintenance and repair of the premises at all times during the term of the Agreement to prevent the premises from entering into a state of disrepair. Such proper and reasonable maintenance and repair of the premises includes:

7.36.1 Daily upkeep of the premises. Ordinary repairs that affect the structure, egress, fire protection system, fire ratings, energy conservation or plumbing, sanitation, gas, electrical or other utilities, must be performed by a person who is licensed and insured in the State of Nevada to perform the maintenance or repair.

7.36.2 Maintenance and replacement of the floor coverings but only in such a manner that is consistent with the use of techniques and products approved by the City in advance of the commencement of any work; interior walls and paint; electrical wiring and fixtures; equipment that is used for fire protection or suppression; the interior of the premises in general, and periodic gutter cleaning as necessary. Examples would be, but are not limited to, the following: water leaks, plugged toilets, burnt out bulbs, bad lighting ballasts, all plate glass, holes in walls, tears in carpet or damaged tile and the general upkeep of the interior.

7.37 Maintain compliance with all requirements set forth by the Environmental Control Authority including but not limited to proper solid waste handling per an approved solid waste management plan and proper maintenance of pretreatment equipment per the wastewater discharge permit.

7.38 Comply with all other duties, services, and requirements as described throughout this Agreement.

8. CERTAIN DUTIES AND SERVICES TO BE PROVIDED BY THE CITY

The City Shall:

8.1 Provide at its sole expense, based on available funding, proper and reasonable maintenance and repair of buildings and grounds infrastructure, including the parking lot and cart paths at all times during the term of the Agreement. Such proper and reasonable maintenance and repair of buildings and grounds infrastructure is limited to the roof, foundation; exterior; mainline plumbing; jointly-used electrical panels; and the HVAC (heating, ventilation and air conditioning) system.

8.2 Meet with the Licensee, at least once annually, to review compliance with agreement, including without limitation to: fees, marketing, outreach, course condition, and customer satisfaction.

8.3 Provide natural resource management, including, but not limited to, noxious weeds on the lands surrounding the Golf Course, as shown on Exhibit B, compliant with Nevada Revised

Statutes (NRS 555). The City will work cooperatively with Licensee to coordinate these efforts to not negatively impact the Golf Course or its operations.

8.4 Provide delivery of reclaimed water, subject to its availability, in accordance with the permit issued by the Nevada Division of Environmental Protection (NDEP), to the main reservoir located on the east course pursuant to Carson City Municipal Code 12.10.220.

8.5 Operate and maintain the Eagle Valley pump station located at the Water Resource Recovery Facility (WRRF), the transmission line, including appurtenances, from the WRRF to point of discharge at the main reservoir, and the main reservoir level control system.

8.6 Pay for repairs to reclaimed water delivery infrastructure, including but not limited to pump stations, located at the Golf Course whenever the costs of such repairs exceed \$5,000. However, the City will not be responsible for paying for repairs that are needed due to a lack of care, scheduled maintenance, or the negligence of Licensee.

8.7 Prioritize funding and complete capital project improvements in accordance with approved budgets.

8.8 Comply with all other duties, services, and requirements as described throughout this Agreement.

9. PROFESSIONAL STANDARDS

Instructors, golf professionals and staff hired by Licensee or through independent agreement or similar instrument, are required to be under the direction of a Professional Golf Association (PGA) certified Class A Professional during the term of this Agreement. Maintenance and agronomic staff shall be under the direction of a member of the Golf Course Superintendents Association of America (GCSAA) Golf Course Superintendent. The onsite Superintendent need not be a member of the GCSAA, as long as a member of the Licensee's management team overseeing the operation is such a member. Copies of such membership shall be provided to the City upon request to ensure compliance. In addition, Licensee shall operate and manage the Golf Course in accordance with the Code of Ethics of the PGA, GCSAA and the City.

10. MARKETING AND ADVERTISING

10.1 Licensee is responsible for effectively advertising, marketing and promoting public and tournament play at the Golf Course and the sale of golf related merchandise and services.

10.2 Licensee shall, on or before January 31 of each year during the term of this Agreement, or any renewals thereof, meet with the Director to review the annual sales and marketing plan for the Golf Course. The City shall have the right to comment upon and make suggestions with

respect to said plan, provided, however, while Licensee shall consider all of the City's suggestions and comments, Licensee shall not be obligated to implement the same.

10.3 Licensee is aware that this is a public golf course, and as such, is expected to use discretion in the choice of advertising and marketing to ensure its appropriateness. The City retains the right to request removal of advertising or marketing that it deems inappropriate. Licensee will make every effort to indicate on marketing materials (including print, web and other mediums) that the Eagle Valley Golf Course is owned by Carson City and operated and managed by Duncan Golf Management.

11. HOURS OF OPERATION

11.1 Licensee shall devote adequate staff and personal attention to operate and manage a modern and efficient golf course.

11.2 Licensee shall ensure adequate staff is onsite whenever course is open for play.

11.3 Licensee shall recommend to the Director for approval an annual schedule setting forth the minimum hours during the year (weather permitting) when the Golf Course shall be open for play. Licensee is responsible for opening and closing security gates. Licensee is responsible for the security of Golf Course facilities and assets during all times.

12. ESTABLISHMENT OF RATES

12.1 In the first twelve (12) months of the Initial Term, the green fees charged shall be in accordance with rates set forth in the schedule of rates attached here to as Exhibit A.

12.2 The Licensee, in its discretion, shall re-evaluate and determine green fee rates annually. The green fee determination shall be reviewed with the Director at the annual meeting. Any desired rate increases that exceed the previous year's rates by more than 10% must be proposed to the Board of Supervisors for approval before implementation.

13. COLLECTION OF RECEIPTS AND ACCOUNTING

The following apply to Licensee and all management or service subcontractors. Licensee is responsible for ensuring any management or service subcontractors adhere to the following:

13.1 Definitions:

“Food and beverage sales” means all food and beverage sales.

“Green fees” include, but are not limited to, all revenue collected from daily regular green fees, ticket and annual discounted fees, and advance reservation fees.

“Pro Shop sales” mean all retail and merchandise sales.

“Ticket” and “annual” fees mean any fee which entitles a person to use the Golf Course, exclusive of tournament play.

“Tournament” means any group of more than twelve (12) wishing to have “blocked” or pre-designated tee or start times, including “shot-gun” starts. Tournament revenues are a part of “green fees,” however their revenues are to be collected and reported separately as “Tournament Revenues.” Tournament rounds of play are to be accounted for on the day of play.

13.2 Licensee shall establish cash collection and payroll procedures in compliance with business industry standards, applicable federal and state laws, and generally accepted accounting principles (accrual basis of accounting); train and monitor all staff in the appropriate cash handling practices; at all times monitor and ensure the safety of all monetary exchanges; adhere to accepted credit card and other personal information security standards.

13.3 Licensee shall submit to the City, monthly reports of rounds of play and gross revenue, which will include green fees, advance reservation fees, annual and ticket sales, annual surcharge, cart income, cart usage, tournament income, driving range income, pro shop sales, lessons, food sales, beverage sales, catering in addition to all other items of receipts, and will state that sign-up sheets, cash register tapes, and daily statement of receipts have been reconciled and are in agreement. Licensee shall submit a monthly summary of expenses to the City sufficient to reflect an accurate net operating income. Licensee shall submit to the City a copy of any contracts or agreements made by the Licensee that extend beyond a twelve (12) month term.

13.4 Licensee shall establish and maintain complete books of accounts and other records showing all business transacted in connection with the operation of the Golf Course in compliance with generally accepted accounting principles (accrual basis of accounting), including reporting any barter or in-kind exchange agreements entered into by the Licensee at fair value to the City. Reporting shall include the nature and terms of the agreement.

13.5 Licensee agrees to install and maintain a system of accounts acceptable to the City and its auditors.

13.6 All accounting records and supporting documents shall be subject to audit and inspection and be available at any and all reasonable times to the City and its authorized officers, agents, or employees.

13.7 The Director reserves the right to require management audits, or other studies and reviews of Licensee’s operating procedures, or accounting and controls that are deemed desirable. If City requires Licensee to perform such procedures, Licensee must engage the appropriate entity to perform said services. However, City will promptly reimburse Licensee for costs incurred for requested services so long as Licensee has provided the service agreement to the City and City has approved the service agreement. If Licensee fails to provide the required

records and supporting documents, or provides inadequate information, Licensee agrees to pay any additional charges incurred as a result of the delay in the completion of the audit.

13.8 Licensee shall be responsible for retaining all financial records for a minimum of seven (7) years for each accounting year.

13.9 Licensee and designated staff shall be fully proficient in and routinely use a point of sale system or similar instrument.

13.10 Licensee and any management or service subcontractors shall use either a calendar year, January 1 through December 31, or fiscal year, July 1 through June 30, as the established accounting period.

14. PERFORMANCE BENCHMARKS

Performance benchmarks and completion dates have been established in Section 10 “Marketing and Advertising.”

14.1 The City shall utilize a “report card” for evaluation purposes. The “report card” shall be on a form created by the Director in collaboration with the Licensee. Reviews by the City shall be conducted each year.

14.2 Failure to meet benchmarks and specific performance dates may result in additional reviews and non-renewal of this Agreement.

14.3 Licensee will be reviewed for, but not limited to, adherence to the standards established in Exhibit A, the financial viability review and the extent and nature of management and auditing concerns provided through annual financial statements, and customer satisfaction.

15. EMPLOYEES

Licensee shall employ, or through separate agreement or similar instrument, at their own expense, such staff as necessary to fully operate and manage Golf Course in an efficient, professional and orderly manner.

16. IRRIGATION AND RECLAIMED WATER

16.1 The City is the owner of reclaimed water that is provided to the golf course for irrigation purposes. Except as otherwise provided in section 8.6 above, the Licensee will be responsible for upkeep of this infrastructure, compliant with industry standards, federal, state and local regulations.

16.2 The monthly service charge associated with reclaimed water use will be charged in accordance with the Carson City Municipal Code, which currently is \$283.00 per month and is the responsibility of the Licensee.

16.3 The Licensee is also responsible for:

16.3.1 Maintaining compliance with all requirements set forth by the Nevada Department of Environmental Protection (NDEP) for the use of reclaimed water, including but not limited to a Reclaimed Water Management Plan, Groundwater Discharge Permit, discharge monitor reporting, reclaimed water quality sampling and testing, and spill reporting.

16.3.2 Providing support personnel to operate and maintain an alarm notification system and program for the timely response and repair of the system in the event of failure or malfunction to prevent any regulatory violation or property damage from occurring.

16.3.3 Operating and maintaining the reclaimed water system from the point of discharge at the main reservoir throughout the distribution system used to deliver reclaimed water to and throughout the property including but not limited to the irrigation system, on-site pump stations, diversion vaults, valves, air releases, filters, controllers, ponds and reservoirs in accordance with industry standards and local building codes.

16.3.4 Maintaining a program for maintenance of the golf course property, including but not limited to turf management and the control of noxious and native weeds, mosquitos, and algae in accordance with industry and municipal code standards, consistent with the level of service standards outlined in Exhibit A.

16.3.5 Providing records upon the City's request.

17. ENERGY CONSERVATION

Licensee shall make every effort to conserve energy, whenever and wherever possible, including, but not limited to, the heating and lighting of areas necessary to conduct business during operating hours or maintain security.

18. PERFORMANCE BOND

Licensee shall be required to provide a performance bond, in a form acceptable to the City in its sole discretion, issued by an insurance company qualified/licensed to do business in Nevada, in the amount of Two Hundred Fifty Thousand Dollars (\$250,000). Said bond must name the City as sole obligee. Said bond will be released at the expiration or termination of the

resulting Agreement, provided the Licensee has fully and completely performed under the Agreement.

19. FIXTURES

19.1 Any fixtures or items permanently attached to the clubhouse at the Golf Course in connection with the operation of the pro shop, excluding trade fixtures owned by Licensee, shall become the property of the City upon the termination of Agreement.

19.2 Upon expiration or termination of this Agreement, Licensee shall quit and surrender the premises under its control, including permanent fixtures attached thereto and personal property of the City, to City in as good condition as at the date of the execution of this Agreement, ordinary wear and tear excepted.

20. PREFERENTIAL TREATMENT FORBIDDEN

Licensee shall not grant any preferential treatment to any individual or group of individuals except as authorized by the rules and regulations pertaining to the Golf Course.

21. COLLABORATIVE RELATIONSHIP

21.1 Licensee shall be accountable in all of its operations to the Director or the Director's designee. The City recognizes and acknowledges that Licensee will need the assistance and cooperation of the City in order to properly perform and fulfill Licensee's covenants and obligations under this Agreement.

21.2 Therefore, the City agrees it shall execute documents and do such further acts and things as Licensee reasonably requests in order to assist Licensee in fulfilling its obligations under this Agreement. The City further agrees it shall designate a specific officer or agent having appropriate experience and authority whose responsibility is to work with Licensee in assuring that Licensee obtains the full reasonable cooperation and assistance of the City, subject to the terms of this Agreement and all applicable laws.

21.3 Licensee shall also reasonably cooperate with all other City Departments.

22. LICENSE AGREEMENT

It is understood and agreed that the Golf Course is licensed for use. Licensee's right to occupy and operate the same, as granted herein, shall continue only so long as each and all undertakings, provisions, covenants, agreements, stipulations and conditions herein contained are strictly complied with. Nothing in this Agreement shall grant any permanent right, title or interest in the Golf Course to Licensee outside of the term of this Agreement.

23. INDEMNIFICATION

23.1 To the maximum extent permitted by law, Licensee shall, at its own expense, indemnify, defend with counsel acceptable to the City (which acceptance will not be unreasonably withheld), and hold harmless the City, its officers, officials, employees, agents, and volunteers (“Indemnitees”) from and against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorney’s fees and costs and fees of litigation) (collectively “Liability”) of every nature, whether actual, alleged or threatened, arising out of or in connection with the services provided pursuant to this Agreement or Licensee’s alleged fault of the Indemnitees except as provided below.

23.2 Licensee’s obligation to indemnify, defend, and hold harmless under this provision shall not be excused because of Licensee’s inability to evaluate any Liability, or because Licensee evaluates liability and determines that Licensee is not or may not be liable. Licensee must respond within thirty (30) calendar days to any tender for defense and indemnity by the City, unless the time for responding is extended by an authorized representative of the City in writing. If Licensee fails to accept tender of defense and indemnity within thirty (30) calendar days, in addition to any other remedies authorized by law, so much of the money or that may become due to Licensee under this Agreement as shall be reasonably considered necessary by the City, may be retained by the City until disposition has been made of the matter subject to tender, or until Licensee accepts the tender, whichever occurs first.

23.3 Licensee waives any and all rights to express or implied indemnity against the Indemnitees concerning any Liability of Licensee arising out of or in connection with the services provided pursuant to this Agreement or Licensee’s failure to comply with any of the terms of this Agreement.

23.4 Subject to the limitations set forth in NRS Chapter 41 the City agrees to indemnify and hold Licensee harmless, and shall defend any claims against Licensee in any action where the central issue of the action was the City’s sole negligence or the City’s failure to abide by the terms of this Agreement.

24. INSURANCE REQUIREMENTS

24.1 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.

24.2 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.

24.3 General Terms

24.3.1 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.

24.3.2 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 an ongoing condition subsequent to this Agreement. Any failure of the City to timely approve shall not constitute a waiver of the condition.

24.3.3 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.

24.3.4 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.

24.3.5 Compliance with the insurance requirements of this Agreement shall not limit the liability of Licensee, its employees, agents, subcontractors, volunteers or invitees performing Services 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.

24.3.6 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.

24.4 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.

24.5 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.

24.6 Waiver of Subrogation

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

24.7 Cross Liability

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

24.8 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.

24.9 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.

24.10 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.

24.11 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:

24.11.1 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 Acor 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.

24.11.2 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.

24.11.3 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.

24.12 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.

Minimum Limits required:

24.12.1 Two Million Dollars (\$2,000,000.00) - General Aggregate.

24.12.2 Two Million Dollars (\$2,000,000.00) - Products & Completed Operations Aggregate.

24.12.3 One Million Dollars (\$1,000,000.00) - Each Occurrence.

24.12.4 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)].

24.12.5 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.

24.12.6 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.

24.12.7 There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability assumed under a contract.

24.12.8 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.

24.13 Business Automobile 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.

Other Requirements

24.13.1 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.

24.13.2 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.

24.14 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 (\$2,000,000.00) in the aggregate.

Other Requirements

24.14.1 Retroactive date: One day prior to the commencement of the performance of this Agreement.

24.14.2 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's negligent acts, errors and omissions committed during the term of the Professional Liability Policy.

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

24.14.4 A certified copy of this policy may be required.

24.15 Worker's Compensation and Employer's Liability Insurance

24.15.1 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.

24.15.2 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.

24.16 Property Insurance

24.16.1 The City may, at its option, secure and maintain insurance covering damage to its property. Any such insurance shall be for the sole benefit of the City and Licensee shall have no claim to any proceeds there from, nor shall the City be required to use the proceeds for reconstruction or repair.

24.16.2 Licensee shall secure insurance covering their property at their own expense and shall secure and maintain such insurance as is necessary to protect against any claim for damage to private property, including golf carts which are stored at the course.

24.16.3 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' 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.

24.16.4 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.

24.16.5 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.

25. DAMAGE AND RESTORATION

25.1 Total Destruction:

If the buildings or other improvements on the Premises licensed under this Agreement or the Personal Property should be totally destroyed (i.e., damage in excess of partial destruction as defined in Section 25.2) by fire or other casualty or a force majeure occurrence, Licensee shall have the option, to be exercised in writing within sixty (60) days of such destruction, to either (a)

terminate this Agreement in which event the parties shall have no further obligations hereunder, or (b) elect to repair and restore the Premises, subject to the availability of insurance proceeds restore the buildings, improvements and Personal Property in a good and workmanlike manner to a condition as good as or better than the condition in which the buildings, improvements and Personal Property existed prior to their total destruction.

25.2 Partial Destruction:

If the buildings or other improvements on the Premises licensed under this Agreement or the Personal Property should be partially damaged by fire or other casualty or a force majeure event, then Licensee shall, subject to the availability of insurance proceeds (it being understood and acknowledged that Licensee shall have no obligation to repair or restore any portion of the Premises if insurance proceeds are not available to fully restore the same), restore the buildings, improvements and Personal Property in a good and workmanlike manner to a condition as good as or better than the condition in which the buildings, improvements and Personal Property existed prior to their damage or destruction. For purposes of this Agreement, the term “partially damaged” means (a) damage to the extent of one third or less of the value of the buildings, improvements and Personal Property at the Premises or (b) damage to the extent that no more than nine holes on the golf course at the Premises are rendered unplayable. If the insurance proceeds made available to Licensee are not sufficient to fully restore the Premises, then Licensee may terminate this Agreement upon written notice to the City in which event the parties shall have no further liability hereunder. In addition, notwithstanding anything in this Section 25.2 to the contrary, if, as a result of the partial destruction of the Premises, Licensee is unable to make full and productive economic use of the Premises and, in Licensee’s reasonable determination, the full and complete restoration of the Premises will take in excess of one hundred eighty (180) days, then Licensee may, upon written notice to the City within sixty (60) days after the partial destruction occurs, terminate this Agreement, in which event the parties shall have no further obligations hereunder.

25.3 Application of Insurance Proceeds upon Termination:

If, after the partial or total destruction of the Premises, this Agreement is terminated pursuant to the provisions of this Section 25 then all insurance proceeds made available on account of such destruction shall first be paid to Licensee to reimburse Licensee for the value of any and all improvements made to the Premises by Licensee prior to such destruction until such time as Licensee has received full reimbursement for all such improvements and for the value of the Personal Property at the Premises owned by Licensee; second, to the City until such time as the City has received full reimbursement for the value of the improvements at the Premises which existed as of the first day of the Agreement and the balance, if any, shall be paid to Licensee.

26. RESTRICTIONS

Any agreements, written or oral, between the Licensee and parties other than the City, where such agreements involve Licensee's personnel assigned to the City's account, is prohibited without the express written consent of the City.

27. HAZARDOUS SUBSTANCES AND MATERIALS

27.1 Licensee shall maintain on-site, Material Safety Data Sheets (MSDS), as defined and prescribed in 29 C.F.R. Section 1910.1200, for all hazardous substances purchased by Licensee for use under this Agreement.

27.2 Licensee shall apprise personnel of the hazards to which they may be exposed in using, handling, transporting, or disposing of hazardous substances, and to obtain medical treatment for those who may be affected by the substance.

27.3 Licensee shall immediately report all spills of hazardous substances to the Carson City Department of Health and Human Services, the Environmental Control Authority, the Carson City Risk Manager, and any other entity as required by law.

28. LICENSEE'S USE AND POSSESSION OF PREMISES

28.1 The Golf Course premises and all other improvements thereon shall be used by Licensee to provide professional golf services. It is understood and agreed that the said premises shall be used by Licensee during the term of this Agreement only for the above stated purposes and for direct ancillary uses with the prior written approval of the City, and for no other purposes or uses whatsoever.

28.2 Licensee will not make or permit any use of the said premises which, directly or indirectly, is forbidden by public law, ordinance or government regulation which may be dangerous to life, limb or property. Licensee may not commit waste on the premises, use the premises for any illegal purpose, or permit a nuisance on the premises.

28.3 In the event that Licensee uses these premises for any purposes not expressly permitted herein, the City may terminate this Agreement, subject to the curative periods set forth herein, and without notice to Licensee restrain such improper use by injunction or other legal action.

28.4 Quiet Enjoyment

Subject only to the terms of this Agreement, so long as Licensee complies with its obligations under this Agreement, the City shall secure to Licensee the quiet and peaceful enjoyment of the Premises and the sole and exclusive possession of the Premises without objection or interference from the City or any party claiming under the City.

28.5 Frustration of Purpose

At any time during the term of this Agreement, (i) if the governing body of any political subdivision having competent jurisdiction over the Premises should enact any valid zoning or other ordinance, law or regulation (collectively, "Use Law") which prohibits the use of the whole or a substantial part of the Premises for the purposes as provided in Section 2 of this Agreement; (ii) if an event of force majeure (collectively, "Force Majeure Event") occurs, including without limitation, declared or undeclared war, sabotage, riot or other acts of civil disobedience, acts or omissions of government, labor disputes, shortages of fuel or other materials, accidents, fires, explosions, floods, earthquakes, or other acts of God, which substantially prevents Licensee's use of the Premises as provided for in Section 2 of this Agreement; or (iii) if Facilities become unavailable or inadequate so as to substantially interfere with Licensee's use of the Premises as provided in Section 2 of this Agreement, it is agreed that Licensee may elect, within one hundred twenty (120) days after the effective date of such Use Law or the occurrence of the Force Majeure Event, or the date Facilities become unavailable or inadequate, to cancel this Agreement and surrender possession of the Premises. Any such cancellation and surrender shall act to release and discharge Licensee from any further obligation under this Agreement. In addition, it is agreed that during the period of any Force Majeure Event; during the period that Facilities are unavailable or inadequate; and/or during any period that any defect in the Premises substantially interferes with Licensee's use of the Premises as provided in Section 2 of this Agreement, the City and Licensee shall be excused from performing their respective obligations under this Agreement whether or not Licensee exercises its right to terminate as provided herein.

29. ALTERATIONS AND IMPROVEMENTS BY LICENSEE

29.1 Licensee has inspected the premises and hereby accepts the premises in its present "as is, where is" condition. Licensee shall not make any alteration or addition to any portion of the Golf Course's facilities or to any equipment belonging to the City located at the Golf Course without prior written consent of the Director. Except as otherwise provided in this Agreement, Licensee shall, at its sole cost, maintain and repair the Premises in accordance with the maintenance standards set forth on Exhibit A.

29.2 In the event that Licensee wishes to make improvements to said real property, it may do so at its own expense and after the written approval of the City, satisfying all statutory and code requirements of applicable governmental entities including the provisions of NRS 338, if applicable.

29.3 All improvements of Licensee shall be solely at Licensee's cost and expense and shall be performed in a good workmanlike manner in accordance with sound construction practices and in accordance with all applicable codes and regulations. Licensee shall keep the premises and said improvements free and clear of liens for labor and materials and shall hold the City harmless from any responsibility in respect thereto.

30. OWNERSHIP OF IMPROVEMENTS

30.1 All temporary improvements, furnishings, and equipment purchased, constructed or installed on the premises by the Licensee shall be personal property of Licensee and Licensee shall have legal title thereto during the term of this Agreement. Upon the expiration, termination, or default of this Agreement, title to all permanent improvements constructed on the premises shall vest in the City.

30.2 Title to all supplies, furnishings, inventories, and removable equipment and other personal property not originally provided by the City shall remain the Licensee's, and Licensee shall have the right to remove such items, excepting licenses, from the Premises without damaging the Premises unless the Licensee is in default hereunder.

30.3 Licensee shall consider any reasonable offer to buy the above items from the Licensee upon expiration or termination of this Agreement.

30.4 If Licensee is in default, all items listed in Exhibit C that do not have outstanding lease or purchase obligations shall automatically vest to the City to offset any real or anticipated damages. An equipment inventory with estimated value based on condition is outlined in Exhibit C.

31. LICENSES AND PERMITS

Licensee shall pay for all licenses, permits, and fees necessary for Licensee to construct improvements, if any, and conduct Licensee's business on the Premises, including, without limitation Nevada Division of Environmental Protection permits for the use of reclaimed water.

32. LIENS

32.1 Licensee will not permit any mechanics, laborers or material man's liens to stand against the Premises or improvements for any labor or materials to the Licensee or claimed to have been furnished to Licensee's agents or sublicensees, in connection with work of any character performed or claimed to have been performed on the Premises, or improvements by or at the direction or sufferance of the Licensee; provided, however, Licensee shall have the right to contest the validity or amount of any such lien or claimed lien.

32.2 In the event of Licensee's decision to contest the validity or amount of any such lien or claimed lien, Licensee shall give the City reasonable security as may be demanded by the City to insure payment thereof and prevent sale, foreclosure or forfeiture of the Premises or improvements by reason of such non-payment.

32.3 Such security shall be posted by the Licensee within fifteen (15) days of written notice from the City, or Licensee may "bond off" the lien according to statutory procedures.

32.4 Licensee will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Licensee's own expense.

33. RIGHT OF CANCELLATION

33.1 If either party breaches a material provision hereof (“Cause”), the non-breaching party shall give the other party notice of such Cause. If the Cause is remedied within thirty (30) days, the notice shall be null and void.

33.2 If such Cause is not remedied within the specified period, the party giving notice shall have the right to terminate the Agreement upon expiration of such remedy period. The rights of termination referred to in this Agreement are not intended to be exclusive and are in addition to any other rights or remedies available to either party at law or in equity.

33.3 In addition to all other rights herein, the City may terminate this Agreement without prior notice should the Licensee become insolvent, voluntarily file for bankruptcy or receivership, or make any assignment for the benefit of creditors, or should the other party have commenced against it any proceeding, suit or action in bankruptcy or receivership provided such proceeding, suit or action is not dismissed within thirty (30) days.

33.4 If the parties elect to renegotiate the terms of this Agreement pursuant to Section 43, this Agreement will continue according to its terms until the conclusion of the negotiations.

33.4.1 During the renegotiation period, either party may elect to cancel the Agreement as a no fault cancellation by providing not less than ninety (90) days prior written notice.

33.4.2 In the event of a no fault cancellation pursuant to Section 33.4.1, the Agreement shall survive cancellation for a period of up to ninety (90) days beyond the cancellation date in the event either party needs additional time to wind up its affairs. During that time, the parties shall be required to continue fulfilling their obligations under this Agreement.

34. VACATION OF THE PREMISES

34.1 In the event of the termination of this Agreement for any reason other than expiration, Licensee shall peaceably vacate the Premises within such time as may be specified in the written notice to vacate, except in cases where continued presence of Licensee would cause immediate injury or damage to the City or other persons, in which case vacation may be immediate.

34.2 Upon the expiration or earlier termination of this Agreement, Licensee shall return the Real and Personal Property initially provided by the City in the same or better condition, excepting normal wear and tear, than when it was received by Licensee. Licensee agrees to have

all personal property, fixtures, and equipment appraised at the time this agreement is executed and supply the City with a schedule and current value of the same. At the expiration or termination of this agreement Licensee shall return all such Real and Personal Property to the City. During the term of this agreement Licensee shall purchase or otherwise acquire replacement equipment as required and shall maintain the existing equipment for as long as feasible in accordance with this Agreement and any capital improvement plan agreed to by Licensee and the Director.

35. NONDISCRIMINATION

In accordance with NRS 338.125, in connection with the performance of work under the resulting Agreement, the Licensee agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, gender identity or expression, or age. Such agreements shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. Any violation of such provision by the Licensee shall constitute a material breach of contract. Further, Licensee agrees to insert this nondiscrimination provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

36. ASSIGNMENT

No assignment of any agreement resulting from award of this bid shall be allowed, including the right to receive payment, without the express written permission of the City.

37. DEFAULT

Termination for default shall result in proceedings against the Licensee, which may result in its being debarred from providing services to the City for a period not less than five (5) years after the expiration date of the defaulted Agreement. In addition, the defaulting Licensee may be charged for any additional cost to City for the provision of services as defined in Section 2 “Scope of Services” for the remaining term of this Agreement.

38. THIRD PARTY RIGHTS

This Agreement is not intended to create, nor shall it be construed to create, any third party beneficiary rights in any person not a party hereto.

39. EXCLUSIVE

This is an exclusive agreement between the City and Licensee during the term of the agreement.

40. NOTICES

Except as otherwise specified, all notices under this Agreement shall be in writing.

Notice to Licensee shall be addressed to:

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

Notice to City shall be addressed to:

Laura Rader, Purchasing and Contracts Administrator
Carson City Purchasing and Contracts
201 N. Carson Street, Suite 2
Carson City, NV 89701

41. NOTICE TO PROCEED

The City's Purchasing Department shall issue a written Notice to Proceed, in the form of a Notification of Award, upon execution of this Agreement. Licensee shall not perform on any portion this Agreement without providing satisfactory insurance certificates and fiduciary bond.

42. EXTENSION OF SERVICES

Licensee may be required to continue performance of services beyond the expiration date of this Agreement, upon the City's request, at the rates specified in this Agreement. The total extension of any performance hereunder shall not exceed six (6) months. Any extension to this Agreement shall be in writing and signed by both parties.

43. REOPENER

The parties reserve the right to renegotiate any part of this agreement if a material change to the Agreement should occur as a result of applicable ordinances, laws, rules, and regulations of the City, state, and federal government; and of any political subdivision or agency, authority or commission thereof, which may have jurisdiction to pass laws, ordinances, or make and enforce rules or regulations with respect to the operations of the golf course, including but without limiting the generality of the foregoing, such rules and regulations of the City.

44. GOVERNING LAW

This Agreement shall be governed, interpreted and construed in accordance with the laws of Nevada.

45. DISPUTE RESOLUTION

The parties hereto shall use their best efforts to settle any dispute, claim, question, or disagreement arising from or relating to this Agreement or breach thereof. Any dispute, claim, question, or disagreement that is unable to be resolved by following the procedures outlined in this agreement shall be settled by arbitration administered pursuant to the Nevada Rules of Arbitration.

46. SOPHISTICATED PARTIES AND DRAFTING PRESUMPTION

The parties agree that each has had their respective counsel review this Agreement and are sophisticated entities, and as such this Agreement shall be construed as if it was jointly drafted.

47. SEVERABILITY

If any provision contained in this Contract is held to be invalid, void, or unenforceable by a court of law or in equity, the provisions of this Agreement not adjudicated as such will remain in full force and effect. The non-enforceability of any such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

48. ENTIRE AGREEMENT

This Contract and the Exhibits specifically recited herein constitute the entire Agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and agreements that may have been made in connection with this Agreement. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistent with the terms of this Agreement.

49. GOOD STANDING

Licensee represents that the execution of this Agreement and performance of the services as specified herein will not violate any provisions of or constitute a default under any other agreement to which Licensee is a party or is bound. Further, Licensee is not precluded or prohibited, in any way, whether in law or in equity, from performing the services it is agreeing to

in this Agreement, nor will it impose any liability or obligation upon the City for accepting such Services, other than those that are expressly agreed to within the four corners of this Agreement.

50. PROPER AUTHORITY

The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Licensee acknowledges that this Contract is effective for the period of time specified in this Contract. Any services performed by Licensee before this Agreement is effective or after it ceases to be effective is performed at the sole risk of Licensee.

51. ACKNOWLEDGMENT AND EXECUTION

This Contract may be executed in counterparts, each of which shall be an original and all of which together shall constitute one Agreement. The parties hereto have caused this Contract to be signed and intend to be legally bound thereby as follows:

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

CITY
Carson City Purchasing & Contracts
Attn: Laura Rader, Administrator
201 North Carson Street, Suite 2
Carson City, Nevada 89701
Telephone: 775-283-7137
Fax: 775-887-2107
LRader@carson.org

CITY’S LEGAL COUNSEL
Carson City District Attorney

I have reviewed this Contract and approve as to its legal form.

By: _____
Laura Rader, Administrator

By: _____
Deputy District Attorney

Dated: _____

Dated: _____

CITY’S ORIGINATING DEPARTMENT
Carson City Parks and Recreation

BY: Jennifer Budge, Director
Carson City Parks and Recreation

By: _____
Jennifer Budge, Director

Dated _____

DUNCAN GOLF MANAGEMENT

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

By: _____

DATED: _____

CONTRACT ACCEPTANCE AND EXECUTION:

The Board of Supervisors for Carson City, Nevada at their publicly noticed meeting of _____ approved the acceptance of the attached Contract hereinbefore identified as **CONTRACT No.** _____. Further, the Board of Supervisors authorizes the Mayor of Carson City, Nevada to set his hand to this document and record his signature for the execution of this Contract in accordance with the action taken.

CARSON CITY, NEVADA

ROBERT L. CROWELL, MAYOR

DATED this ___ day of _____, 2018.

ATTEST:

SUSAN MERRIWETHER, CLERK-RECORDER

DATED this ___ day of _____, 2018

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

AFTER RECORDING RETURN TO:

CARSON CITY PUBLIC WORKS
Attn: Stephanie Hicks, Real Property Manager
3505 Butti Way
Carson City, Nevada 89701

AND

CARSON CITY PURCHASING AND CONTRACTS
Attn: Laura Rader, Purchasing & Contracts Administrator
Purchasing and Contracts Department
201 North Carson Street, Suite 2
Carson City, Nevada 89701

**LICENSE AGREEMENT BETWEEN
CARSON CITY AND DUNCAN GOLF
MANAGEMENT DBA TDS GOLF AT EAGLE
VALLEY LLC. FOR OPERATION, MANAGEMENT
AND MAINTENANCE OF THE
EAGLE VALLEY GOLF COURSE**

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EXHIBITS

- Exhibit A Duncan Golf Management Proposal
- Exhibit B Property Map and description
- Exhibit C Equipment Inventory, Condition and Value

**LICENSE AGREEMENT
FOR PROFESSIONAL MANAGEMENT SERVICES
AT THE EAGLE VALLEY GOLF COURSES**

This license Agreement (the “Agreement”) is entered into this ____ day of 2018, by and between the Consolidated Municipality of Carson City, a political subdivision of the State of Nevada (also referred to as the “City”), and Duncan Golf Management, Inc. DBA TDS Golf at Eagle Valley LLC., (also referred to as the “Licensee”).

W I T N E S S E T H

1. RECITALS

Whereas the City owns the property known as the Eagle Valley Golf Course and the City requires certain golf management services be performed; and

Whereas, in response to a Request for Proposal distributed by the City for such golf management services, the Licensee submitted a proposal and statement of qualifications, outlined in Exhibit A; and

Whereas the Licensee represents that it is qualified, equipped, staffed, ready, willing and able to perform and render such services as shall be necessary, required or desired, for and on behalf of the City,

Whereas, the Licensee was determined to be the most responsive and responsible bidder by the Carson City Board of Supervisors at their December 7, 2017 meeting.

Therefore, in consideration of the above, the parties agree to the following:

2. SCOPE OF SERVICES

During the term of this Agreement, Licensee shall have the exclusive right and license at the Eagle Valley Golf Course (the “Golf Course”) to operate and manage all parts of Golf Course. “Golf Course” is located on portions of six (6) parcels (Assessor Parcel Numbers 008-391-15, 008-391-12, 008-391-05, 005-051-25, 008-011-93, 005-051-13) and is approximately 319-acres, as described in Exhibit B. To operate and manage Golf Course as Licensee deems appropriate ~~by implementing all policies and procedures~~ and to perform any act deemed necessary or desirable for the operation and management of Golf Course; maintain all the golf

course property, operate, manage and supervise daily play, pro shop, food and beverage services, driving range and putting practice greens, maintenance facilities, club house and infrastructure on the property; provide lessons, ~~choose~~ and maintain all play and maintenance equipment, advertise and promote public play and the sale of merchandise and services.

3. TERM

This Agreement shall be for a period of fifty seven months (57) months, April 1, 2018 through December 31, 2022, with the City's option to renew for an additional five (5) years after December 31, 2020 and a thorough review and evaluation process takes place. Consideration for renewal shall include, but not be limited to, setting the base rent to fair market value and renegotiating capital improvements as set out in paragraph 4.5 below, the Licensee satisfactorily performing ~~all~~ professional golf management services herein described, receiving rating of satisfactory-or-above on all evaluations, achieving the performance benchmarks as stated herein and the investment of Licensee and City as provided for herein. Should either party decline to exercise its option to renew this Agreement for an additional five (5) years after the three (3) year review and evaluation process is completed, this Agreement will terminate on December 31, ~~2023~~2022.

4. CONSIDERATION

4.1 In exchange for the license to use the property, the City will receive needed management services for its public golf course. In exchange for the management services, except as otherwise provided in this Agreement the Licensee shall be entitled to retain ~~all~~ revenue generated from its operation of the Golf Course during the term of this Agreement.

4.2 The City and the Licensee shall work together to develop a Capital Improvement Plan, provide estimated values and cooperate to prioritize the needs of the public golf course. Both parties will invest in the property.

4.3 Licensee shall be required to acquire capital equipment related to the operation and maintenance of the Golf Course in an amount not less than \$90,000 per year. Accounting records as proof of the investment must be provided to the City.

4.4 Prior to expending funds for such capital equipment, Licensee will submit such proposed capital leases or purchases in writing to Director of Parks and Recreation or its designee ("the Director") for its review and approval, which approval shall not be unreasonably delayed or withheld. The City's failure to respond to a request for approval of any such lease or purchase for more than fourteen (14) calendar days shall be deemed a denial approval by the City. All equipment acquired by Licensee pursuant to this provision for which the Licensee does not have an outstanding lease or purchase obligation shall be owned by the City and retained by the City upon termination or expiration of this Agreement. Equipment that is acquired for which any

outstanding lease or purchase obligation ~~s-remains~~ will be retained by Licensee, and Licensee shall be responsible for fulfilling those outstanding lease or purchase obligations unless assumed by the City at the City's sole discretion. Straight leases, as opposed to purchase leases, are considered operating expenses and not capital reinvestments.

4.5 In addition to the expenditures for capital equipment as provided for above, ~~at the conclusion of the third year of the initial five year term of this Agreement, after December 31, 2020,~~ Licensee shall contribute 10% of its accumulated net Golf Course operating income from the ~~previous three (3) years effective date of this Agreement~~ as additional capital investment in the Golf Course. Such contribution by Licensee shall be contingent upon City matching the amount to be contributed by Licensee as well as the renewal of this Agreement for an additional five (5) year term. The spending of such contributions shall be in accordance with a capital improvement plan prepared by both parties and approved by the Board of Supervisors. In the event that such a capital improvement plan is not approved by Board of Supervisors, neither Licensee nor the City shall be obligated to make the contribution provided for herein.

4.6 ~~Both parties~~The City will collaborate with Licensee to seek additional funding for the golf course, including without limitation, funding from partners, sponsors, and grants for the benefit of the public.

5. BUSINESS LICENSE

Licensee represents that it is licensed by the City and the State of Nevada for the purposes of performing the services set forth in this Agreement.

6. STATUS OF LICENSEE

Licensee shall have the status of an "Independent Contractor" pursuant to NRS 608.0155, and shall not be entitled to any of the rights, privileges, benefits, and emoluments of either an officer or employee of the City.

7. CERTAIN DUTIES AND SERVICES TO BE PROVIDED BY LICENSEE

Licensee, its Professional Golf Instructor ("Instructor"), employees and staff shall perform all duties in accordance with the best interest of the City.

Licensee Shall:

7.1 Operate, manage, and maintain the course in a safe and efficient manner ~~in accordance with established policies~~. Such operation and management shall include, without limitation, the collection of fees, regulation of play, conduct of persons on course, enforcement of the rules and regulations of golf course, and soliciting and coordinating tournaments.

7.2 Operate, manage, and maintain a satisfactory pro shop in a professional, up-to-date manner to include, but not be limited to, sales, rental, and repair of golf equipment, clothing, and accessories. Stock and maintain an inventory of golf related merchandise, supplies and equipment in keeping with best retail practices. ~~demand.~~ Maintain golf course property including clubhouse, maintenance shop, and all infrastructures of the property, to the standards outlined in Exhibit A ~~& and~~ best practices.

7.3 Have the sole right to operate and manage all food and beverage concessions, or to enter into separate agreements for their operation.

7.4 Be responsible for ~~providing, acquiring and~~ maintaining compliance with all necessary permits, fees, rules, and regulations for the sale of food, beverages, including liquor, and must maintain an “A” rating as designated by the local health authority.

7.5 Determine all personnel requirements, recruitment schedules and compensation levels and shall employ, train, promote, discharge and supervise all personnel performing services in and about the Golf Course. Instructor and all staff (including cart staff) shall be required to wear uniforms.

7.6 Have the right and responsibility, subject to limitations set forth below, to establish all fees, including, but not limited to, green fees, cart fees, driving range fees, annual passes, play tickets, tournament fees, merchandise, lessons and all other charges associated with the operation of Golf Course.

7.7 Inform, at least annually, the Director of the intended fee structure for the up-coming year during the last quarter (October-December) of each calendar year as the Golf Course is a public facility.

7.8 Be responsible for all reports, and other pertinent information to be delivered to the Director or designee a minimum of monthly, by paper or electronic means of delivery.

7.9 Computer or print generate all interior signs (absolutely no hand written signs), and display ~~the signs and must be~~ neatly and prominently. All exterior signs must comply with the City’s signage master plan, a copy of which will be provided to Licensee upon execution of this agreement.

7.10 Establish accounting, cash collection and payroll procedures in compliance with generally accepted accounting principles as stated in Section 13 “Collection of Receipts and Accounting” of this Agreement.

7.11 Provide community golf lessons and an instruction program under the direction of a PGA Class A Instructor. Licensee shall also provide all other services customarily provided by a golf professional in accordance with demand. It is understood that these services may be provided by the Licensee’s employees, or through other mechanisms such as independent Licensee-contractor agreements, volunteer agreements or similar instruments.

7.12 Operate, manage, and supervise the use of the driving range and all putting practice greens adjoining said course and control and regulate their use in such a manner as to eliminate or prevent hazards or dangers to any person.

7.13 Furnish, without cost to the City, all equipment necessary for the suitable operation of the driving range and putting practice greens.

7.14 Provide and maintain daily equipment, including mats, golf balls, token or similar machines, and yardage markers for the driving range. Tee area shall be of a quality and quantity acceptable to the Director or designee. Any deficiencies will be noticed to the Licensee in writing and shall be corrected immediately or, in the case of replacement of equipment, ~~or golf balls,~~ within thirty (30) days.

7.15 Provide and supervise all starter and player activity functions, collect green fees and coordinate player starts, and furnish, at no cost to the City, suitable and qualified personnel in adequate number to insure efficient performance of such duties.

7.16 Effectively advertise, market and promote public and tournament play at the Golf Course and the sale of golf-related merchandise and services.

7.17 Furnish and maintain proper facilities, equipment and devices for the ~~minor~~ repair of golf equipment.

7.18 Provide, maintain and make available to the public at reasonable rental fees an adequate supply of all equipment necessary to play the game of golf including without limitation, golf clubs and golf carts. All carts shall be pre-numbered and maintained in good operating condition. The exterior and interior of all carts shall be maintained in a clean condition.

7.19 Except as otherwise provided herein, aAssume full responsibility and expense for all electric, gas, ~~and water~~ and reclaimed water utilities and repairs, sewer, garbage, telephone service and repair, fire system monitoring, intrusion alarm monitoring and repair, cable TV, electrical or cart service utilities, and maintenance of all cart storage areas.

7.20 Provide all portable display platforms, signs, equipment and/or devices for the purpose of advertising or demonstrating the services, merchandise and/or equipment for sale or rent in the pro shop. Permanent signs shall be reviewed and approved by the Director. Design and material shall comply with applicable City standards, including adopted plans.

7.21 Maintain inventory of golf merchandise, golf supplies and equipment in accordance with ~~the demand-~~best retail practices.

7.22 Be responsible for the preparation and submittal of liability/property loss reports, monthly cash and rounds of play reports, and other reports common to the operation of the business and/or as requested by the City, by paper or electronic means of delivery. Liability/property loss reports shall be submitted to Director as soon as reasonably practicable, but no later than two business days after the incident.

7.23 Coordinate with volunteers, Men's and Women's Clubs, community organizations, junior and golf development programs, and promote youth and senior golf opportunities to enhance golf programs and customer service offerings.

7.24 Promptly pay any and all taxes imposed by the local, state or federal government, utility bills, merchant invoices, and all other liabilities with respect to its operation of the Golf Course.

7.25 Comply with all applicable ordinances, laws, rules, and regulations of the City, state, and federal government; and of any political subdivision or agency, authority or commission thereof, which may have jurisdiction to pass laws, ordinances, or make and enforce rules or regulations with respect to the operations of the golf course, including but without limiting the generality of the foregoing, such rules and regulations of the City as are consistent with the rights herein granted to the Licensee.

7.26 Surrender City property in as good condition as when received, ordinary wear and tear excepted, upon termination of the Agreement

7.27 Operate and manage golf course on Licensee's own credit and hold harmless the City from any and all claims, demands or liability on account thereof. The City shall not be responsible for any debts incurred by the Licensee in the performance of any resulting Agreement.

7.28 Provide and maintain a golf driving range, including turf and sprinkler maintenance.

7.29 Maintain all golf course holes, landscape and planted areas which are part of the course.

7.30 Provide such signs and posters it shall deem necessary for public safety and convenience.

7.31 Provide scorecards, starting sheets, reservation sheets and all other items incidental to business on the golf course.

7.32 Meet with the Director, at least once annually, to review compliance with agreement, including without limitation to: fees, marketing, outreach, course condition, and customer satisfaction.

7.33 Maintain the course to acceptable professional turf maintenance standards as outlined in the maintenance standards described in Exhibit A, realizing quality of the course maintenance is very important to overall operation.

7.34 Maintain all facilities located on the real property that constitutes the Golf Course in good repair and function, including without limitation, the club house maintenance buildings, restrooms, cart barn, drinking fountains, and maintenance yard; domestic water irrigation system, including filters, and pumping facilities. Except as otherwise provided herein, Licensee is responsible for all ~~minor~~ repairs and maintaining all improvements and modifications to Golf Course that Licensee has installed or caused to be installed. Repairs or improvements made by

Licensee shall be subject to the provisions of Section 29 “Alterations and Improvements by Licensee,” at their own expense.

7.35 Provide all janitorial services and equipment to all areas of the Golf Course.

7.36 Provide at Licensee’s sole expense, reasonable maintenance and repair of the premises at all times during the term of the Agreement to prevent the premises from entering into a state of disrepair. Such proper and reasonable maintenance and repair of the premises includes:

7.36.1 Daily upkeep of the premises. Ordinary repairs that affect the structure, egress, fire protection system, fire ratings, energy conservation or plumbing, sanitation, gas, electrical or other utilities, must be performed by a person who is licensed and insured in the State of Nevada to perform the maintenance or repair.

7.36.2 Maintenance and replacement of the floor coverings but only in such a manner that is consistent with the use of techniques and products approved by the City in advance of the commencement of any work; interior walls and paint; electrical wiring and fixtures; equipment that is used for fire protection or suppression; the interior of the premises in general, and periodic gutter cleaning as necessary. Examples would be, but are not limited to, the following: water leaks, plugged toilets, burnt out bulbs, bad lighting ballasts, all plate glass, holes in walls, tears in carpet or damaged tile and the general upkeep of the interior.

7.37 Maintain compliance with all requirements set forth by the Environmental Control Authority including but not limited to proper solid waste handling per an approved solid waste management plan and proper maintenance of pretreatment equipment per the wastewater discharge permit.

7.38 Comply with all other duties, services, and requirements as described throughout this Agreement.

8. CERTAIN DUTIES AND SERVICES TO BE PROVIDED BY THE CITY

The City Shall:

8.1 Provide at its sole expense, based on available funding, proper and reasonable maintenance and repair of ~~the buildings~~ and grounds infrastructure, including the parking lot and cart paths at all times during the term of the Agreement. Such proper and reasonable maintenance and repair of ~~the buildings~~ and grounds infrastructure is limited to the roof, foundation; exterior; mainline plumbing; jointly-used electrical panels; and the HVAC (heating, ventilation and air conditioning) system.

8.2 Meet with the Licensee, at least once annually, to review compliance with agreement, including without limitation to: fees, marketing, outreach, course condition, and customer satisfaction.

8.3 Provide natural resource management, including, but not limited to, noxious weeds on the lands surrounding the Golf Course, as shown on Exhibit B, compliant with Nevada Revised Statutes (NRS 555). The City will work cooperatively with Licensee to coordinate these efforts to not negatively impact the Golf Course or its operations.

8.4 Provide delivery of reclaimed water, subject to its availability, in accordance with the permit issued by the Nevada Division of Environmental Protection (NDEP), to the main reservoir located on the east course pursuant to Carson City Municipal Code 12.10.220.

8.5 Operate and maintain the Eagle Valley pump station located at the Water Resource Recovery Facility (WRRF), the transmission line, including appurtenances, from the WRRF to point of discharge at the main reservoir, and the main reservoir level control system.

8.6 Pay for repairs to reclaimed water delivery infrastructure, including but not limited to pump stations, located at the Golf Course whenever the costs of such repairs exceed \$5,000. However, the City will not be responsible for paying for repairs that are needed due to a lack of care, scheduled maintenance, or the negligence of Licensee.

8.7 Prioritize funding and complete capital project improvements in accordance with approved budgets.

8.8 Comply with all other duties, services, and requirements as described throughout this Agreement.

9. PROFESSIONAL STANDARDS

Instructors, golf professionals and staff hired by Licensee or through independent agreement or similar instrument, are required to be under the direction of a Professional Golf Association (PGA) certified Class A Professional during the term of this Agreement. Maintenance and agronomic staff shall be under the direction of a member of the Golf Course Superintendents Association of America (GCSAA) Golf Course Superintendent. The onsite Superintendent need not be a member of the GCSAA, as long as a member of the Licensee's management team overseeing the operation is such a member. Copies of such membership shall be provided to the City upon request to ensure compliance. In addition, Licensee shall operate and manage the Golf Course in accordance with the Code of Ethics of the PGA, GCSAA and the City.

10. MARKETING AND ADVERTISING

10.1 Licensee is responsible for effectively advertising, marketing and promoting public and tournament play at the Golf Course and the sale of golf related merchandise and services.

10.2 ~~After the first year of this Agreement,~~ Licensee shall, on or before January 31 of each year during the term of this Agreement, or any renewals thereof, meet with the Director to review the annual sales and marketing plan for the Golf Course. The City shall have the right to comment upon and make suggestions with respect to said plan, provided, however, while Licensee shall consider all of the City's suggestions and comments, Licensee shall not be obligated to implement the same.

10.3 Licensee is aware that this is a public golf course, and as such, is expected to use discretion in the choice of advertising and marketing to ensure its appropriateness. The City retains the right to request removal of advertising or marketing that it deems inappropriate. Licensee will make every effort to indicate on marketing materials (including print, web and other mediums) that the Eagle Valley Golf Course is owned by Carson City and operated and managed by Duncan Golf Management.

11. HOURS OF OPERATION

11.1 Licensee shall devote adequate staff and personal attention to operate and manage a modern and efficient golf course.

11.2 Licensee shall ensure adequate staff is onsite whenever course is open for play.

11.3 Licensee shall recommend to the Director for approval an annual schedule setting forth the minimum hours during the year (weather permitting) when the Golf Course shall be open for play. Licensee is responsible for opening and closing security gates. Licensee is responsible for the security of Golf Course facilities and assets during all times.

12. ESTABLISHMENT OF RATES

12.1 In the first twelve (12) months of the Initial Term, the green fees charged shall be in accordance with rates set forth in the schedule of rates attached here to as Exhibit A.

12.2 The Licensee, in its discretion, shall ~~determine and~~ re-evaluate and determine green fee rates annually. ~~In Licensee's evaluation, Licensee shall perform an analysis of green fees in the Consolidated Municipality of Carson City and in Northern Nevada at comparable daily fee golf courses. If Licensee elects to reevaluate green fee rates, the evaluation process must include a wide sampling of publicly owned municipal and privately owned daily fee courses with a comparable (i) quality of physical improvements, and (ii) maintenance standards ("Comparable Golf Courses").~~ The green fee analysis determination shall be reviewed with the Director at the annual meeting.

~~12.2—In the first twelve (12) months of the Initial Term, the green fees charged shall be in accordance with rates set forth in the schedule of rates attached here to as Exhibit A. If Licensee chooses to increase green fees in subsequent years, any increase in green fees shall not exceed 110% of the average fee as calculated in the analysis described in section 12.1 above without the consent of the Director. In no event shall green fees be required to be reduced from the amount charged for green fees in the previous year. Any desired rate increases proposed that exceed the previous year's rates by more than 10% must be proposed to the Board of Supervisors for approval of the previous year's rates shall be subject to the approval of the Board of Supervisors before implementation.~~

13. COLLECTION OF RECEIPTS AND ACCOUNTING

The following apply to Licensee and all management or service subcontractors. Licensee is responsible for ensuring any management or service subcontractors adhere to the following:

13.1 Definitions:

“Food and beverage sales” means all food and beverage sales.

“Green fees” include, but are not limited to, means all revenue collected from daily regular green fees, ticket and annual discounted fees, and advance reservation fees, ~~or other categories of revenue which may be established by the Licensee.~~

“Pro Shop sales” mean all retail and merchandise sales.

“Ticket” and “annual” fees mean any fee which entitles a person to use the Golf Course, exclusive of tournament play.

“Tournament” means any group of more than twelve (12) wishing to have “blocked” or pre-designated tee or start times, including “shot-gun” starts. Tournament revenues are a part of “green fees,” however their revenues are to be collected and reported separately as “Tournament Revenues.” Tournament rounds of play are to be accounted for on the day of play.

13.2 Licensee shall establish cash collection and payroll procedures in compliance with business industry standards, applicable federal and state laws, and generally accepted accounting principles (accrual basis of accounting); train and monitor all staff in the appropriate cash handling practices; at all times monitor and ensure the safety of all monetary exchanges; adhere to accepted credit card and other personal information security standards; ~~limit the amount of cash and cash equivalences on site through regular banking procedures.~~

13.3 Licensee shall submit to the City, monthly reports of rounds of play and gross revenue, which will include green fees, advance reservation fees, annual and ticket sales, annual surcharge, cart income, cart usage, tournament income, driving range income, pro shop sales, lessons, food sales, beverage sales, catering in addition to all other items of receipts, and will state that sign-up sheets, cash register tapes, and daily statement of receipts have been reconciled

and are in agreement. Licensee shall submit a monthly summary of expenses to the City sufficient to reflect an accurate net operating income. Licensee shall submit to the City a copy of any contracts or agreements made by the Licensee that extend beyond a twelve (12) month term ~~period~~.

~~13.4. Licensee shall be responsible for and explain any overages or shortages for the period.~~

13.54 Licensee shall establish and maintain complete books of accounts and other records showing all business transacted in connection with the operation of the Golf Course in compliance with generally accepted accounting principles (accrual basis of accounting), including reporting any barter or in-kind exchange agreements entered into by the Licensee at fair value to the City. Reporting shall include the nature and terms of the agreement.

13.65 Licensee agrees to install and maintain a system of accounts acceptable to the City and its auditors.

13.76 All accounting records and supporting documents shall be subject to audit and inspection and be available at any and all reasonable times to the City and its authorized officers, agents, or employees.

13.87 The Director reserves the right to require management audits, or other studies and reviews of Licensee's operating procedures, or accounting and controls that are deemed desirable. If City requires Licensee to perform such procedures, ~~Licensee must engage the appropriate entity to perform said services. However, City will promptly reimburse Licensee for costs incurred for requested services so long as Licensee has provided the service agreement to the City and City has approved the service agreement.~~ If Licensee fails to provide the required records and supporting documents, or provides inadequate information, Licensee agrees to pay any additional charges incurred as a result of the delay in the completion of the audit.

13.98 Licensee shall be responsible for retaining all financial records for a minimum of seven (7) years for each accounting year.

~~13.109 Licensee and designated staff shall be fully proficient in and routinely use, as a standard administrative practice of the Golf Course operations, including~~ a point of sale system or similar instrument.

~~13.110~~ Licensee and any management or service subcontractors shall use either a calendar year, January 1 through December 31, or fiscal year, July 1 through June 30, as the established accounting period.

14. PERFORMANCE BENCHMARKS

Performance benchmarks and completion dates have been established in Section 10 "Marketing and Advertising."

14.1 The City shall utilize a “report card” for evaluation purposes. The “report card” shall be on a form created by the Director in collaboration with the Licensee. Reviews by the City shall be conducted each year.

14.2 Failure to meet benchmarks and specific performance dates may result in additional reviews and non-renewal of this Agreement.

14.3 Licensee will be reviewed for, but not limited to, adherence to the standards established in Exhibit A, the financial viability review and the extent and nature of management and auditing concerns provided through annual financial statements, and customer satisfaction.

15. EMPLOYEES

Licensee shall employ, or through separate agreement or similar instrument, at their own expense, such staff as necessary to fully operate and manage Golf Course in an efficient, professional and orderly manner.

16. IRRIGATION AND RECLAIMED WATER

16.1 The City is the owner of reclaimed water that is provided to the golf course for irrigation purposes. Except as otherwise provided in section 8.6 above, the Licensee will be responsible for upkeep of this infrastructure, compliant with industry standards, federal, state and local regulations.

16.2 The monthly service charge ~~of \$283 per month~~ associated with reclaimed water use will be charged in accordance with the Carson City Municipal Code, which currently is \$283.00 per month and is the responsibility of the Licensee.

16.3 The Licensee is also responsible for:

16.3.1 Maintaining compliance with all requirements set forth by the Nevada Department of Environmental Protection (NDEP) for the use of reclaimed water, including but not limited to a Reclaimed Water Management Plan, Groundwater Discharge Permit, discharge monitor reporting, reclaimed water quality sampling and testing, and spill reporting.

16.3.2 Providing support personnel to operate and maintain an alarm notification system and program for the timely response and repair of the system in the event of failure or malfunction to prevent any regulatory violation or property damage from occurring.

16.3.3 Operating and maintaining the reclaimed water system from the point of discharge at the main reservoir throughout the distribution system used to deliver

reclaimed water to and throughout the property including but not limited to the irrigation system, on-site pump stations, diversion vaults, valves, air releases, filters, controllers, ponds and reservoirs in accordance with industry standards and local building codes.

16.3.4 Maintaining a program for maintenance of the golf course property, including but not limited to turf management and the control of noxious and native weeds, mosquitos, and algae in accordance with industry and municipal code standards, consistent with the level of service standards outlined in Exhibit A.

16.3.5 Providing records upon the City's request.

17. ENERGY CONSERVATION

Licensee shall make every effort to conserve energy, whenever and wherever possible, including, but not limited to, the heating and lighting of areas necessary to conduct business during operating hours or maintain security.

18. PERFORMANCE BOND

Licensee shall be required to provide a performance bond, in a form acceptable to the City in its sole discretion, issued by an insurance company qualified/licensed to do business in Nevada, in the amount of Two Hundred Fifty Thousand Dollars (\$250,000). Said bond must name the City as sole obligee. Said bond will be released at the expiration or termination of the resulting Agreement, provided the Licensee has fully and completely performed under the Agreement.

19. FIXTURES

19.1 Any fixtures or items permanently attached to the clubhouse at the Golf Course in connection with the operation of the pro shop, excluding trade fixtures owned by Licensee, shall become the property of the City upon the termination of Agreement.

19.2 Upon expiration or termination of this Agreement, Licensee shall quit and surrender the premises under its control, including permanent fixtures attached thereto and personal property of the City, to City in as good condition as at the date of the execution of this Agreement, ordinary wear and tear excepted.

20. PREFERENTIAL TREATMENT FORBIDDEN

Licensee shall not grant any preferential treatment to any individual or group of individuals except as authorized by the rules and regulations pertaining to the Golf Course.

21. COLLABORATIVE RELATIONSHIP

21.1 Licensee shall be accountable in all of its operations to the Director or the Director's designee. The City recognizes and acknowledges that Licensee will need the assistance and cooperation of the City in order to properly perform and fulfill Licensee's covenants and obligations under this Agreement.

21.2 Therefore, the City agrees it shall execute documents and do such further acts and things as Licensee reasonably requests in order to assist Licensee in fulfilling its obligations under this Agreement. The City further agrees it shall designate a specific officer or agent having appropriate experience and authority whose responsibility is to work with Licensee in assuring that Licensee obtains the full reasonable cooperation and assistance of the City, subject to the terms of this Agreement and all applicable laws.

21.3 Licensee shall also reasonably cooperate with all other City Departments.

22. LICENSE AGREEMENT

It is understood and agreed that the Golf Course is licensed for use. Licensee's right to occupy and operate the same, as granted herein, shall continue only so long as each and all undertakings, provisions, covenants, agreements, stipulations and conditions herein contained are strictly complied with. Nothing in this Agreement shall grant any permanent right, title or interest in the Golf Course to Licensee outside of the term of this Agreement.

23. INDEMNIFICATION

23.1 To the maximum extent permitted by law, Licensee shall, at its own expense, indemnify, defend with counsel acceptable to the City (which acceptance will not be unreasonably withheld), and hold harmless the City, its officers, officials, employees, agents, and volunteers ("Indemnitees") from and against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorney's fees and costs and fees of litigation) (collectively "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with the services provided pursuant to this Agreement or Licensee's alleged fault of the Indemnitees except as provided below.

23.2 Licensee's obligation to indemnify, defend, and hold harmless under this provision shall not be excused because of Licensee's inability to evaluate any Liability, or because Licensee evaluates liability and determines that Licensee is not or may not be liable. Licensee must

respond within thirty (30) calendar days to any tender for defense and indemnity by the City, unless the time for responding is extended by an authorized representative of the City in writing. If Licensee fails to accept tender of defense and indemnity within thirty (30) calendar days, in addition to any other remedies authorized by law, so much of the money or that may become due to Licensee under this Agreement as shall be reasonably considered necessary by the City, may be retained by the City until disposition has been made of the matter subject to tender, or until Licensee accepts the tender, whichever occurs first.

23.3 Licensee waives any and all rights to express or implied indemnity against the Indemnitees concerning any Liability of Licensee arising out of or in connection with the services provided pursuant to this Agreement or Licensee's failure to comply with any of the terms of this Agreement.

23.4 Subject to the limitations set forth in NRS Chapter 41 the City agrees to indemnify and hold Licensee harmless, and shall defend any claims against Licensee in any action where the central issue of the action was the City's sole negligence or the City's failure to abide by the terms of this Agreement.

24. INSURANCE REQUIREMENTS

24.1 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.

24.2 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.

24.3 General Terms

24.3.1 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.

24.3.2 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 an ongoing condition subsequent to this Agreement. Any failure of the City to timely approve shall not constitute a waiver of the condition.

24.3.3 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.

24.3.4 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.

24.3.5 Compliance with the insurance requirements of this Agreement shall not limit the liability of Licensee, its employees, agents, subcontractors, volunteers or invitees performing Services 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.

24.3.6 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.

24.4 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.

24.5 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.

24.6 Waiver of Subrogation

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

24.7 Cross Liability

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

24.8 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.

24.9 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.

24.10 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.

24.11 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:

24.11.1 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.

24.11.2 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.

24.11.3 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.

24.12 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.

Minimum Limits required:

24.12.1 Two Million Dollars (\$2,000,000.00) - General Aggregate.

24.12.2 Two Million Dollars (\$2,000,000.00) - Products & Completed Operations Aggregate.

24.12.3 One Million Dollars (\$1,000,000.00) - Each Occurrence.

24.12.4 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)].

24.12.5 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.

24.12.6 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.

24.12.7 There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability assumed under a contract.

24.12.8 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.

24.13 Business Automobile 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.

Other Requirements

24.13.1 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.

24.13.2 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.

24.14 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 (\$2,000,000.00) in the aggregate.

Other Requirements

24.14.1 Retroactive date: One day prior to the commencement of the performance of this Agreement.

24.14.2 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's negligent acts, errors and omissions committed during the term of the Professional Liability Policy.

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

24.14.4 A certified copy of this policy may be required.

24.15 Worker's Compensation and Employer's Liability Insurance

24.15.1 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.

24.15.2 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.

24.16 Property Insurance

24.16.1 The City may, at its option, secure and maintain insurance covering damage to its property. Any such insurance shall be for the sole benefit of the

City and Licensee shall have no claim to any proceeds there from, nor shall the City be required to use the proceeds for reconstruction or repair.

24.16.2 Licensee shall secure insurance covering their property at their own expense and shall secure and maintain such insurance as is necessary to protect against any claim for damage to private property, including golf carts which are stored at the course.

24.16.3 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' 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.

24.16.4 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.

24.16.5 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.

25. DAMAGE AND RESTORATION

25.1 Total Destruction:

If the buildings or other improvements on the Premises licensed under this Agreement or the Personal Property should be totally destroyed (i.e., damage in excess of partial destruction as defined in Section 25.2) by fire or other casualty or a force majeure occurrence, Licensee shall have the option, to be exercised in writing within sixty (60) days of such destruction, to either (a) terminate this Agreement in which event the parties shall have no further obligations hereunder, or (b) elect to repair and restore the Premises, subject to the availability of insurance proceeds restore the buildings, improvements and Personal Property in a good and workmanlike manner to a condition as good as or better than the condition in which the buildings, improvements and Personal Property existed prior to their total destruction.

25.2 Partial Destruction:

If the buildings or other improvements on the Premises licensed under this Agreement or the Personal Property should be partially damaged by fire or other casualty or a force majeure event, then Licensee shall, subject to the availability of insurance proceeds (it being understood and acknowledged that Licensee shall have no obligation to repair or restore any portion of the Premises if insurance proceeds are not available to fully restore the same), restore the buildings, improvements and Personal Property in a good and workmanlike manner to a condition as good as or better than the condition in which the buildings, improvements and Personal Property existed prior to their damage or destruction. For purposes of this Agreement, the term “partially damaged” means (a) damage to the extent of one third or less of the value of the buildings, improvements and Personal Property at the Premises or (b) damage to the extent that no more than nine holes on the golf course at the Premises are rendered unplayable. If the insurance proceeds made available to Licensee are not sufficient to fully restore the Premises, then Licensee may terminate this Agreement upon written notice to the City in which event the parties shall have no further liability hereunder. In addition, notwithstanding anything in this Section 25.2 to the contrary, if, as a result of the partial destruction of the Premises, Licensee is unable to make full and productive economic use of the Premises and, in Licensee’s reasonable determination, the full and complete restoration of the Premises will take in excess of one hundred eighty (180) days, then Licensee may, upon written notice to the City within sixty (60) days after the partial destruction occurs, terminate this Agreement, in which event the parties shall have no further obligations hereunder.

25.3 Application of Insurance Proceeds upon Termination:

If, after the partial or total destruction of the Premises, this Agreement is terminated pursuant to the provisions of this Section 25 then all insurance proceeds made available on account of such destruction shall first be paid to Licensee to reimburse Licensee for the value of any and all improvements made to the Premises by Licensee prior to such destruction until such time as Licensee has received full reimbursement for all such improvements and for the value of the Personal Property at the Premises owned by Licensee; second, to the City until such time as the City has received full reimbursement for the value of the improvements at the Premises which existed as of the first day of the Agreement and the balance, if any, shall be paid to Licensee.

26. RESTRICTIONS

Any agreements, written or oral, between the Licensee and parties other than the City, where such agreements involve Licensee's personnel assigned to the City's account, is prohibited without the express written consent of the City.

27. HAZARDOUS SUBSTANCES AND MATERIALS

27.1 Licensee shall maintain on-site, Material Safety Data Sheets (MSDS), as defined and prescribed in 29 C.F.R. Section 1910.1200, for all hazardous substances purchased by Licensee for use under this Agreement.

27.2 Licensee shall apprise personnel of the hazards to which they may be exposed in using, handling, transporting, or disposing of hazardous substances, and to obtain medical treatment for those who may be affected by the substance.

27.3 Licensee shall immediately report all spills of hazardous substances to the Carson City Department of Health and Human Services, the Environmental Control Authority, the Carson City Risk Manager, and any other entity as required by law.

28. LICENSEE'S USE AND POSSESSION OF PREMISES

28.1 The Golf Course premises and all other improvements thereon shall be used by Licensee to provide professional golf services. It is understood and agreed that the said premises shall be used by Licensee during the term of this Agreement only for the above stated purposes and for direct ancillary uses with the prior written approval of the City, and for no other purposes or uses whatsoever.

28.2 Licensee will not make or permit any use of the said premises which, directly or indirectly, is forbidden by public law, ordinance or government regulation which may be dangerous to life, limb or property. Licensee may not commit waste on the premises, use the premises for any illegal purpose, or permit a nuisance on the premises.

28.3 In the event that Licensee uses these premises for any purposes not expressly permitted herein, the City may terminate this Agreement, subject to the curative periods set forth herein, and without notice to Licensee restrain such improper use by injunction or other legal action.

28.4 Quiet Enjoyment

Subject only to the terms of this Agreement, so long as Licensee complies with its obligations under this Agreement, the City shall secure to Licensee the quiet and peaceful enjoyment of the Premises and the sole and exclusive possession of the Premises without objection or interference from the City or any party claiming under the City.

28.5 Frustration of Purpose

At any time during the term of this Agreement, (i) if the governing body of any political subdivision having competent jurisdiction over the Premises should enact any valid zoning or other ordinance, law or regulation (collectively, "Use Law") which prohibits the use of the whole or a substantial part of the Premises for the purposes as provided in Section 2 of this Agreement; (ii) if an event of force majeure (collectively, "Force Majeure Event") occurs, including without limitation, declared or undeclared war, sabotage, riot or other acts of civil disobedience, acts or

omissions of government, labor disputes, shortages of fuel or other materials, accidents, fires, explosions, floods, earthquakes, or other acts of God, which substantially prevents Licensee's use of the Premises as provided for in Section 2 of this Agreement; or (iii) if Facilities become unavailable or inadequate so as to substantially interfere with Licensee's use of the Premises as provided in Section 2 of this Agreement, it is agreed that Licensee may elect, within one hundred twenty (120) days after the effective date of such Use Law or the occurrence of the Force Majeure Event, or the date Facilities become unavailable or inadequate, to cancel this Agreement and surrender possession of the Premises. Any such cancellation and surrender shall act to release and discharge Licensee from any further obligation under this Agreement. In addition, it is agreed that during the period of any Force Majeure Event; during the period that Facilities are unavailable or inadequate; and/or during any period that any defect in the Premises substantially interferes with Licensee's use of the Premises as provided in Section 2 of this Agreement, the City and Licensee shall be excused from performing their respective obligations under this Agreement whether or not Licensee exercises its right to terminate as provided herein.

29. ALTERATIONS AND IMPROVEMENTS BY LICENSEE

29.1 Licensee has inspected the premises and hereby accepts the premises in its present "as is, where is" condition. Licensee shall not make any alteration or addition to any portion of the Golf Course's facilities or to any equipment belonging to the City located at the Golf Course without prior written consent of the Director. Except as otherwise provided in this Agreement, Licensee shall, at its sole cost, maintain and repair the Premises in accordance with the maintenance standards set forth on Exhibit A.

29.2 In the event that Licensee wishes to make improvements to said real property, it may do so at its own expense and after the written approval of the City, satisfying all statutory and code requirements of applicable governmental entities including the provisions of NRS 338, if applicable.

29.3 All improvements of Licensee shall be solely at Licensee's cost and expense and shall be performed in a good workmanlike manner in accordance with sound construction practices and in accordance with all applicable codes and regulations. Licensee shall keep the premises and said improvements free and clear of liens for labor and materials and shall hold the City harmless from any responsibility in respect thereto.

30. OWNERSHIP OF IMPROVEMENTS

30.1 All temporary improvements, furnishings, and equipment purchased, constructed or installed on the premises by the Licensee shall be personal property of Licensee and Licensee shall have legal title thereto during the term of this Agreement. Upon the expiration, termination, or default of this Agreement, title to all permanent improvements constructed on the premises shall vest in the City.

30.2 Title to all supplies, furnishings, inventories, and removable equipment and other personal property not originally provided by the City shall remain the Licensee's, and Licensee shall have the right to remove such items, excepting licenses, from the Premises without damaging the Premises unless the Licensee is in default hereunder.

30.3 Licensee shall consider any reasonable offer to buy the above items from the Licensee upon expiration or termination of this Agreement.

30.4 If Licensee is in default, all items listed in Exhibit C that do not have outstanding lease or purchase obligations shall automatically vest to the City to offset any real or anticipated damages. An equipment inventory with estimated value based on condition is outlined in Exhibit C.

31. LICENSES AND PERMITS

Licensee shall pay for all licenses, permits, and fees necessary for Licensee to construct improvements, if any, and conduct Licensee's business on the premises, including, without limitation Nevada Division of Environmental Protection permits for the use of reclaimed water.

32. LIENS

32.1 Licensee will not permit any mechanics, laborers or material man's liens to stand against the premises or improvements for any labor or materials to the Licensee or claimed to have been furnished to Licensee's agents or sublicensees, in connection with work of any character performed or claimed to have been performed on the Premises, or improvements by or at the direction or sufferance of the Licensee; provided, however, Licensee shall have the right to contest the validity or amount of any such lien or claimed lien.

32.2 In the event of Licensee's decision to contest the validity or amount of any such lien or claimed lien, Licensee shall give the City reasonable security as may be demanded by the City to insure payment thereof and prevent sale, foreclosure or forfeiture of the Premises or improvements by reason of such non-payment.

32.3 Such security shall be posted by the Licensee within fifteen (15) days of written notice from the City, or Licensee may "bond off" the lien according to statutory procedures.

32.4 Licensee will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Licensee's own expense.

33. RIGHT OF CANCELLATION

~~The City shall reserve the right to cancel this Agreement for any of the following reasons:~~

33.1 If either party breaches a material provision hereof (“Cause”), the non-breaching party shall give the other party notice of such Cause. If the Cause is remedied within thirty (30) days, the notice shall be null and void.

33.2 If such Cause is not remedied within the specified period, the party giving notice shall have the right to terminate the Agreement upon expiration of such remedy period. The rights of termination referred to in this Agreement are not intended to be exclusive and are in addition to any other rights or remedies available to either party at law or in equity.

33.3 In addition to all other rights herein, the City may terminate this Agreement without prior notice should the Licensee become insolvent, voluntarily file for bankruptcy or receivership, or make any assignment for the benefit of creditors, or should the other party have commenced against it any proceeding, suit or action in bankruptcy or receivership provided such proceeding, suit or action is not dismissed within thirty (30) days.

33.4 If the parties elect to renegotiate the terms of this Agreement pursuant to Section 43, this Agreement will continue according to its terms until the conclusion of the negotiations.

33.4.1 During the renegotiation period, either party may elect to cancel the Agreement as a no fault cancellation by providing not less than ninety (90) days prior written notice.

33.4.2 In the event of a no fault cancellation pursuant to Section 33.4.1, the Agreement shall survive cancellation for a period of up to ninety (90) days beyond the cancellation date in the event either party needs additional time to wind up its affairs. During that time, the parties shall be required to continue fulfilling their obligations under this Agreement.

34. VACATION OF THE PREMISES

34.1 In the event of the termination of this Agreement for any reason other than expiration, Licensee shall peaceably vacate the ~~p~~Premises within such time as may be specified in the written notice to vacate, except in cases where continued presence of Licensee would cause immediate injury or damage to the City or other persons, in which case vacation may be immediate.

34.2 Upon the expiration or earlier termination of this Agreement, Licensee shall return the Real and Personal Property initially provided by the City in the same or better condition, excepting normal wear and tear, than when it was received by Licensee. Licensee agrees to have all personal property, fixtures, and equipment appraised at the time this agreement is executed and supply the City with a schedule and current value of the same. At the expiration or termination of this agreement Licensee shall return all such Real and Personal Property to the

City. During the term of this agreement Licensee shall purchase or otherwise acquire replacement equipment as required and shall maintain the existing equipment for as long as feasible in accordance with this Agreement and any capital improvement plan agreed to by Licensee and the Director.

35. NONDISCRIMINATION

In accordance with NRS 338.125, in connection with the performance of work under the resulting Agreement, the Licensee agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, gender identity or expression, or age. Such agreements shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. Any violation of such provision by the Licensee shall constitute a material breach of contract. Further, Licensee agrees to insert this nondiscrimination provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

36. ASSIGNMENT

No assignment of any agreement resulting from award of this bid shall be allowed, including the right to receive payment, without the express written permission of the City.

37. DEFAULT

Termination for default shall result in proceedings against the Licensee, which may result in its being debarred from providing services to the City for a period not less than five (5) years after the expiration date of the defaulted Agreement. In addition, the defaulting Licensee may be charged for any additional cost to City for the provision of services as defined in Section 2 “Scope of Services” for the remaining term of this Agreement.

38. THIRD PARTY RIGHTS

This Agreement is not intended to create, nor shall it be construed to create, any third party beneficiary rights in any person not a party hereto.

39. EXCLUSIVE

This is an exclusive agreement between the City and Licensee during the term of the agreement.

40. NOTICES

Except as otherwise specified, all notices under this Agreement shall be in writing.

Notice to Licensee shall be addressed to:

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

Notice to City shall be addressed to:

Laura Rader, Purchasing and Contracts Administrator
Carson City Purchasing and Contracts
201 N. Carson Street, Suite 2
Carson City, NV 89701

41. NOTICE TO PROCEED

The City's Purchasing Department shall issue a written Notice to Proceed, in the form of a Notification of Award, upon execution of this Agreement. Licensee shall not perform on any portion this Agreement without providing satisfactory insurance certificates and fiduciary bond.

42. EXTENSION OF SERVICES

Licensee may be required to continue performance of services beyond the expiration date of this Agreement, upon the City's request, at the rates specified in this Agreement. The total extension of any performance hereunder shall not exceed six (6) months. Any extension to this Agreement shall be in writing and signed by both parties.

43. REOPENER

The parties reserve the right to renegotiate any part of this agreement if a material change to the Agreement should occur as a result of applicable ordinances, laws, rules, and regulations of the City, state, and federal government; and of any political subdivision or agency, authority or commission thereof, which may have jurisdiction to pass laws, ordinances, or make and enforce rules or regulations with respect to the operations of the golf course, including but without limiting the generality of the foregoing, such rules and regulations of the City.

44. GOVERNING LAW

This Agreement shall be governed, interpreted and construed in accordance with the laws of Nevada, ~~and any dispute will be heard in the First Judicial District Court of Nevada.~~

45. DISPUTE RESOLUTION

~~The parties hereto shall use their best efforts to settle any dispute, claim, question, or disagreement arising from or relating to this Agreement or breach thereof. Any dispute, claim, question, or disagreement that is unable to be resolved by following the procedures outlined in this agreement shall be settled by arbitration administered pursuant to the Nevada Rules of Arbitration.~~

~~**45. DISPUTE RESOLUTION**~~

~~— In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of 60 days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration administered pursuant to the Nevada Rules of Arbitration.~~

4546. SOPHISTICATED PARTIES AND DRAFTING PRESUMPTION

The parties agree that each has had their respective counsel review this Agreement and are sophisticated entities, and as such this Agreement shall be construed as if it was jointly drafted.

4647. SEVERABILITY

If any provision contained in this Contract is held to be invalid, void, or unenforceable by a court of law or in equity, the provisions of this Agreement not adjudicated as such will remain in full force and effect. The non-enforceability of any such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

4748. ENTIRE AGREEMENT

This Contract and the Exhibits specifically recited herein constitute the entire Agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and agreements that may have been made in connection with this Agreement. Unless an integrated attachment to this Agreement specifically dispays a mutual intent to amend a particular part of this Agreement, general conflicts in

language between any such attachment and this Agreement shall be construed consistent with the terms of this Agreement.

4849. GOOD STANDING

Licensee represents that the execution of this Agreement and performance of the services as specified herein will not violate any provisions of or constitute a default under any other agreement to which Licensee is a party or is bound. Further, Licensee is not precluded or prohibited, in any way, whether in law or in equity, from performing the services it is agreeing to in this Agreement, nor will it impose any liability or obligation upon the City for accepting such Services, other than those that are expressly agreed to within the four corners of this Agreement.

50. PROPER AUTHORITY

The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Licensee acknowledges that this Contract is effective for the period of time specified in this Contract. Any services performed by Licensee before this Agreement is effective or after it ceases to be effective is performed at the sole risk of Licensee.

51. ACKNOWLEDGMENT AND EXECUTION

This Contract may be executed in counterparts, each of which shall be an original and all of which together shall constitute one Agreement. The parties hereto have caused this Contract to be signed and intend to be legally bound thereby as follows:

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

CITY
Carson City Purchasing & Contracts
Attn: Laura Rader, Administrator
201 North Carson Street, Suite 2
Carson City, Nevada 89701
Telephone: 775-283-7137
Fax: 775-887-2107
LRader@carson.org

CITY'S LEGAL COUNSEL
Carson City District Attorney

I have reviewed this Contract and approve as to its legal form.

By: _____
Laura Rader, Administrator

By: _____
Deputy District Attorney

Dated: _____

Dated: _____

CITY'S ORIGINATING DEPARTMENT
Carson City Parks and Recreation

BY: Jennifer Budge, Director
Carson City Parks and Recreation

By: _____
Jennifer Budge, Director

Dated _____

DUNCAN GOLF MANAGEMENT

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

By: _____

DATED: _____

CONTRACT ACCEPTANCE AND EXECUTION:

The Board of Supervisors for Carson City, Nevada at their publicly noticed meeting of _____ approved the acceptance of the attached Contract hereinbefore identified as **CONTRACT No. _____**. Further, the Board of Supervisors authorizes the Mayor of Carson City, Nevada to set his hand to this document and record his signature for the execution of this Contract in accordance with the action taken.

CARSON CITY, NEVADA

ROBERT L. CROWELL, MAYOR

DATED this ___ day of _____, 2018.

ATTEST:

SUSAN MERRIWETHER, CLERK-RECORDER

DATED this ___ day of _____, 2018

4816-5675-7338, v. 1